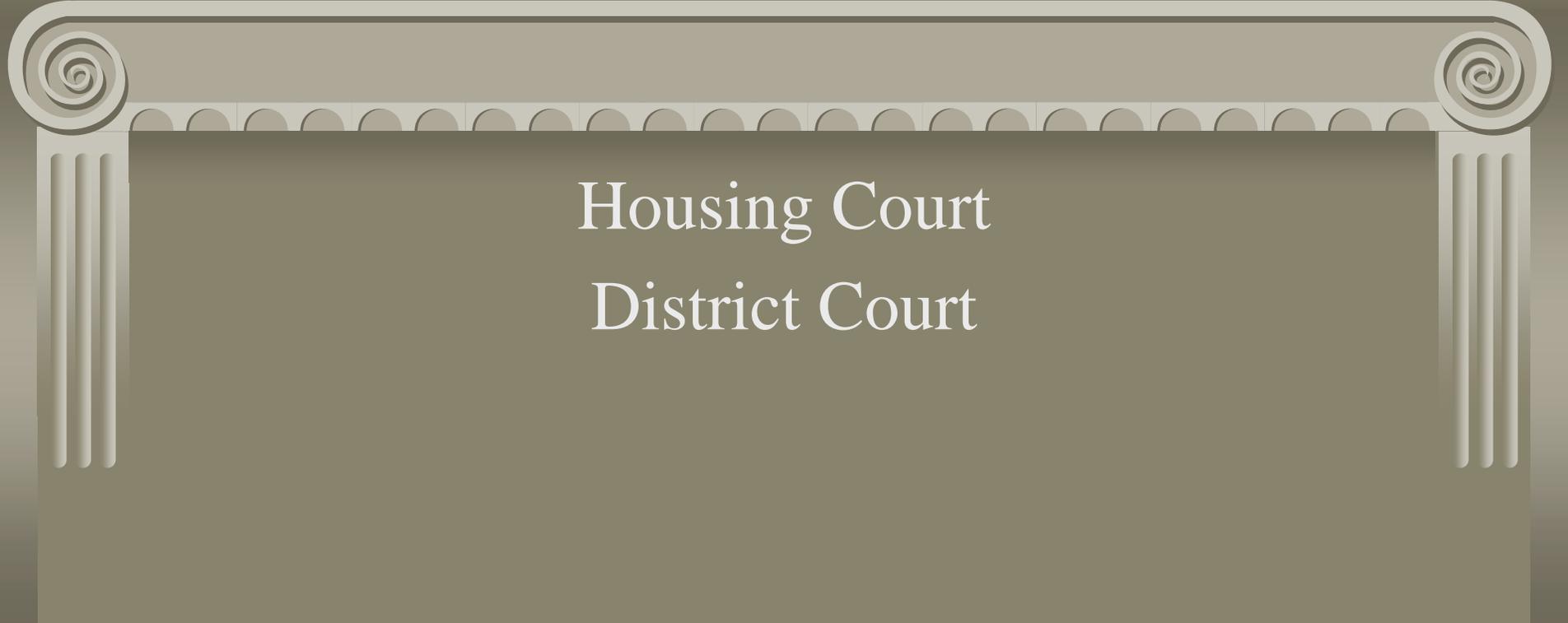


# Fire Code Violations and the Court System



Housing Court  
District Court

# Rules of Thumb

For all courts

# If in Doubt

- ◆ Contact your legal counsel
  - ◆ Department Counsel
  - ◆ Town Counsel
  - ◆ City Solicitor
  - ◆ District Attorney's Office
  - ◆ Attorney General's Office

# Know The Court Personnel

- ◆ Do a “meet and greet” before you need to use the court’s services.
  - ◆ Ask about any special procedures or rules.
  - ◆ Obtain copies of any court specific forms. (Housing Court forms are different for each court
  - ◆ Explain your responsibilities.
  - ◆ Meet the clerk magistrate, and assistant clerk magistrates. Meet the Housing Court’s Housing Specialists.
  - ◆ Obtain court schedule.

# Cite the Correct Party

- ◆ Cite the correct owner or responsible party.
- ◆ Don't cite an employee.
- ◆ Cite the legal entity. This may not always be the public name.
- ◆ Corporations, LLCs, LPs, Trusts, Partnerships.
- ◆ [www.sec.state.ma.us](http://www.sec.state.ma.us)
- ◆ Failure to cite the correct party may result in dismissal.

# Cite the Correct Property Owner

- ◆ May not always be apparent.
- ◆ May be owned by a legal entity and not an individual.
- ◆ [www.Masslandrecords.com](http://www.Masslandrecords.com) or Local Registry of Deeds.
- ◆ Failure to cite correct owner may result in dismissal.

# Be Prepared!

- ◆ If seeking a civil order, be prepared with a list of what you are requesting the court to order.
- ◆ Try to conduct a last minute inspection the day of your court appearance.
- ◆ Be reasonable, be professional in appearance and demeanor.

# Legal Jurisdiction of the Housing Court

- ◆ Chapters one hundred and forty-three, one hundred and forty-eight, and two hundred and thirty-nine, jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation and the possession, condition, or use of any particular housing accommodations or household goods or services situated therein or furnished in connection there with or the use of any real property and activities conducted there on as such use affects the health, welfare and safety of any resident, occupant, user or member of the general public and which is subject to regulation by local cities and towns under the state building code, state specialized codes, state sanitary code, and other applicable statutes and ordinances.

# Legal Jurisdiction of the Housing Court

- ◆ In all matters within their jurisdiction, the divisions of the housing court department shall have all the powers of the superior court department including the power to grant temporary restraining orders and preliminary injunctions as justice and equity may require. The divisions shall have like power and authority for enforcing orders, sentences and judgments made or pronounced in the exercise of any jurisdiction vested in them, and for punishing contempts of such orders, sentences and judgments and other contempts of their authority, as are vested for such or similar purposes in the supreme judicial court or superior court department.

# Legal Jurisdiction of the Housing Court

- ◆ Mass. General Law C148 S 34D (as inserted by C 304 of the Acts of 2004)
- ◆ Grants the Housing Court (and District Court) equitable powers to enforce the lawful orders of the marshal or head of the fire department

# Legal Jurisdiction of the Housing Court

- ◆ Mass. General Law C148A (as inserted by C 304 of the Acts of 2004)
- ◆ Authority to hear direct appeals of “tickets” issued by the State Fire Marshal or State Building Inspector
- ◆ Authority to hear 2<sup>nd</sup> step appeals of tickets issued by local code enforcers.

# Ticket Appeals

- ◆ Ticket Hearings before the Clerk Magistrate are De Novo.
- ◆ Anew. afresh. Considering the matter anew, the same as if it had not been heard before and as if no decision previously had been rendered.

# Failure to Pay Tickets

- ◆ Each Housing Court has a unique process to handle.
- ◆ Some will automatically issue a criminal complaint. Others will require a “show cause” or probable cause hearing.

# Geographic Jurisdiction of the Housing Court



# Western Division

- ◆ All cities and towns located within Berkshire, Hampden, Hampshire and Franklin Counties.

# Worcester Division

- ◆ Includes all of the cities and towns within Worcester County and the following towns  
Ashby (Middlesex)
- ◆ Bellingham (Norfolk)
- ◆ Hudson (Middlesex)
- ◆ Marlborough (Middlesex)
- ◆ Townsend (Middlesex)

# Southeastern Division

- ◆ All of the cities and towns within Plymouth and Bristol Counties

# Northeastern Division

- ◆ All of the cities and towns located in Essex County.
- ◆ The following communities located in Middlesex County. Acton , Ayer , Billerica , Boxborough , Carlisle , Chelmsford, Concord Dracut, Dunstable, Groton, Littleton, Lowell, Maynard Pepperell, Shirley, Stow, Tewksbury
- ◆ Tyngsboro, Westford

# Criminal Matters

- ◆ All violations of 527 CMR and Chapter 148 are considered as criminal violations.
- ◆ Process involves filing a request for Probable Cause or Show Cause Hearing with the Clerk Magistrate.
- ◆ A hearing is scheduled at which time the fire official presents his or her case. The fire official may be cross examined by the defendant and or the defendant's legal counsel, and the defendant may present evidence.
- ◆ The clerk magistrate will then decide if enough evidence or probable cause has been shown to issue a complaint.

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT

HOUSING COURT DEPARTMENT  
WORCESTER COUNTY DIVISION

APPLICATION FOR CRIMINAL COMPLAINT

NO.

TO ANY JUSTICE OR CLERK MAGISTRATE OF THE ABOVE NAMED COURT

David J. Beaudin, Code Compliance Officer, Office of the State Fire Marshal, on behalf of the Commonwealth,  
on oath complains that

STATUTE VIOLATED

POSSIBLE PENALTIES

And did so willfully, intentionally, recklessly or repeatedly.

DATE \_\_\_\_\_

COMPLAINANT

SWORN TO BEFORE THE UNDERSIGNED CLERK MAGISTRATE OF THIS COURT.

DATE \_\_\_\_\_

CLERK MAGISTRATE

# Criminal Matters

- ◆ If a complaint is issued, the defendant is scheduled for arraignment. The defendant pleads guilty, not guilty or no contest.
- ◆ If the defendant pleads not guilty, the matter will be scheduled for pre-trial conference and trial.
- ◆ Guilty or no contest pleas the case is disposed of by the judge.

# Equitable or Civil Matters

- ◆ The fire official files a “civil suit” against the offender. Requesting that the court order the defendant to do “something” or refrain from doing “something”
- ◆ Documents must be served on the defendant by a civil process server (sheriff, constable).
- ◆ If the situation is very dangerous, you may ask the court to issue a Temporary Restraining Order (TRO). If you convince the court that this is necessary the court can issue the TRO without hearing from the other side. A hearing will be scheduled within 10 days

**Commonwealth of Massachusetts  
The Trial Court**

Worcester, ss.

Housing Court Department  
Worcester County Division  
NO.

**PLAINTIFF'S AFFIDAVIT/VERIFIED COMPLAINT AND  
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

**Plaintiff**

David J. Beaudin, Code Compliance Officer  
Commonwealth of Massachusetts  
Department of Fire Services  
Office of the State Fire Marshal  
PO Box 389-One Prince Street  
Northampton, MA 01060-0389  
(413) 587-3181

V.

**Defendant**

Brief statement of facts:

Based upon the specific facts set out above; I request that the Court order the Defendant(s) to cease and desist from the following.

I request that the Court specifically waive the requirements of rule 65(c) of the Massachusetts Rules of Civil Procedure that I provide security for the issuance of the above order(s) for the reason(s) that:

Plaintiff is requesting this order as an agent of the Commonwealth.

Signed and sworn to under the pains and penalties of perjury this

Day of \_\_\_\_\_,

\_\_\_\_\_

David J. Beaudin

# Civil Matters

- ◆ A hearing or trial will be held. After hearing the evidence the judge may issue an injunction.
- ◆ Violations of TROs or injunctions are contempt. The judge is free to punish the contempt as he or she sees fit. This may include fines or jail until there is compliance.

# Mediation

- ◆ Mediation is an informal, confidential process where a neutral person called a mediator acts to encourage and facilitate the resolution of a case without prescribing what it should be.
- ◆ In contrast to a judge (or an arbitrator) who decides for the parties how a dispute will be resolved, a mediator (or conciliator) helps the parties reach their own mutually acceptable and voluntary agreement.

# Mediation

- ◆ The role of the mediator may include: assisting the parties in identifying the issues, assessing and reviewing the relative strengths and weaknesses of their case, determining common interests, fostering joint problem-solving, exploring settlement alternatives, and finalizing a settlement agreement. Throughout all Housing Court mediation, the decision-making authority remains with the parties to the case: unless and until an agreement is reached and approved by the judge; or, if no agreement is reached, until one or both parties terminate the mediation process and bring the case to court for determination by a judge.

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, SS:

HOUSING COURT DEPARTMENT  
\_\_\_\_\_  
DIVISION

\_\_\_\_\_  
PLAINTIFF(S)

VS.

\_\_\_\_\_  
DEFENDANT(S)

REFERRAL TO HOUSING SPECIALIST DEPARTMENT

NOTICE

You are not required, prior to trial to go before the Housing Specialist. You have the right to refuse referral to a Housing Specialist.

However, the Housing Specialist Department can sometimes help a complainant and defendant arrive at an agreement satisfactory to both.

Housing Specialists are Court personnel. Anything said to a Housing Specialist, and any agreement made before a Housing Specialist prior to trial is held in strict confidence, and is not admissible as evidence if a trial is held.

AGREEMENT

I have read the above notice and agree to referral to the Housing Specialist Department.

Date: \_\_\_\_\_

Complainant \_\_\_\_\_

Address \_\_\_\_\_

City/State \_\_\_\_\_

Telephone \_\_\_\_\_

Defendant \_\_\_\_\_

Address \_\_\_\_\_

City/State \_\_\_\_\_

Telephone \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, SS:

HOUSING COURT DEPARTMENT  
DIVISION  
/ / / - / / / / / / / / / /  
CIVIL ACTION

\_\_\_\_\_  
PLAINTIFF(S)

VS.

\_\_\_\_\_  
DEFENDANT(S)

AGREEMENT

The parties in the above captioned action hereby stipulate and agree to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE ABOVE STIPULATIONS ARE AN AGREEMENT WHICH PLACES THE PARTIES UNDER THE RESTRAINT OF A DIRECT ORDER OF THE COURT THAT THEY DO OR REFRAIN FROM DOING THE PARTICULAR ACTS STATED HEREIN. ANY VIOLATION OF THIS AGREEMENT CAN RESULT IN CONTEMPT AS THE DOCUMENT IN QUESTION IS INTENDED TO OPERATE AS AN INJUNCTION.

\_\_\_\_\_  
Plaintiff:

\_\_\_\_\_  
Defendant

SO ORDERED:

\_\_\_\_\_  
Prepared by:

\_\_\_\_\_  
Justice

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Associate Justice

# Administrative Inspection Warrant

- ◆ Used when you are denied entry.
- ◆ Used when you cannot locate the owner or occupant to grant permission to inspect.

**Commonwealth of Massachusetts**  
**Housing Court Department** **Western Division**

APPLICATION AND AFFIDAVIT IN SUPPORT OF  
ADMINISTRATIVE INSPECTION WARRANT  
GENERAL LAWS, CHAPTER 148, SECTIONS 4 & 5

I, David J. Beaudin, being duly sworn on my oath, according to law, depose and say:

1. That I am a member of the Department of Fire Services, and serve the function of Compliance Officer. I have been a compliance officer for approximately five years.
2. I have been assigned to the State Fire Marshal's Office, and assigned the duties of code compliance and enforcement, per MGL Chapter 148, Sec. 4 & 5 by Stephen D. Coan, State Fire Marshal.
3. ( Describe how you became aware of the situation)
4. (Describe the building/premises)
5. (Describe observations of the building/premises, and attempts to inspect)
6. ( Describe absence of permits/licenses)
7. (Describe any photographs or other attachments to application)
8. This building/premises is occupied in whole or in part for residential purposes (or describe nexus to residential property)
9. Based on my observations, I have reason to believe that a serious fire hazard exists. (and would pose an imminent danger to nearby residential structure(s))
10. Based on the foregoing reliable information and upon my personal belief, there is a reasonable need to conduct an administrative fire inspection of the building/premises located at (\_\_\_\_\_) in order to ensure such conditions are remedied as provide in MGL Chapter 148, Sec. 5, and in order to effectuate the purposes of MGL Chapter 148 and to protect the health and safety of the public.
11. Based upon the circumstances as I have described them, I believe there is a reasonable and valid public interest in carrying out an administrative fire inspection of the building/premises pursuant to MGL Chapter 148, Sec. 4 & 5.
12. WHEREFORE, I respectfully request that the Court issue an Administrative Inspection Warrant authorizing the inspection of (\_\_\_\_\_).

Then personally appeared the above named David J. Beaudin and made the foregoing affidavit by him subscribed as true.

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_

---

Justice  
Clerk Magistrate  
Assistant Clerk Magistrate

**Commonwealth of Massachusetts**  
**Housing Court Department**

**Western Division**

**ADMINISTRATIVE INSPECTION WARRANT**  
**GENERAL LAW CHAPTER 148 SECTIONS 4 & 5**

To: Code Compliance Officer David J. Beaudin, Massachusetts State Fire Marshal's Office, Code Compliance & Enforcement Unit

Proof having been made this day by Code Compliance Officer David J. Beaudin that there is a reasonable need to conduct an inspection of the premises named herein pursuant to M.G.L. c 148, sections 4 & 5, in order to determine compliance with the provisions of c. 148 and the Massachusetts Fire Code, 527 CMR 1.00-50.00 and to investigate as to the existence of conditions likely to cause fire.

We therefore command you, pursuant to M.G.L. c. 148, sections 4 & 5 to conduct an administrative inspection of the premises located at \_\_\_\_\_

The address is a \_\_\_\_\_

You are authorized to enter all areas of the building and premises located at \_\_\_\_\_ and to photograph and or videotape the conditions of the building or premises solely for the purpose of enforcing said laws.

You are further authorized to utilize such other members of the State Fire Marshal's Office, State Police, \_\_\_\_\_ Fire and /or Police Departments and such other personnel as may be necessary to conduct the inspection and investigation authorized by this warrant.

This inspection shall commence promptly upon issuance of this warrant and shall be conducted between the hours of 8:00 AM and 6:00 PM. A prompt return shall be made to this court no later than seven days from the issuance of this warrant.

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Justice  
Clerk Magistrate  
Assistant Clerk Magistrate

# The People's Court

- ◆ The Housing Court is the most user friendly branch of the court system.
- ◆ The court has the highest percentage of pro se litigants (people representing themselves of any court).
- ◆ The court specializes in adjudicating cases involving safety and health codes.
- ◆ The Housing Court is referred to as a “court of compliance”.

# Legal Jurisdiction of the District Court

- ◆ The District Court hears a wide range of criminal, civil, housing, juvenile, mental health, and other types of cases. District Court criminal jurisdiction extends to all felonies punishable by a sentence up to five years, and many other specific felonies with greater potential penalties; all misdemeanors; and all violations of city and town ordinances and by-laws.

# Legal Jurisdiction of the District Court

- ◆ In felonies not within District Court final jurisdiction, the District Court conducts probable cause hearings to determine if a defendant should be bound over to the Superior Court. District Court magistrates conduct hearings to issue criminal complaints and arrest warrants, and to determine whether there is probable cause to detain persons arrested without a warrant. Both judges and magistrates issue criminal and administrative search warrants.

# Legal Jurisdiction of the District Court

- ◆ Massachusetts General Law, Chapter 148A provides for ticket appeals to the District Court in areas without a Housing Court.
- ◆ Mass. General Law C148 S 34D (as inserted by C 304 of the Acts of 2004)
  - ◆ Grants the Housing Court (and District Court) equitable powers to enforce the lawful orders of the marshal or head of the fire department

# Ticket Appeals

- ◆ Ticket Hearings before the Clerk Magistrate are De Novo.
- ◆ Anew. afresh. Considering the matter anew, the same as if it had not been heard before and as if no decision previously had been rendered.
- ◆ The court may or may not be familiar with Chapter 148A ticketing.

# Criminal Matters

- ◆ All violations of 527 CMR and Chapter 148 are considered as criminal violations.
- ◆ Process involves filing a request for Probable Cause or Show Cause Hearing with the Clerk Magistrate.
- ◆ A hearing is scheduled at which time the fire official presents his or her case. The fire official may be cross examined by the defendant and or the defendant's legal counsel, and the defendant may present evidence.
- ◆ The clerk magistrate will then decide if enough evidence or probable cause has been shown to issue a complaint.

**FOR COMPLAINT OR JUVENILE**

ARREST     HEARING     SUMMONS     WARRANT  
 The within named complainant requests that a complaint issue against the within named defendant, charging said defendant with the offense(s) listed below.

**District Court Department**  
 COURT DIVISION  
 Adams District Court  
 65 Park Street  
 Adams, Ma. 01220

DATE OF APPLICATION    DATE OF OFFENSE    PLACE OF OFFENSE

NAME OF COMPLAINANT	NO.	OFFENSE	G.L. Ch. and Sec.
ADDRESS AND ZIP CODE OF COMPLAINANT	1.		
	2.		
NAME, ADDRESS AND ZIP CODE OF DEFENDANT	3.		
	4.		

COURT USE ONLY →    A hearing upon this complaint application will be held at the above court address on    DATE OF HEARING    AT    TIME OF HEARING    ← COURT USE ONLY

**CASE PARTICULARS — BE SPECIFIC**

NO.	NAME OF VICTIM Owner of property, person assaulted, etc.	DESCRIPTION OF PROPERTY Goods stolen, what destroyed, etc.	VALUE OR PROPERTY Over or under \$250.	TYPE OF CONTROLLED SUBSTANCE OR WEAPON Marijuana, gun, etc.
1				
2				
3				
4				

OTHER REMARKS:

x \_\_\_\_\_  
SIGNATURE OF COMPLAINANT

**DEFENDANT IDENTIFICATION INFORMATION — Complete data below if known.**

DATE OF BIRTH	PLACE OF BIRTH	SOCIAL SECURITY NUMBER	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
OCCUPATION	EMPLOYER/SCHOOL	MOTHER'S NAME (MAIDEN)		FATHER'S NAME				

**↓ COURT USE ONLY ↓**

DATE	DISPOSITION	AUTHORIZED BY
	<b>NO PROCESS TO ISSUE</b> <input type="checkbox"/> At request of complainant <input type="checkbox"/> Complainant failed to prosecute <input type="checkbox"/> Insufficient evidence having been presented	
	<b>PROCESS TO ISSUE</b> <input type="checkbox"/> Sufficient evidence presented <input type="checkbox"/> Warrant <input type="checkbox"/> Defendant failed to appear <input type="checkbox"/> Summons returnable _____	
	<input type="checkbox"/> Continued to _____	
COMMENTS		

COURT COPY

# Criminal Matters

- ◆ If a complaint is issued, the defendant is scheduled for arraignment. The defendant pleads guilty, not guilty or no contest.
- ◆ You need to contact the District Attorney's Office if a complaint is issued.
- ◆ If the defendant pleads not guilty, the matter will be scheduled for pre-trial conference and trial.
- ◆ Guilty or no contest pleas the case is disposed of by the judge.

# Criminal Matters

- ◆ Cases may be continued without a finding (CWOF). This is usually done when the violation has been corrected.
- ◆ Cases may be continued for a specified time with the condition that the violations be corrected. The case is usually dismissed when the violations have been corrected.

# Civil Matters

- ◆ The District Court has equitable power to enforce the lawful orders of the Marshal and head of the fire department.
- ◆ This is new for the District Court.
- ◆ Discuss with the Court prior to seeking an order.

# Administrative Inspection Warrant

- ◆ Used when you are denied entry.
- ◆ Used when you cannot locate the owner or occupant to grant permission to inspect.

# Remember the Rules of Thumb!

- ◆ If in doubt seek legal counsel.
- ◆ Know the court personnel.
- ◆ Cite the correct person/entity.
- ◆ Cite the correct property owner.
- ◆ **BE PREPARED.**

Questions ???



Code Compliance & Enforcement  
Unit

978-567-3375