

# **"How to Get the Job Done"**

**Legal Issues and Environmental Health**

**May 10, 2010**

**Presented by:  
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## **I. Legal Basis for Code Enforcement - C.G.S. Sec 19a-200(a):**

"... Such director of health shall have and exercise within the limits of the city, town or borough for which he is appointed all powers necessary for enforcing the general statutes, provisions of the Public Health Code relating to the preservation and improvement of the public health and preventing the spread of diseases therein."

"(c) As used in this chapter, "authorized agent," means a sanitarian certified under chapter 395 and any individual certified for a specific program of environmental health by the Commissioner of Public Health in accordance with the Public Health Code."

## **II. Initiation of Enforcement - C.G.S. Sec. 19a-206(a):**

"Town, city and borough directors of health or their authorized agents shall, within their respective jurisdictions, examine all nuisances and sources of filth injurious to the public health cause such nuisances to be abated and cause to be removed all filth which in their judgment may endanger the health of the inhabitants."

- A. Initiation of enforcement as a result of response to complaint from**
  - 1. Landlord**
  - 2. Tenant**
  - 3. Municipal or State code official**
  - 4. Other reliable source**
  
- B. Initiation of enforcement as part of an area search per municipal plan**

### III. Initial inspection C.G.S. Sec. 19a-206

"...Any local director of health or his authorized agent or a sanitarian authorized by such director may enter all places within his jurisdiction where there is just cause to suspect any nuisance or source of filth exists, and abate or cause to be abated such nuisance and remove or cause to be removed such filth."

- A. Inspector's right to inspect pursuant to C.G.S. Sec. 19a-206 unless notified by authorized person the inspection is disallowed.
  - i. Authorized person for access to **tenant's unit** is the tenant or his appointed representative.
  - ii. Landlord cannot give an inspector access to a tenant's unit without the consent of the tenant *unless* there is a case of true emergency. (See Landlord's right of entry in C.G.S. Sec. 47a-16). Landlord's remedy for unreasonable denial of appropriate access is in C.G.S. Sec. 47a-18.
  - iii. Landlord cannot deny inspector access to tenant's unit if tenant consents to the search.
  - iv. Authorized person for access to **common areas** is owner or tenant who has rights in the common areas.
  
- B. Denial of right to inspect - Application for Administrative Search Warrant - C.G.S. Sec. 54-33.
  - i. To be used at any time inspection is necessary but inspector has either a specific denial or just an inability to gain access.
  - ii. Need two inspectors to sign under oath or affirmation before the Judge.
  - iii. Do not need to have proof that a violation exists where dxyou want to inspect, only that there is a statutory or regulatory obligation on the part of the official to inspect.
  - iv. Should be executed with the local police department. The warrant must be executed by the local police department. After the code officials conduct their search, the report is affixed to the warrant. The warrant must be returned to court within 10 days. Reinspections will need a new warrant if access is still unavailable.

## IV. Enforcement Orders

- a. Should be issued as soon as possible after a proper inspection is conducted and the code enforcement official has found violation(s) of a state or municipal health law.
- b. The director of health or his authorized agent issues and causes to be served upon the person(s) responsible for the alleged violation(s) a legal order to abate the alleged violation(s).
- c. The order is in the form as has been prescribed by the Commissioner of Health.
- d. The order must:
  - i. Be addressed to **all** the responsible parties.
  - ii. Name each violation with enough particularity so as to give the recipient fair notice of the place and type of violation found. Give exact code section and general description of the section. Notify party of any special requirements that may be necessary, i.e. permits, testing, etc.
  - iii. Give a time period for full abatement commencing from **receipt** of your order.
  - iv. Give right of appeal information
  - v. Give penalty information under C.G.S. Sec.s applicable (19a-36 for health code, 19a-230 for other legal orders including lead paint, 47a-52 et seq. for landlord/tenant health statutes, 19a-109 for intentional termination of essential services, 19a-365 for tenement house act and 7-148 for municipal ordinances.)
  - vi. Be duly served upon each responsible party. Proof that the responsible party received the order is an element the State will have to prove to bring a case to a conviction. Actual service is best. The following service may be used:
    1. Certified mail return receipt requested or other signed-for postal service.
      - a. Should only be used when the director deems it acceptable to have delivery take up to 2 weeks. If mail is unclaimed or refused, an alternative method of service must be used.
      - b. HOLD ONTO THOSE GREEN CARDS!**
    2. State Marshal or Deputy Marshal
      - a. Obtain a return of service
      - b. May be in hand on the person or abode service. Do not leave at office with

personnel, only in hand on the named party.

3. Police Service

a. Has same authority to serve as marshal. Obtain a report from proof of service in hand or abode. Only contact police to request that an officer serve orders in emergency situations. Don't wait until an emergency to make your contacts with your local PD.

4. As otherwise allowed by law.

e. Determining the owner of the property

i. **OWNERSHIP IS EVIDENCED ON THE MUNICIPAL LAND RECORDS. ASSESSOR'S RECORDS ARE NOT NECESSARILY CORRECT. DON'T RELY SOLEY ON THE ASSESSOR'S RECORDS.**

1. Use assessor's records to get the volume and page number for what they show as the deed for the current owner. Use as a starting point to then check the land records to "run down" the title and make sure there has been no recent transfers.

2. Get a certified copy of the current deed for your files. This will allow it to be introduced as evidence in court of the ownership at the time of your enforcement action.

3. If notices of lis pendens, bankruptcy, probate or other actions which may affect title of the property are recorded, obtain copies. Review with counsel.

a. Foreclosure should not stay enforcement.

b. Bankruptcy does not stay criminal enforcement matters so it doesn't stay your abatement of a violation.

ii. **ABATING PERSONS** - Property may have one or several owners. **Abate:** each individual named on title regardless of percentage of ownership. Do not omit any name without legal cause. **Form:**

One owner: Mr. Richard Dastardly  
123 Owner's Court  
Noname, CT 77777

Two owners: Mr. Richard Dastardly  
Mrs. Joan Dastardly  
123 Owner's Court

Noname, CT 77777

Note: do not address orders to husband and wife as "Mr. And Mrs. Richard Dastardly". Both names must be fully stated as on the deed to properly order both parties.

If owners live at different addresses, send the orders to the different home addresses for each.

iii. **ABATING CORPORATIONS** - Corporations, including LLCs, cannot be arrested by bringing in the corporate building. However corporate officers and/or other legal agents of the corporation may be held criminally liable for the criminal acts such person conducts in the name of the corporation per C.G.S. Sec. 53a-11.

1. **Abate:** Those corporate officers or agents responsible for the control of the property either individually or jointly with others.
2. To find out the names of the corporate officers, contact in Hartford the State of Connecticut, Office of the Secretary of State corporate information by internet, phone, and mail or by walk in. The internet search system for the State of CT Secretary of State is called "Concord". It can be found at the following internet site: [www.concord.sots.ct.gov/CONCORD/index.jsp](http://www.concord.sots.ct.gov/CONCORD/index.jsp) Once you locate an active corporation or LLC, obtain the name and **residential address** of each of the principals of the corporation. Print a copy of the Concord page with this information for your records. Send the order to the president of the corporation. You may also serve an order on any other principal, i.e. the Vice-President who may be in charge of real estate management, in addition to the principal officer. Never take out the principal officer from the abatement process. And do not serve the corporation's agent for service. That is a term for the person authorized to accept paperwork for the corporation, not act as principal of it. It is commonly the attorney who set up the corporation.

If you have to issue an order to a condominium association, as you may do if the violations cited are in the common areas of a condo complex, the same instruction applies; that is, service should be upon the officers of the

corporation. However, if officers of the corporation change during the abatement process, orders to the new officers will have to be issued. If this is happening consistently, consider serving all owners in lieu of the association officers as they simply represent the owners anyway.

If the corporation is an LLC (Limited Liability Corporation), then send the order to the listed Member or Managing Member. LLCs, like corporations, have to file yearly updates with the Secretary of State.

Hint for corporate agent identifications: check the land records to see if the LLC signed a lease or mortgage agreement, which may be recorded. Often an agent for the corporation will sign these documents in his official capacity, i.e. managing member.

### **3. FORM:**

Richard Dastardly, President  
ABC Corporation  
123 Owner's Court  
Noname, CT 77777

For an LLC:  
Richard Dastardly, Managing Member  
ABC, LLC  
123 Owner's Court  
Noname, CT 77777

**Note:** you are serving the agent at the home of the agent. If serving by marshal, it can be by abode or in hand only. Mail service to the corporation address is not sufficient.

**Note:** Corporations, which are banks, may be abated by getting the corporation information from the State of Connecticut Banking Commissioner's office.

When serving a bank, try to serve both the president and whatever vice president or officer

responsible for the handling of this property directly.

**Note:** Never send the order to someone in care of (c/o) someone else. That does not accomplish ordering either party.

**Note:** Only serve the agent for service on a foreign (a non-Connecticut corporation) where you have no better in-state agent for process.

- iv. **Abating PARTNERSHIPS-** Partners can be held criminally liable for the acts they conduct in the name of the partnership. Partnerships may be in different forms. The General Partner runs general Partnerships. General partnerships register with the Secretary of State Partnership Division. They should be contacted for the name and home address of the general partner. General Partnerships can be found on the Secretary of State's Concord system as well.

Limited partnerships do not register. Try to obtain partnership information from the land records.

**Abate:** The general partner in a general partnership. The responsible limited partner(s) in a limited partnership.

**Form:** Richard Dastardly, General Partner  
ABC General Partnership  
123 Owner's Court  
Noname, CT 77777

- v. **Abating Trusts:** Abate the trustee if responsible for the property. Obtain a copy of the trust document for your files.

## V. Reinspection

- a. Inspector must personally view the fact that some or all of the violations continue to exist at the premises.
- b. Do not rely on the statement of someone outside your code enforcement agency for proof of satisfaction of your order.
- c. Use administrative search warrant where you cannot get back in for the reinspection.
- d. Conduct reinspection as soon as possible after the expiration of the orders. Remember to begin counting the day after

service of the orders and give the party until the 11:59:59 p.m. the last day for compliance before you reinspect.

## VI. Prepare an Arrest Warrant Application

- a. Complete within 30 days of the last inspection.
- b. Try to verify no change in ownership since you sent order.
- c. Let prosecutor know the severity of the situation in the affidavit and cover letter if necessary.
- d. Close your file from public review. Requests for information should be done through requests under the Freedom of information Act. All such requests should be reviews by both the prosecutor and municipal counsel.
  - i. **NEVER GIVE OUT COPIES OF CRIMINAL ARREST WARRANT APPLICATIONS UNDER FOI**
- e. Submit one for **EACH PERSON** who violated your order. Warrants can not be shared.
- f. Continue to seek compliance with your order but do keep prosecutor advised. **You are not done with a matter until you have compliance with your abatement order.**
- g. Important Points to Remember:
  - i. **Do not** tell a person you will have them arrested. You cannot. You can state that you will apply for their arrest to the prosecuting authority.
  - ii. **Do not** tell a person that you must be allowed access to an area on your authority. Unless you have an emergency, you may be lawfully refused access. You may tell the person that if they do not agree to give you access that you will seek an administrative search warrant for entry.
  - iii. **Do not** tell a defendant landlord once the criminal case is started that they are excused from any court obligation. Refer them to the prosecutor's office if they want to be excused from court appearance.
  - iv. **Always** cooperate with the prosecuting attorney.

**ASKING ME TO  
OVERLOOK A SIMPLE  
SAFETY VIOLATION  
WOULD BE ASKING ME  
TO COMPROMISE MY  
ENTIRE ATTITUDE  
TOWARD THE VALUE  
OF YOUR LIFE.**

**“THE SINGLE BIGGEST  
PROBLEM IN  
COMMUNICATION IS  
THE ILLUSION IT IS  
BEING  
ACCOMPLISHED.”**

**- BERNARD SHAW**