



Clayton County Police Department PROCEDURES

Subject UNLAWFUL SQUATTING & PROPERTY FRAUD SCHEMES		Procedure # D50	
Authorizing Signature 	Effective 09-24-2024	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Rescinds	Total Pages 6

I. PURPOSE

To provide guidance and procedures for officers when they encounter a situation where an individual claiming to be the property owner requests that officers of the Clayton County Police Department (CCPD) take enforcement action against persons believed to be squatting, trespassing, or otherwise on a premise without the owner’s permission.

II. POLICY

It is the policy of the Clayton County Police Department (CCPD) to protect citizens from violent crimes and crimes against property. This includes situations involving squatters and fraud schemes which negatively impact legitimate property owners, landlords, and others throughout the County. This policy seeks to provide guidance for addressing these complex matters, both civil and criminal in nature, in an effort to provide relief for legitimate property owners and property renters who are the victims of fraud, particularly when a property owner claims that someone is living on their property without permission.

III. GEORGIA SQUATTER REFORM ACT

The 2024 session of the Georgia Legislature created a new law called the Georgia Squatter Reform Act as House Bill (HB) 1017. Georgia HB 1017 is a mixture of civil and criminal law that will allow the Magistrate Court to issue to the property owner an immediate Writ of Possession that can then be served by the Clayton County Sheriff’s Office (CCSO) if the facts of the case so justify. This returns the use of the property to its rightful owner and was one of the primary reasons for the passage of this Act.

The Act created a new criminal statute, the Official Code of Georgia Annotated (OCGA) § 16-7-21.1 Unlawful Squatting, which reads as follows:

“16-7-21.1. Unlawful squatting.

(a)

- (1) A person commits the offense of unlawful squatting when he or she enters upon the land or premises of another and resides on such land or premises for any period of time knowingly acting without the knowledge or consent of the owner, rightful occupant, or an authorized

representative of the owner. For purposes of this Code section, the term “resides” means to inhabit or live on or within any land or premises.

- (2) Any person who commits or is accused of committing the offense of unlawful squatting as provided for in paragraph (1) of this subsection shall receive a citation advising that they must present to the head of the issuing law enforcement agency or their designee within three business days of receiving the citation for such alleged offense properly executed documentation that authorizes the person’s entry on such land or premises. Such documentation may include a properly executed lease or rental agreement or proof of rental payments.
 - (3) If such person is unable to provide the documentation required by paragraph (2) of this subsection, such person shall be subject to arrest for unlawful squatting and upon conviction to the penalty provided in subsection (b) of this Code section.
 - (4) If such person does provide documentation that authorizes such person’s entry on the land or premises, a hearing shall be set within seven days of the submission of such documentation and if the court finds that the submitted documentation was not properly executed or is not meritorious, such person shall be subject to demand for possession and removal as provided in [Code Section 44-11-32](#), be subject to arrest and upon conviction penalties as provided for in [Code Sections 16-9-1](#) and [16-9-2](#), and shall be assessed an additional fine based on the fair market monthly rental rate of the land or premises.
- (b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor which upon conviction shall be punishable as provided in [Code Section 17-10-3](#).”

IV. BACKGROUND

A. Squatters

Some incidents involving squatters are simply occasions where a trespasser knowingly entered a residence looking for a place to stay, without the consent of the property owner and without documentation permitting them to be on the property. Squatters may falsify documents such as leases, deeds, or other property records, in an attempt to provide fraudulent proof of residency to police. Some of these squatters may be sovereign citizens, who have created their own forms of documentation, independent of the law, thus creating residential victims.

B. Fraud Schemes

Persons may also fraudulently pose as property owners or landlords and lease or rent properties to unwitting victims. The victims in these schemes believe they have leased or rented a property from the legitimate owner and may possess documents they believe to be legitimate leases, deeds, or other property records, which were, in fact, created by a third party who is fraudulently collecting rent money for a property they do not own. In other cases, residential victims may be paying rent to a third party, but have no lease, deed, or other documentation allowing them on the property. These types of schemes defraud both the lessee, and the legitimate property owner.

V. PROCEDURES TO ENFORCE THE NEW UNLAWFUL SQUATTING LAW

Officers will adhere to the following procedures when deciding on whether or not to enforce the new unlawful squatting law.

A. Officer Contact with the Property Owner/Representative

1. Based on the complexity of these types of calls, officers shall notify their supervisor when handling such calls. When feasible, supervisors shall respond to the scene and/or assist officers with these types of calls and/or investigations.

2. Upon arrival at the call and/or incident location, the officer shall locate the lawful owner, tenant, agent or attorney of the owner (hereinafter referred to as the property owner/representative). The officer shall interview the property owner/representative to find out what type of allegations are being made.
3. If the property owner/representative is accusing a person of unlawful squatting as described in OCGA § 16-7-21.1(a)(1), the officer shall explain the *Affidavit of Property Owner or Representative Form*.

Refer to *Appendix A* of this policy to view a copy of the *Affidavit of Property Owner or Representative Form*.

5. Affidavit of Property Owner or Representative Form

The officer will explain to the property owner/representative that in order to proceed, they must execute an *Affidavit of Property Owner or Representative Form*.

- a. Stating that they are the lawful owner, tenant, agent or attorney of the owner of the real property located in Clayton County, Georgia at the incident location, and as such they claim in good faith the right of possession of the described land or tenement and that such land or tenement is in the hands of another named person who does not in good faith claim a right to such possession. [**Note**, the word “tenement” as used here means the dwelling, house, or abode that is being unlawfully occupied.]
- b. The affidavit also requires the property owner/representative to name the person in unlawful possession, state how long they have been in unlawful possession, and that the property owner/representative has given notice to the unlawful squatter to abandon the premises and the suspect has refused to do so.
- c. The officer will use the *Affidavit of Property Owner or Representative Form* for this purpose. HB 1017 authorizes a Georgia POST certified peace officer to administer the oath and sign the Affidavit which now will become the basis for the Department’s future actions. The oath is: “Do you swear or affirm that the Affidavit you are about to sign is true and accurate to the best of your knowledge and belief.”

In the event, the property owner/representative does not know the name of the unlawful squatter and/or how long the suspect has been in unlawful possession, the officer shall attempt to meet with the suspect in person to obtain this information, so the above steps for executing the *Affidavit of Property Owner or Representative Form* can be completed.

The officer and the property owner or representative must sign the *Affidavit of Property Owner or Representative Form*. A notary is not required pursuant to OCGA § 44-11-31.

B. Officer Contact with the Suspect

1. Once the property owner/representative completes the *Affidavit of Property Owner or Representative Form*, the officer will attempt to meet with the suspect in person.
2. If contact is made, the officer shall attempt to verify the suspect’s identity to see if it matches the information provided by the property owner/representative, when applicable. Allow the suspect an opportunity to explain their side of the story and ascertain how long they have been at the incident location.
3. If after this interview the officer believes the elements of the crime of Unlawful Squatting have been met, the officer will issue the suspect a *Uniform Traffic Citation (UTC)* for “Unlawful Squatting” OCGA § 16-7-2.1(a)(1). The issuing officer will ensure the court shows “**MAGISTRATE COURT**” and the court date is “**To Be Notified**”.

4. The officer will complete the *Notice of Unlawful Squatting O.C.G.A. § 16-7-21.1 Form* in the Department's Records Management System (RMS) and inform the suspect that they must go to the Clayton County Police Department (CCPD) Headquarters Records Unit within three (3) business days from the date the *UTC* was issued and bring with them the lease, receipts for rent paid or any other documentation they believe authorizes their possession of the residence. Failure to appear with the documents as directed may result in their arrest for Unlawful Squatting. Once the form is completed, the officer will provide the suspect with a copy of the form.

Refer to *Appendix B* of this policy to view a copy of the *Notice of Unlawful Squatting O.C.G.A. § 16-7-21.1 Form*.

5. When officers are unable to meet with a suspect in person, the officer will document in the *Incident Report* what efforts were made, to include any witness information.

C. No Legal or other Advice to the Parties

Due to the complexity of this law, officers shall not offer any legal advice to the property owner/representative, or the suspect. This is extremely important. DO NOT GIVE ANY ADVICE TO EITHER PARTY OTHER THAN THEY MUST OBEY THE LAW.

D. Required Documentation

1. The reporting officer will complete an *Incident Report* in the RMS and will complete all applicable fields in a manner consistent with the *National Incident Based Reporting System (NIBRS) Manual*. **Note:** The individual cited for Unlawful Squatting shall be listed as an offender, however the case shall not be cleared by arrest.
2. The completed *Incident Report*, *UTC*, *Notice of Unlawful Squatting O.C.G.A. § 16-7-21.1 Form*, and a copy of the *Affidavit of Property Owner or Representative Form* **must** be submitted by the end of the reporting officer's shift. **Note:** The *Affidavit of Property Owner or Representative Form* is the only paper document not available in the RMS. Hence, the reporting officer shall scan the *Affidavit of Property Owner or Representative Form* and attach it to the *Incident Report* in the RMS.

The reporting officer will ensure the original copy of the *Affidavit of Property Owner or Representative Form* is turned into the appropriate supervisor by the end of their shift.

3. Supervisors will review the *Incident Report* before the report is further distributed. The review should ensure the *Incident Report* is consistent with applicable standards established by NIBRS and this Department. If the submitting officer's supervisor is unavailable, another supervisor shall review the report.

The reviewing supervisor will verify that all required documents (e.g., *Incident Report*, *UTC*, *Notice of Unlawful Squatting O.C.G.A. § 16-7-21.1 Form* and copy of the *Affidavit of Property Owner or Representative Form*) are submitted by the reporting officer, before approval, so the Records Unit will have access to these documents immediately. **These documents must be in the Records Unit's possession when the offender arrives at the CCPD Headquarters Records Unit as directed by the reporting officer.**

Supervisors will ensure that original copies of the *Affidavit of Property Owner or Representative Form* are submitted to the Commander of the Records Unit or Records Unit Supervisor daily.

4. Cases requiring follow-up investigation will be assigned to the appropriate officer or detective in compliance with CCPD SOP: *D4: Criminal Investigations*. This assignment process will be done electronically through the RMS.

E. Record's Unit Contact

1. By law, the offender must appear at the CCPD Headquarters Records Unit and present the lease, proof of payment or other documents alleged to prove right of ownership or lawful possession to the Chief of Police or authorized designee. For the purpose of this procedure the Chief of Police has designated the Records Unit Commander and the Record's Unit Supervisor as the authorized designees.
2. When the Records Unit Commander or Records Unit Supervisor receives the documents presented by the offender. A copy of the documents will be made for the offender as the documents presented must be forwarded to Magistrate Court along with the *Affidavit of Property Owner or Representative Form*, *Incident Report*, *Uniform Traffic Citation (UTC)*, and a copy of the *Notice of Unlawful Squatting O.C.G.A. § 16-7-21.1 Form*.

These documents will be taken to the Magistrate Court Clerk's Office with a second courtesy copy to the Magistrate Court Judge's Office. **A receipt of delivery confirmation shall be obtained for each case.**

3. If after three (3) business days but no more than four (4) business days, the offender has failed to appear at the CCPD Headquarters Records Unit as required, the Records Unit Commander or Records Unit Supervisor will have a copy of the *Incident Report*, *Affidavit of Property Owner or Representative Form*, *Notice of Unlawful Squatting O.C.G.A. § 16-7-21.1 Form* and the original *Uniform Traffic Citation (UTC)*, taken to the Magistrate Court Clerk's Office with a second courtesy copy to the Magistrate Court Judge's Office. Included in this package will be an *Affidavit of the Records Unit Commander or Authorized Designee Form* to indicate that the offender failed to appear at the CCPD Headquarters Records Unit as required by law within three (3) business days of receiving a citation for Unlawful Squatting. Refer to *Appendix C* of this policy to view a copy of the *Affidavit of the Records Unit Commander or Authorized Designee Form*.
4. The offender will be served notice of their court date by the Magistrate Court Clerk's Office.

F. Flow Chart

The Magistrate Court, in collaboration with this Department created the *Squatter Reform Act Procedure* (Flow Chart), to describe the separate steps involved in the Squatter Reform Act.

Refer to *Appendix D* of this policy to view a copy of the *Squatter Reform Act Procedure* (Flow Chart).

G. Scenario Discussion

1. Scenario One – Accused has been paying rent to someone but not the owner.

Officer arrives at the scene of an alleged unlawful squatter. The officer speaks with the property owner and has the owner complete the *Affidavit of Property Owner or Representative Form*. The officer then speaks with the suspect. The suspect explains they have lived in the house for five (5) months. Pays monthly rent, the utilities are in the suspect's name. The house is full of the suspect's furniture along with the suspect's family members. The suspect identifies someone other than the property owner, the officer just met, as the person the suspect is renting from.

Verify with the property owner that the person the suspect is paying rent to is not authorized by the property owner as their agent.

The officer might have a fraud case. The suspect may have been victimized and is paying "rent" to someone other than the rightful owner. Obtain all information needed for a fraud

report with the suspect listed as the victim. This will require another case number, because the suspect will be listed as a victim in the *Incident Report*.

Even though the suspect is a victim of fraud, the suspect is unlawfully occupying the house. The officer will proceed with the steps above to charge the suspect with Unlawful Squatting. The suspect will need to bring their documents to the CCPD Headquarters Records Unit within three (3) business days.

Of course, if the property owner and the suspect can work something out that satisfies them both, so be it. In such a case, it is not necessary to proceed with the Unlawful Squatting case; but you will still have the fraud case to report.

2. Scenario Two – Urban camper is sleeping in the house.

Remember the definition of Unlawful Squatting in 16-7-21.1(a)(1).

The officer arrives at the scene and the property owner tells the officer that someone has broken into the house and is sleeping in there without the owner's permission.

Once the property owner has completed the *Affidavit of Property Owner or Representative Form*, the officer contacts the suspect and observes the suspect's sleeping bag and a milk crate that contains the suspect's belongings in the house. There is no other furniture, the utilities are not on. The suspect has no lease, or proof of payment. The suspect is trespassing.

Have the property owner give the suspect the Criminal Trespass Warning from OCGA § 16-7-21(b)(3). If the suspect leaves, warn the suspect not to return or face arrest. Complete an *Incident Report* to document the criminal trespass warning.

Officers shall keep this in mind as they are handling these types of cases. The new Unlawful Squatting law gives a fast track for the property owner to obtain a writ of possession to get their house back and the squatter evicted. So, where possible, this statute is the most useful for the property owner.

But where a trespasser is just taking advantage of the unoccupied house as a crash pad, a dry place to sleep, with no documents and no effort to reside in the house such as utilities turned on and the like they are a candidate for Criminal Trespass.

3. Scenario Three – A landlord tenant problem.

The officer arrives at the scene and learns that the occupant of the house has not paid rent for more than four (4) months. The owner calls the occupant a "squatter" and demands that police arrest him.

The officer verifies with the occupant that they had a lease that has now expired and the occupant is no longer making rent payments to the owner.

Stop right there. This is a landlord – tenant dispute. It is not a crime. This is a civil matter and the landlord/property owner must be referred to Magistrate Court to begin dispossessory proceedings.