

**501 POLICE ACTION AT PUBLIC LODGING AND PUBLIC FOOD SERVICE ESTABLISHMENTS, AND EJECTION OF TRANSIENT GUESTS**

- I. PURPOSE: This policy is issued to clarify officers' powers and duties involving investigations on premises of a public lodging and public food service establishments as defined in Florida Statute (FS) §509.013.
- II. DISCUSSION: Under FS Chapter 509, public lodging and public food service establishments are required to be licensed and are regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Under Chapter 509, these establishments may ask law enforcement to respond to various complaints such as: ejection of an undesirable guests (§509.141); disorderly conduct on the premises of an establishment (§509.143); handbill distribution (§509.144); obtaining food or lodging with the intent to defraud (§509.151); theft of personal property from an establishment (§509.162); and an operator's right to lockout and recover property (§509.401-402). Even though the definition of a public lodging establishment includes transient and nontransient public lodging establishments, it is important to understand that per §509.034 the provisions covered in this policy and enforced by officers only applies to "transients" and Chapter 509 may not be used to circumvent the procedural requirements of the Florida Residential Landlord and Tenant Act.

The most common public lodging or public food service establishment call for service will be for refusal or ejection of an undesirable guest under §509.141. Enforcement under §509.141 requires officers to understand the statutory definitions, qualifying conditions, and the necessary prerequisite actions to be taken by the operator prior to the officer taking action. Officers may be called to scenes where the location or person sought to be ejected does not qualify for law enforcement assistance in the removal. Officers must therefore pay close attention to whether the person is "transient" or "nontransient" and whether the location qualifies for requesting removal as a public lodging or public food service establishment, see Public Lodging Establishment Ejection Checklist at the end of this SOP.

FS §509.141 addresses the refusal of admission and ejection of undesirable guests; notice; procedure; and penalties for refusal to leave. The "operator" of a "public lodging establishment" or "public food service establishment" (hereinafter both will be referred to as "the establishment") may remove or caused to be removed from the establishment any guests of the establishment who, while on the premises, meet certain qualifying conditions. These qualifying conditions or circumstances are defined and include as provided under §509.141(1):

- a. Possession or dealing in drugs;
- b. Intoxication;
- c. Profanity;
- d. Lewdness;

- e. Brawling;
- f. Disturbing the peace and comfort of other guests;
- g. Injuring the reputation, dignity, or standing of the establishment;
- h. For public lodging establishments, a guest who fails to make payment of rent at the agreed-upon rental rate by the checkout time specified in writing by the public lodging establishment;
- i. For public lodging establishments, a guest who fails to check out by the time specified in writing by the public lodging establishment at check-in, unless an extension of time is agreed to by the public lodging establishment and guest before checkout;
- j. For public food service establishments, a guest who fails to make payment for food, beverages, or services; or
- k. When in the opinion of the management, it would be detrimental to the establishment to continue to entertain the guest.

FS §509.141(3), provides that a guest who has violated a qualifying offense and who remains or attempts to remain in a public lodging or food service establishment after being requested to leave is guilty of a second degree misdemeanor if the operator determined the a qualifying condition was met and the following occurs:

- a. The **operator has notified the guest** that the establishment no longer desires to entertain the guest and has requested the guest to immediately depart from the establishment;
- b. Notice had been given from an operator of the establishment to the guest orally or in writing unless the request is for a public lodging establishment and is due to the guest's failure to check out or pay for the dwelling unit by check-out time. In this case, the notice must be provided in an e-mail, text, or printed document. The notice is effective upon delivery, whether notice is provided in person or by phone or e-mail, using the contact information provided by the guest, or, with respect to a public lodging establishment, upon delivery to the guest's dwelling unit. The notice shall state:  
 "You are hereby notified that this establishment no longer desires to entertain you as its guests, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state.";
- c. The establishment at the time the notice is given has **tendered the unused portion of the advance payment** if the guest has paid in advance; however, the establishment may withhold payment for each full day that the guest has been entertained at the establishment for any portion of the 24-hour period of such day; and
- d. The **guest has remained** or attempted to remain in the establishment after the operator has requested the guest to depart with proper notice.

### III. DEFINITIONS (under FS §509.013):

- A. **“Public lodging establishment”** includes **both transient and nontransient** public establishment. The following are excluded from the definition of a public lodging establishment:
1. School sleeping facilities or dorms;
  2. Licensed health care facilities;
  3. Any place renting four units or less unless advertised as regularly rented to public to transient guest;
  4. Condominiums, timeshares, and one to four dwelling units that are:
    - a. Rented for at least 30 days or 1 calendar month;
    - b. Not advertised or held out to public as being rented for periods less than 30 calendar days or 1 month; and
    - c. No more than 4 units within a single complex of buildings are available for rent;
  5. Permitted migrant labor camps or residential migrant housing;
  6. Establishments inspected by Department of Health;
  7. Private nonprofit care facilities or housing;
  8. Senior living facilities inspected by HUD; and
  9. Roominghouse, boardinghouse, or other sleeping facilities that are not classified as a hotel, motel timeshare, project, vacation rental, nontransient apartment, bed and breakfast, or transient apartment.
- B. **“Transient public lodging establishment”** means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 consecutive days or which is advertised or held out to the public as a place regularly rented to guests for periods of less than 30 consecutive days.
- C. **“Transient”** means a guest in a transient occupancy.
- D. **“Transient occupancy”** means occupancy that is temporary. The term includes the occupancy of a dwelling unit at a hotel, motel, vacation rental, bed and breakfast inn, or timeshare project, as defined in §509.242, unless a written rental or lease agreement expressly states that the dwelling unit is the sole residence of the guest.
1. “Hotel” means any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.
  2. “Motel” means any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, off-street parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting

bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

3. For “Vacation Rental”, “Nontransient Apartment”, “Transient Apartment”, “Bed and Breakfast Inn”, and “Timeshare Project” see definitions under §509.242.
- E. **“Nontransient public lodging establishment”** means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 consecutive days, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 consecutive days.
- F. **“Nontransient”** means a guest in nontransient occupancy.
- G. **“Nontransient occupancy”** means occupancy that is not temporary. The term does not include the occupancy of a dwelling unit at a hotel, motel, vacation rental, bed and breakfast inn, or timeshare project, as defined by §509.242, unless a written rental or lease agreement expressly states that the dwelling unit is the sole residence of the guest.
- H. **“Operator”** means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of the public lodging establishment or public food service establishment.
- I. **“Guest”** means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.
- J. **“Public food service establishment”** means any building, vehicle, place or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term excludes the following:
  1. Public or private school place or events;
  2. Church, religious, or nonprofit place or events;
  3. Common carrier (train, airport, bus) places;
  4. DCF or AHCA approved places;
  5. Places issued permits from or inspected by the Department of Agriculture and Consumer Services;
  6. Places where only drinks or prepackaged items are sold without preparation;
  7. Food sold to theatre users;
  8. Vending machines; and

9. Private test kitchens.

#### IV. POLICY:

- A. When police officers are called to public lodging or food service establishments, they should enforce all laws just as they would when called to any other establishment. When an officer feels it is necessary to make an arrest for a violation of law at a public lodging or food service establishment for which a warrantless arrest is authorized, the arrest would typically be made without unnecessary involvement of the operator or licensee. However, for guests charged with refusal to leave at a public lodging or food service establishment under §509.141(3), officers will need the involvement of the operator as discussed below and observe a violation by the guest in the officer's presence in order to make a warrantless arrest or obtain a warrant. In addition, an officer may issue a notice to appear without a warrant for a violation of §509.141 as it is specifically authorized under §901.1503 which provides:

“A law enforcement officer may give a notice to appear to a person without a warrant when the officer has determined that he or she has probable cause to believe that a violation of s. 509.144 has been committed and the owner or manager of the public lodging establishment in which the violation occurred and one additional affiant sign an affidavit containing information that supports the officer's determination of probable cause.”

- B. In accordance with §509.141(4), an operator of the establishment may call upon officers for assistance in ejection of an undesirable guest who remains on the premises after a lawful request by the operator to depart. It is the duty of officers upon request of the operator to remove a guest who remains on the premises of an establishment after a lawful request as discussed herein by the operator to depart. For a violation of unlawfully remaining in a public lodging or public food service establishment under §509.141(3), officers may consider whether to issue a notice to appear upon probable cause or place a guest under arrest when a violation occurs in the presence of the officer, and no warrant or capias has been issued, and the each of the following elements of the crime are present (for public lodging ejection only, see also attached checklist):
  1. The establishment meets the definition of **public lodging or food service facility** in §509.013;
  2. The person requesting the action is an **operator** of the establishment;

3. The operator has **offered to return any unused payment** to the guest;
  4. The operator **requested the guest to depart** verbally or in writing as may be required per §509.141(2) after one of the **qualifying conditions** per §509.141(1) was determined to have occurred by the operator (however, per case law below, an officer may make the request to depart at the operator's request);
  5. The guest, in the officers' presence or upon sworn affidavit, **fails to comply** with the request to leave; and
  6. The admission to or removal from any such establishment is not based upon race, creed, color, sex, physical disability, national origin, age (as appropriate) or sexual orientation.
- C. If a warrant has been issued, the officer shall serve the warrant and arrest the person.
- D. While an officer is required to observe that a guest has remained or attempted to remain in an establishment after being requested to leave by an operator in order to make a warrantless arrest for the misdemeanor, according to case law, the operator may tell the officer to provide the notice to the guest that the establishment no longer desires to entertain them as a guest and that the guest is required to leave at once or face an arrest for a misdemeanor. State v. Williams, 751 So. 2d 170 (Fla 2nd DCA 2000; Zinojinovich v. Barner, 525 F. 3d 1059 (11th Cir. 2008).
- E. Unless the operator at the time of the request to vacate tenders any entitled refund for the unused portion of an advance payment to the guest, officers are not justified in arresting a guest for violation of unlawfully remaining in a public lodging or public food service establishment under §509.141(3) even though a guest refuses to leave. Brown v. State, 891 So. 2d 1120 (Fla. 4th DCA 2004).
- F. Previously, the legal opinion was that once an officer determines a guest is subject to arrest, an officer must arrest the person prior to physical removal from the establishment. Florida Op. Atty. Gen., 072-139 (April 13, 1972). However, as of July 1, 2025, §509.141(5) was amended to read "A law enforcement officer may place under arrest and take into custody a guest who violates subsection (3)." Thus, while an officer has a "duty" to remove upon request a guest who qualifies under §509.141(4), an officer "may" arrest which means that arrest is discretionary upon removal.
- G. For Fourth Amendment purposes a public lodging establishment is considered a private dwelling where the occupant is legally there, has paid

for the room, and has not been asked to leave. State v. M.B.W., 276 So. 3d 501 (Fla 2<sup>nd</sup> DCA 2019).

- H. Upon arrest, a guest will have been deemed to have given up any right to occupancy or to have abandoned such right of occupancy of the premises and the operator of the establishment may make the premises available to other guests. The operator is responsible for taking reasonable care to any personal property which may be left on the premises by the guest §509.141(5).
- I. Public lodging establishments are not authorized to eject a guest under this law unless the guest falls squarely within the law. Officers should use caution prior to ejection if there is any doubt as to the authority of the public lodging establishment to use this law rather than the eviction process under FS Chapter 83 which is civil in nature.
- J. Transient occupancy vs. nontransient occupancy: The difference between a transient and nontransient occupancy is in the nature of the stay itself, temporary or not temporary, and it shall be presumed to be transient in nature when a transient public lodging establishment rents a room without a lease or rental agreement stating the rental unit stay was the sole residence of the guest. A public lodging operator may ask an officer to remove an unwanted transient guest who qualifies for removal, but a nontransient guest will still follow the eviction process through civil court.
- K. Handbill distribution (§509.144):
  - 1. Violations for the illegal distribution of handbills may be investigated under either FS §509.144 or §6-171, Tampa Code.
  - 2. Under §509.144(2) in order to make an arrest for unlawful distribution of handbills, an officer needs to personally witness the distribution of handbills occurring at a *public lodging establishment*; determine it was done without written permission of the owner, manager, or agent of the public lodging establishment; and ensure there is a sign posted at the establishment prohibiting advertisement or solicitation.
  - 3. §6-171(a), Tampa Code, prohibiting handbill distribution is broader than §509.144(2) and can be used if the violation occurs at any *private property* where “No Advertising” or “No Soliciting” signs have been properly posted.
  - 4. Both FS §509.144(3) and §6-171(b), Tampa Code, also create a violation when a person or contractor is *directed by the business* to distribute a handbill in violation of the law.

5. Because §6-171(b) also states that a business cannot *encourage or allow* a person or contractor to distribute handbills on private property. Proof that a business was in violation of unlawful handbill distribution can be established after a business has received notice of the violations and continues to encourage or allow the unlawful distributions.
6. Investigations of violations of unlawful handbill distributions which were not observed by an officer and the subject is not known will still proceed with an investigation into the business named on the handbill as follows:
  - a. A public lodging establishment who wishes to make a complaint will need to first complete a Handbill Distribution Complaint Form (TPD 1063).
  - b. TPD 1063 can be accessed through TPD website. Communications will first direct any complaints to the website link and request the caller to call back when the complaint is completed and an officer will be sent out.
  - c. Officers responding to a hotel located within the City will obtain the completed Handbill Distribution Complaint Form and complete a report.
  - d. Officers will place the items into evidence ensuring at least one of every type of handbill is scanned into the report as an attachment.
  - e. Officers will route the report to the Criminal Intelligence Bureau (CIB) for a follow up investigation by the assigned public nuisance conduct officer in CIB.
  - f. The assigned CIB officer will generate a notice of violation letter for the business named on the handbill.
  - g. Businesses which have been previously warned may have the appropriate charges direct filed against the businesses if there is probable cause it was directed by the business, encouraged, or allowed. Municipal ordinance violations will be referred to the municipal prosecutor for direct file or a Notice To Appear (NTA) may be issued if hand delivered to the subject and signed.
  - h. The violation occurs where the distribution occurred (typically at a hotel).

L. Obtaining food or lodging with the intent to defraud (§509.151):

1. Any person who obtains food, lodging, or other accommodations having a value of less than \$1,000 at any public lodging service establishment, or at any transient establishment, with intent to defraud the operator thereof, commits a second-degree misdemeanor; or a third-degree felony if such food, lodging, or other accommodations have a value of \$1,000 or more.

M. Theft of personal property from an establishment (§509.162):

1. Any law enforcement officer or operator of a public lodging establishment or public food service establishment who has probable cause to believe that theft of personal property belonging to such establishment has been committed by a person and that officer or operator can recover such property or the reasonable value thereof by taking a person into custody may take such person into custody on the premises and detain such person in a reasonable manner and for a reasonable period of time.
2. If an operator takes a person into custody, an officer shall be called to the scene immediately.
3. Any officer may arrest either on or off the premises and without a warrant, any person if there is probable cause to believe that person has committed theft in a public lodging establishment or in a public food service establishment.
4. Any person who resists the reasonable effort of an officer or operator to recover property which the officer or operator has probable cause to believe has been stolen from the public lodging establishment or public food service establishment, commits a second-degree misdemeanor under §509.162(3) if the subject knew the person whom he or she was resisting was an officer or operator.
5. Theft of any property from a guest of a Chapter 509 licensed public lodging or food service establishment, or theft by an employee of such establishment or by an employee which has contracted to perform services to the establishment is a third-degree felony under §509.162(4).

N. Operator's right to lockout and recover property (§509.401-402):

1. When an operator has made a reasonable determination that a transient guest has accumulated a large outstanding account at a

public lodging establishment, the operator may lock the guest out of the guest's rental unit for the purpose of requiring the guest to confront the operator and arrange for payment on the account. Such arrangement must be in writing and a copy provided to the guest.

2. Once the transient guest has confronted the operator and made arrangement for payments on the account, the operator shall provide the guest with unrestricted access to the guest's rental unit.
3. The operator shall at all times permit the guest to remove from the rental unit any items of personal property essential to the health of the guest.
4. If the guest of a public lodging establishment vacates the premises without notice to the operator and the operator reasonably believes the guest does not intend to satisfy the outstanding account, the operator may recover the premises. The operator shall make an itemized inventory of any property belonging to the guest and store such property until a settlement or final court judgment is obtained. Such inventory shall be conducted by the operator.

Supersedes SOP 501, dated 5/24.

## **§509.141 - PUBLIC LODGING ESTABLISHMENT EJECTION CHECKLIST**

- Location is a transient public lodging establishment renting to guests more than three times in a calendar year for periods of less than 30 consecutive days or which is advertised or held out to the public as regularly rented to guests for periods of less than 30 consecutive days.**
- Temporary occupancy (transient) at a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project as defined under §509.242.**
- Guest occupancy is temporary without a written rental or lease agreement.**
- Operator has requested the action of the police for a guest who has violated a qualifying condition under §509.141(1) (drugs, drunk, fighting, profane, disturbance, fail to pay rent/food, fail to check out, or detrimental).**
- Operator has notified the guest that the establishment no longer wants guest to stay or the operator has requested TPD to provide the notice.**
- Notice has been provided in writing by e-mail, text, or written document if the ejection is for failure to check out or pay by check-out time and specifically states: “You are hereby notified that this establishment no longer desires to entertain you as a guests, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state.”**
- The establishment at the time the notice is given has tendered the unused portion of the advance payment if the guest has paid in advance beyond the day of the eviction.**
- The guest has remained or attempted to remain at the establishment after notice in the officer’s presence or upon sworn affidavit, has failed to comply with the request to leave.**
- Ejection is not based on race, creed, color, sex, physical disability, national origin, age (as appropriate), or sexual orientation.**
- Subject may be charged for violation of §509.141(3) for refusal to leave.**