

6. *Systemic Operational Issues Affecting Industry and Consumers*

Assertion: Aggressive enforcement tactics undermining trust

The City of Cape Coral Building Division is responsible for enforcing the Florida Building Code, including the issuance of Certificates of Occupancy under FBC 111.1 and the administration of permit time limitations of applications per FBC 105.3 and expired permits under FBC 105.4. To protect the life, safety, and property of residents and visitors, the Development Services Department employs enforcement measures when properties are found to be illegally occupied without a valid Certificate of Occupancy. Upon discovery, staff provide immediate notice directing the owner and contractor to vacate the premises and outlining the steps required to achieve compliance. When a property remains unlawfully occupied after notice, the City may take additional actions, such as requesting utility disconnection, to ensure compliance, though such measures are only taken as a last resort and after proper notification to all responsible parties.

In addition, the City actively monitors and enforces expired permits and applications in accordance with FBC 105.4, including the authority to require removal of unpermitted work when necessary to achieve compliance. With approximately 8,100 expired permits and applications citywide, the Department has implemented systematic review procedures and scheduled site checks to address these cases, uphold the requirements of the Florida Building Code, and to reduce the number of open, yet inactive records in the City's electronic permitting system. The City issued a Notice to the Industry detailing the purpose and process of this initiative on June 17, 2025. The Building Official's enforcement responsibilities are detailed in F.S.S. 468.604.

The assertion that the City's enforcement of, FBC 111.1 and FBC 105 is "aggressive" is baseless and without any evidence or specific examples.

Attached to support response:

- F.S.S. 468.604
- Florida Building Code Section 111.1
- Florida Building Code Section 105.3
- Florida Building Code Section 105.4
- Notice to Industry – Expired Permits
- Policy for Illegal Occupation Prior to C/O Issuance
- Example of Enforcement Process

The Florida Senate

2025 Florida Statutes

<u>Title XXXII</u> REGULATION OF PROFESSIONS AND OCCUPATIONS	<u>Chapter 468</u> MISCELLANEOUS PROFESSIONS AND OCCUPATIONS Entire Chapter	SECTION 604 Responsibilities of building code administrators, plans examiners, and inspectors.
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468.604 Responsibilities of building code administrators, plans examiners, and inspectors.—

(1) It is the responsibility of the building code administrator or building official to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. The building code administrator or building official shall faithfully perform these responsibilities without interference from any person. These responsibilities include:

(a) The review of construction plans to ensure compliance with all applicable sections of the code. The construction plans must be reviewed before the issuance of any building, system installation, or other construction permit. The review of construction plans must be done by the building code administrator or building official or by a person having the appropriate plans examiner license issued under this chapter.

(b) The inspection of each phase of construction where a building or other construction permit has been issued. The building code administrator or building official, or a person having the appropriate building code inspector license issued under this chapter, shall inspect the construction or installation to ensure that the work is performed in accordance with applicable sections of the code.

(2) It is the responsibility of the building code inspector to conduct inspections of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. Each building code inspector must be licensed in the appropriate category as defined in s. [468.603](#). The building code inspector's responsibilities must be performed under the direction of the building code administrator or building official without interference from any unlicensed person.

(3) It is the responsibility of the plans examiner to conduct review of construction plans submitted in the permit application to assure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code. The review of construction plans must be done by the building code administrator or building official or by a person licensed in the appropriate plans examiner category as defined in s. [468.603](#). The plans examiner's responsibilities must be performed under the supervision and authority of the building code administrator or building official without interference from any unlicensed person.

(4) The Legislature finds that the electronic filing of construction plans will increase governmental efficiency, reduce costs, and increase timeliness of processing permits. If the building code administrator or building official provides for electronic filing, then construction plans, drawings, specifications, reports, final documents, or documents prepared or issued by a licensee may be dated and electronically signed and sealed by the licensee in accordance with ss. [668.001-668.006](#), and may be transmitted electronically to the building code administrator or building official for approval.

History.—s. 2, ch. 98-419; s. 32, ch. 2000-141; s. 13, ch. 2000-372; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 4, ch. 2012-13; s. 1, ch. 2012-58.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection, as provided in Section 110.9.7.2, is not required. An architect or engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to Section 110.9.8.

110.9.7.2 A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report pursuant to Section 110.9.8.

110.9.8 Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

- (a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.
- (b) Indicate the manner and type of inspection forming the basis for the inspection report.
- (c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.
- (d) State whether unsafe or dangerous conditions, as those terms are defined in the *Florida Building Code*, were observed.
- (e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.
- (f) Identify and describe any items requiring further inspection.

110.9.9 The association must distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner,

regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to received notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

110.9.10 A local enforcement agency may prescribe timelines and penalties with respect to compliance with this section.

110.9.11 A board of county commissioners may adopt an ordinance requiring that a condominium or cooperative association schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

SECTION 111 CERTIFICATE OF OCCUPANCY

[A] 111.1 Use and occupancy. A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made, until the *building official* has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

Exception: Certificates of occupancy are not required for work exempt from *permits* in accordance with Section 105.2.

[A] 111.2 Certificate issued. After the *building official* inspects the building or structure and does not find violations of the provisions of this code or other laws that are enforced by the department of building safety, the *building official* shall issue a certificate of occupancy that contains the following:

1. The building *permit* number.
2. The address of the structure.
3. The name and address of the *owner* or the owner's authorized agent.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative or condominium building.

(2) A local enforcement agency:

- (a) May require a contractor, as a condition of obtaining a permit for a fire alarm system project, to submit a completed application and payment.
- (b) May not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire alarm system project.

(3) A local enforcement agency must issue a permit for a fire alarm system project in person or electronically.

(4) A local enforcement agency must require at least one inspection of a fire alarm system project to ensure compliance with applicable codes and standards. If a fire alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.

(5) A contractor must keep a copy of the plans and specifications at a fire alarm system project worksite and make such plans and specifications available to the inspector at each inspection.

5. Electrical documents. See *Florida Statutes* 471.003(2)(h).

Documents requiring an engineer seal by this part shall not be valid unless a professional engineer who possesses a valid certificate of registration has signed, dated, and stamped such document as provided in Section 471.025, *Florida Statutes*.

6. All public swimming pools and public bathing places defined by and regulated under Chapter 514, *Florida Statutes*.

105.3.1.3 Reviewing application for building permit.

- 1. When reviewing an application for a building permit, a local government may not request additional information from the applicant more than three times, unless the applicant waives such limitation in writing.
- 2. If a local government requests additional information from an applicant and the applicant submits the requested additional information to the local government within 30 days after receiving

the request, the local government must, within 15 days after receiving such information:

- a. Determine if the application is properly completed;
- b. Approve the application;
- c. Approve the application with conditions;
- d. Deny the application; or
- e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.

3. If a local government makes a second request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information:

- a. Determine if the application is properly completed;
- b. Approve the application;
- c. Approve the application with conditions;
- d. Deny the application; or
- e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.

4. Before a third request for additional information may be made, the applicant must be offered an opportunity to meet with the local government to attempt to resolve outstanding issues. If a local government makes a third request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information unless the applicant waived the local government's limitation in writing, determine that the application is complete and:

- a. Approve the application;
- b. Approve the application with conditions; or
- c. Deny the application.

5. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, must process the application and either approve the application, approve the application with conditions, or deny the application.

[A] 105.3.2 Time limitation of application. An application for a *permit* for any proposed work shall be deemed to have been abandoned 180 days after the date of filing,

SCOPE AND ADMINISTRATION

unless such application has been pursued in good faith or a permit has been issued; except that the *building official* is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.3.3 An enforcing authority may not issue a building permit for any building construction, erection, alteration, modification, repair or addition unless the permit either includes on its face or there is attached to the permit the following statement: “NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies.”

105.3.4 A building permit for a single-family residential dwelling must be issued within 30 working days of application therefor unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the *Florida Building Code* or the enforcing agency’s laws or ordinances.

105.3.5 Identification of minimum premium policy. Except as otherwise provided in Chapter 440, *Florida Statutes*, Workers’ Compensation, every employer shall, as a condition to receiving a building permit, show proof that it has secured compensation for its employees as provided in Sections 440.10 and 440.38, *Florida Statutes*.

105.3.6 Asbestos removal. Moving, removal or disposal of asbestos-containing materials on a residential building where the owner occupies the building, the building is not for sale or lease, and the work is performed according to the owner-builder limitations provided in this paragraph. To qualify for exemption under this paragraph, an owner must personally appear and sign the building permit application. The permitting agency shall provide the person with a disclosure statement in substantially the following form:

Disclosure Statement: State law requires asbestos abatement to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own asbestos abatement contractor even though you do not have a license. You must supervise the construction yourself. You may move, remove or dispose of asbestos-containing materials on a residential building where you occupy the building and the building is not for sale or lease, or the building is a farm outbuilding on your property. If you sell or lease such building within 1 year after the asbestos abatement is complete, the law will presume that you intended to sell or lease the property at the time the work was done, which is a violation of this exemption. You may not hire an unlicensed person as your contractor. Your work must be done according to all local, state and federal laws and regulations which apply to asbestos abatement projects. It is your responsibility to make sure that people employed by you have licenses

required by state law and by county or municipal licensing ordinances.

105.3.7 Applicable Code for Manufactured Buildings. Manufacturers should be permitted to complete all buildings designed and approved prior to the effective date of a new code edition, provided a clear signed contract is in place. The contract shall provide specific data mirroring that required by an application for permit, specifically, without limitation, date of execution, building owner or dealer, and anticipated date of completion. However, the construction activity must commence within 6 months of the contract’s execution. The contract is subject to verification by the Department of Business and Professional Regulation.

105.3.8 A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

105.4 Conditions of the permit.

105.4.1 Permit intent. A permit issued shall be construed to be a license to proceed with the work and not as authority to violate, cancel, alter or set aside any of the provisions of the technical codes, nor shall issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans, construction or violations of this code. Every permit issued shall become invalid unless the work authorized by such permit is commenced within 6 months after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 6 months after the time the work is commenced.

105.4.1.1 If work has commenced and the permit is revoked, becomes null and void, or expires because of lack of progress or abandonment, a new permit covering the proposed construction shall be obtained before proceeding with the work.

105.4.1.2 If a new permit is not obtained within 180 days from the date the initial permit became null and void, the building official is authorized to require that any work which has been commenced or completed be removed from the building site. Alternately, a new permit may be issued on application, providing the work in place and required to complete the structure meets all applicable regulations in effect at the time the initial permit became null and void and any regulations which may have become effective between the date of expiration and the date of issuance of the new permit.

105.4.1.3 Work shall be considered to be in active progress when the permit has received an approved inspection within 180 days. This provision shall not be applicable in case of civil commotion or strike or when the building work is halted due directly to judicial injunction, order or similar process.

105.4.1.4 The fee for renewal reissuance and extension of a permit shall be set forth by the administrative authority.

105.5 Additional options for closing a permit. Pursuant to Section 553.79(15), *Florida Statutes*, a property owner,



NOTICE TO INDUSTRY

EXPIRED PERMITS

EFFECTIVE IMMEDIATELY - 6/17/2025

This is to advise all contractors and permit holders with expired permits to take immediate action to resolve outstanding expired permit issues.

Pursuant to Florida Building Code Section 105.4.1, permits expire if work has not commenced within 180 days of issuance or if work is suspended or abandoned for 180 days. Performing any work under an expired permit is a violation and may result in enforcement action under the enforcement procedures outlined in City of Cape Coral Ordinance 2-85.

All work associated with expired permits must cease immediately until valid permits are reinstated.

Following this notification, if corrective action is not taken within 30 days, an official Notice of Violation will be issued, and hearing may be requested before the Special Magistrate. If you are found guilty, the penalty up to \$1,000 per day plus fees for each permit may begin to accrue until compliance is achieved.

Failure to resolve expired permits may also result in your contractor license being reported to the Florida Department of Business and Professional Regulation (DBPR) for possible disciplinary action, including suspension or revocation.

You are strongly urged to review your permit records immediately and take all necessary steps to renew, close, or otherwise address expired permits.

Please contact the Permitting Division without delay at **permits@capecoral.gov**.

Building Official, City of Cape Coral



TO: Development Services, Building Division Inspectors and Plans Examiners

FROM: Shane Kittendorf, Building Official

DATE: December 10, 2024

SUBJECT: Policy for Illegal Occupancy Prior to Issuance of a Certificate of Occupancy

Authority: Florida Building Code (FBC); Florida Statutes; City of Cape Coral Code of Ordinances

1. Purpose

The purpose of this policy is to establish consistent procedures for identifying, responding to, and correcting illegal occupancy of residential structures prior to the issuance of a Certificate of Occupancy (CO) in accordance with the Florida Building Code (FBC) and applicable laws. This policy ensures the safety, health, and welfare of residents and visitors by preventing occupancy of structures that have not been verified as safe and code-compliant.

2. Legal Authority

Florida Building Code

- **FBC 111.1 – Certificate of Occupancy Required:**
“No building or structure shall be used or occupied, and no change in the existing occupancy classification shall be made, until the Building Official has issued a Certificate of Occupancy.”
- **FBC 105.4 – Conditions of Permits / Expired Permits:**
Allows the Building Official to ensure work is completed in compliance, including requiring permits to be renewed, completed, or reopened when work is incomplete or expired.

Florida Building Code – Enforcement

The Building Official is charged with enforcing all provisions of the Florida Building Code, including prohibiting unsafe or unlawful occupancy.

City of Cape Coral Code of Ordinances

Local code provisions authorize the posting of notices and the disconnection of utilities when necessary to protect life and property.

3. Policy Statement

It is the policy of the City of Cape Coral Building Division that no residence may be occupied prior to the issuance of a Certificate of Occupancy. Any occupancy prior to CO issuance is illegal, constitutes a violation of FBC 111.1, and must be addressed immediately to safeguard the public.

Where illegal occupancy is identified, the City will issue appropriate notices, require the occupants to vacate, and take necessary enforcement actions—including disconnection of utilities when required, to prevent continued unsafe use of the property.

4. Identification of Illegal Occupancy

Illegal occupancy may be identified through:

- Site inspections
 - Reports from inspectors, utility staff, or Code Compliance
 - Complaints from neighbors
 - Discovery during expired permit enforcement
 - Observations of active utilities or signs of habitation in an unapproved structure
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5. General Response Procedure

Step 1 — Initial Site Visit

A Building Inspector or designated City representative conducts a site visit to confirm:

- Whether the structure is occupied
- Whether a valid CO has been issued
- Permit status (active vs. expired)
- Safety or life-safety hazards

Step 2 — Notification

The homeowner and contractor are informed verbally and/or in writing that:

- The residence is illegally occupied
- Occupancy without a CO violates FBC 111.1
- Immediate corrective action is required

Step 3 — Issue Notice to Vacate

The City will post a Notice to Vacate at the property that includes:

- Citation of applicable code sections (FBC 111.1, FBC 105.4, local ordinances)
- A requirement that the premises be vacated immediately
- Instructions for obtaining compliance
- Contact information for the Building Division

The posted Notice serves as official legal notice.

Step 4 — Mandated-Inspection / Evaluation

To assist the homeowner with compliance, the Building Division will:

- Perform an immediate inspection to determine deficiencies
- Identify outstanding inspections and documents
- Provide guidance to the contractor or owner on the path to CO issuance

Step 5 — Assist With Compliance

City staff will work with the homeowner and contractor to:

- Address expired permit issues
- Identify missing or incorrect documentation
- Guide the homeowner through the final inspections
- Coordinate with other departments as needed (utilities, zoning, fire)

Step 6 — CO Issuance and Removal of Notice

Once all building, mechanical, electrical, plumbing, fire, zoning, and floodplain requirements are met and all documents and inspections are completed:

- The Building Official will issue the Certificate of Occupancy
 - The Notice to Vacate will be removed
 - Utilities may be restored as needed
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6. Enforcement Measures

If occupants fail to vacate after being notified:

- The City may contact the contractor and property owner to reiterate the requirement.
 - Continued illegal occupancy may result in the disconnection of utilities, as authorized by the Building Official, to protect life and safety.
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7. Expired Permit Connection

This policy works in tandem with the City's Expired Permit Enforcement Program.

- When a structure has an expired permit and appears occupied, both issues are handled simultaneously.
 - Expired permits must be resolved, inspections completed, and compliance achieved before a CO may be issued.
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8. Homeowner Expectations

Homeowners are expected to:

- Not occupy the home until a CO is issued
 - Cooperate with site access, inspections, and documentation requests
 - Hire licensed contractors and design professionals as required
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9. Contractor Expectations

Licensed contractors are expected to:

- Follow all requirements of the FBC, Floodplain Regulation, Land Development Code, Engineering Design Standards, along with other applicable local, state, and Federal Regulations.
 - Ensure inspections are completed
 - Communicate with City staff during the compliance process
 - Ensure the structure is not occupied prior to CO issuance
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10. Conclusion

The City of Cape Coral Building Division is committed to protecting life, health, and property by enforcing the Florida Building Code and ensuring that all structures are safe prior to occupancy. Illegal occupancy without a Certificate of Occupancy undermines public safety and will be addressed promptly and consistently in accordance with this policy.

Example of Expired Permit/Occupation Without Certificate of Occupancy
Enforcement
(1001 Old Burnt Store Road, CODE25-002369)

1. Initial Site Visit: On January 31, 2025, City staff performed a site visit at to confirm that a property was being occupied illegally, with the new construction permit in “Expired” status and no Certificate of Occupancy having been issued. Upon arriving at the property, the inspector observed that the yard and interior of the home were filled with personal belongings. The inspector posted a Notice to Vacate, allowing seven business days for the occupant to vacate the premises.
2. Ongoing Engagement with the Occupant: As the inspector was leaving the property, the resident arrived home and opened the garage door, revealing that the garage was fully stocked with exercise equipment. The inspector explained to him that the home could not be occupied until a valid CO was issued by the Building Official. The resident responded by claiming the inspector was trespassing and refused to leave. He also removed the Notice to Vacate from his door. The inspector informed him that under Florida Building Code Section 111.2, the Building Official has the authority to disconnect utilities if necessary. The resident then mentioned that he had a propane generator. The inspector assured him he would consult with the Building Official and informed him that he had 10 days to complete the required construction to obtain a CO.
3. Escalation and Code Enforcement: The City subsequently opened a case with Code Enforcement on February 13, 2025, and the inspector conducted site visits approximately every three days to monitor the property's progress. After the third visit, the inspector posted a Notice to Vacate once more, as the resident had removed previous notices. At this point, the resident escalated the matter by emailing the City Manager, the Director, and the Building Official, claiming that City staff were trespassing and that his mother, who required oxygen, had no other place to stay. The inspector spoke with Building Official, who advised that the inspectors should continue to assist resident and guide him through the process of obtaining the CO. We found that many of the required documents, such as final surveys and septic inspections, were the primary items still pending. After approximately six months of coordination with the property owner and the contractor, a Certificate of Occupancy was issued on September 12, 2025.

1001 Old Burnt Store RD - B21-09407

Notice to Vacate – 10 Days to comply

Audit inspection no fee. The home has barking dogs, and we have witnessed vehicles here at all hours. The garbage cans at road are full of everyday debris consistent with an occupied dwelling. There are play toys around pool deck as if the pool is being used. You have been given a 10 day notice to come into compliance by moving your personal belongings out. I left a notice to vacate on front door with a 10-day notice. after ten days your utilities will be authorized to be turned off. Homeowner showed up, I explained to him in person that he had ten days before power may be turned off. Ves Swift 239-707-3029

