

MACOUPIN COUNTY CIRCUIT CLERK
EVICTON LAW – LANDLORD/TENANT
INFORMATIONAL SHEET

*NOTE: This is for informational purposes only.**

Court personnel and clerks are prohibited from giving legal advice. If you have questions, you should consult with a licensed Attorney.

BEFORE A COMPLAINT FOR EVICTION CAN BE FILED IN COURT, THE LANDLORD MUST COMPLY WITH THE FOLLOWING STATUTORY REQUIREMENTS:

(Failure to comply with these prerequisites may result in the Landlord's eviction complaint being delayed.)

Preliminary Note: The Eviction Laws (formerly known as "Forcible Entry and Detainer") were "enacted in response to legislators' perception that, over the years, landlords have engaged in unfair and sometimes illegal eviction practices. The law attempts to provide a fair and workable system for both tenants and landlords. As such, the courts expect strict compliance with the provisions of the statute. To ensure a successful and legal eviction, landlords must be careful to fully comply with the letter of the law. Many complexities and local court customs exist in this field of law."

NOTICE TO TERMINATE

All tenants are entitled to a notice of termination of tenancy or demand for rent before the lessor may bring an eviction action.

Exceptions

No notice of termination of tenancy is required at the expiration of the lease period. 735 ILCS 5/9-213. However, if the Chicago ordinance (CRLTO) governs the rental agreement, the landlord must notify the tenant in writing at least 30 days before the date of termination of the lease or the landlord's intention not to renew the lease. Section 5-12-130(j). Some courts have held that notice may not be required if the tenant has agreed in the lease to waive it. Lessors may waive their right to assert the waiver of notice provision in a lease. See, e.g., *Avdich v. Kleiniert*, 69 Ill.2d 1, 370 N.E. 2d 504, 12 Ill. Dec. 700 (1970). A lease provision that waives the right to notice of termination is not enforceable under the CRLTO. Section 5-12-140(d).

WRITTEN NOTICE

Notices of termination must be in writing and describe the premises with reasonable certainty. The Notice must also be properly served before filing a Complaint.

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TIMING OF NOTICES

Notices must afford the tenant the full number of days required by statute. *Hoefler v. Erickson*, 331 Ill. App. 577, 73 N.E. 2d 448 (1st Dist. 1947). The date of service is excluded, and if the last day falls on a Saturday or Sunday or holiday, it is also excluded. 5 ILCS 70 / 1.11.

TYPES OF NOTICES

1. 5 Day Notice- Rent Demand (735 ILCS 5/9-209)
2. 10 Day Notice to Quit - (735 ILCS 5/9-201)
3. 30 Day Notice - (735 ILCS 5/9-207)

5 DAY NOTICE- RENT DEMAND

735 ILCS 5/9-209

When rent is not paid on the due date, the lessor may serve on the tenant a five-day notice stating that unless the rent is paid within five days of service, the tenancy will be terminated. The tenant can avoid any eviction proceeding by tendering to the lessor the rent due.

The 5 Day Notice must state:

- The amount of rent due;
- The tenant has the right to pay the rent claimed due within the five-day period; and
- If the rent due is not paid within the five-day period, the tenancy will be terminated. The first day is the day after the tenant gets notice.

Tenant disputes rent claimed due

A tenant who is served a five-day notice may dispute the amount of rent claimed due. If the amount claimed exceeds the amount the tenant believes due, explore the reasons why. A tender of the actual amount due should defeat the lessor's claim of possession. *Elizondo v. Medina*, 100 Ill.App.3d 718, 427 N.E. 2d 381(1st Dist. 1981).

Rent demand on 5 Day Notice should NOT include non-rent amounts

A five-day rent demand should include rent only, and no other claims such as damages, security deposits, attorneys fees, etc. 735 ILCS 5 / 9-209. See, *Payne v. Coates Miller*, 52 Ill. App.3d 288, 367 N.E. 2d 406, (1st Dist. 1977) affirming an injunction enjoining lessor from including in five-day rent demands claims for attorney's fees and costs. The tenant should be advised to tender the rent actually due.

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Tender

Some courts can narrowly interpret tender. A tenant should tender rent due in the manner demanded on the five-day notice. If the notice does not specify, the tenant should tender the rent in accord with the past practice of the parties. In tendering an amount in person, the tenant should take a witness, and show the lessor or his designated agent the money or another manner of payment.

Refusal of tender

If the lessor refuses tender of the amount due, the tenant can bring a motion to dismiss any eviction action based on the five-day demand for rent. *Madison v. Rosser*, 3 Ill.App.3d 851, 279 N.E. 2d 375 (1st Dist. 1972).

Tender excused

Tender may be excused where it would be futile. If the lessor tells the tenant not to try to tender, or if the rent amount claimed due is grossly excessive, tender may be futile. *Casciola v. Gardner*, 101 Ill .App. 3d 852, 428 N.E.2d 921, (1st Dist. 1981). This argument may be even stronger if the lessor includes the "only full payment" language included in 9-209. That language is:

Only full payment of the amount of rent demanded in this notice will waive the landlord's right to terminate the lease under this notice, unless the landlord agrees in writing to continue the lease in exchange for receiving partial payment.

10-DAY NOTICE TO QUIT
735 ILCS 5 / 9-210

The lessor may terminate the tenancy by a ten-day notice to quit when the tenant has violated a term or condition of the lease.

The 10-Day Notice to Quit must state:

- the nature of the lease violation and
- the tenancy is terminated. *Goldblatt v. Pearl*, 338 Ill.App.654, 88 N.E.2d 377 (1st Dist. 1949).

It is necessary to review the term of the lease that the lessor claims have been breached. Ambiguities in any lease terms are construed against the drafter. *Chicago Housing Authority v. Rose*, 203 Ill. App. 3d 208, 560 N.E.2d 1131, (1st Dist. 1990).

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Nonpayment of rent in a notice to quit

The lessor may claim nonpayment of rent as the lease violation in a ten-day notice to quit, but the tenant can avoid eviction by tendering the rent due in the ten-day period. *Westerman v. Gilmore*, 17 Ill. App. 2d 455, 150 N.E.2d 660 (3d Dist. 1958).

30-DAY NOTICE
735 ILCS 5 / 9-207

An oral and/or month to month tenancy may be terminated on a written 30-day notice. The notice need not state a reason for the termination of the tenancy. TO BE PROPER NOTICE and IN COMPLIANCE WITH THE LAW, **the notice must be served at least 30 days before the date of termination and must state the last date of the rental period.** *Hoefler v. Erickson*, 73 N.E.2d 448 (1st Dist. 1947).

(Note: Squatters/Unknown Occupants – who do not have a verbal or written lease – typically must also be given a 30-Day Notice.)

Holdover tenancy: willful hold over

735 ILCS 5 / 9-202

A tenant who willfully stays after the expiration of the lease term must pay double the value of the unit. The landlord must demand in writing possession of the premises before claiming double rent.

Holdover after notice

735 ILCS 5 / 9-203

A tenant who gives notice of intent to vacate the unit and who stays beyond the date mentioned shall pay double the value of the unit.

SERVICE OF NOTICE TO EVICT/TERMINATE

(Before a Complaint may even be filed)

735 ILCS 5 / 9-211

Any notice of termination of tenancy, including a 5-day, 10 Day, or 30-Day notice **must** be served by one of the following means:

- Personal service on the tenant;
- Service on a person 13 years old or older **if residing on the premises or in possession of the premises;**
- Certified or registered mail, with **return receipt,** or

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- Posting, **but only where no one is in actual possession.** (If the property is not legitimately abandoned, the landlord may not serve the Notice by posting.)

In *Prairie Mgmt. Corp. v. Bell*, 289 Ill. App. 3d 746, 752, 682 N.E.2d 141, 145 (1st Dist. 1997), the court held that the methods of service identified in this statutory provision are not meant to be exhaustive. Furthermore, a tenant's acknowledged receipt of the notice cures any defect in the landlord's manner of service. *Id.* However, in construing the posting section of the statute, the Appellate Court found that there was no jurisdiction over a tenant who was in actual possession of the premises and whom the landlord served by posting. *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 935 N.E.2d 1080 (1st Dist. 2010); *but see* – *Goodwin v. Matthews*, 2018 IL App (1st) 17214, ¶¶11-20.

EVICTIONS

(Once Notice has been properly given and served, a Landlord may then file a formal Complaint for Eviction if the Tenant has not complied with the terms of the Notice.)

See 735 ILCS 5 / 9-101 et seq and Supreme Court Rule 181(b)(2)

Lessors must evict tenants through judicial proceedings. The judicial eviction proceeding is called an Eviction Action. The requirements for an eviction action are contained in 735 ILCS 5 / 9-101 et seq.

An eviction action is an action to determine the right to possession of the premises at issue. 735 ILCS 5 / 9-102.

It is a summary proceeding; matters not germane to possession may not be joined, but the statute specifically allows a claim for rent to be joined. 735 ILCS 5 / 9-106.

Practitioners in Cook County should be aware that the courts narrowly construe germaneness. In any event, if possible, any germane counterclaims should also be pled as affirmative defenses. Examples of relevant matters are:

- *Defenses based on poor housing conditions such as a breach of the warranty of habitability and plead ordinance violations in addition to Jack Spring;*
- *Retaliatory eviction such as when a landlord files a case after a tenant reports poor housing conditions or after a tenant obtains an order of protection;*
- *Fair housing violations, if relevant to the issue of possession;*
- *Defenses in a nonpayment of rent case where a tenant believes no rent is owed;*
- *Defenses in a breach of lease claim where a tenant claims the lease was not breached; and*
- *Tenants who are victims of domestic or sexual abuse.*

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COMPLAINT FOR EVICTION

735 ILCS 5 / 9-106

The complaint needs to allege that the Plaintiff is entitled to possession of the premises and that the Defendant unlawfully withholds possession of the premises.

(The Complaint shall further allege facts sufficient enough to state a cause of action and should also attach a copy of the written lease, unless said contract was oral – at which time, the Landlord should allege the terms of the oral agreement. To prevent possible delays in Court, the Landlord should also include a copy of the 5, 10, or 30-Day Notice to the Complaint that was served on the Tenant. See local jurisdictions for standardized notices and sample complaints.)

SERVICE of the SUMMONS and COMPLAINT
(which differs from Service of the Notice)

Service of Summons must be made by the general requirements of the Code of Civil Procedure. There must be strict compliance with the statutory requirements for service. *Chiaro v. Lemberis*, 28 Ill. App. 2d 164, 171 N.E.2d 81 (1st Dist. 1960).

See, 735 ILCS 5 / 2-203, for service on individuals. It provides that service shall be made:

- By leaving a copy of the summons with the defendant personally; and/or
- By leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, *provided the officer or other person making service shall also* send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode.

The certificate of the officer or affidavit of the person that he or she has sent the copy in pursuance of this section is evidence that he or she has done so.

Constructive service

735 ILCS 5 / 9-107 provides that constructive service of the COMPLAINT and SUMMONS may be had by "posting and mailing" or by "publication and mailing" under 735 ILCS 5 / 2-206, *but only where the officer returns the summons stating that service could not be obtained*. The plaintiff or plaintiff's attorney **must file an affidavit** showing the basis for the use of constructive service, as outlined in section 5/9-107. **Judgment for rent may not be entered in such cases**. A landlord must make a due and diligent inquiry into the whereabouts of the tenant before relying on constructive service. *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 32; *Bell Federal Savings &*

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Loan Association v. Horton, 59 Ill. App. 3d 923, 928 (5th Dist. 1978). Depending upon the particular circumstances of a case, inquiring with neighbors, inquiring with known counsel, checking court records, and investigating employment information may be part of the 'due inquiry' and 'diligent inquiry' required of a plaintiff intending to rely on constructive service. *Nasolo*, 364 Ill. App. 3d at 32.

If these statutorily mandated due and diligent inquiries are not completed by the plaintiff, the court has no jurisdiction over that defendant and a default judgment entered against him, or her is void. *Id.* 364 Ill. App. 3d at 32.

Timing of service

Summons must be served at least three days before the date the defendant is required to appear. Illinois Supreme Court Rule 102(b).

Objections to service

Objections to service may be made by filing a motion to quash service of process under 735 ILCS 5 / 2-301. The defendant no longer must file a special and limited appearance with the motion. If the reasons for the objection do not appear on the face of the pleadings on file, an affidavit must support the motion.

ANSWER

A defendant in an eviction action must appear at the time and place specified in the summons. Supreme Court Rule 181 (b) (2). The defendant need not file an answer unless ordered to do so by the court. When no answer is ordered, the allegations in the complaint are deemed denied, and any defense may be proved as if it were specifically pleaded. *Id.* Practitioners in Cook County may wish to file affirmative defenses to avoid allegations of surprise, and preclusion of affirmative defenses, at trial.

735 ILCS 5/9-108

A defendant in an eviction action has a right to a jury trial. The demand must be made when the defendant makes a first appearance to preserve the right. 735 ILCS 5/2-1105. Since no answer is required in an eviction action, the jury demand should be filed on or before the first appearance date. *First Bank of Oak Park v. Carswell*, 111 Ill. App. 3d 71, 73, 443 N.E.2d 755, 757 (1st Dist. 1982); but see *Pecoraro v. Kesner*, 217 Ill. App. 3d 1039, 1045, 578 N.E.2d 53, 56 (1st Dist. 1991) reversing trial court's decision to strike jury demand filed eleven days after tenant was first required to appear in an eviction action, and stating that statutes regulating the right to a jury trial should be liberally construed in favor of allowing this right.

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BURDEN OF PROOF

Plaintiff has the burden to show its right to possession by a preponderance of the evidence. *Connery v. Van Thournout*, 303 Ill. App. 406, 25 N.E.2d 397, 399 (2d Dist. 1940).

The Landlord must also show strict adherence to the procedural requirements, including notice requirements, of the eviction provisions of the Code of Civil Procedure, which is why it is important that the Landlord strictly comply with the written Notice requirements, service, and plead sufficient facts in the Complaint to state a cause of action.

TENANT'S DEFENSES to Evictions

Waiver
Repair and Deduct
Warranty of Habitability
Rental Property Utility Service Act Violations
Retaliatory Eviction
Fair Housing Act Violations
Domestic Abuse

WAIVER:

A lessor who by any action recognizes the continued existence of a tenancy after the lessor has knowledge of a breach of the lease waives the right to assert forfeiture of the lease due to that lease violation. *Midland Management Co. v. Helgason*, 158 Ill. 2d 97, 630 N.E.2d 836 (1994). Such acts include:

- Acceptance of rent accruing after the lessor's knowledge of the breach. *Helgason*; supra; *McGill v. Wire Sales Co.* 175 Ill. App. 3d 56, 529 N.E.2d 682, (1st. Dist. 1988); *Housing Authority for LaSalle v. Little*, 64 Ill. App. 3d 149, 380 N.E.2d 1201 (3d Dist. 1978); but see, *Schivarelli v. Chicago Transit Auth.*, 355 Ill. App. 3d 93, 823 N.E.2d 158 (- Dist. 2005) holding that even though the lessor, CTA, accepted rent from plaintiffs, the lessor did not waive its right to enforce a particular section of the lease. The court held that the lessor did not have knowledge of the breach. For a waiver to apply, the lessor must have knowingly waived adherence to the provision;
- Service of a five-day demand for rent. *Avdich v. Kleinert*, 69 Ill. 2d 1, 370 N.E.2d 504 (1977). A five-day notice reaffirms that the tenancy continues to exist and will only terminate if the tenant does not pay the rent demanded within the five-day period. This logic may not apply where the lessor issues a ten-day notice and then

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another ten-day notice, although advocates have still been successful in making the argument. *Shelby Hous. Auth. v. Thornell*, 144 Ill. App. 3d 71, 493 N.E.2d 1109 (5th Dist. 1986) mailing of subsequent notices did not operate to waive previous notices; and

- Renewal of a lease.

REPAIR AND DEDUCT

When a landlord has promised in the lease to make needed repairs and does not after a tenant has given landlord notice of conditions and a reasonable amount of time to make repairs, the tenant has three options:

- Abandon the premises if, due to the landlord's failure to make repairs, the premises become untenable;
- Remain in possession and sue the landlord for costs of repairs; and
- Make repairs and deduct the costs of the repairs from the rent due.

If landlord sues tenant for eviction for nonpayment of rent after tenant makes repairs, the tenant can argue that rent is not owed because of costs of repairs. The Illinois Residential Tenant's Right to Repair Act, 765 ILCS 742/5, allows for rent to be withheld to cover the cost of necessary repairs. However, the tenant must meet the following requirements:

- The repairs made must be required by the lease agreement or by local law or ordinance;
- The reasonable cost of repair must not exceed \$500, or one half of one month's rent, whichever is less;
- The tenant must notify the landlord of the intention to make the repairs at the landlord's expense by certified mail;
- The landlord has 14 days after given notice to repair the issue before the repairs are made;
- The repairs must be made in a skillful manner by a tradesman unrelated to the tenant;
- After the repairs are made, the tenant must send a copy of the paid bill to the landlord, along with the tradesman's name, address, and telephone number; and
- The repairs must not be required because of the tenant's fault.

This does not apply to public housing, condominiums, not-for-profit cooperative homes, or owner-occupied dwellings with six or fewer units. Also, if you make repairs, you should be aware that you are responsible for the following:

- That the repairs are made skillfully;
- That a licensed tradesman makes the repairs; and

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- That the tradesman is insured for any damages that occur during the repair.

In addition to the Illinois Act, the Chicago ordinance (CRLTO) explicitly authorizes a limited repair and deduct remedy. Section 5-12-110(c) gives tenants the right to repair and deduct under the following circumstances:

- *There is material noncompliance by the landlord with the rental agreement or with section 5-12-070 regarding the landlord's responsibility to maintain the premises;*
- *The reasonable cost of compliance does not exceed the greater of \$500 or one-half the monthly rent;*
- *The reasonable cost of compliance does not exceed one month's rent;*
- *The tenant gives written notice to the landlord stating the intention to correct the condition at the landlord's expense;*
- *If the landlord fails to correct the defect within 14 days after written notice is given, the tenant may have the work done in a workmanlike manner and compliance with the existing law;*
- *The tenant must submit to the landlord a paid bill from an appropriate contractor or supplier, and*
- *The amount deducted from the rent may not exceed reasonable prices customarily charged for such work.*

WARRANTY OF HABITABILITY

Illinois does not recognize a tenant's right to withhold rent as a method to compel lessors to fix defects. Tenants should be warned that it is risky to withhold rent. However, every residential lease includes an implied warranty of habitability. *Jack Spring v. Little*, 50 Ill. 2d 351, 280 N.E.2d 208 (1972). Some leases also contain express warranties of habitability.

Breach of an express or implied warranty of habitability is a defense germane to an eviction action. The tenant is entitled to a rent set-off appropriate to the extent of the lessor's breach. *Glasoe v. Trinkle*, 107 Ill. 2d 1, 479 N.E.2d 915 (1985). The claim may be made by the affirmative defense and by counterclaim.

Elements of a claim

The elements of a claim based on breach of the warranty of habitability include:

- Defects in the premises may be shown by the failure to maintain the premises in substantial compliance with municipal building codes;
- Lessor's knowledge of the defects;
- Lessor's failure to repair defects; and
- Defects would cause a reasonable person to consider the premises unfit, unsanitary, unhealthy or unsafe, but tenant need not establish that the premises are uninhabitable. *Pole Realty co. v. Sorrells*, 84 Ill. App. 2d 178, 417 N.E.2d 1297 (-- Dist. 1981).

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Measure of damages

In *Glasoe v. Trinkle*, 107 Ill. 2d 1, 479 N.E.2d 915 (1985), the Illinois Supreme Court approved two alternate methods for assessing damages due to the breach of the warranty of habitability:

- **"percentage reduction in use"** method. The rent claimed due by the lessor is set off by the percentage of reduction in the use of the premises by the tenant over the period the defect existed; and
- **"difference in value"** method. The rent claimed due by the lessor is set off by the difference in fair value of premises if they had been as warranted versus their value in their defective condition over the period the defect existed.

The court may consider the agreed monthly rent as the fair rental value. The lessor and/or the tenant may testify as to his or her opinion of the value of the premises in their defective condition, but expert opinion is advisable. The court should consider the severity of the breach, the duration of the breach, and the effectiveness of the lessor's attempts to correct defects in determining the amount of rent abatement.

If tenant's damages exceed the amount of rent due, the tenant has a complete defense and is entitled to a judgment for the amount more than the rent owed. If rent is still due to the lessor after appropriate reduction due to a breach of the warranty of habitability, the tenant is entitled to a set-off, but the lessor may still gain possession of the premises.

RENTAL PROPERTY UTILITY SERVICE ACT VIOLATIONS - 765 ILCS 735 / 1

Tenants may deduct from rent due payments they make for utility services that the landlord was obligated to make but failed to make to avoid interruption of service.

Elements of this defense are:

- Lessor's agreement, written or oral, to pay for water, gas or electricity services
- Lessor's failure to make payments due for the utility service
- Nonpayment jeopardizes the continuation of service to the tenant, and
- Tenant's payment for the utility service

Common area utilities –

765 ILCS 735/1.2

A tenant shall not be required to pay utilities for any common area or other units unless, before entering into a lease or taking a security deposit, the landlord provides a specific written statement of the arrangement and 12 months of utility bills. The tenant may waive this provision in writing.

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765 ILCS 735/1.3

Tenant can recover actual damages from a landlord's violation and can recover treble damages if the landlord's action was knowing or intentional. Fees and costs may be awarded if judgment is over \$3,000.

Termination of utility service by the landlord -

765 ILCS 735/1.4

A landlord may not cause utility service to tenants to be interrupted or terminated by nonpayment of utility bills for which the landlord is responsible or by tampering with equipment.

765 ILCS 735/2.1

If a landlord terminates service in violation of section 1.4, the tenant may recover damages from the landlord of 100% rent reduction for each month and consequential damages, although the tenant must mitigate. If the landlord showed reckless indifference or willful disregard, each affected resident could get up to \$300 or \$5,000 divided by the number of such residents, whichever is less.

RETALIATORY EVICTION

765 ILCS 720 /1

A lessor cannot terminate or refuse to renew a lease or tenancy because the tenant complained to a governmental authority of a bona fide violation of a building code, health ordinance, or similar regulation. Any lease provision to the contrary is void. In *Clore v. Fredman*, 59 Ill. 2d 20, 319 N.E.2d 18 (1974), the Illinois Supreme Court held that retaliatory eviction is a defense germane to an eviction action.

Elements of this defense are:

- The tenant complained in good faith to a governmental authority, not a newspaper, or some other organization, about potential building code or health ordinance violation;
- The lessor knows the complaint; and
- The lessor terminates the tenancy or refuses to renew the lease.

The lessor can rebut the *prima facie* case of retaliatory eviction by establishing that the eviction was in fact motivated by other reasons. The mere existence of another independent reason to evict is not sufficient. *Clore v. Fredman*, 319 N.E. 2d at 867.

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FAIR HOUSING ACT VIOLATIONS

42 USC § 3601 et seq.

The Fair Housing Act prohibits various forms of discrimination in a wide variety of housing and real estate practices. It proscribes discrimination based on race, color, national origin, disability, religion, sex, and familial status. 42 U.S.C. § 3604. Under the Act, a housing provider cannot refuse to sell or rent to an individual based on his/her belonging to one or more of those protected classes. Id. at § 3604(a) & (f)(1). Also, the housing provider cannot discriminate in the terms, conditions or privileges of the sale or rental of a property, or in the provision of services or facilities. Id. at § 3604(b) & (f)(2). Concerning persons with disabilities, a housing provider has an affirmative duty to provide reasonable accommodations to its rules, policies, practices, or services when necessary to ensure an equal opportunity to use and enjoy a dwelling and to permit reasonable modifications such as physical improvements that ensure access to units and common areas. Id. at § 3604(f)(3)(A) & (f)(3)(B). The Act also makes it illegal to coerce, intimidate, threaten, or interfere with a person who exercises his/her rights under the Act. Id. at § 3617.

Tenant remedy: A tenant may be able to use a housing provider's violation of the Act to defend against an eviction action.

Eviction due to familial status

Familial status is defined as one or more individuals under 18 who are domiciled with a parent or other person designated by the parent or other person having custody with the written permission of such parent or another person. 42 USC § 3602(K). Families also include pregnant women, persons in the process of adopting a minor child, and families with foster children. *Gorski v. Troy*, 929 F. 2d 1183 (7th Cir. 1991). A lessor cannot require a larger security deposit from families with children or evict a family solely because the family has a child.

Reasonable local, state, or federal regulations on the maximum number of occupants permitted to occupy a dwelling are lawful provided that they do not discriminate against a class protected by the Act. 42 USC § 3607(b). The Act does not address occupancy standards imposed by private landlords. HUD's regulations implementing the Fair Housing Act indicate that such standards may be permissible if they are reasonable, e.g., comport with a local building code. 24 C.F.R. §100.10.

Eviction where lessor has failed to make reasonable accommodation for a person with disabilities.

42 USC § 3604 (f) (3) (b) specifically requires the lessor to make reasonable accommodation in rules, policies, practices or services when such accommodations may be necessary to afford disabled persons equal opportunity to use and enjoy a dwelling.

"Handicap" is defined as:

- A physical or mental impairment which substantially limits one or more of such person's major life activities;
- A record of having such an impairment; and

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- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance as defined in section 102 of the Controlled Substances Act 21 USC § 802.

An accommodation is not reasonable if it imposes undue financial or administrative burdens. See *Cnty. Coll. v. Davis*, 442 U.S. 397 (1st Cir. 1979).

Examples of reasonable accommodations include:

- Allowing persons unable to maintain their homes to have homemakers; and
- Setting up a rent paying mechanism through third-party payees, e.g., banks, social service agencies to ensure that monthly rent payments are made.

DOMESTIC ABUSE -735 ILCS 5/9-106.2

A tenant has an affirmative defense in an eviction case if:

- Eviction is based on victim's status as a victim of domestic or sexual violence
- Eviction is based on an incident of actual or threatened domestic or sexual violence against tenant
- Case is based on criminal activity related to domestic violence that has been committed by a household member or guest against the tenant
- Case is based on the violation of a bar order, and the tenant did not willingly allow the barred person on the property.

A landlord can defeat the above defense if they can show that the tenant's presence would create a threat to other residents, the landlord, or their employees. Even if the municipality has a crime-free or nuisance ordinance, the landlord is still required to follow federal and state laws protecting victims of domestic violence.

ENFORCEMENT OF JUDGMENT

Lessors must enforce a judgment of possession within 120 days unless the court grants an extension. 735 ILCS 5 / 9-117

The court must grant the extension unless the defendant establishes

- That the tenancy has been reinstated
- That the breach upon which the judgment has been issued has been cured or waived
- That the plaintiff and defendant entered into a post-judgment agreement whose terms the defendant has performed
- That other legal or equitable grounds exist that bar enforcement of the judgment

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A tenant should notify the sheriff's office in the event the lessor does not enforce order within 120 days to make sure that the sheriff refuses to enforce a stale order. The tenant should be sure to wait until the 120-day period has elapsed.

Waiver after judgment

Lessors sometimes accept rent accruing after the eviction order is entered. If such rent is accepted, a new lease is created. The tenant may bring an action to recognize the new tenancy. However, the landlord may accept rent that accrues between the entry of the judgment and the expiration of the stay, if the landlord has obtained the court's approval.

GENERAL HOUSEKEEPING MATTERS and SUMMARY OF THE LAW

If you do not own the property, you are not a proper Plaintiff and may not list yourself as a Plaintiff in a Complaint for Eviction.

If the Landlord is a business or company, the law mandates that the Landlord Plaintiff be represented by a licensed Attorney. There are no exceptions to this rule.

A Landlord Plaintiff, who is not an LLC or Corporation, etc., and who is not represented by counsel, must represent him or herself. A non-party may not act as an attorney. Otherwise, to do so would be in violation of the law and Supreme Court Rules by committing the unauthorized practice of law.

Plaintiff-landlords must understand and abide by the proper applicable period of notice to a tenant and unknown occupants before an action may be filed. Failure to comply with these legal requirements will likely result in the Complaint being summarily dismissed. The Landlord will then have to start the process over, incurring more fees and being deprived of additional rent.

If a Tenant has a defense, the Tenant must show up to the Court hearing and tell the Judge he/she has a defense.

In almost all cases, a Judge will grant a "stay of enforcement" of the Order for Possession so that the tenant has some time to find a new residence. Once the stay expires, a landlord may direct the sheriff's department to forcibly remove the tenant from the rental premises. A judge may allow up to 21-days to move.

If the notice demands full payment of rent and the landlord accepts a partial payment, the landlord has not waived the right to evict.

If a landlord recovers both rent and possession in joint action and the client pays the amount owed, the landlord can still evict.

Through the use of a 5-day notice, the landlord can claim back rent only.

Damage to property must be deducted from the security deposit or may be claimed in a 10-day notice.

The effective date of a 30-Day Notice cannot be the same date that it was mailed. In other words, the 30-Day Notice's termination date cannot be the same date it was sent to the tenants.

MACOUPIN COUNTY CIRCUIT CLERK
EVICITION LAW – LANDLORD/TENANT
INFORMATIONAL SHEET

Unless evidence proves otherwise, generally, a month to month tenancy expires at midnight on the last day of the month. Therefore, a Notice to Terminate a month to month tenancy (or oral agreement), should call for the premises to be vacated at the end of the month. Thus, a Complaint for Eviction cannot be filed prior to the expiration of the notice period specified in the Landlord's Notice of Termination. *Am. Mgmt. Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 57 (3d Dist. 2009).

If Tenant appears in Court, acknowledges receipt of Notice, but fails to raise any defects, then those defects may be deemed waived.

If Tenant does not appear at eviction hearing and the Landlord requests a default judgment, the Court will likely deny that request **if the Landlord cannot establish notice of termination was properly given and served prior to the Complaint being filed** even if the Tenant was served with Summons and Complaint. REMEMBER: Written Notice and Service are STATUTORY REQUIREMENTS that must be met before a Landlord may seek relief from the Courts. If proper Notice was not given, even if the Tenant was served with the Summons to appear in Court, the Court will likely give the Landlord permission to perfect the notice and service requirement with Leave to File an Amended Complaint for Eviction.

A Landlord will not be entitled to monetary damages if Summons and Complaint were served by constructive service or by publication. An Order for possession only will be entered until the Court has personal jurisdiction over the defendant.

If more than one person lives at the residence, but who are not named in the lease, the Landlord will be required to list "Unknown Occupants" on the Complaint and have those individuals served separately. (No monetary damages can be awarded, though, against Unknown Occupants.)

Typically, at the first appearance, if the Defendant denies the allegations in the Complaint, the Court will grant a Defendant 7-14 days to file a formal Answer/Affirmative Defense or Motion to Dismiss. Issues regarding defective Notice are usually raised in a Motion to Dismiss. Any Counterclaims/Affirmative Defenses not pled may be deemed waived at Trial.

Eviction Proceedings, unlike Small Claims proceedings, are also entitled to formal discovery. If formal discovery is requested, the Court will enter a Case Management Order, typically setting forth the following deadlines: Answer/Counterclaim/Motions: to be filed within 7 days; Parties to issue written discovery within 7 days thereafter; and parties granted 14 days to respond to discovery. A bench or jury trial will then be set approximately 14 days after discovery is completed.

We recognize other jurisdictions or courts may have been more relaxed in the past regarding compliance with the statutory and legal requirements in eviction proceedings. This recognition, however, does not give courts permission to relax the rules. We take our Oath of Office seriously and must follow the law at all times - even if it inconveniences the courts, parties, litigants, and/or attorneys. This is to ensure everyone, regardless of one's status, is treated equally.

Due process deserves no less.

*Information obtained from Illinois Legal Aid Website and various other legal resources
<https://www.illinoislegalaid.org/legal-information/helping-clients-landlord-and-tenant-cases>

LAND OF LINCOLN
LEGAL ASSISTANCE
(800) 642-5570
(618)462-0029



Catholic Charities
Legal Services

William C. Henry
Program Director and Attorney at Law

1625 West Washington Street
Springfield, Illinois 62702
Phone: 217-321-8329
Fax: 217-523-5624
henry@cc.dio.org

DEMAND FOR RENT --- 5 DAY NOTICE

TO: _____

YOU ARE HEREBY NOTIFIED THAT: You owe the undersigned Landlord the sum of: \$ _____
for past due rent (and late charges, if any) for the premises you are leasing/renting, located at:
_____, the City of _____, County of Macoupin, State of Illinois.

YOU ARE FURTHER NOTIFIED THAT:

- 1) You are **required** to either pay the **FULL AMOUNT** currently due or vacate the above premises within five (5) days after the service of this Notice.
- 2) Failure to comply with this Notice will result in termination of your Lease and an eviction proceeding being filed.

ONLY FULL PAYMENT OF RENT demanded in this Notice will waive the Landlord's right to terminate the Lease under this Notice, unless the Landlord agrees in writing to continue the Lease in exchange for partial payment.

Date: _____

Landlord

AFFIDAVIT OF SERVICE – When served by a person not an Officer.

STATE OF ILLINOIS,)
)ss.
COUNTY OF _____)

_____ being duly sworn, on oath deposes and states that on _____ day of _____, 20____, he/she served the above Notice pursuant to 735 ILCS 5/9-211 by:

- Delivering a copy to the above Tenant, named _____, via hand-delivery, certified mail or registered mail, with a returned receipt from the addressee; or
- Leaving a copy of this Notice with _____, a person 13 years of age or upwards, residing on, or in the possession of the above property; or
- Posting a copy of the same on the premises, no person being in actual possession of the above premises. (*Note: Posting may only be used when no one is in actual possession of the property.*)

Subscribed and Sworn to before me the ____ day of _____, 20____.

Notary Public

10 DAY NOTICE TO QUIT
(Violation of Lease Agreement)

TO: _____

YOU ARE HEREBY NOTIFIED THAT: You are leasing/renting property from the undersigned Landlord, located at: _____, the City of _____, County of Macoupin, State of Illinois.

YOU ARE FURTHER NOTIFIED THAT: You have violated the terms of the Lease by:

YOUR TENANCY WILL END TEN (10) DAYS AFTER THE DATE OF SERVICE OF THIS NOTICE.

Date: _____
_____ Landlord

AFFIDAVIT OF SERVICE – When served by a person not an Officer.

STATE OF ILLINOIS,)
)ss.
COUNTY OF _____)

_____ being duly sworn, on oath deposes and states that on _____ day of _____, 20____, he/she served the above Notice pursuant to 735 ILCS 5/9-211 by:

- Delivering a copy to the above Tenant, named _____, via hand-delivery, certified mail or registered mail, with a returned receipt from the addressee; or
- Leaving a copy of this Notice with _____, a person 13 years of age or upwards, residing on, or in the possession of the above property; or
- Posting a copy of the same on the premises, no person being in actual possession of the above premises. (*Note: Posting may only be used when no one is in actual possession of the property.*)

Subscribed and Sworn to before me the _____ day of _____, 20____.

Notary Public

30 DAY NOTICE OF INTENT TO TERMINATE LEASE
(Month-to-Month or Oral Lease)

TO: _____

YOU ARE HEREBY NOTIFIED THAT: You are leasing/renting property from the undersigned Landlord, located at: _____, the City of _____, County of Macoupin, State of Illinois on a month-to-month Lease.

UNDER ILLINOIS LAW, this tenancy can be terminated by the Landlord by delivering to the Tenant a Notice of the Intention to Terminate the Tenancy at least thirty (30) days prior to the end of the monthly lease term.

PLEASE REGARD THIS AS NOTICE of the undersigned Landlord's intention to terminate the rental agreement on _____, 20 ____.

THIS NOTICE DOES NOT WAIVE THE RIGHTS TO COLLECT THE AGREED UPON RENT FOR THE PERIOD OF THIS NOTICE.

Date: _____
_____ Landlord

AFFIDAVIT OF SERVICE – When served by a person not an Officer.

STATE OF ILLINOIS,)
)ss.
COUNTY OF _____)

_____ being duly sworn, on oath deposes and states that on _____ day of _____, 20____, he/she served the above Notice pursuant to 735 ILCS 5/9-211 by:

- Delivering a copy to the above Tenant, named _____, via hand-delivery, certified mail or registered mail, with a returned receipt from the addressee; or
- Leaving a copy of this Notice with _____, a person 13 years of age or upwards, residing on, or in the possession of the above property; or
- Posting a copy of the same on the premises, no person being in actual possession of the above premises. (*Note: Posting may only be used when no one is in actual possession of the property.*)

Subscribed and Sworn to before me the ____ day of _____, 20____.

Notary Public

STATE OF ILLINOIS, CIRCUIT COURT Macoupin COUNTY	CERTIFICATION FOR EXEMPTION FROM E-FILING	For Court Use Only
Instructions ▼ Directly above, enter the name of the county where the case was filed. Enter the name of the person who started the lawsuit as Plaintiff/Petitioner. Enter the name of the person being sued as Defendant/Respondent. Enter the Case Number given by the Circuit Clerk or leave this blank if you do not have one.	_____ Plaintiff / Petitioner (First, middle, last name) v. _____ Defendant / Respondent (First, middle, last name)	_____ Case Number

In 1, check the reasons you are asking to file by mail or in person. You should check all that apply.

You are exempt from e-filing and you do not need to file this Certification if:

- you are in jail or prison;
- you are filing a will;
- you are filing into a juvenile case; OR
- your disability prevents you from e-filing.

1. I am not able to e-file documents in this case for the following reasons (check all that apply) :
- I am representing myself and do not have the Internet or a computer in my home. My only access is through a public terminal at a courthouse, library, or other location. This poses a financial or other hardship.
 - I am representing myself and have trouble reading, writing, or speaking in English.
 - I am filing a document in a sensitive case, such as a petition for an order of protection or a civil no contact/stalking order.
2. Illinois Supreme Court Rule 9(c)(5) allows for an exemption from e-filing for good cause. For the above reasons, I need a good cause exemption from e-filing for my entire case or until I am able to e-file.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

After you finish this form, sign and print your name.

Enter your complete address and telephone number.

I certify that everything in the *Certification for Exemption from E-filing* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

 Your Signature

 Street Address

 Print Your Name

 City, State, ZIP

 Telephone

**IN THE STATE OF ILLINOIS
CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS**

_____))
_____))
Plaintiff(s) vs. _____ NO: _____ LM _____)
_____))
Defendant(s). _____)

**COMPLAINT FOR EVICTION
(Residential Real Estate)**

1) Plaintiff(s) allege(s) that he/she/they is/are entitled to possession of the following property located in Macoupin County, Illinois:

(Address) (City, Village, Township)

2) My/our name IS or IS NOT on the Title/Deed to the above listed Real Estate.
(Note: If the answer is NOT, you cannot use this Complaint. The Complaint must be filed and conducted only by the record owner.)

3) Defendant(s) unlawfully withhold(s) possession of the property from the Plaintiff(s) for the following reasons: *(Please check all that apply.)*

a. The Defendant(s) failed to pay rent for the months of _____ and past due rent totals: \$ _____. *(Note: this amount may include late fees, but cannot include security deposits, utilities, physical damages, etc.)*

b. The Lease term expired.

c. The Defendant(s) breached the terms of the lease by:

d. Other:

(Insert specific facts showing how Defendant(s) is/are unlawfully withholding possession.)

4) Plaintiff(s) HAS/HAVE attached a copy of the written Lease Agreement/contract pursuant to 735 ILCS 5/2-606 **OR**
 NO written Lease is attached because the parties entered into a **verbal agreement**.

The terms of the verbal agreement are as follows:

- a) Dates of verbal agreement (duration of verbal agreement): _____
- b) Amount of rent due and owing each week/month: _____
- c) Date rent is due each week/month: _____
- d) Any additional terms of the parties' verbal agreement relevant to the case: _____

(Note: if there is a Lease and it is not attached, your Complaint may be dismissed.)

- 5) Plaintiff(s) has/have attached a copy of the required 5 Day, 10 Day, and/or 30 Day Notice. (check all that apply.)

(Note: if you fail to attach the required Notice, your Complaint may be dismissed.)

6) Plaintiff(s) pray(s) for an Eviction Order and for such other relief as may be just and proper.

Attorney for Plaintiff(s)/Self-Represented Pltf(s)

VERIFICATION

I/We, _____, on oath and under the penalties as provided by law, pursuant to 735 ILCS 5/1-109, certify(ies) that the statements set forth in this Complaint are true and correct.

Plaintiff Name: _____
 Address: _____
 Tel. No: _____
 e-mail: _____
 Attorney # (if any) _____

X: _____
 Attorney for Plaintiff(s) or Self-Represented Plaintiff(s)
 (Signature)

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

_____))
Plaintiff(s),))
vs.) No: _____ LM _____)
_____))
Defendant(s).))

EVICITION AFFIDAVIT
Re: Emergency Exception

On _____, I filed a Complaint for Eviction against the above-named Defendant(s). This filing is exempt from Governor Pritzker's moratorium on residential evictions for the following reason(s):

- 1) Defendant's/tenant's conduct poses a direct threat to the health and safety of the tenants because:

_____;
- 2) Defendant's/tenant's conduct poses an immediate and severe risk to the property because:

_____;
- 3) Defendant/tenant is violating the following building code, health ordinance, or similar regulation _____ by doing the following: _____;
- 4) _____ None of the above exceptions apply¹.

Dated: _____ By: _____
Plaintiff(s)

VERIFICATION

I/We, _____, on oath and under the penalties of perjury as provided by law, pursuant to 735 ILCS 5/1-109, certify(ies) that the statements set forth in this Affidavit are true and correct.

Plaintiff's Name: _____ X: _____
Signature of Plaintiff/Agent

¹(Note: if none of the above exceptions apply, your case will not be heard until after the Governor lifts the moratorium for evictions.)

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

_____))
_____))
Plaintiff(s),))
vs.)) No: _____ LM _____))
_____))
_____))
Defendant(s).))

EVICITION CERTIFICATION
Re: CARES Act Exception

NOTICE TO PLAINTIFF: Through August 24, 2020, Section 4024 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act prohibits filing certain evictions from "covered dwellings" if those dwellings are in "covered properties." In general, a "covered property" is any property that receives a federal rental subsidy or has a federally-backed/insured mortgage (such as Fannie Mae, Freddie Mac, or the FHA). If unsure, read the actual language of the Act before completing this Certification.

On _____, I _____, filed a Complaint for Eviction against the above-named Defendant(s). This filing is exempt from Governor Pritzker's moratorium on residential evictions for the following reason(s):

- 1) I am _____ the named Plaintiff (or) _____ an Agent of the named Plaintiff.
- 2) The filing of this Eviction case does not violate the CARES Act because: (check one)
 - A. _____ The property is not a "covered dwelling;" or
 - B. _____ The property is a "covered property," but the eviction is otherwise allowed under the Act.

Dated: _____ By: _____
Plaintiff(s)/Plaintiff's Agent

VERIFICATION

I/We, _____, on oath and under the penalties of perjury as provided by law, pursuant to 735 ILCS 5/1-109, certify(ies) that the statements set forth in this Affidavit are true and correct.

Plaintiff's Name: _____
Address: _____
Tel. No.: _____
e-mail: _____
Attorney ID #: _____

X: _____
Plaintiff's Signature

STATE OF ILLINOIS, CIRCUIT COURT _____ COUNTY	AFFIDAVIT - SUPPORTING DOCUMENTS NOT ATTACHED TO EVICTION COMPLAINT	<i>For Court Use Only</i>
Instructions ▼		
Directly above, enter the name of the county where you will file the case.	Plaintiff (For example, the landlord or owner): _____ _____	
Enter your name as Plaintiff.		
Below "Defendants," enter the names of the people you are trying to evict.	v. Defendants (First, middle, last name): _____ _____	
The sheriff will only evict unknown occupants if the "Unknown Occupants" box is checked.	<input type="checkbox"/> Unknown Occupants (Check this box only if you checked Unknown Occupants on the Eviction Complaint and Eviction Summons.)	
Enter the case number given by the Circuit Clerk.		_____ Case Number

NOTE: You only need to fill out and attach this *Affidavit* to the Eviction Complaint if you do not attach the Notice, Demand, affidavit or proof of service of a Notice or Demand, or Lease.

In 1, check the box that states why you did not attach a Notice or Demand.

In 2, check the box that states why you did not attach the affidavit or proof of service of a Notice or Demand.

In 3, check the box that states why you did not attach a written lease.

If you need more information, read *How to File & Present an Eviction Complaint*.

Check all that apply:

- 1. I did not attach a Notice or Demand to the Eviction Complaint because:
 - I cannot find or did not save my copy.
 - A Notice or Demand is not required in this case.
 - Other reason: _____

- 2. I did not attach a copy of an affidavit or proof of service of a Demand or Notice because:
 - I cannot find or did not save my copy.
 - A Notice or Demand is not required in this case.
 - Other reason: _____

- 3. I did not attach a copy of a written lease to the Eviction Complaint because:
 - I am not required to attach a written lease.
 - I did not have a written lease with Defendants.
 - I cannot find or did not save a copy of the written lease.
 - Other reason: _____

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

I certify that everything in this *Affidavit* is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under 735 ILCS 5/1-109.

 /s/
 Your Signature

 Street Address, Unit #

 Print Your Name

 City, State, ZIP

 Telephone

Getting Started Summons

IMPORTANT: This getting started guide and the instructions are not legal advice. They are only meant to help you learn how to use the *Summons* form. Your use of the form does not guarantee you will be successful in court.

To learn how to fill out the form and file it with the court, read the *How to Serve a Summons* instruction sheet and the instructions on the form.

Name of the form:	<i>Summons</i>
Purpose of the form:	The <i>Summons</i> tells a person they are being sued and where and when to respond to the lawsuit.
Types of cases the form CAN be used for:	Most civil cases, for example: evictions and lawsuits for injury or property damage.
Types of cases the form CANNOT be used for:	Criminal cases and some civil cases including divorce, foreclosure, paternity, small claims, orders of protection, stalking no contact orders, and civil no contact orders.
Cost to file the form:	There is a fee to file your Complaint with the court. You must also pay the sheriff who serves the <i>Summons</i> for you. If you cannot afford to pay the fees, fill out the <i>Application for Waiver of Court Fees</i> to ask the court for a fee waiver. illinoiscourts.gov/Forms/approved/
Special information or papers needed to complete the form:	You will need the other parties' names and addresses. You will also need your Complaint/Petition to attach to the <i>Summons</i> . Check with the Circuit Clerk if there are any additional local notices or documents that are required to be attached to the <i>Summons</i> .
Statutes and rules covering the form:	IL Code of Civil Procedure Sections 2-201 through 2-211; <u>735 ILCS 5/2-201 et seq.</u> Illinois Supreme Court Rules <u>101</u> , <u>102</u> , <u>103</u> , <u>104</u> , <u>131</u> , <u>283</u> , and <u>284</u>
For more information:	Read the <i>How to Serve a Summons</i> instruction sheet that comes with the form. You may also find more information and resources at the courthouse or by going to: illinoislegalaid.org/legal-information/serving-summons .

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT <u>Macoupin</u> COUNTY		SUMMONS		<i>For Court Use Only</i>
Instructions ▼ Enter above the county name where the case was filed.		Plaintiff / Petitioner (First, middle, last name)		Case Number
Enter your name as Plaintiff/Petitioner.		v.		
Enter the names of all people you are suing as Defendants/ Respondents.		Defendant / Respondent (First, middle, last name)		
Enter the Case Number given by the Circuit Clerk.				

In 1, if your lawsuit is for money, enter the amount of money you seek from the Defendant/ Respondent.

In 2, enter your contact information. If more than 1 person is bringing this lawsuit, attach an *Additional Plaintiff/Petitioner Contact Information* form.

In 3, enter the name of the person you are suing and their address. If more than 1 person is being sued, attach an *Additional Defendant/Respondent Contact Information* form.

- Information about the lawsuit:**
 Amount claimed: \$ _____
- Contact information for the Plaintiff/Petitioner:**
 Name (First, Middle, Last): _____
 Street Address, Apt #: _____
 City, State, ZIP: _____
 Telephone: _____
 See attached for additional Plaintiff/Petitioner contact information
- Contact information for the Defendant/Respondent:**
 Name (First, Middle, Last): _____
 Street Address, Apt #: _____
 City, State, ZIP: _____
 Telephone: _____
 See attached for additional Defendant/Respondent contact information

Important Information for the person receiving this form:

You have been sued. Follow the instructions on the next page on how to appear/answer.

- If you do not appear/answer the court may decide the case without hearing from you and enter a judgment against you for what the plaintiff/petitioner is asking.
- Your written appearance/answer must be filed on time and in the proper form.
- Forms for a written appearance/answer are available here: <http://www.illinoiscourts.gov/forms/approved/default.asp>

If you cannot afford to pay the fee for filing your appearance/answer, ask the circuit clerk for an *application for waiver of court fees*.

You should read all of the documents attached.

Enter the Case Number given by the Circuit Clerk: _____

In 4, the Circuit Clerk will give you the court date or appearance date, check any boxes that apply, and include the address of the court building and room where the Defendant/Respondent must file their response.

4. Instructions for person receiving this form (Defendant/Respondent):

To respond to this *Summons* you must:

- Go to court:
On this date: _____ at this time: _____ a.m. p.m.
Address: _____ Court Room: _____
City, State, ZIP: _____
- File a written *Appearance* and *Answer/Response* with the court:
On or before this date: _____ at this time: _____ a.m. p.m.
Address: _____
City, State, ZIP: _____
- File a written *Appearance* and *Answer/Response* with the court within 30 days from the day you receive this *Summons* (listed below as the "Date of Service").
On this date: _____ at this time: _____ a.m. p.m.
Address: _____
City, State, ZIP: _____

STOP!
The Circuit Clerk will fill in this section.

Witness this Date: _____

Seal of Court

Clerk of the Court: _____

STOP!
The officer or process server will fill in the Date of Service.

This *Summons* must be served within 30 days of its date, listed above.

Date of Service: _____

(Date to be entered by an officer or process server on the copy of this *Summons* left with the Defendant/Respondent or other person.)

Plaintiff/Petitioner: To serve this *Summons*, you must hire the sheriff (or a private process server outside of Cook County) to deliver it and your Complaint/Petition to the Defendant/Respondent. If the sheriff (or private process server outside of Cook County) tries but can't serve the *Summons*, fill out another summons and repeat this process.

Attention: E-Filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/faq/gethelp.asp> or talk with your local circuit clerk's office.

Enter the Case Number given by the Circuit Clerk; _____

DO NOT complete this section. The sheriff, or private process server will complete it.

By:

Signature

Print Name

FEES

By certified/registered \$ _____

Service and Return \$ _____

Miles: \$ _____

Total \$ _____

HOW TO SERVE A SUMMONS

What is a *Summons* and when do I use it?

- The *Summons* is the court paper that tells a person they are being sued and where and when to respond to the lawsuit.
- When you file a lawsuit against someone, you must fill out a *Summons* and have it delivered to the person you are suing. The person you are suing is called the Defendant/Respondent.
- The judge in your case cannot decide your case until you have properly served the *Summons* on the Defendant/Respondent.

What does it mean to serve a *Summons*?

- To "serve" a *Summons* means to have it delivered to the person you are suing.
- If you are suing more than 1 person, every person you are suing has to be served. You must name them all on your *Summons*.
- If you are suing more than 1 person in your case, attach an *Additional Defendant/Respondent Contact Information* form to your *Summons*.

What is an *Affidavit of Service of Summons and Complaint/Petition*?

- The *Affidavit of Service of Summons and Complaint/Petition* is the part of the form you will give to the court to prove that your *Summons* and *Complaint/Petition* were served on the Defendant/Respondent.
- The sheriff will fill out the rest of the form. The sheriff will complete an affidavit for each Defendant/Respondent served, if there are more than 1.

Is there a cost to serve a *Summons*?

- There is a fee to file your *Complaint* with the Circuit Court.
- You must also pay the sheriff who serves the *Summons* for you.
- If you cannot afford to pay the fees, you can ask the court to file and serve the Defendant/Respondent for free. Fill out the *Application for Waiver of Court Fees* to ask the court for a fee waiver. This is a separate set of forms you can find at:
illinoiscourts.gov/Forms/approved/

Where can I find the form I need?

You can find the form at:
illinoiscourts.gov/Forms/approved/

What do I do after I fill out the form?

Step 1: File your *Summons* and *Complaint/Petition* with the Circuit Clerk in the county where your court case should be filed.

- File your case in the proper court. The proper court could be in the county where the defendant lives or the incident took place.
- File your case in the county you live in or the county your spouse lives in.
- You must electronically file (e-file) court documents unless (1) you are an inmate in a prison or jail and you do not have a lawyer, or (2) you qualify for an exemption from e-filing.
 - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer, (2) you have a disability that keeps you from e-filing, or (3) you have trouble reading or speaking in English.
 - Fill out a *Certification for Exemption from E-Filing* found here: illinoiscourts.gov/Forms/approved/
 - File the original and 1 copy of your forms, and the *Certification*, with the Circuit Clerk's office in person or by mail.
- To e-file, create an account with an e-filing service provider.
 - Visit efile.illinoiscourts.gov/service-providers.htm to select a service provider. Some service providers are free while others charge a processing fee. For instructions on how to e-file for free with Odyssey eFileIL, see the self-help user guides here:
illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp
- If you do not have access to a computer or if you need help e-filing, take your form to the Circuit Clerk's office where you can use a public computer terminal to e-file your form.
 - You can bring your form on paper or saved on a flash drive.
 - The terminal will have a scanner and computer that you can use to e-file your form.

Step 2: Serve the other party with copies of your form.

- Have the sheriff or a private process server serve the *Summons*. You cannot serve the *Summons* yourself.
- Staple the *Summons* to the front of the copy of your forms that will go to the other party.
- In person or by mail, ask the sheriff in the county where each person to be served lives to serve your *Summons* and your forms.

- Take it to the sheriff in person
 - Bring copies of your *Summons* and your forms to the sheriff's office.
 - Pay the sheriff's fees for each party OR give the sheriff a copy of your *Order for Waiver of Court Fees* (if you have one) and you will not be charged a fee.
- Mail it to the sheriff
 - Mail copies of your *Summons* and your forms to the sheriff's office.
 - Include the *Letter to the Sheriff* found at: <http://www.illinoiscourts.gov/Forms/approved/>.
 - Include a self-addressed and stamped envelope for the sheriff to mail the *Affidavit of Service of Summons and Complaint/Petition* to you.
 - Pay the sheriff's fees for each party OR mail the sheriff a copy of your *Order for Waiver of Court Fees* (if you have one) and you will not be charged a fee.
- If any party does NOT live in the same county or state where the case was filed:
 - Get the name, address, and telephone number of the sheriff for the county or the state where that party lives.
 - Call the sheriff in that county or state to find out:
 - If it is the correct sheriff's department for the address where you want that party served;
 - The address where you should bring or mail your *Summons* and forms;
 - The number of copies of your *Summons* and forms to bring or send; AND
 - The sheriff's fees for service if they will honor your *Order for Waiver of Court Fees* (if you have one).

Step 4: Wait for the other party to file a response with the Circuit Clerk.

- Once the sheriff serves your form to the other party, they will have a deadline to file a response with the Circuit Clerk. The deadline will be on the *Summons*.
- If you do not get a copy of the other party's response by the deadline, call the Circuit Clerk to ask if there is a response in the file. If there is, ask the Circuit Clerk to send you a copy or go to the Circuit Clerk's office to pick it up.
- If the other party files a response, you may then ask for a court date.
- After the deadline, you may ask the court for a date whether or not the other party filed a response.

Step 3: Confirm the sheriff served your form on the other party.

- After the sheriff serves the other party with your court forms, they will fill out the *Affidavit of Service of Summons and Complaint/Petition* section of your *Summons* form and file it with the Circuit Clerk OR mail it to you.
- If the sheriff files the completed *Affidavit of Service of Summons and Complaint/Petition* directly with the Circuit Clerk, call the Circuit Clerk to find out if it has been filed. If it has been filed, ask the Circuit Clerk how to get a copy.
- If the sheriff mails the *Summons* with the completed *Affidavit of Service of Summons and Complaint/Petition* to you, make a copy for yourself, file the original with the Circuit Clerk, and have the Clerk file stamp your copy.
- If the sheriff is not able to serve the other party, ask them why. You should try to fix the problem and fill out another *Summons* and ask the sheriff to try to serve the other party again.

**LETTER TO THE SHERIFF
(SERVING A SUMMONS AND FORMS)**

Instructions to User

1. Complete this letter. If there is more than one defendant/respondent and they do not all live in the same county, you will need to complete this letter for each sheriff that you will be asking to serve a *Summons*.
2. With this letter, include the *Summons* and a copy of your forms for each of the other parties in your case that live in that county, payment or *Order for Waiver of Court Fees*, and a self-addressed and stamped envelope for the sheriff to mail the Affidavit of Service to you.
3. Send your letter and the documents listed above to the sheriff's office in the county and state where the other party lives.

Date: _____

Sheriff of _____ County State of _____

Address of Sheriff _____

Dear Sheriff:

Re: _____ v. _____ Case Number: _____
Plaintiff/Petitioner *Defendant/Respondent*

I am enclosing the *Summons*:

to be served on: _____
Name of Other Party

Street, Apt # City State Zip

to be served on: _____ *(fill in only if there is more than 1 other party)*
Name of Other Party

Street, Apt # City State Zip

to be served on: _____ *(fill in only if there are more than 2 other parties)*
Name of Other Party

Street, Apt # City State Zip

Check the box that applies:

- I have enclosed an *Order for Waiver of Court Fees* entered by the Court in _____ County, Illinois, which waives the cost of service; **OR**
- I have enclosed the cost of service \$ _____.

Once you have served the enclosed documents, please complete the Affidavit of Service and return it to me in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter.

Sincerely,

Signature

Printed Name

Street Address, Apt #

City State Zip

Phone

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT Macoupin COUNTY		ADDITIONAL PLAINTIFF/PETITIONER CONTACT INFORMATION FOR SUMMONS	<i>For Court Use Only</i>
Instructions			
Enter above the county name where the case was filed.			
Enter your name as Plaintiff/Petitioner.	Plaintiff / Petitioner (First, middle, last name)		
Enter the name of the person you are suing as Defendant/ Respondent.	v.		
Enter the Case Number given by the Circuit Clerk.	Defendant / Respondent. (First, middle, last name)		Case Number

Enter the contact information for additional Plaintiff/Petitioner.

Contact information for the Plaintiff/Petitioner:

Name (First, Middle, Last): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

Contact information for the Plaintiff/Petitioner:

Name (First, Middle, Last): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

Contact information for the Plaintiff/Petitioner:

Name (First, Middle, Last): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

Contact information for the Plaintiff/Petitioner:

Name (First, Middle, Last): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT Macon COUNTY		ADDITIONAL DEFENDANT/RESPONDENT CONTACT INFORMATION FOR SUMMONS		<i>For Court Use Only</i>
Instructions				
Enter above the county name where the case was filed.				
Enter your name as Plaintiff/Petitioner.		Plaintiff / Petitioner (<i>First, middle, last name</i>)		
Enter the name of the person you are suing as Defendant/ Respondent.		v.		
Enter the Case Number given by the Circuit Clerk.		Defendant / Respondent (<i>First, middle, last name</i>)		Case Number

Enter the contact information for additional Defendant/ Respondent.

Contact information for the Defendant/Respondent:

Name (*First, Middle, Last*): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

Contact information for the Defendant/Respondent:

Name (*First, Middle, Last*): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

Contact information for the Defendant/Respondent:

Name (*First, Middle, Last*): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

Contact information for the Defendant/Respondent:

Name (*First, Middle, Last*): _____
Street Address, Apt #: _____
City, State, ZIP: _____
Telephone: _____

STATE OF ILLINOIS, CIRCUIT COURT _____ Macoupin COUNTY	EVICITION ORDER	<i>For Court Use Only</i>
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Instructions ▼

Directly above, enter the name of the county where the case was filed.

Enter the full names of Plaintiff, -- Defendants, and the case number as listed on the *Eviction Complaint*.

Check the box for Unknown Occupants if it was checked on *Eviction Complaint*.

Plaintiff (For example, the landlord or owner):

v.

Defendants (For example, the tenants or occupants):

Unknown Occupants

Case Number

Notice to Defendants: This *Order* is a judgment against you. It may appear on a background or credit check and affect your ability to rent housing. Do not agree to or sign off on this *Order* if:

- You have an agreement with Plaintiff that lets you stay in the property; or
- Plaintiff has agreed to dismiss this case if you move out by a certain date.

Check this box if the judge dismissed any Defendants from the case. Enter the names of those Defendants.

In 1, enter the complete address, including the street direction (N., E., etc.) and unit # or floor.

In 2, enter the date and time by which Defendants must move out.

In 3, enter the names of Defendants to be evicted and check the box for Unknown Occupants if it was checked on the *Eviction Complaint*.

In 4, check the boxes that apply. If Plaintiff is awarded money, enter the names of Defendants who have been ordered to pay the money.

Sections 1-4 must be completed.

The following individuals are dismissed as Defendants, and this *Order* does not apply to them:

1. Plaintiff is given possession of the property located at:

Street address _____ Unit _____

City _____ State _____ ZIP _____

2. Defendants must move out of the property on or before _____ by 11:59 p.m. or by _____ Date _____ Time _____

3. Plaintiff may give the sheriff a copy of this *Eviction Order*. If Defendants do not move by the date and time listed above, the Sheriff is ordered to evict the following Defendants: _____ Unknown Occupants

4. Plaintiff is owed (check all that apply): No money claimed in *Eviction Complaint*

Money claim dismissed and Plaintiff may seek this money in the future

Money claim dismissed and Plaintiff may not seek this money in the future

\$ _____ in rent or assessments

\$ _____ in court costs

\$ _____ in attorneys' fees (if allowed)

The total judgment amount of \$ _____ is entered against the following Defendants: _____

The Court is not yet ruling on the money claim. Case continued to _____ Date _____ Time _____ for status hearing in courtroom _____ and the Court finds there is no just reason to delay enforcement or appeal of this *Eviction Order*.

Enter the name and contact information of the person completing this *Order*.

Name: _____ ENTERED: _____ Date _____

Address: _____

Telephone #: _____

Attorney # (if any): _____

_____ Judge