

IN THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, IL

GUIDE TO FORCIBLE ENTRY &
DETAINER

CHIEF JUDGE JOHN BARICEVIC
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FORCIBLE ENTRY AND DETAINER

This guide to Forcible Entry and Detainer cases has been prepared and is presented in accord with Rule 2.03 of the Rules of Practice for the Twentieth Judicial Circuit, adopted by the circuit judges on December 12, 1991.

1. What is Forcible Entry and Detainer?

Forcible Entry and Detainer, commonly called FE&D, is the law governing almost all lawsuits and actions involving eviction from real estate premises. In Illinois all FE&D cases are controlled strictly by the FE&D law. This law is Article IX of the Illinois Code of Civil Procedure and is found at 735 ILCS 5/9-101 through 5/9-321. Copies of these statutes are available for review without charge by any person in the St. Clair County law library on the 3rd floor of the courthouse.

2. How is an FE&D case started?

Most FE&D cases involve situations where a landlord seeks to evict a tenant or where a real estate seller seeks to evict a real estate buyer. In such cases a notice must first be delivered to, or served upon, the tenant. (When the term "tenant" is used, it generally means any person residing upon real estate premises, whether by a oral or written lease, by a sales contract, or by any other means.) This notice must strictly comply with the notice requirements of the FE&D law. These requirements are found in §§9-102, 9-104, 9-104.1, 9-104.2, 9-205, 9-206, 9-207, 9-209, and 9-210. Not all of these sections of the law apply to each case. These sections apply to different cases for different situations. In most cases only the notices in §§9-207, 9-209 or 9-210 will apply.

If the notice does not comply with all the requirements of the FE&D law, then the court will not have jurisdiction, or authority, to consider any lawsuit brought to evict the tenant and will be required to dismiss the lawsuit, even if the tenant defaults after filing of the suit. Anyone who intends to file a lawsuit to evict a tenant, whether the suit seeks only to evict or also seeks both eviction and rent, must make certain:

1. the notice is in the form required by the FE&D law;
2. the notice is properly delivered to the tenant as required by the FE&D law; and
3. the lawsuit is not filed until the notice time required by the FE&D law has expired.

Different forms of notice and different notice times apply, depending upon the nature of the tenancy and upon the reason for seeking the eviction. The FE&D law should be very carefully reviewed. It is the responsibility of the person seeking eviction to prepare the correct notice and to have the notice properly delivered to the tenant. The circuit clerk does not provide forms for any notice and does not assist in having the notice delivered to the tenant.

The person seeking eviction should keep at least two (2) extra copies of the notice and should state on the bottom of the copies:

1. how the notice was delivered;
2. to whom the notice was delivered;
3. by whom the notice was delivered; and
4. when the notice was delivered.

3. What if the notice cannot be delivered?

In some cases the required notice cannot be delivered to the tenant because the tenant has moved. The FE&D law provides that under certain circumstances the notice may be posted as provided in §9-104 or §9-211. Posting of the notice on the premises may be used in place of delivery upon the tenant personally **only when no one is in actual possession of the premises**. This does **not** mean that posting may be used when the tenant is not at home when the delivery of the notice is attempted; and it does **not** mean that posting may be used when the tenant refuses to answer the door or refuses to accept mail. Posting should be used generally only when the premises have in fact been vacated by the tenant as a residence. It is not necessary to obtain a court order to use posting as a method for delivery of the notice.

In some cases the required notice cannot be delivered to the tenant because the tenant is purposely avoiding delivery. Posting the notice in such circumstances is not proper delivery of the notice.

4. How is an FE&D lawsuit filed?

After the required notice has been delivered and the required time has expired, if the tenant has not moved from the premises, or if the owner of the premises wishes to have a court judgment for possession of the premises, a lawsuit under the FE&D law may be filed in the county where the premises are located. If such a lawsuit is filed, only two kinds of relief may be requested from

the court. The suit **must** seek a judgment for possession of the premises; the suit **may** also seek a judgment for rent, as provided by §9-201 of the FE&D law. Note, however, that rent cannot be recovered if service of summons has been made by publication or by posting only and not by delivery personally to the defendant; in such a case only possession of the premises may be recovered. Note, also, that, if only a claim for rent is involved, without a claim for possession, then such a claim cannot be filed as an FE&D suit. If only rent is involved, such a claim must be filed as any other lawsuit seeking money damages.

The lawsuit is filed by filing a complaint with the circuit clerk and paying the required filing fees. The circuit clerk has forms for the complaint. It is the obligation of the person filing the lawsuit to fill out the complaint form properly. The complaint should state whether the suit seeks only possession or both possession and rent. If a claim for rent is sought, the amount of rent alleged to be due must be carefully stated. If the tenant fails to answer the suit and is held in default, the judge cannot award more in rent than is requested in the complaint without requiring additional notice of the increased amount to be served upon the tenant. It is also important to note that the only claim for money that can be considered along with a suit for possession under the FE&D law is for rent; the claim cannot be for any other money alleged to be due from the tenant which is not clearly rent. Claims for other money, such as for damages to the premises, for utility bills, and for disputes over damage deposits, must be litigated in a separate lawsuit as any lawsuit seeking money damages.

A copy of the notice which was delivered to the tenant, with the information about delivery stated on the notice, should always be attached to the complaint, since the judge must review this notice at the first court date to determine whether the court has authority to proceed with the lawsuit.

The complaint should also contain a full and complete description of the premises from which eviction is sought. In most instances the full address will suffice, including apartment or lot number (if applicable), street address, city and state. A post office box mailing address is never acceptable as a description of the premises.

No complaint or other paper presented to the circuit clerk will be accepted for filing by the clerk unless:

1. the required filing fee is presented with the complaint or other paper; and
2. the complaint or other paper is legible and contains on the complaint or other paper the name, address and telephone number of the

person who is filing the complaint or other paper.

The person who files the lawsuit should keep a copy of the complaint and of the attached notice for use later in court.

Each person who files the lawsuit is called a **plaintiff**; each person against whom the suit is filed is called a **defendant**.

5. What happens after the lawsuit has been filed?

After the complaint has been filed by the plaintiff, the circuit clerk will assign an initial court appearance date for the case. This initial date is called the "first appearance date." The clerk prepares a summons for each defendant and places this first appearance date on each summons. The summons directs the defendant to appear in courtroom #305 in the courthouse at 9:00AM on a Monday in the near future (or on a Tuesday if Monday of that week is a court holiday) and to answer the claims in the complaint. It is then the obligation of the plaintiff to have the summons and a copy of the complaint delivered to, or served upon, each defendant.

The summons and complaint together are called process and can be served upon a defendant by a process server from the sheriff's office of the county where the defendant resides or can be found. If the plaintiff wishes to have process served by the sheriff's process server, the circuit clerk will assist by sending the process to the appropriate sheriff's office. In that case the process service fee for the sheriff must be presented to the clerk for delivery to the sheriff along with the process.

If the plaintiff wishes to have the process served by a private process server, the clerk will give the plaintiff the copies of the summons and complaint which are to be served upon each defendant. Then the plaintiff must make his own arrangements for service of process. The Yellow Pages of the local telephone directory carries a listing of persons or agencies who can serve process; this listing is usually under "DETECTIVE AGENCIES" or "DETECTIVES - PRIVATE."

The lawsuit cannot go forward against a defendant until process has been served upon that defendant. If process cannot be served because the defendant cannot be located or because the defendant is avoiding service, publication of service or posting of service may be used in place of personal service. Publication or posting must be carried out in accordance with §9-107 of the FE&D law. If service of process is made by publication or posting, then the judgment against any defendant served only by publication or posting will be for possession of the premises only and will not include a judgment for rent. A court order allowing publication or posting for service of process is not needed.

6. What happens at the First Appearance if the defendant is not present?

Only the defendant is required to be present in court for the first appearance date. If the defendant has been properly served with process and fails to appear for the first appearance, the judge will first look at the file to see whether the notice attached to the complaint is in the form required for the relief requested in the complaint and whether the notice appears to have been delivered to the defendant as required. If the notice appears proper, then the court will proceed to enter a judgment by default for the plaintiff and against the defendant for the relief properly requested in the complaint. The judge will fill out a judgment form by checking the appropriate boxes on a preprinted form. This form will indicate whether the judgment is for possession of the premises only or for possession plus rent. If judgment is for rent also, then the amount of the rent award will be filled in by the judge.

If the defendant has not been properly served with process, the judge will note the appropriate box on the preprinted form and allow the plaintiff to obtain a new summons (called an alias summons) from the circuit clerk. The plaintiff must then make new arrangements to have this alias summons and a copy of the complaint served upon the defendant. The judge will also set a status date on the same form. The purpose of the status date is to bring the file back into the courtroom on the status date so the judge can monitor the progress of the case. If the plaintiff has not been able to have the defendant served with process by the time of the status date, the plaintiff must be present for the status date to explain to the judge why the defendant has not been served. If the plaintiff fails to appear for the status date, the judge will probably dismiss the case.

7. What happens at the First Appearance if the defendant is present?

If the defendant is present in court for the first appearance, the judge will first look at the file to see whether the notice attached to the complaint is in the form required for the relief requested in the complaint and whether the notice appears to have been delivered to the defendant as required. If the notice appears proper, the judge will ask the defendant whether he admits or denies that the plaintiff is entitled to possession of the premises and to the rent, if requested. If the defendant admits that the plaintiff is entitled to everything requested in the complaint, then the judge will enter a judgment for the plaintiff and against the defendant for the relief properly requested in the complaint. The judge will fill out a judgment form by checking the appropriate boxes on a preprinted form. This form will indicate whether the

judgment is for possession of the premises only or for possession plus rent. If judgment is for rent also, then the amount of the rent award will be filled in by the judge. If the defendant denies that the plaintiff is entitled to all or to any part of what has been requested, then the judge will set the case for trial.

When a case is set for trial, the trial is scheduled at 9:30AM on the Monday after the first appearance date (or on Tuesday if the Monday is a court holiday). This will all be noted by the judge on the preprinted form. The defendant will then be required to pay his own appearance filing fee to the circuit clerk before the trial.

8. How does everyone get notified about what happened at the First Appearance date?

After the judge has completed the appropriate portions of the First Appearance Order form, the circuit clerk will mail a copy to each person who is involved in the lawsuit— that is, to each plaintiff and each defendant who is not represented by an attorney and to each attorney on behalf of that attorney's client. These copies should be mailed out no later than Wednesday of the week of the first appearance. If you have not received a copy of this form by Friday, you should immediately contact the circuit clerk's office and inquire about the status of your case. Your case may have been set for trial on the next Monday, and you should be prepared to attend a trial on very short notice. Each party to any lawsuit is required to monitor the progress of the case to make certain that, in the event something is set or is ordered which requires action by a party to the suit, that party appears in court for the setting or takes the required action within the time limits set.

9. What happens at the trial?

At the trial the judge will listen to the testimony of each witness and review the evidence. It is the obligation of each party to make certain that all testimony and all evidence is presented in proper form. The judge cannot consider testimony or evidence which is not admissible under Illinois rules of evidence. The judge also cannot help any party with presentation of evidence. It is the burden of the plaintiff to prove the following at trial:

1. the notice is in proper form;
2. the notice was properly delivered to the tenant, or the tenant actually received the notice;
3. the plaintiff is entitled to possession of the premises;

4. if rent is requested in the complaint, what agreement exists for the payment of rent. When rent was due, and when rent was last paid, and
5. anything else that bears upon the relief requested by the plaintiff in the complaint.

It is the burden of the defendant to prove at trial any defense he may allege, such as a breach of habitability of the premises, an agreement to waive any portion of the rent or the like.

After the trial have been completed the judge will tell the parties how he will decide the case. In some cases the judge will announce his decision immediately and give the judgment; in some cases the judge will take the case under consideration because he wishes to reflect upon the evidence and the law before issuing a written judgment. If the judge takes the case under consideration, then a copy of the written judgment will be mailed to the parties by the clerk after the judgment has been entered.

10. What happens after the judgment has been entered?

If the judgment is entered in favor of the defendant, that means the judge has ruled in favor of the defendant on the issues on which judgment was entered for the defendant. If the judgment was in favor of the defendant for possession, then the possession of the premises remains with the defendant. If the judgment was in favor of the defendant on the issue of rent, then the defendant owes no rent for the time period involved in the case.

If the judgment is entered in favor of the plaintiff, that means the judge has ruled in favor of the plaintiff on the issues on which judgment was entered for the plaintiff. If the judgment was in favor of the plaintiff for possession, then the plaintiff is entitled to possession of the premises as of the date the judgment is entered. If the judgment was in favor of the plaintiff on the issue of rent, then defendant owes the plaintiff the amount of rent decided by the court for the time period involved in the case.

No judgment is self executing. Whoever prevails in a judgment must take additional steps to enforce the judgment; example, if the plaintiff obtains an order for possession and the defendant fails to vacate in a timely manner, the plaintiff must take action to have the defendant removed. The first step is for the plaintiff to obtain to have the defendant removed. The first step is for the plaintiff to obtain and have served a 48 hour writ/notice. The plaintiff should take the order for possession to the Circuit Clerk's Office, Civil Division, for issuance and posting of the writ by the sheriff. Presently the clerk's charge for preparation of the writ/notice is \$6.00 and the sheriff's fee for positing is \$42.00. Next the plaintiff should contact the sheriff's office to determine when the writ/notice was posted. If the defendant fails to vacate after the 48 hours after the writ/notice was

posted, It would be the plaintiff's obligation to contact the sheriff's office at 277-3505 ext. 5728 to schedule a setout. At the present time, the sheriff's fee for setout is \$50.00. The plaintiff must have at least 3 individuals present the time of setout to physically remove the defendant's property. The sheriff will not physically removed any property, but will be present to maintain the peace.

An individual may represent themselves in court but may not represent another individual or entity unless they have a license to practice law. An individual who is not a attorney in Illinois may represent their own interest in court but cannot represent an LLC, corporation, or another party even if they totally own the LLC or corporation. An individual may not, with a power of attorney, represent another party in court.

11. What about court costs?

The court costs are usually only those fees paid by a party to file the complaint, to have the summons and complaint delivered to the defendant, and/or have summons and complaint delivered to the defendant, and/or have an appearance entered by the clerk for a party. These costs are usually assessed as part of the judgment against the losing party, although the judge may assess against another party, then that assessment becomes part of the judgment and must be collected in the same manner as any money judgment.

THE EMPLOYEES OF THE CIRCUIT CLERK'S OFFICE ARE NOT LAWYERS AND ARE NOT ALLOWED TO GIVE LEGAL ASSISTANCE TO A LITIGANT EXCEPT AS IS OUTLINED ABOVE.