SERVICE OF CIVIL PROCESS

Illinois Law Enforcement Training and Standards Board
Executive Institute

JANUARY 2026

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INTRODUCTION

Illinois law imposes upon all sheriffs the duty to "serve and execute, within their respective counties, and return all warrants, process, orders, and judgments of every description that may be legally directed or delivered to them."[i] The rules and procedures for the execution and service of these and other documents are found in various articles of the Code of Civil Procedure, other Illinois statutes, and several Illinois Supreme Court Rules.[ii]

These statutes and court rules specify how legal documents are to be served on individuals, corporations, limited liability companies, partnerships, governmental entities, and other miscellaneous bodies; the form of the documents; and the records that must be maintained by the individuals making service. Chapter 1 explains the general procedures for the service of process contained in the Illinois Code of Civil Procedure and other state statutes.[iii] Chapter 2 details the rules and procedures relating to enforcement of judgments, including citations to discover assets, wage and non-wage garnishments, and levying real property and personal property. Then, Chapters 3 through 7 discuss specific procedures with which sheriffs may become involved, including replevin, attachment, ne exeat, body attachment, forcible entry and detainer, mortgage foreclosure, domestic violence orders of protection, and involuntary commitment to a mental institution. Finally, Chapters 8 through 10 provide an overview of issues that may arise in attempting or making service, sheriff's fees, and the laws protecting and affecting process servers. Each chapter includes a general discussion of the chapter topic and references to relevant statutes and cases.

The information contained in this Manual is intended to be a guide and informational resource for those individuals interested in the foregoing topics. It is not intended to be an authoritative compilation of all the rules and laws of civil process. As Illinois Supreme Court Rules and Illinois statutes are always subject to amendment and interpretation by all Illinois courts,

sheriffs are strongly advised to keep abreast of all changes in the law. Any questions concerning the construction or effect to be given to a statute, rule, or case should be directed to the County State's Attorney, who by law is the legal advisor of each sheriff.[iv]

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[i] 55 ILCS 5/3-6019
[ii] 735 ILCS 5/1-101 *et. seq.*; IL Sup. Ct. R. 101-110
[iii] 735 ILCS 5/2-201 *et. seq*.
[iv] 55 ILCS 5/3-9005(a)(7)

CHECKLIST FOR SERVICE OF SUMMONSES AND OTHER TYPES OF PROCESS

	Date to Answer or Appear	Expiration Date	Deadline for Service	Service	Mailing and Filing
Certain Day Summons	On date specified in summons	30 days after issuance	No later than 3 days before answer/ appearance date	· Method: Any method described in Chapter 1 · Serve summons and complaint · Indorse date of service on the summons given to person served	File Proof of Service For timing on when to file the proof of service, see "File Proof of Service with the Circuit Clerk" on page v of this checklist
30 Day Summons	Within 30 days after service	30 days after issuance	30 days after issuance	· Method: Any method described in Chapter 1 · Serve summons and complaint · Indorse date of service on the summons given to person served	File Proof of Service
Citation to Discover Assets	On date specified in citation		No later than 3 days before answer/ appearance date	· Method: o If debtor is natural person - personal service or substitute service o If debtor is not a natural person – prepaid certified or registered mail, return receipt requested or any other method provided by law for service of process · Serve Citation, Citation Notice, Income and Asset Form, and court order	File Proof of Service
Third-Party Citation to Discover Assets	On date specified in citation		Must serve 3rd party before mailing citation and citation notice to debtor, and mailing must be done at least 5 days before answer/ appearance date	· Method: Personal service; substitute service; prepaid certified or registered mail, return receipt requested; or any other method provided by law for service of process · Serve Citation, Citation Notice, Income and Asset Form, and court order	File Proof of Service and Within 3 business days of service, mail copy of citation and citation notice to debtor at their last known address by regular first-class mail (citation notice not required to be mailed to corporation, partnership or association) and File a certificate of mailing with the court

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Non-Wage Garnishment	On date specified in summons	The answer/ appearance date	No later than 10 days before answer/ appearance date	· Method: Personal service or mailed by circuit clerk (in counties under 1,000,000 population) · Serve Summons, copy of underlying judgment or certification by circuit clerk or creditor's attorney, Garnishment Notice, and Interrogatories	File Proof of Service and Within 2 business days of service, mail copy of the Garnishment Notice and Summons to debtor at address indicated in the notice by first-class mail and Within 4 business days of service, file certificate of mailing with court
Wage Garnishment	On date specified in summons	The answer/ appearance date	No later than 3 days before answer/ appearance date	· Method: Personal service, mailed by circuit clerk (in counties under 1,000,000 population), prepaid certified or registered mail, return receipt requested; or any other method provided by law for service of process, except publication · Serve Summons, copy of underlying judgment or certification by circuit clerk or creditor's attorney, Wage Deduction Notice, and Interrogatories	File Proof of Service
Replevin Notice of Hearing	On date specified in notice of hearing	None	No later than 5 days prior to date of hearing	· Method: Personal service, substitute service or publication service (on an individual); any of the methods for service on a corporation; any of the methods for service on a partnership or partners; any of the methods for service on a voluntary unincorporated association; or by certified or registered mail by the circuit clerk	File Proof of Service
Replevin Order	On date specified in order	None	None	· Service on defendant **and** o Method: Any method described in Chapter 1 for service of summons · Service on defendant's property o Method: Seizing the property described in the complaint from defendant's possession and delivering it to plaintiff Bond from plaintiff is prerequisite to service	Return bond (provided by plaintiff) and order to circuit court upon receipt and before service; and File Proof of Service
Attachment Order*	On date specified in order	5 days after issuance of order	No later than 10 days before answer/ appearance date	· Service on defendant, garnishee, and other person holding property identified in order **and** o Method: Any method described in Chapter 1 for service of summons · Service on defendant's property o Method: Seizing the property described in the order from defendant's possession and delivering it to plaintiff, but only if defendant is personally served or notified by publication and mail	File Proof of Service that states method of service and *If attachment order is on real estate, file certificate of levy with the recorder in the county

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Ne Exeat Order	On date specified in order	None	None	· Method: Any method described in Chapter 1 for service of summons	File Proof of Service
Body Attachment Order	On date specified in Order			· Method: Personal service by sheriff · Sheriff must bring the respondent before the court	File Proof of Service and Release detainee if bond is paid as outlined in the order
Eviction Five Day Notice	None	None	None	· Method: Personal service; substitute service; certified or registered mail, return receipt requested; posting (if no one is in actual possession)	Provide affidavit of service
Eviction Summons	On date specified in summons	30 days after issuance	No later than 3 days before appearance date For posting, no later than 10 days before appearance date	· Known defendants o Method: Personal service; posting and mailing (if affidavit filed); or publication and mailing (if affidavit filed) · Unknown occupants o Method: Personal service; substitute service; posting and mailing (if affidavit filed); or publication and mailing (if affidavit filed) · Indorse date of service on the summons given to person served	File Proof of Service

Proof of Service

- Indicate name, and title if applicable, of person served
- Indicate the sex, race and approximate age of person served, along with any other identifying traits, *i.e.*, tattoo, piercing, disability
- Indicate the date, time, and place of service; include exact street address when possible
- State the type of service effected, *i.e.*, personal or substitute service)
- Retain copy

File Proof of Service with the Circuit Clerk

- May be filed by mail
- File immediately after all defendants have been served, or
- If Certain Day Summons, (1) file no less than 21 days before answer/appearance date for an action for ≤ $50k or mandatory arbitration; (2) file no later than three days before answer/appearance date for an action for eviction or recovery of tangible personal property; or (3) file no later than three days before the day specified in the summons if personal service outside of Illinois is to be made
- In all other cases, file immediately after the last day service can be made
- If provided with a post card, return post card to plaintiff (or their attorney) immediately after return of summons and specify whether service was had and on what date

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CHECKLIST FOR METHODS OF SERVICE

Defendant to be served	When utilized	Method of Service	How to serve
Individual	Generally, *i.e.*, for summonses and other types of process	Personal service	Physically deliver the process to the person named
	Generally, *i.e.*, for summonses and other types of process	Substitute service	1. Leave the process at the defendant's usual place of abode, with a member of defendant's family over 13 years old **or** a person residing at defendant's usual place of abode over 13 years old 2. Inform the person which whom the process is left of its contents 3. Mail copy of the process in a postage prepaid envelope to defendant at usual place of abode
	Vehicle parking or standing violations (in cities with at least 500,000 population)	Service for parking or standing vehicle violations	Attach the process to the vehicle or hand the process to the vehicle operator
	If the defendant cannot be served because they reside or have gone out of Illinois, cannot be found on due inquiry, or is concealed within Illinois **and** the plaintiff or their attorney files the required affidavit so stating	Publication	The circuit clerk publishes the required notice in a newspaper in the county where the action is pending (or in a newspaper published in an adjoining county in Illinois with circulation where the action is pending) and mails a copy to the defendant within 10 days
	Forcible entry and detainer: If the defendant cannot be served because they reside or have gone out of Illinois, cannot be found on due inquiry, or is concealed within Illinois **and** the plaintiff or their attorney files the required affidavit so stating	Posting	1. At least 10 days before the appearance date, post clerk-prepared notices in three public places in the neighborhood of the court in which suit will be tried 2. If defendant or unknown occupant's address is stated in filed affidavit, mail copy of the notice to each defendant or unknown occupant at address so stated 3. File notice that is endorsed with statements indicating when and where notices were posted and to whom and to which addresses notice was mailed
Corporation	Generally, *i.e.*, for summonses and other types of process	Registered agent or officer or agent of the corporation found anywhere in Illinois	Leave the process with the registered agent or any officer or agent, wherever found in Illinois
	If the defendant cannot be served because they reside or have gone out of Illinois, cannot be found on due inquiry, or is concealed within Illinois **and** the plaintiff or their attorney files the required affidavit so stating	Publication	The circuit clerk publishes notice in a newspaper and mails a copy to the defendant
	IL/foreign corporations: If the registered agent has not been appointed or maintained or if the registered agent cannot be found at the registered office in Illinois through reasonable diligence	Secretary of State	1. Serve the Secretary of State or any designated clerk 2. Mail notice of the service and a copy of the process to the corporation at the last registered office on file in the Secretary of State's office and at the address the plaintiff

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	IL corporations only: If the corporation has been dissolved, the registered agent has not been appointed or maintained or cannot be found, and a civil action against or affecting the corporation is instituted within 5 years or a criminal against agent or affecting the corporation is instituted at any time Foreign corporations only: If the corporation's authority to transact business in Illinois has been revoked or withdrawn or the corporation transacts business in Illinois without obtaining such authority		knows or reasonably believes is likely to provide actual notice to the corporation 3. Attach an affidavit of compliance to the process
Limited liability company (LLC)	Generally, *i.e.*, for summonses and other types of process	Registered agent	Serve the registered agent
	IL/foreign LLCs: If the registered agent has not been appointed or maintained or if the registered agent cannot be found at the registered office in Illinois or at the principal place of business stated in the LLC's articles of organization; if the LLC has been dissolved, the registered agent has not been appointed or maintained or cannot be found; and a civil action against or affecting the LLC is instituted within 5 years of dissolution IL LLCs only: if the LLC has been dissolved, the registered agent has not been appointed or maintained or cannot be found, and a criminal action against or affecting the LLC is instituted at any time	Secretary of State	1. Serve the Secretary of State or a designated employee 2. Mail notice of the service and a copy of the process by registered or certified mail to the LLC at the last registered office on file in the Secretary of State's office and at the address the plaintiff knows or reasonably believes is likely to provide actual notice to the LLC 3. Attach an affidavit of compliance to the process
Partnerships and joint ventures	If the partnership is sued in the partnership name, then generally, *i.e.*, for summonses and other types of process	Personal service on any partner or agent of the partnership	
	If the partnership is sued in the partnership name and if the defendant cannot be served because they reside or have gone out of Illinois, cannot be found on due inquiry, or is concealed within Illinois **and** the plaintiff or their attorney files the required affidavit so stating	Publication	The circuit clerk publishes notice in a newspaper and mails a copy to the defendant
	If a partner is sued in their own name for a partnership liability, then generally, *i.e.*, for summonses and other types of process	Personal service, substitute service, or publication service on the partner sued	See the above section on service on individuals
	If a partner is sued in their own name for a partnership liability, then generally, *i.e.*, for summonses and other types of process Service on a nonresident partner against whom a personal judgment is sought may be made by leaving a copy with any other partner, and mailing, as	Personal service on any other partner	1. Serve any other partner 2. Mail a copy of the summons and complaint to the partner being sued at his usual place of abode in a postage prepaid envelope 3. File a certificate stating that such mailing has been done

	provided herein, only if the cause of action sued on is a partnership liability arising out of the transaction of business within the State.		
Limited liability partnership (LLP)	IL/foreign LLPs: Generally, *i.e.*, for summonses and other types of process	Registered agent	Serve the registered agent
	Foreign LLPs: If the foreign LLP fails to file a statement of qualification to transact business in Illinois IL LLPs: The Uniform Partnership Act does not provide for service through the Secretary of State Foreign LLPs:	Secretary of State	1. Serve the Secretary of State with 2 copies of the process 2. The Secretary of State mails one copy of the process by registered or certified mail to the LLP and its designated office 3. Attach an affidavit of compliance to the process
Limited partnership (LP) and limited liability limited partnership (LLLP)	IL/foreign LPs and LLLPs: Generally, *i.e.*, for summonses and other types of process	Registered agent	Serve the registered agent
	Foreign LPs and LLLPs: If the LP or LLLP has not appointed or maintained a registered agent or the registered agent cannot be found at the agent's address through reasonable diligence	Secretary of State	1. Serve the Secretary of State or designated employee 2. Mail notice of the service and a copy of the process by registered or certified mail to the LP or LLLP at the last address for the agent on file in the Secretary of State's office and at the address the plaintiff knows or reasonably believes is likely to provide actual notice to the LP or LLLP 3. Attach an affidavit of compliance to the process
Voluntary unincorporated association	Generally, *i.e.*, for summonses and other types of process	Service on officer or agent	Any officer of the association personally or at the office of the association with an agent of the association
	If the defendant cannot be served because they reside or have gone out of Illinois, cannot be found on due inquiry, or is concealed within Illinois **and** the plaintiff or their attorney files the required affidavit so stating	Publication	The circuit clerk publishes notice in a newspaper and mails a copy to the defendant
County	Generally, *i.e.*, for summonses and other types of process	Service on county board chairman or county clerk	Serve the county board chairman or county clerk
City	Generally, *i.e.*, for summonses and other types of process	Service on mayor or city clerk	Serve the mayor or city clerk
Village	Generally, *i.e.*, for summonses and other types of process	Service on village president or village clerk	Serve the village president or village clerk
Township	Generally, *i.e.*, for summonses and other types of process	Service on supervisor or town clerk	Serve the supervisor or town clerk
Other public, municipal, governmental or	Generally, *i.e.*, for summonses and other types of process	Service on president, clerk, or other corresponding officer	Serve the president, clerk, or other corresponding officer

quasi-municipal corporation or body			
Trustee or receiver of corporation	Generally, *i.e.*, for summonses and other types of process	Any manner provided for service on individuals or corporations	See above
	Generally, *i.e.*, for summonses and other types of process	Any agent employed by the trustee or receiver	Serve the agent
Individual or entity	Citation to discover assets: If the citation is served on someone other than a natural person debtor Third party citation to discover assets: Generally Forcible entry and detainer: Any demand or notice, including the five-day notice	Prepaid certified or registered mail, return receipt requested	The plaintiff or their attorney sends the process by prepaid certified or registered mail, addressed to the party, return receipt requested. It must be sent "restricted delivery" if to a natural person. The return receipt must show to whom delivered and the date and address of the delivery.
	Non-wage garnishment: In counties of less than 1 million Wage garnishment: In counties of less than 1 million	Prepaid certified or registered mail, return receipt requested	The plaintiff or their attorney pays a $2 fee plus the cost of mailing to the circuit clerk. The circuit clerk does the mailing and the certificate of mailing. It must be sent "restricted delivery if to a natural person. The return receipt must show the name and address of the addressee, the date of mailing, and the documents mailed.

CHAPTER 1: SERVICE OF PROCESS

Service of process is essential to the smooth functioning and administration of the judicial system. Personal jurisdiction over a defendant must be established with service of process or voluntary submission to the court's jurisdiction. Strict compliance with the statutes governing service of process is necessary. Accordingly, a judgment rendered without voluntary submission or service of process in strict compliance with statutory authority is void regardless of whether the defendant had actual knowledge of the proceedings.[1]

1. Who is authorized to serve process?

In general, process is served by a sheriff, or if the sheriff is disqualified, by a coroner of some county in Illinois.[2] However, it is not necessary that service be made by a sheriff or coroner of the county in which service is made.[3] A sheriff of a county with a population of less than 2,000,000 may employ civilian personnel to serve process.[4] The sheriff may also appoint a special deputy to serve any summons issued out of a court.[5] However, deputies cannot give the summons to another person to serve as Illinois statutes do not permit "deputization by deputy."[6] The court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action.[7] The sheriff or coroner must endorse their return, and if by a

[1] *U.S. Bank Nat. Ass'n v. Rahman*, 2016 IL App (2d) 150040, ¶ 24; *Charter Bank and Trust of Illinois v. Novak*, 218 Ill. App. 3d 548, 551-52 (2d Dist. 1991)
[2] 735 ILCS 5/2-202(a)
[3] 735 ILCS 5/2-202(a)
[4] 735 ILCS 5/2-202(a)
[5] 55 ILCS 5/3-6011; 55 ILCS 5/3-6015
[6] *Isaacs v. Shoreland Hotel*, 40 Ill. App. 2d 108, 115 (1st Dist. 1963)
[7] 735 ILCS 5/2-202(a)

private person the return shall be by affidavit.[8] If the county or State is an interested party, process may be served by a special investigator who is appointed by the State's Attorney of the county, as defined in Section 3-9005 of the Counties Code.[9]

In counties with a population of less than 2,000,000, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004, or by a registered employee of a private detective agency certified under the same Act as ordered and appointed by the court.[10] The motion and the order or appointment must contain the number of the certificate issued to the private detective agency by the Department of Professional Regulation.[11]

It is important to note that the law as stated in the previous paragraph will change on January 1, 2025. Notably, the amended law removes the language "[i]n counties with a population of less than 2,000,000," and "without special appointment."[12] The requirement that the registered employee of a private detective agency be ordered and appointed by the court is also removed.[13] Thus, starting on January 1, 2025, process may be served by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 or by a registered employee of a private detective agency certified under that Act.[14]

Further, beginning on January 1, 2025, where service is made in a county of 3,000,000 or more, by any person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 or by a registered

[8] 735 ILCS 5/2-202(a)
[9] 735 ILCS 5/2-202(a)
[10] 735 ILCS 5/2-202(a)
[11] 735 ILCS 5/2-202(a-5)
[12] 735 ILCS 5/2-202(a), as amended by P.A. 103-671 (H.B. 4351) (eff. Jan. 1, 2025)
[13] 735 ILCS 5/2-202(a-5), as amended by P.A. 103-671 (H.B. 4351) (eff. Jan. 1, 2025)
[14] 735 ILCS 5/2-202(a), as amended by P.A. 103-671 (H.B. 4351) (eff. Jan. 1, 2025)

employee of a private detective agency certified under the Act and hired to serve summons must remit $5 of each service fee to the county sheriff.[15]

A private detective or private detective agency must supply the county sheriff in each county they serve process with a copy of their individual private detective license or private detective agency certificate; however, the failure of a person to supply the copy will not impair the validity of process served by the person.[16] As long as the license or certificate is valid and meets the requirements of the Department of Financial and Professional Regulation, a new copy of the current license or certificate does not need to be sent to the sheriff.[17]

2. What must be served?

Every summons to be served must have a copy of the complaint attached to it.[18] The plaintiff must provide a copy of the complaint to be served.[19] However, the failure to deliver or serve a copy of the complaint does not impair the court's jurisdiction over the person served.[20]

Chapters 2 through 7 of this Manual discuss other types of process that may be served besides a summons. Any documents that must be served with those types of process will be noted.

3. Form of summons

All summonses must bear the seal of the issuing court and identify the name of the clerk.[21] Each summons must also (1) clearly identify the date it was issued; (2) be directed to each defendant; and (3) bear the attorney's name, business address, e-mail address, and telephone

[15] 735 ILCS 5/2-202(a), as amended by P.A. 103-671 (H.B. 4351) (eff. Jan. 1, 2025)
[16] 735 ILCS 5/2-202(a)
[17] 735 ILCS 5/2-202(a)
[18] Ill. Sup. Ct. R. 104(a)
[19] Ill. Sup. Ct. R. 104(a)
[20] Ill. Sup. Ct. R. 104(d)
[21] Ill. Sup. Ct. R. 101(a)

number (or if self-represented, the litigant's mailing address and telephone number and e-mail address if they have one).[22]

4. Timing for service of process

Generally, a party who has been served with process has 30 days after they were served to either file their answer or file their appearance.[23] However, there are certain exceptions. A summons will sometimes require a defendant to appear or answer on a specific date.[24] In an action for money not in excess of $50,000, not including interest and costs, or in any action subject to mandatory arbitration where a local rule prescribes a specific date for appearance, the summons must require each defendant to appear, either in person or remotely, on the day specified in the summons, that day being no less than 40 and no more than 61 days after the summons was issued.[25] The sheriff or other party serving process must serve the summons and file proof of service no later than 21 days before the day for appearance.[26] In any action for eviction or for recovery of possession of tangible personal property, the summons must be in the same form, but must require each defendant to appear on a day specified in the summons, that day being no less than seven days and no more than 40 days after the summons was issued.[27] The sheriff or other party serving process must serve the summons and file proof of service no later than three days before the day of appearance.[28] If service is to be made under section 2-208 of the Code of Civil Procedure, the return day must be no less than 40 and no more than 60 days after the summons was issued, and no default shall be taken until the expiration of 30 days after service.[29] Finally, in proceedings

[22] Ill Sup. Ct. R. 101(a); *see also* Ill. Sup. Ct. R. 131(d)
[23] Ill. Sup. Ct. R. 101(d)
[24] *See* Ill. Sup. Ct. R. 101 (b), (c), (d)
[25] Ill. Sup. Ct. R. 101(b)(1). (The summons must be prepared using, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix of the Illinois Supreme Court Rules.)
[26] Ill. Sup. Ct. R. 102(b), (d)
[27] Ill. Sup. Ct. R. 101(b)(2)
[28] Ill. Sup. Ct. R. 102(b), (d)
[29] Ill. Sup. Ct. R. 101 (b)(3)

where the form of process is not otherwise prescribed and a specific date for appearance is required by statute or by rules of court, service must conform to Illinois Supreme Court Rule 101(b).[30]

5. What constitutes service of process

There is no requirement that the process server physically place the summons in the defendant's hand.[31] Illinois has adopted the general method of placing the summons in the general vicinity of the person to be served and announcing the nature of the documents.[32] It's important to note the recent changes in the Illinois Supreme Court Rules which now make it possible for parties to serve one another by methods including email, text message, and direct message via social media.[33] To use these methods, the party requesting service must obtain permission from the court pursuant to Section 2-203.1 of the Illinois Code of Civil Procedure. The court must find that service of process by the requested alternate method is warranted under the circumstances.[34] Where the court approves of service of process by the alternative method, the party serving process must carefully adhere to the Rule's requirements, depending on the circumstances, when carrying out service of process.[35] Chapter 8 of this Manual further discusses evasion as an issue that may arise when attempting or making service.

6. Return of service

When a sheriff serves a summons on any defendant, the sheriff must indorse the date of service on the copy of the summons given to the recipient, but failing to so does not affect the validity of the service.[36] Then, the sheriff must make a return of service by filing a proof of service

[30] Ill. Sup. Ct. R. 101 (c); See Ill. Sup. Ct. R. 101 (b)
[31] *Freund Equip. v. Fox*, 301 Ill. App. 3d 163, 168 (2d Dist. 1998)
[32] *Freund Equip.*, 301 Ill. App. 3d at 168
[33] *See* Ill. Sup. Ct. R. 102(f)(1)(A)(B)(C)
[34] *See* Ill. Sup. Ct. R. 102(f)(1)
[35] *See* Ill. Sup. Ct. R. 102(f)
[36] Ill. Sup. Ct. R. 102(c)

with the circuit clerk immediately after all defendants have been served.[37] In cases involving multiple defendants, proof of service may be filed immediately after service on each defendant.[38] A party who has placed a summons with an officer or other person who is authorized to serve process, but who does not have access to the court filing system, must file the proof of service obtained from the officer.[39] If the plaintiff provides a post card, the sheriff must mail the post card to the plaintiff or their attorney immediately upon return of the summons and indicate whether service was had and if so on what date.[40] Failing to return the summons or file proof of service does not render service invalid.[41]

If the summons bears a specific return day or day for appearance, the officer shall make a return by filing the proof of service: (1) in an action for money not in excess of $50,000, not including interests and costs, or in any action subject to mandatory arbitration where a local rule prescribes a specific date for appearance, not less than 21 days before the day of appearance; (2) in any action for eviction or for recovery of possession of tangible personal property or where service is to be made under section 2-208 of the Code of Civil Procedure, not less than three days before the day of appearance no later than three days before that day.[42] In all other cases, the proof of service must be filed immediately after the last day service can be made.[43]

If service is successful upon an individual, the return of service must state the following: (1) the sex, race and approximate age of the defendant or other individual with whom a copy of the summons was left; and (2) the date, time and place the service was made, with an exact street

[37] Ill. Sup. Ct. R. 102(d)
[38] Ill. Sup. Ct. R. 102(d)
[39] Ill. Sup. Ct. R. 102(d)
[40] Ill. Sup. Ct. R. 102(e)
[41] Ill. Sup. Ct. R. 102(d)
[42] Ill. Sup. Ct. R. 102(d)
[43] Ill. Sup. Ct. R. 102(d)

address whenever possible.[44] Copies of return of service forms should also be retained in the sheriff's records.[45]

A variety of forms are included in the FORMS APPENDIX to provide examples of the information that should be included on the return of service forms prepared by sheriffs. Forms relevant to this chapter can be found on pages 1-12 of the FORMS APPENDIX.

7. Costs of service

Except as provided for in the Juvenile Court Act, courts may assess the fee for sheriff's service as a cost in the legal proceeding.[46] If process is served by a private person or entity, the court may establish a fee and tax such fee as costs in the proceeding.[47]

A. SERVICE ON INDIVIDUALS

Service of process on individual defendants may be done in one of the following four ways: (1) by personal service; (2) by substitute service (also known as abode service); (3) by the method provided in Section 1-2-9.2 of the Illinois Municipal Code relating to parking or standing vehicle violations in cities with a population in excess of 500,000 (i.e., the City of Chicago); or (4) by publication, if the defendant resides outside of or has left Illinois, cannot be found on due inquiry, or is concealed within Illinois.[48] If service upon an individual defendant is impractical under the foregoing methods, a plaintiff may ask the court to enter an order directing a comparable method of service. Such a motion must be accompanied by an affidavit (1) stating the nature and extent of the investigation made to determine the whereabouts of the defendant; (2) stating the reasons why service is impractical; and (3) including a specific statement showing that a diligent inquiry to

[44] 735 ILCS 5/2-203(b)
[45] 735 ILCS 5/2-203(b)
[46] 735 ILCS 5/2-202(d)
[47] 735 ILCS 5/2-202(d)
[48] 735 ILCS 5/2-203; 735 ILCS 5/2-206

locate the individual defendant was made and that reasonable efforts to achieve service have been unsuccessful.[49]

1. Personal service

For personal service, the sheriff must physically deliver the summons to the defendant.[50] A summons may be served on defendants anywhere they are found in Illinois.[51] Sheriffs may serve process outside the county in which they work, but mileage outside the county may not be assessed as a cost of service.[52]

Where the return of service indicates the defendant was served personally, that service is presumed to be valid because the sheriff has personal knowledge that the individual they served identified themself to the sheriff.[53] The presumption of valid service can only be overcome by clear and satisfactory evidence.[54]

2. Substitute service (aka, Abode or substitute abode service)

2a. Elements

The second method for service on individuals, and the method with the largest potential for difficulty, is substitute service (also known as abode or substitute abode service). There are four elements to substitute service: (1) a copy of the summons must be left at the defendant's usual place of abode; (2) with some person of the family or a person residing there, of the age of 13 years old or older; (3) the sheriff inform that person of the contents of the summons; and (4) the sheriff must mail a copy of the summons in a postage prepaid envelope to the defendant at their

[49] 735 ILCS 5/2-203.1
[50] 735 ILCS 5/2-203
[51] 735 ILCS 5/2-202(b)
[52] 735 ILCS 5/2-202(b)
[53] *Prudential Property & Casualty Ins. Co. v. Dickerson,* 202 Ill. App. 3d 180, 184 (1st Dist. 1990); *See also Chiaro v. Lamberis,* 28 Ill. App. 2d 164, 171-72 (1st Dist. 1960)
[54] *In re Jafree*, 93 Ill. 2d 450, 455 (1982)

usual place of abode.[55] "Where the method of service on a party is through substitute service, the return 'must show strict compliance with every requirement of the statute authorizing such substituted service, since the same presumption of validity that attaches to a return reciting personal service does not apply to substituted service.'"[56] While failure of the sheriff's return to indicate compliance with all four requirements will not necessarily invalidate service of process if in fact all requirements were met, the sheriff should make sure the return of service form they complete indicates compliance with all four elements.

2b. Where the summons may be left

The sheriff usually does not have personal knowledge that where they leave the summons is the defendant's usual place of abode.[57] Therefore, the sheriff's return of substitute service will not be given the same presumption of validity as personal service.[58] Because sheriffs serve defendants at the addresses provided by the plaintiff, or their attorney, fault for service at the wrong address is not normally attributed to the sheriff. Where possible, sheriffs should attempt to double-check the addresses of defendants.

There is a rebuttable presumption that the residence of the defendant's spouse and children is their usual place of abode.[59] The court will consider a variety of factors in determining if the presumption is overcome, including (1) the state of the marriage at the time of service, (2) the frequency of the defendant's contacts with the house in which the family has been residing, (3) the

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[55] 735 ILCS 5/2-203(a)
[56] *Mayfield v. Smith*, 2019 IL App (1st) 181899, ¶ 28 (quoting *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 309 (1986))
[57] *See Four Lakes Management & Development Co. v. Brown*, 129 Ill. App. 3d 680, 684 (2d Dist. 1984); *see also Fargo v. Olivan*, 2015 IL App (1st) 140875-U, ¶ 15 ("Whether a person occupies a home or property as his or her 'usual place of abode,' is not generally a matter presumptively within the personal knowledge of the process server and what constitutes a person's 'usual place of abode' is a question of fact") (unpublished Rule 23 order cannot be cited as precedent)
[58] *Four Lakes,* 129 Ill. App. 3d at 684; *Chiaro*, 28 Ill. App. 2d at 171-72
[59] *United Bank of Loves Park v. Dohm*, 115 Ill. App. 3d 286, 289 (2d Dist. 1983)

defendant's intent or lack of intent to abandon the residence permanently or to move their family elsewhere, (4) whether the defendant has removed their personal belongings from this residence, (5) the defendant's address for voter registration, driver's license, mail delivery and other purposes, and (6) whether the spouse and children continue to live at the residence.[60] The underlying consideration is whether it is reasonable to assume service at the residence will provide the defendant with an actual notice of the lawsuit.[61]

Generally, a hotel or boarding house where the defendant is staying temporarily cannot be considered the defendant's usual place of abode.[62] However, a rented room for which the defendant pays rent and at which the defendant permanently resides may be considered their usual place of abode.[63]

2c. Persons with whom the summons may be left

Effective January 1, 1994, the law governing substitute service was amended and the scope of individuals on whom substituted service may be made has been expanded.[64] The prior law required such service on a member of the defendant's family at least 13 years of age. The amended law allows for substitute service on family members over 13 years of age or individuals residing with the defendant over 13 years of age.

"[A] defendant's family member is not required to reside in the defendant's household in order to accept service of process for substitute service. The language of the statute expressly states that the process server must leave a copy of the summons at the defendant's usual residence 'with some person of the family or a person residing there, of the age of 13 years or upwards.' Thus, the

[60] *United Bank of Loves Park*, 115 Ill. App. 3d 286 at 289
[61] *United Bank of Loves Park*, 115 Ill. App. 3d 286 at 289
[62] *Edward Hines Lumber Co. v Smith*, 29 Ill. App. 2d 35, 41-42 (2d Dist. 1961)
[63] *Edward Hines Lumber Co. v Smith*, 29 Ill. App. 2d 35, 41-42 (2d Dist. 1961)
[64] 735 ILCS 5/2-203(a)

process server can leave the summons with *either* a family member *or* a person who lives in the household. There is no requirement that the family member reside in the defendant's household to accept the summons."[65]

2d. How to effectuate substitute service

Having ascertained the individual on whom service is to be made and who is legally authorized to receive substitute service, the sheriff must give the summons to the individual.[66] The sheriff then must inform the individual of the contents of the summons.[67] Once service is completed, the sheriff must mail a copy of the summons in a postage prepaid envelope to the defendant at their usual place of abode.[68]

3. Service for parking or standing vehicle violations

The third method of service on individuals is service of a summons for a vehicle parking or standing violation in cities with population of at least 500,000. This method is described in Section 1-2-9.2 of the Illinois Municipal Code.[69] A police officer, parking enforcement aide, or other person authorized by ordinance to issue a notice of a vehicle parking or standing violation complaint may serve the summons and complaint for any such violation by either attaching the original or fax copy of the documents to the vehicle or by handing the notice to the vehicle operator, if present.[70]

[65] *Cent. Mortg. Co. v. Kamarauli*, 2012 IL App (1st) 112353, ¶ 21
[66] 735 ILCS 5/2-203(a)
[67] 735 ILCS 5/2-203(a)
[68] 735 ILCS 5/2-203(a)
[69] 65 ILCS 5/1-2-9.2
[70] 65 ILCS 5/1-2-9.2

4. Service in facility licensed under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act

No employee of a facility licensed under the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act shall obstruct an officer or other person making service on an individual within such facility.[71]

5. Gated residential communities

An employee of a gated residential community, which includes a condominium association, housing cooperative, or private community, must grant entry into the community, including its common areas and common elements, to an authorized process server who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.[72]

6. Inmates

For the security of a correctional institution, a facility, or a jail, a process server may be refused entry into that correctional institution, facility, or jail.[73] Instead, the location may designate a representative to accept service of process from a licensed or registered private detective or agency for the purpose of receiving service of process on behalf of an inmate in the location's custody.[74] For inmates in custody at an IDOC facility, the process server must arrange, in advance with the chief administrator of the facility, a date and time for conducting service of process.[75] At such time, a facility representative will accept service of process.[76]

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[71] 735 ILCS 5/2-203(a)
[72] 735 ILCS 5/2-203(a)
[73] 735 ILCS 5/2-203.2
[74] 735 ILCS 5/2-203.2
[75] 735 ILCS 5/2-203.2
[76] 735 ILCS 5/2-203.2

Serving a warden or a sheriff's representative constitutes substitute service of process, and a mailing to the inmate of the process must be completed by the server in accordance with Section 2-202 of the Code of Civil Procedure.[77] The warden or sheriff's representative accepting substitute service of process must forward the process to the inmate, but if for any reason the process is not forwarded to the inmate, the sheriff, sheriff's representative, warden, or warden's representative will not be subject to any civil fine or penalty, or have other liability.[78] If the inmate is not in the correctional institution, facility, or jail at the time process is served for any reason, the warden's or sheriff's representative may refuse to accept service for the inmate.[79] If it becomes known after service of process was left with the designated representative that the inmate was not present at the location, the designated representative must promptly return it to the licensed or registered private detective or agency and indicate that substitute service was not completed.[80] The process server must then promptly notify the court of the unsuccessful service.[81]

7. Service by publication

7a. Actions affecting property or status within the jurisdiction of the court (does not include judicial foreclosures)

In cases affecting property or status within the court's jurisdiction, the defendant may be served by publication if (1) they cannot be served because they reside or have gone out of Illinois, (2) cannot be found on due inquiry, or (3) is concealed within Illinois.[82] The plaintiff or their attorney must file an affidavit with the circuit clerk's office in the county where the action is pending stating the following: (1) that the defendant resides or has gone out of Illinois, cannot be

[77] 735 ILCS 5/2-203.2 (*See also* 735 ILCS 5/2-202)
[78] 735 ILCS 5/2-203.2
[79] 735 ILCS 5/2-203.2
[80] 735 ILCS 5/2-203.2
[81] 735 ILCS 5/2-203.2
[82] 735 ILCS 5/2-206(a)

found on due inquiry, or is concealed within Illinois; (2) that the defendant cannot be served; and (3) the defendant's place of residence, if known, or that upon diligent inquiry their place of residence cannot be determined.[83] The circuit clerk must then cause publication to be made in some newspaper published in the county where the action is pending.[84] If no newspaper is published in that county, the publication must be made in a newspaper published in an adjoining county in Illinois with circulation in the county where the action is pending.[85] The publication must contain: (1) notice of the pendency of the action, (2) the court's title, (3) the case title, (4) the names of the first named plaintiff and the first named defendant, (5) the case number, (6) the names of the parties to be served by publication, and (7) the date after which a default may be entered against the party served by publication.[86] The circuit clerk must also mail a copy of the notice within 10 days of the first publication to each defendant whose place of residence is stated in the affidavit.[87]

7b. Service by publication in judicial foreclosure

Plaintiffs in judicial foreclosure matters may serve notice by publication.[88] First, the plaintiff, or their attorney, must file an affidavit "showing that the defendant resides outside of or has left this State, or on due inquiry cannot be found, or is concealed within this State so that process cannot be served upon defendant, and stating the place of residence of the defendant, if known, or that upon diligent inquiry defendant's place of residence cannot be ascertained…"[89] The plaintiff or their representative must have notice published in a newspaper published in the

[83] 735 ILCS 5/2-206(a)
[84] 735 ILCS 5/2-206(a)
[85] 735 ILCS 5/2-206(a)
[86] 735 ILCS 5/2-206(a)
[87] 735 ILCS 5/2-206(a)
[88] 735 ILCS 5/2-206(a-5)
[89] 735 ILCS 5/2-206(a-5)

county in which the action is pending.[90] If there is no newspaper in that county, then publication must be in a newspaper published in an adjoining county.[91]

The publication must include (1) notice of the action, (2) the title of the court, (3) the title of the case, (4) the names of the first named plaintiff and the first named defendant, (5) the case number, (6) the names of the parties to be served by publication, and (7) the date on or after which default may be entered against the parties being served by publication.[92] Within 10 days of the first publication of the notice, the plaintiff or their attorney must send a copy of the notice by mail, addressed to each defendant whose place of residence is included in the above-mentioned affidavit.[93] The plaintiff or their attorney must file a certificate at the office of the clerk of the court where the action is pending to confirm they have sent a copy of the notice by mail to each defendant.[94] The certificate will be evidence that the plaintiff or their attorney have sent the notice by mail to each defendant.[95]

7c. Strict compliance required

"[A] party defending notice by publication must demonstrate strict compliance with every requirement of the statute, including due diligence and due inquiry."[96] Due and diligent inquiry requires an honest attempt to determine a defendant's location, and the inquiry must be as thorough as the circumstances allow.[97] Whether an inquiry is sufficient depends on the facts of each case, and the court will consider what attempts the plaintiff made to determine the defendant's location.[98] Depending on the circumstances, the plaintiff may need to check employment records

[90] 735 ILCS 5/2-206(a-5)
[91] 735 ILCS 5/2-206(a-5)
[92] 735 ILCS 5/2-206(a-5)
[93] 735 ILCS 5/2-206(a-5)
[94] 735 ILCS 5/2-206(a-5)
[95] 735 ILCS 5/2-206(a-5)
[96] *Deephaven Mortg. LLC v. Jones*, 2020 IL App (1st) 191468, ¶ 37
[97] *Pennington v. Pennington*, 27 Ill. App. 3d 344, 350 (1st Dist. 1975)
[98] *Pennington,* 27 Ill. App. 3d at 350; *Chicago v. Logan*, 56 Ill. App. 2d 291, 295 (1st Dist. 1965)

and court records to satisfy the due and diligent inquiry requirement.[99] However, due and diligent inquiry does not require determining and attempting service at the defendant's workplace or speaking with the defendant's neighbors.[100]

B. SERVICE ON PRIVATE CORPORATIONS

Corporations, like individuals, may be served in a variety of ways. A private Illinois corporation may be served (1) by service on their registered agent, or an officer or agent of the corporation found within the State; (2) by publication; or (3) by service upon the Secretary of State.[101] Foreign corporations, which are corporations organized and chartered under the laws of another state,[102] may be served in the same manner as Illinois corporations.[103]

1. Service on the registered agent, or officer or agent of the corporation

Corporations may be served by leaving a copy of the summons with the registered agent of the corporation or any officer or agent of the corporation wherever they are found in Illinois.[104] There is no priority in the order of service upon corporations, and a registered agent, officer or agent may be served when found.[105]

All corporations doing business in Illinois must designate an individual residing in Illinois or a corporation, limited liability company, limited partnership, or limited liability partnership authorized to do business in Illinois as their registered agent.[106] Service on the registered agent is limited to the registered agent named, and an employee or an agent of a

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[99] *First Federal Sav. and Loan Ass'n of Chicago v. Brown*, 74 Ill. App. 3d 901, 907 (1st Dist. 1979)
[100] *Household Finance Corp., III v. Volpert*, 227 Ill. App. 3d 453, 456 (1st Dist. 1992)
[101] 735 ILCS 5/2-204; 805 ILCS 5/5.25
[102] 805 ILCS 5/1.80
[103] 805 ILCS 5/5.25; *Hall v. Metropolitan Life Ins. Co.*, 298 Ill. App. 83, 90 (1st Dist. 1938)
[104] 735 ILCS 5/2-204
[105] *Taeb v. Ritchey Construction Co.*, 234 Ill. App. 3d 953, 955-56 (1st Dist. 1992)
[106] 805 ILCS 5/5.05(b)

corporation's registered agent may not be served unless that employee or agent has been appointed by the corporation to receive process.[107]

Officers of a corporation are provided for by the corporation's bylaws and are elected or appointed by the corporation's board of directions.[108] Directors, shareholders, and attorneys of the corporation are not officers for service.[109]

Whether an individual served is an agent of the corporation for purposes of service is a question of fact.[110] Accordingly, not every employee of a corporation is considered an agent of the corporation.[111] The circumstances of each case must be considered, including whether the individual served understands the purpose and effect of service and their duty to deliver the summons to their employer, whether they impliedly have the authority to receive the summons, and whether they are likely to inform the corporation of the summons.[112] Accordingly, a clerk, typist, or receptionist of a corporation may be considered an agent of a corporation depending on the circumstances.[113] Service on an agent of a corporation will not be presumed valid if the corporation challenges the agency because the sheriff usually lacks personal knowledge of the existence of an agency relationship between the individual served and the corporation.[114]

2. Service by publication

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[107] *Hester v. North Barrington Professional Center Condominium Ass'n*, 2013 IL App (1st) 122791-U at ¶ 35-36 (unpublished Rule 23 order cannot be cited as precedent); *Slates v. International House of Pancakes, Inc.*, 90 Ill. App. 3d 716, 725 (4th Dist. 1980); *Mason v. Freeman National Printing Equipment Co., Ltd.*, 51 Ill. App. 3d 581, 583-84 (1st Dist. 1977)
[108] 805 ILCS 5/8.50
[109] *Sarelas v. Fagerburg,* 316 Ill. App. 606, 615-16 (1st Dist. 1942)
[110] *Island Terrace Apartments v. Keystone Service Co.*, 35 Ill. App. 3d 95, 99 (1st Dist. 1975)
[111] *Jansma Transport, Inc. v Torino Baking Co.*, 27 Ill. App. 2d 347, 352-53 (1st Dist. 1960)
[112] *Island Terrace Apartments*, 35 Ill. App. 3d at 99; *Jansma Transport, Inc.*, 27 Ill. App. 2d at 352-53
[113] *Island Terrace Apartments*, 35 Ill. App. 3d at 98-99; *Megan v. L. B. Foster Co.*, 1 Ill. App. 3d 1036, 1038 (2nd Dist. 1971)
[114] *Ingram v. MFA Insurance Co.*, 18 Ill. App. 3d 560, 564 (2d Dist. 1974); *Harris v. American Legion John T. Shelton Post No. 838*, 12 Ill. App. 3d 235, 237-40 (1st Dist. 1973)

Corporations may also be served by publication, as discussed in Part A.7 of this Chapter on serving individuals by publication.[115]

3. Service upon the Illinois secretary of state

The Secretary of State is considered to have been appointed as an agent of all corporations for service of process.[116] An Illinois or foreign corporation may be served through the Secretary of State if (1) the corporation has not appointed or maintained a registered agent in Illinois; or (2) the registered agent cannot be found at the registered office in Illinois through reasonable diligence.[117] Reasonable diligence is limited to finding the registered agent at the registered office in Illinois and does not require seeking out the new location of a registered agent that abandons or moves from the registered office and does not notify the Secretary of State or attempting service on a corporate officer or other agent.[118]

Moreover, an Illinois corporation may also be served through the Secretary of State if (1) the corporation has been dissolved, (2) a registered agent has not been appointed or maintained or cannot be found, and (3) a civil action against or affecting the corporation is instituted within five years of dissolution or a criminal action against or affecting the corporation is instituted at any time.[119] A foreign corporation may also be served through the Secretary of State if (1) its authority to transact business in Illinois has been revoked or withdrawn or (2) it transacts business in Illinois without obtaining such authority.[120]

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[115] 735 ILCS 5/2-204
[116] 805 ILCS 5/5.25
[117] 805 ILCS 5/5.25
[118] *Dutch Farm Meats v. Horizon Foods*, 275 Ill. App. 3d 322, 326 (1st Dist. 1995)
[119] 805 ILCS 5/5.25
[120] 805 ILCS 5/5.25; 805 ILCS 5/5.30

The corporation is served through the Secretary of State by: (1) service on the Secretary of State (or designated clerk in charge of the corporation division) of a copy of the summons and payment of the required fee; (2) mailing notice of the service on the Secretary of State and a copy of the summons by registered or certified mail to the corporation at the last registered office on file in the Secretary of State's office and at the address the plaintiff knows or reasonably believes is likely to provide actual notice to the corporation; and (3) attaching an affidavit of compliance, in any form required by the Secretary of State, to the process.[121]

C. SERVICE ON LIMITED LIABILITY COMPANIES (LLCs)

Illinois and foreign limited liability companies (LLCs) may be served (1) by service on their registered agent or (2) by service upon the Secretary of State as allowed by statute.[122] Foreign LLCs are LLCs organized under the laws of another state.[123]

1. Service on the LLC's registered agent

Illinois LLCs may be served with process by serving a registered agent appointed by the LLC.[124] All LLCs doing business in Illinois are required to designate an individual residing in Illinois or a corporation, LLC, partnership, limited partnership, or limited liability partnership authorized to do business in Illinois as their registered agent.[125] An employee of an LLC's registered agent may not be served unless that employee has been appointed by the LLC as an agent to receive service of process.[126]

2. Service upon the Illinois secretary of state

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[121] 805 ILCS 5/5.25
[122] 805 ILCS 180/1-50(a)
[123] 805 ILCS 180/1-5
[124] 805 ILCS 180/1-50(a)
[125] 805 ILCS 180/1-35; 805 ILCS 180/1-5
[126] *Hester*, 2013 IL App (1st) 122791-U at ¶ 35-36 (unpublished Rule 23 order cannot be cited as precedent); *Slates*, 90 Ill. App. 3d at 725

LLCs may also be served by service on the Secretary of State under certain circumstances. The Secretary of State is considered to have been appointed as an agent of all LLCs for service of process when (1) the LLC has failed to appoint or maintain a registered agent or (2) the registered agent cannot be found at the registered office in Illinois or at the principal place of business stated in the LLC's articles of organization through reasonable diligence.[127] Reasonable diligence is limited to finding the registered agent at the registered office in Illinois and does not require seeking out the new location of a registered agent that abandons or moves from the registered office and does not notify the Secretary of State.[128] Moreover, an Illinois or foreign LLC may also be served through the Secretary of State when (1) the LLC has been dissolved, (2) a registered agent has not been appointed or maintained or cannot be found, and (3) a civil action against or affecting the LLC is instituted within five years of dissolution.[129]

An Illinois LLC may also be served through the Secretary of State if (1) the LLC has been dissolved, (2) a registered agent has not been appointed or maintained or cannot be found, and (3) a criminal action against or affecting the LLC is instituted at any time.[130] A foreign LLC may also be served through the Secretary of State if its authority to transact business in Illinois has been revoked or withdrawn.[131]

To properly utilize the Illinois Secretary of State for service of a limited liability company, a party must (1) provide the Illinois Secretary of State a copy of the process, notice, or demand, and other papers required for service by law and pay the required fee; (2) provide notice

[127] 805 ILCS 180/1-50(b)(1), (2)
[128] *Dutch Farm Meats*, 275 Ill. App. 3d at 326
[129] 805 ILCS 180/1-50(b)(3)
[130] 805 ILCS 180/1-50(b)(4)
[131] 805 ILCS 180/1-50(b)(5)

of service on the Illinois Secretary of State and a copy of process, notice, or demand, and other papers required for service by law, to the limited liability company by registered or certified mail to its last registered office; and (3) attach an affidavit of compliance as prescribed by the Illinois Secretary of State to the process, notice, or demand.[132]

D. SERVICE ON PARTNERSHIPS AND JOINT VENTURES

A partnership may be sued in the names of the partners as individuals doing business as the partnership, in the partnership name, or both.[133] When a partnership is sued in the partnership name, the partnership is served by leaving the summons with any partner personally or with any agent of the partnership wherever found in Illinois.[134] When a partnership is sued in the partnership name, the partnership may also be served by publication, as discussed in Part A.7 of this Chapter on serving individuals by publication.[135] A joint venture may be sued according to the rules for service on partnerships.[136]

When a personal judgment is sought against a known partner for a partnership liability the partner may be served (1) in any manner provided for service on individuals; or (2) by leaving a copy of the summons for them with any other partner and mailing a copy of the summons in a sealed envelope with postage prepaid, addressed to the partner against whom the judgment is sought at their usual place of abode as shown by an affidavit filed in the cause.[137]

Service on a nonresident partner against whom a personal judgment is sought may be made by leaving a copy with any other partner, and mailing, as provided herein, only if the cause

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[132] 805 ILCS 180/1-50(c)
[133] 735 ILCS 5/2-411(a)
[134] 735 ILCS 5/2-205(a)
[135] 735 ILCS 5/2-205(a)
[136] *Japczyk v. Gust K. Newberg Constr. Co.*, 224 Ill. App. 3d 325, 329 (1st Dist. 1991)
[137] 735 ILCS 5/2-205(b)

of action is for a partnership liability arising out of the transaction of business within the State.[138] Whether a partnership transacted business within Illinois depends on the facts of each case.[139] To determine whether the partnership transacted business within Illinois, the critical consideration is whether the partnership's contacts with Illinois are continuous, permanent and systematic.[140] Many Illinois courts have focused on the partnership's offices or sales activities within Illinois.[141]

E. SERVICE ON LIMITED LIABILITY PARTNERSHIPS (LLPs)

LLPs and Foreign LLPs are types of partnerships organized under the laws of another state.[142]

1. Illinois LLPs

All Illinois LLPs are required to designate an individual residing in Illinois or a corporation, limited liability company, partnership, or other entity authorized to do business in Illinois as their registered agent.[143] An employee or an agent of an LLP's registered agent may not be served unless that employee or agent has been appointed by the LLC to serve receive process.[144]

The Uniform Partnership Act[145] does not provide for service on an Illinois LLP through the Secretary of State.[146]

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[138] 735 ILCS 5/2-205(b)
[139] *Milligan v. Soo L. R. Co.*, 775 F.Supp. 277, 279 (N.D. Ill. 1991) (citing *Maunder v. DeHavilland Aircraft of Canada*, 102 Ill. 2d 342, 350-51 (1984))
[140] *Milligan v. Soo L. R. Co.*, 775 F.Supp. 277, 279 (N.D. Ill. 1991) (citing *Maunder v. DeHavilland Aircraft of Canada*, 102 Ill. 2d 342, 350-51 (1984))
[141] *Milligan v. Soo L. R. Co.*, 775 F.Supp. 277 at 279-80
[142] 805 ILCS 206/101(d), (e)
[143] 805 ILCS 206/1001(d); 805 ILCS 206/101(j)
[144] *Hester*, 2013 IL App (1st) 122791-U at ¶ 35-36 (unpublished Rule 23 order cannot be cited as precedent); *Slates*, 90 Ill. App. 3d at 725
[145] 805 ILCS 206/100, *et seq*.
[146] 805 ILCS 206/1001 *et seq.*

2. Foreign LLPs

Foreign LLPs are served (1) by service on their registered agent or (2) by service upon the Secretary of State.[147]

Like Illinois LLPs, all foreign LLPs doing business in Illinois must designate an individual residing in Illinois or a corporation, limited liability company, partnership, or other entity authorized to do business in Illinois as their registered agent.[148] An employee of a foreign LLP's registered agent may not be served unless that employee has been appointed by the foreign LLP to serve receive process.[149]

If a foreign limited liability partnership transacts business in Illinois without a statement of foreign qualification, the Secretary of State is its agent for service of process with respect to a cause of action arising out of the transaction of business in this State.[150] Service of any process, notice, or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State duplicate copies of the process, notice, or demand.[151] If a process, notice, or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the foreign limited liability partnership and its designated office.[152] An affidavit of compliance with this Section in substantially the form that the Secretary of State may prescribe by rule shall be attached to the process, notice, or demand.[153] The date of service is the earliest of (1) the date the foreign LLP receives the

[147] 805 ILCS 206/1102(a)(3), (e); 805 ILCS 206/1103(d), (e)
[148] 805 ILCS 206/1102(e); 805 ILCS 206/101(j)
[149] *Hester*, 2013 IL App (1st) 122791-U at ¶ 35-36 (unpublished Rule 23 order cannot be cited as precedent); *Slates*, 90 Ill. App. 3d at 725
[150] 805 ILCS 206/1103(d)
[151] 805 ILCS 206/1103(e)
[152] 805 ILCS 206/1103(e)
[153] 805 ILCS 206/1103(e)

summons; (2) the date shown on the return receipt, if signed on behalf of the foreign LLP; or (3) five days after the summons is deposited in the mail, if correctly addressed.[154]

F. SERVICE ON LIMITED PARTNERSHIPS (LPs) AND LIMITED LIABILITY LIMITED PARTNERSHIPS (LLLPs)

Illinois and foreign limited partnerships (LPs) and limited liability limited partnerships (LLLPs) are served (1) by service on their registered agent or (2) by service upon the Secretary of State.[155] An LLLP is a type of LP.[156] Foreign LPs and LLLPs are LPs and LLLPs organized under the laws of another state.[157]

1. Service on the registered agent

LPs and LLLPs may be served by serving the registered agent of the LP or LLLP.[158] All LPs and LLLPs doing business in Illinois must designate an individual residing in Illinois or a corporation, partnership, limited liability company, or other entity authorized to do business in Illinois as their registered agent to receive service of process.[159] An employee or an agent of an LP or LLLP's registered agent may not be served unless that employee or agent has been appointed by the LP or LLLP to serve receive process.[160]

2. Service upon the Illinois secretary of state

The Secretary of State is considered to have been appointed as an agent of all LPs and LLLPs for service of process.[161] LPs and LLLPs may be served through the Secretary of State if (1) the LP or LLLP has not appointed or maintained a registered agent; or (2) the registered

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[154] 805 ILCS 206/1103(f)
[155] 805 ILCS 215/102(13); 805 ILCS 215/117(a), (b)
[156] 805 ILCS 215/102(13)
[157] 805 ILCS 215/102(8)-(9)
[158] 805 ILCS 215/117(a)
[159] 805 ILCS 215/114(a)(2), (c); 805 ILCS 215/102(16)
[160] *Hester*, 2013 IL App (1st) 122791-U at ¶¶ 35-36 (unpublished Rule 23 order cannot be cited as precedent); *Slates*, 90 Ill. App. 3d at 725; *Mason*, 51 Ill. App. 3d at 583-84
[161] 805 ILCS 215/117(b)

agent cannot be found at the agent's address through reasonable diligence.[162] Reasonable diligence is limited to finding the registered agent at the registered office in Illinois and does not require seeking out the new location of a registered agent that abandons or moves from the registered office and does not notify the Secretary of State.[163] However, a party should still reasonably inquire into where a defendant is likely to receive actual notice.[164]

The LP or LLLP is served through the Secretary of State by (1) service on the Secretary of State or designated employee of a copy of the summons and payment of the required fee; (2) mailing notice of the service on the Secretary of State and a copy of the summons by registered or certified mail to the LP or LLLP at the last address for the agent on file in the Secretary of State's office and at the address the plaintiff knows or reasonably believes is likely to provide actual notice to the LP or LLLP; and (3) attaching an affidavit of compliance, in any form required by the Secretary of State, to the process.[165]

The date of service is the earliest of (1) the date the LP or LLLP receives the summons; (2) the date shown on the return receipt, if signed on behalf of the LP or LLLP; or (3) five days after the summons is deposited in the mail, if correctly addressed.[166]

G. SERVICE ON VOLUNTARY UNINCORPORATED ASSOCIATIONS

A voluntary unincorporated association is any organization of two or more individuals formed for a common purpose, other than a partnership or corporation.[167] When a voluntary unincorporated association is sued in the name of the association, the association may be served by leaving a copy of the summons with any officer of the association personally or at the office

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[162] 805 ILCS 215/117(b)
[163] *Dutch Farm Meats*, 275 Ill. App. 3d at 326
[164] *See American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 20 (citing *3M Co. v. John J. Moroney & Co.*, 374 Ill. App. 3d 109, 112–13 (1st Dist. 2007))
[165] 805 ILCS 215/117(c)
[166] 805 ILCS 215/117(d)
[167] 735 ILCS 5/2-209.1

of the association with an agent of the association.[168] When a voluntary unincorporated association is sued in the name of the association, it may also be served by publication, as discussed in Part A.7 of this Chapter on serving individuals by publication.[169]

H. SERVICE ON PUBLIC, MUNICIPAL, GOVERNMENTAL, AND QUASI-MUNICIPAL CORPORATIONS

A party serving process may serve a public, municipal government, or quasi-municipal corporation in the following ways: (1) counties may be served by leaving a copy of the summons with the chairman of the county board or the county clerk; (2) cities may be served by leaving a copy of the summons with the mayor or the city clerk; (3) villages may be served by leaving a copy of the summons with the president of the board of trustees or the village clerk; (4) towns may be served by leaving a copy of the summons with the supervisor or town clerk; and (5) any other public, municipal, governmental or quasi-municipal corporation or body may be served by leaving a copy of the summons with the president, clerk or other corresponding officer.[170]

Service can only be had upon the individuals specified in the statute, and service on the employees or representatives of those specified is generally not allowed.[171] Substitute service is not a permissible method of service upon a public, municipal, governmental, or quasi-municipal corporation.[172]

I. SERVICE ON TRUSTEE OR RECEIVER OF A CORPORATION

Any trustee or receiver of a corporation or its property may be served with process (1) in any manner provided for service on individuals or corporations, as is appropriate or (2) by leaving a copy of the summons with any agent employed by the trustee or receiver wherever

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[168] 735 ILCS 5/2-205.1
[169] 735 ILCS 5/2-205.1; 735 ILCS 5/2-206(a)
[170] 735 ILCS 5/2-211
[171] *Miller v. Town of Cicero*, 225 Ill. App. 3d 105, 111 (1st Dist. 1992)
[172] *Miller*, 225 Ill. App. 3d at 111

found in Illinois.[173] Any trustee or receiver of a corporation or its property may also be served by publication, as discussed in Part A.7 of this Chapter on serving individuals by publication.[174]

[173] 735 ILCS 5/2-212
[174] 735 ILCS 5/2-212

CHAPTER 2: ENFORCEMENT OF JUDGEMENTS

A judgment is when the court "determine[s] the rights of the parties and grant[s] to any party any affirmative relief to which the party may be entitled on the pleadings and proof."[175] Generally, enforcement of judgments through any of the proceedings discussed in this Chapter does not occur unless and until a plaintiff (also called and generally referred to herein as the "judgment creditor") obtains a judgment, typically for money, against a defendant (also called and generally referred to herein as the "judgment debtor") and the defendant does not pay the judgment.

Upon receiving a judgment, a judgment creditor may use a citation to discover assets to compel a judgment debtor to appear in court and disclose their income and assets. Then, based on the judgment debtor's assets, various methods may be utilized by a judgment creditor to enforce the judgment. These methods may include garnishing the judgment debtor's wages or selling the judgment debtor's property.

This chapter will discuss the procedures for a citation to discover assets, wage garnishments, and the sale of real property and personal property. This chapter concludes with a discussion on the exemptions that exist for real and personal property.

A. CITATION TO DISCOVER ASSETS

1. The basics

A citation (also called a citation to discover assets) is a "method by which a judgment creditor may proceed against a judgment debtor or third parties to discover and recover the judgment debtor's assets for the purpose of applying the property in satisfaction of the

[175] 735 ILCS 5/2-1301(a)

judgment."[176] A citation to discover assets allows a judgment creditor to determine the nature, extent, and location of the judgment debtor's income and assets so the judgment may be satisfied.

The judgment creditor may commence authorized citation proceedings at any time after obtaining a judgment subject to enforcement.[177] Citation proceedings may be commenced against the judgment debtor or against a third party who the judgment creditor believes has property of or is indebted to the judgment debtor.[178] However, the judgment creditor must get court permission to bring a second citation regarding the same judgment.[179] The court may grant leave to bring the additional citation if it finds: (1) based on the affidavit of a person with personal knowledge of the facts, that there is reason to believe the party has property or income of or is indebted to the judgment debtor; (2) that the existence of the property, income or indebtedness was not known to the judgment creditor during any prior citation; and (3) the additional citation is brought in good faith and not for harassment.[180]

To begin citation proceedings, the judgment creditor, usually by their attorney, must file a certification with the circuit court in the county where the person, from whom discovery of assets is desired (the judgment debtor or appropriate third party) is located, and orally requests that the clerk issue a citation to be served on that person.[181] The certification must state: (1) the amount of the judgment against the judgment debtor; (2) where applicable, that the judgment is a consumer debt judgment; (3) the date the judgment was entered or revived (revival is discussed later in this Chapter); (4) the balance due on the judgment, (5) the court name, and (56) the case number.[182]

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[176] *Bianchi v. Savino Del Bene Intern. Freight Forwarders, Inc.*, 329, Ill. App. 3d 908, 920 (1st Dist. 2002); *See also Panos Trading LLC v. Forrer*, 2023 IL App (1st) 220451, ¶ 31 (citation proceedings are also called supplementary proceedings.)
[177] Ill. Sup. Ct. R. 277(a); 735 ILCS 5/2-1402(a)
[178] Ill. Sup. Ct. R. 277(a)
[179] Ill. Sup. Ct. R. 277(a)
[180] Ill. Sup. Ct. R. 277(a)
[181] 735 ILCS 5/2-1402(a); Ill. Sup. Ct. R. 277(b)
[182] 735 ILCS 5/2-1402(b)

The citation issued must include the following: (1) a caption of the case wherein the judgment was entered; (2) the date the judgment was entered or revived and the balance due; and (3) a requirement that the party to whom it is directed, or its designated officer or partner, appear for examination, whether in person or remotely, at a specified time (no less than five days after the citation was served) and place, concerning the property, income or indebtedness.[183] The citation may require the production of any books, documents, or records containing information concerning the property or income of the judgment debtor, but such books, documents, or records must be reasonably specified.[184] The citation must also include a copy of the required Citation Notice, a copy of which is included on pages 13-14 of the FORMS APPENDIX.[185]

2. Service

Service of the citation to discover assets is governed by Illinois statute and Illinois Supreme Court Rules 105 and 277. Illinois Supreme Court Rules 105 and 277 provide that the citation may be served (1) by any method provided by law for service of process, as described in Chapter 1 of this Manual (other than by publication), or (2) by prepaid certified or registered mail, return receipt requested.[186] However, the statute states that service of the citation on a judgment debtor who is a natural person must be done by personal service or substitute service, as described in Chapter 1.[187]

Accordingly, although a citation may be served on someone other than a natural person judgment debtor pursuant to Rules 105 and 277, the citation must be served on a natural person judgment debtor by personal or substitute service.[188] As a result, a sheriff may become involved for service of the citation on the judgment debtor or third party.

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[183] Ill. Sup. Ct. R. 277(c)(1)-(3)
[184] Ill. Sup. Ct. R. 277(c)(4)
[185] 735 ILCS 5/2-1402(b)
[186] Ill. Sup. Ct. R. 277(c); Ill. Sup. Ct. R. 105(b)(1)-(2)
[187] 735 ILCS 5/2-1402(b-1)
[188] 735 ILCS 5/2-1402(b-1); Ill. Sup. Ct. R. 277(c); Ill. Sup. Ct. R. 105(b)(1)-(2)

The citation summons for a natural person must be accompanied by a copy of the required Income and Asset Form, a copy of which is included on pages 15-18 of the FORMS APPENDIX, and a copy of the underlying court order that allows the citation proceeding.[189]

If a sheriff serves a citation summons that is directed to a third party instead of the judgment debtor, the sheriff must, within three business days of such service, mail a copy of the citation and the citation notice to the judgment debtor at their last known address by regular first-class mail.[190] However, the citation notice is not required to be mailed to a corporation, partnership, or association.[191] The sheriff must then file a certificate of mailing with the court.[192] The sheriff who serves the summons does not have to personally mail the documents to the judgment debtor.[193] Nonetheless, because the law places the duty of mailing upon the sheriff, it is best practice for the sheriff to mail the documents to the judgment debtor. Moreover, no order or judgment may be entered unless a certification of mailing has been filed showing that copies of the citation and citation notice were mailed to the judgment debtor.[194]

Service of the citation creates a lien on the judgment debtor's non-exempt personal property in the possession or control of the person served.[195] The lien is valid to the time of disposition of the citation, which is for six months after the citation respondent's first personal appearance pursuant to the citation or any subsequent process to enforce the citation, whichever is earlier, but may be extended by the court.[196]

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[189] 735 ILCS 5/2-1402(b-1); Ill. Sup. Ct. R. 277(b)
[190] 735 ILCS 5/2-1402(b)
[191] 735 ILCS 5/2-1402(b)
[192] *See* 735 ILCS 5/2-1402(d)
[193] *Miller v. Miller*, 268 Ill. App. 3d 132, 140 (4th Dist. 1994) (attorney mailed notice sufficient to satisfy requirement)
[194] 735 ILCS 5/2-1402(d)
[195] 735 ILCS 5/2-1402(m), (m)(1), (m)(2)
[196] Ill. Sup. Ct. R. 277(f)

3. Judgment and enforcement

A citation hearing may not be held prior to five days after the mailing of the citation and citation notice to the judgment debtor, unless the parties agree otherwise.[197]

If the judgment creditor or their attorney discovers non-exempt income or assets, the court may enter an appropriate order or judgment.[198] The court order or judgment may grant any of the following relief to the judgment creditor: (1) compel the judgment debtor to deliver money or property to be applied to the judgment; (2) compel the judgment debtor to enter a payment order; (3) compel a third party to deliver assets to be applied to the judgment; (4) enter any order permissible in a garnishment proceeding, as discussed in Part B of this Chapter; (5) compel the judgment debtor to convey title to real or personal property; or (6) authorize the judgment creditor to maintain an action against any person or corporation that is indebted to the judgment debtor.[199] Moreover, although the hearing on a properly issued citation may proceed and the judgment debtor may be examined despite an absent or incomplete Income and Asset Form, no payment order may be entered against a judgment debtor who is a natural person unless (1) the Income and Asset Form was served upon the judgment debtor, (2) the judgment debtor had the opportunity to assert exemptions, and (3) the payments are from non-exempt sources.[200]

The sheriff may also become involved with the sale of property pursuant to a citation to discover assets. All property ordered to be delivered up must be delivered to the sheriff to be collected by the sheriff or sold at public sale.[201] If the property is not readily deliverable or another method of sale is more appropriate, the court may order the sale to be done by the judgment debtor,

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[197] 735 ILCS 5/2-1402(b)
[198] 735 ILCS 5/2-1402(c)
[199] 735 ILCS 5/2-1402(c)(1)-(6)
[200] 735 ILCS 5/2-1402(b-10); 735 ILCS 5/2-1402(c-5)
[201] 735 ILCS 5/2-1402(e)

a third party respondent, or a selling agent other than the sheriff, on just and equitable terms.[202] The sale proceeds, minus reasonable and necessary expenses, must be turned over to the judgment creditor and applied to the balance due on the judgment.[203] The judgment debtor may seek a hearing to declare certain income or assets to be exempt from delivery to the judgment creditor.[204]

B. GARNISHMENT

Garnishment is a statutory proceeding in which a judgment debtor's property in the possession of a third person is subjected to the payment of the judgment recovered against the debtor.[205] Garnishment is the means by which a judgment creditor may reach the judgment debtor's money when some other person (the garnishee) holds that money. There are two types of garnishment proceedings: (1) wage garnishment, involving the garnishment of wages or salary owed to a judgment debtor by the judgment debtor's employer; and (2) non-wage garnishment involving everything else, including bank accounts and personal debts.[206]

1. Non-wage garnishment

1a. The basics

To begin non-wage garnishment proceedings, the judgment creditor, usually by their attorney, must file the following three items with the circuit court in the county in which the judgment was entered: (1) an affidavit stating the garnishee either owes a debt to the judgment debtor, other than for wages, or has property in their possession, custody, or control that belongs to the judgment debtor or in which the judgment debtor has an interest and further stating the judgment debtor's name and last known address; (2) a garnishment notice required by law; and (3)

[202] 735 ILCS 5/2-1402(e)
[203] 735 ILCS 5/2-1402(e)
[204] 735 ILCS 5/2-1402(l)
[205] *Deschauer v. Hilt*, 105 Ill. App. 3d 657 (2d Dist. 1982); *Seidmon v. Harris*, 172 Ill. App. 3d 352 (1st Dist. 1988)
[206] 735 ILCS 5/12-701 *et seq*.; 735 ILCS 5/12-801 *et seq.*

written interrogatories (i.e. questions) for the garnishee to answer concerning the judgment debtor's indebtedness or property.[207] The circuit clerk must then issue a garnishment summons for service upon the garnishee that compels them to appear in court and answer the interrogatories in writing.[208]

The summons must be accompanied by (1) a copy of the underlying judgment, or a certification by the circuit clerk entering the judgment or the judgment creditor's attorney that states the amount of the judgment, that the judgment is a consumer debt judgment[209], if it qualifies as such, the court name, and the case number; (2) one copy of the required garnishment notice; and (3) one copy of the interrogatories.[210] A copy of the required Garnishment Notice is included on pages 19-20 of the FORMS APPENDIX.[211]

The requirements for non-wage garnishment must be strictly complied with.[212]

1b. Service

The non-wage garnishment summons and required accompanying documents may be served by personal service, as discussed in Chapter 1 of this Manual.[213] It is important to note that if the garnishee is served less than 10 days prior to the return date, the court must continue the return date 14 days after the return date stated on the summons.[214] The sheriff must, within two business days of such service on the garnishee, mail a copy of the garnishment notice and summons to the judgment debtor at the address indicated in the garnishment notice by first-class mail.[215] The sheriff must also, within four business days of such service on the garnishee, file a certificate of

[207] 735 ILCS 5/12-701; 735 ILCS 5/12-705
[208] 735 ILCS 5/12-701
[209] *See* 735 ILCS 5/2-1303(b)(1) (Defines "consumer debt.")
[210] 735 ILCS 5/12-705(a)
[211] 735 ILCS 5/12-705(a)
[212] *Marcheschi v. P. I. Corp.*, 84 Ill. App. 3d 873, 879 (1st Dist. 1980)
[213] 735 ILCS 5/12-705(b)
[214] 735 ILCS 5/12-705(a)
[215] 735 ILCS 5/12-705(b)

mailing with the court.[216] A copy of the form provided in the statute for the certificate of mailing is included on page 21 of the FORMS APPENDIX.[217] These documents must be mailed to the judgment debtor to allow the judgment debtor to assert any exemption from garnishment rights to which they may be entitled.[218] However, the sheriff who serves the summons does not have to personally mail the documents to the judgment debtor.[219] Nonetheless, because the law places the duty of mailing upon the sheriff, it is best practice for the sheriff to mail the documents to the judgment debtor. Moreover, a judgment will not be entered against a garnishee unless the certificate of mailing is filed and the garnishee's answer to the interrogatories certifies that a copy of the answer was mailed to the judgment debtor.[220]

Alternatively, the non-wage garnishment statute provides judgment creditors in counties with population under 1,000,000 the option of having the summons served on the garnishee by being mailed by the circuit clerk.[221] If the circuit court clerk is utilized for service, a sheriff will not be involved in the garnishment process, and the circuit clerk will be responsible for filing the certificate of mailing.[222]

1c. Judgment and enforcement

On the date the garnishee is served, the amount of money sought by the judgment creditor becomes a lien on the indebtedness or other property belonging to the judgment debtor or in which the judgment debtor has an interest that is held by the garnishee and remains a lien throughout the garnishment proceeding.[223] The garnishee must hold the judgment debtor's non-exempt

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[216] 735 ILCS 5/12-705(b)
[217] 735 ILCS 5/12-705(b)
[218] *Miller v. Miller*, 268 Ill. App. 3d 132, 140 (4th Dist. 1994) (attorney mailed notice sufficient to satisfy requirement)
[219] *Miller*, 268 Ill. App. 3d at 140
[220] 735 ILCS 5/12-711(e); *See also* 735 ILCS 5/12-707
[221] 735 ILCS 5/12-705(c)
[222] 735 ILCS 5/12-705(b)-(c)
[223] 735 ILCS 5/12-707(a)

indebtedness or other property to the extent of the amount due.[224] Pension and retirement benefits, refunds, holdings, and required contributions are exempt from garnishment.[225]

If the garnishee neither appears nor answers the garnishment summons, the court may enter a conditional judgment against the garnishee for the balance due on the judgment against the judgment debtor.[226] The court may then issue a summons against the garnishee to confirm the conditional judgment and command the garnishee to appear and show cause why the conditional judgment should not become final.[227] This summons may be served by personal service, prepaid certified or registered mail, but not by publication.[228] If the garnishee fails to appear after being properly served, the court must confirm the judgment against the garnishee and award costs.[229]

If the garnishee appears, they must (1) file sworn written answers to the interrogatories with the court; (2) mail a copy of the written answers by first-class mail to the judgment creditor or their attorney, and to the judgment debtor; and (3) certify that such has been mailed.[230] These answers must set forth any indebtedness due or to become due by the garnishee to the judgment debtor and list all property in their possession, custody or control that belongs to the judgment debtor or in which the judgment debtor has an interest.[231]

The garnishee may assert any offsetting claims they may have against the judgment debtor and/or the judgment creditor as defenses to the garnishment, whether due at the time of service of the garnishment summons or thereafter to become due and whether liquidated or unliquidated, except for claims for unliquidated damages for tort actions.[232] The garnishee is liable to the

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[224] 735 ILCS 5/12-707(a)
[225] 735 ILCS 5/12-704
[226] 735 ILCS 5/12-706(a)
[227] 735 ILCS 5/12-706(a)
[228] 735 ILCS 5/12-706(a); *see also* Ill. Sup. Ct. R. 105
[229] 735 ILCS 5/12-706(a)
[230] 735 ILCS 5/12-707(b)
[231] 735 ILCS 5/12-707(b)
[232] 735 ILCS 5/12-708

judgment creditor for the balance due by the judgment debtor after such offsetting claims and deductions.[233] The finding and judgment by the court must show the amount of offsetting claims or deductions allowed for each garnishee.[234]

If another person claims any indebtedness or other property due from or in the possession of the garnishee, the court must allow that claimant to bring their claim before the court.[235] If the claimant does not voluntarily appear before the court, the court must determine how the claimant must be served with notice.[236] If the claimant does not appear after being served as directed by the court, the judgment entered in the garnishment proceeding will conclude their claim.[237] If the claimant appears; timely files their claim; and serves a copy of their claim on the judgment creditor, judgment debtor, and garnishee, the claimant becomes a party to the garnishment proceeding, and their claim will be determined accordingly.[238]

The judgment creditor or the judgment debtor may challenge any assertions made in the garnishee's answer, and, unless good cause requires otherwise, the issues will be promptly determined by the court.[239] At any time on or before the return date of the garnishment summons, the judgment debtor may request a hearing to challenge the garnishment or seek exemptions, and the court will determine the issues at the hearing.[240]

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[233] 735 ILCS 5/12-708
[234] 735 ILCS 5/12-708
[235] 735 ILCS 5/12-710(a)
[236] 735 ILCS 5/12-710(a)
[237] 735 ILCS 5/12-710(a)
[238] 735 ILCS 5/12-710(b)
[239] 735 ILCS 5/12-711(a)
[240] 735 ILCS 5/12-711(b)

If the court finds against a garnishee, a judgment or order must be entered against the garnishee and in favor of the judgment debtor.[241] If debt from the garnishee to the judgment debtor is not yet due, judgment will not be entered against the garnishee until the debt is due.[242]

A garnishee with property, other than money, belonging to the judgment debtor must deliver as much of the property as is necessary to satisfy the judgment, plus costs, to the sheriff with the certified copy of the judgment for enforcement of the judgment.[243] Property received by a sheriff as a result of a garnishment proceeding must be sold in the manner prescribed for real property and personal property levies, such that the procedures for real property and personal property levies set forth in this Chapter will apply.[244]

A garnishee who refuses or fails to deliver property upon court order or upon the request of a sheriff or officer holding a certified copy of the judgment for enforcement may be punished for contempt.[245] Alternatively, the court may enter judgment against the garnishee for the lesser of the value of the property or the balance due on the judgment, plus costs, and have the judgment enforced against the garnishee.[246]

A garnishment order is enforceable like any other civil judgment, such that the other procedures discussed in this Chapter will apply.[247] Generally, the costs of obtaining a garnishment order are charged to the judgment debtor.[248]

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[241] 735 ILCS 5/12-711(d)
[242] 735 ILCS 5/12-713
[243] 735 ILCS 5/12-714(a)
[244] 735 ILCS 5/12-714(e)
[245] 735 ILCS 5/12-715
[246] 735 ILCS 5/12-715
[247] 735 ILCS 5/12-712
[248] 735 ILCS 5/12-716(a)

2. Wage garnishment

2a. The basics

To begin wage garnishment proceedings, the judgment creditor, usually by their attorney, must file the following items with the circuit court in the county in which the judgment was entered: (1) an affidavit stating that the employer owes or will owe wages to the judgment debtor and further stating the judgment debtor's name and last known address; (2) a certification by the judgment creditor or their attorney that a copy of the wage deduction notice was mailed by first-class mail to the judgment debtor's last known address before the affidavit was filed; and (3) written interrogatories for the employer to answer concerning the judgment debtor's wages.[249] The circuit clerk must then issue a wage garnishment summons for service upon the garnishee that compels the garnishee to appear in court and answer the interrogatories in writing under oath.[250]

The summons must be accompanied by a copy of the underlying judgment, or a certification by the circuit clerk entering the judgment or the judgment creditor's attorney that states the date and amount of the judgment, allowable costs expended, interest accumulated, credits paid by or on behalf of the judgment debtor, and the balance due on the judgment; one copy of the required wage deduction notice; and one copy of the interrogatories.[251] A copy of the required wage deduction notice is included on pages 22-23 of the FORMS APPENDIX.[252]

2b. Service

The wage garnishment summons and required accompanying documents may be served by personal service, as discussed in Chapter 1 of this Manual, prepaid certified or registered mail, but

[249] 735 ILCS 5/12-805(a)
[250] 735 ILCS 5/12-805(a)
[251] 735 ILCS 5/12-805; 735 ILCS 5/12-806
[252] 735 ILCS 5/12-805(a)

not publication.[253] It is important to note that if the employer is served less than three days prior to the return date, the court must continue the return date at least 21 days after service.[254] Unlike for non-wage garnishments, the sheriff is not required to mail a copy of the summons or any other document to the judgment debtor or file a certificate of mailing after service of the wage garnishment summons.

Like for non-wage garnishments, judgment creditors in counties with population under 1,000,000 have the option of having the wage garnishment summons served on the garnishee, i.e., the employer, by being mailed by the circuit clerk instead of personally served by the sheriff or other authorized process server.[255] If the circuit court clerk is utilized for service, a sheriff will not be involved in the garnishment process, and the circuit clerk will be responsible for noting the fact of service in the permanent record.[256]

Unlike non-wage garnishments statute, the wage garnishment statute provides a third option that allows the wage garnishment summons to be served according to Illinois Supreme Court Rule 105.[257] Accordingly, the non-wage garnishment may be served (1) by any method provided by law for service of summons, as described in Chapter 1 of this Manual (except for by publication) or (2) by prepaid certified or registered mail, return receipt requested.[258]

2c. Judgment and enforcement

If the garnishee-employer does not respond to the summons within the required time period, the court may enter a conditional judgment against the garnishee-employer for the amount due on the judgment against the judgment debtor.[259] A summons to confirm the conditional

[253] 735 ILCS 5/12-805(c); *see also* 735 ILCS 5/12-806; *see also* Ill. Sup. Ct. R. 105
[254] 735 ILCS 5/12-806
[255] 735 ILCS 5/12-805(b)
[256] 735 ILCS 5/12-805(b)(4)
[257] 735 ILCS 5/12-805(c); Ill. Sup. Ct. R. 105(b)
[258] 735 ILCS 5/12-805(c); Ill. Sup. Ct. R. 105(b)
[259] 735 ILCS 5/12-807(a)

judgment may issue against the employer returnable not less than 21 nor more than 40 days after the date of issuance, commanding the employer to show cause why the judgment should not be made final.[260] The summons must be personally served or served by prepaid certified or registered mail, return receipt requested, but not by publication.[261] If the employer fails to appear and answer after notice, the court shall confirm the conditional judgment to the amount of the judgment against the judgment debtor and award costs.[262] If the employer appears and answers, the proceedings will move forward.[263]

On the date the garnishee-employer is served, the amount of money sought by the judgment creditor becomes a lien on the wages of the judgment debtor held by the garnishee-employer, and the lien continues as to subsequent wages.[264] The garnishee-employer must hold the judgment debtor's non-exempt wages until the total amount due on the judgment and costs is paid, except that the lien terminates if the employment relationship terminates or the underlying judgment is vacated or modified.[265]

Wages are defined as "any hourly pay, salaries, commissions, bonuses, or other compensation owed by an employer to a judgment debtor."[266] The amount of garnished wages under a wage deduction order may not exceed the lesser of (1) 15 percent of the judgment debtor's gross wages for the week or (2) the amount by which the judgment debtor's disposable earnings, or his earnings that remain after legally required deductions, exceed 45 times the minimum wage.[267] However, additional exemptions may apply to judgment debtors in bankruptcy.[268]

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[260] 735 ILCS 5/12-807(a)
[261] 735 ILCS 5/12-807(a); Ill. Sup. Ct. R. 105(b)
[262] 735 ILCS 5/12-807(a)
[263] 735 ILCS 5/12-807(a)
[264] 735 ILCS 5/12-808(b)
[265] 735 ILCS 5/12-808(b)
[266] 735 ILCS 5/12-801
[267] 735 ILCS 5/12-803
[268] *See In re Johnson*, 57 B.R. 635, 639-40 (Bankr. N.D. Ill. 1986)

The garnishee-employer must file sworn written answers to the interrogatories with the court and mail a copy to the judgment debtor.[269] These answers must set forth the amount of wages due to the judgment debtor for the payroll periods ending immediately prior to service of the summons and a summary of how the amount was computed.[270]

The garnishee-employer may assert any offsetting claims they may have against the judgment debtor and/or the judgment creditor as defenses to the garnishment, whether due at the time of service of the summons or thereafter to become due and whether liquidated or unliquidated, except for demands for unliquidated damages for tort actions.[271] The garnishee-employer will be liable for the balance due to the judgment debtor (their employee) for any amount remaining after offsetting claims.[272] The verdict or finding and judgment by the court must show the amount of offsetting claims or deductions allowed for each party.[273]

If another person claims any indebtedness or other property due from or in the possession of an employer, the court must allow the claimant to bring their claim before the court.[274] If the claimant does not voluntarily appear before the court, they must be served by personal service or by certified or registered mail.[275] If the claimant appears, timely files their claim, and serves a copy of the claim on the judgment creditor and employer, they are a party to the garnishment proceeding and their claim is determined accordingly.[276]

The judgment creditor or the judgment debtor may challenge any assertions made in the employer's answer and, unless good cause requires otherwise, the court must immediately proceed

[269] 735 ILCS 5/12-808(c)
[270] 735 ILCS 5/12-808(c)
[271] 735 ILCS 5/12-809
[272] 735 ILCS 5/12-809
[273] 735 ILCS 5/12-809
[274] 735 ILCS 5/12-810(a)
[275] 735 ILCS 5/12-810(a)
[276] 735 ILCS 5/12-810(b)

to try the issues.[277] At any time before the return date of the garnishment summons, the judgment debtor may request a hearing to challenge the garnishment and assert exemptions, and the court will determine these issues at the hearing.[278]

If the court finds in favor of the judgment creditor, it will enter a wage deduction order against the employer.[279] A wage deduction order is enforceable like any other civil judgment, such that the other procedures discussed in this Chapter will apply.[280] Generally, the costs of obtaining a wage deduction order are charged to the judgment debtor.[281]

C. LEVYING REAL PROPERTY AND PERSONAL PROPERTY

Despite a judgment, the judgment debtor is often unwilling or unable to pay what is owed to the judgment creditor. If a judgment debtor is unwilling or unable to pay what is owed, the judgment creditor is entitled to have the judgment debtor's nonexempt property sold to receive what the judgment creditor is owed. All the real property (land and real estate) and personal property (goods and chattels) of any person against whom a judgment has been entered for any monetary amount can be sold to pay the judgment.[282] The judgment creditor may select what non-exempt property will be taken and sold, but personal property may be taken only after all real property is taken.[283]

[277] 735 ILCS 5/12-811(a)
[278] 735 ILCS 5/12-811(b)
[279] 735 ILCS 5/12-811(d)
[280] 735 ILCS 5/12-812
[281] 735 ILCS 5/12-814(a)
[282] 735 ILCS 5/12-112
[283] 735 ILCS 5/12-113

1. Real Property

1a. Recording a judgment and creating a lien on real property

When recorded, a judgment becomes a lien on the real property of the person against whom it is entered. A "lien" is a "hold or claim that one party has on the property of another for a debt."[284] To record the judgment, the judgment creditor must file a transcript, certified copy or memorandum of the judgment in the office of the recorder in the county in which the real property is located.[285] A memorandum of judgment is a memorandum or copy of the judgment signed by a judge or a copy attested to by the circuit clerk that shows the court which entered the judgment, the date and the amount of the judgment, the case number, the name of both parties, and the last known address of the judgment debtor, or that the judgment debtor's address is not known.[286] The lien created upon property by the recording of a judgment against the property owner will remain a lien on that property for a period of seven years from the date judgment was entered, unless the judgment is revived within seven years after its entry or last revival and a new memorandum of judgment is recorded before the judgment and its recorded memorandum of judgment become dormant.[287] The judgment creditor may enforce the judgment by filing a memorandum of judgment in any Illinois county where the judgment debtor's real property is located, and the judgment may be enforced by the proper officer of that county.[288]

After recording the judgment, the judgment creditor then delivers additional certified copies of the judgment to the sheriff in the county in which the real property is located.[289] After the sheriff serves process, these copies must be returned by the sheriff to the clerk of the issuing

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[284] *Aames Capital Corp. v. Interstate Bank of Oak Forest*, 315 Ill. App. 3d 700, 703 (2d Dist. 2000)
[285] 735 ILCS 5/12-101
[286] 735 ILCS 5/12-101
[287] 735 ILCS 5/12-101
[288] 735 ILCS 5/12-106
[289] *See* 735 ILCS 5/12-110

court within 90 days.[290] To bind the goods and chattels of the person against whom it is entered, the sheriff, or other official, must indorse the day, month, year, and hour of receipt on the back of each certified copy of the judgment.[291] Normally, the sheriff serves the order on the judgment debtor to allow the debtor to pay the judgment before their property is sold.

1b. Revival of judgments

After seven years elapse, the lien terminates and is of no legal effect unless the judgment is revived.[292] To revive a judgment, a petition must be filed in the court in which the original judgment was entered, including the original date and amount of the judgment, court costs expended, accrued interest, and any credits to the judgment.[293] The notice of the petition may be served according to any of the three methods set forth in Illinois Supreme Court Rule 105: (1) by any method provided by law for service of summons, as described in Chapter 1 of this Manual; (2) by prepaid certified or registered mail, return receipt requested; and (3) by publication.[294] The judgment creditor must obtain a court order reviving the judgment, and a revived judgment is a lien on real property only after a transcript, certified copy or memorandum of the order of revival is filed in the recorders' office in the county in which the real property is located.[295] An order of revival is valid for seven years from the date it was entered.[296]

Generally, no judgment can be revived more than 20 years after the original judgment was entered.[297] However, this does not apply to consumer debt judgments.[298] Accordingly, only two orders of revival may be issued. The limits on enforcing and reviving liens do not include any time

[290] 735 ILCS 5/12-110
[291] 735 ILCS 5/12-111
[292] 735 ILCS 5/12-101
[293] 735 ILCS 5/2-1602
[294] 735 ILCS 5/2-1602; Ill. Sup. Ct. R. 105; Ill. Sup. Ct. R. 106
[295] 735 ILCS 5/2-1602; 735 ILCS 5/12-101
[296] 735 ILCS 5/12-101
[297] 735 ILCS 5/13-218
[298] 735 ILCS 5/13-218

during which the person seeking enforcement of the judgment was prevented from doing so due to court proceedings or the death of the judgment debtor.[299]

1c. Effect of bankruptcy

If a lien on the property of a judgment debtor is recorded before the individual files for bankruptcy, the general rule is that a discharge in bankruptcy does not discharge liens on any property owned by the bankrupt.[300] Under certain conditions, judgment liens entered within four months of filing for bankruptcy may be discharged by the bankruptcy proceedings.[301]

1d. Selling real property (the real property levy)

A "levy" is "the process whereby a sheriff or other state official empowered by a judicial directive seizes or brings within his or her control a judgment debtor's property for the purposes of satisfying a judgment."[302] Because the real estate levy process is long and expensive, other methods of collection are generally attempted first, such as wage garnishment or the personal property levy, as discussed in this Chapter. If possible, real property must be partitioned or sold in separate lots, and only as much real property as is necessary to satisfy the judgment and costs may be sold.[303]

With certain exceptions, generally because a judgment is a lien on real property for only seven years after the entry of the judgment, any attempts to have a sheriff levy real property must occur within seven years after the judgment was entered, unless the judgment is revived.[304] If

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[299] 735 ILCS 5/12-104
[300] *Rochelle State Bank v. Gavic*, 70 Ill. App. 3d 42, 43 (2d Dist. 1979); *Farmers State Bank of Sherrard v. Hansen*, 196 Ill. App. 3d 295, 297 (3d Dist. 1990)
[301] *Fischer v. Pauline Oil & Gas Co.*, 309 U.S. 294, 300-02 (1940)
[302] *United Transfer, Inc. v. Lorence*, 2011 IL App (2d) 110041 n.2
[303] 735 ILCS 5/12-114
[304] 735 ILCS 5/12-108(a); *Holmes v. Fanyo*, 327 Ill. App. 1, 4 (2d Dist. 1945); *see also* 735 ILCS 5/2-1602(a-10) (discussing the revival standards that apply to judgments relating to consumer debt.)

properly levied, the real property can be sold up to one year after the expiration of the seven-year limit.[305]

Levy of real property occurs when the sheriff executes a certificate of levy and files the certificate of levy with the recorder's office in the county in which the real estate is located.[306] A copy of the form for the Certificate of Levy provided in the statute is included on page 24 of the FORMS APPENDIX.[307] The certificate must be recorded by the recorder.[308]

1e. The public sale

All sales of real property to satisfy a judgment must be public and take place between 9:00AM and sunset.[309] The specific time and place of the sale must be posted once a week for three weeks in a newspaper published in the county where the sale will take place.[310] If there is more than one newspaper in the county, the judgment creditor or their attorney may designate the newspaper in which the notice will be published.[311] Furthermore, printed notice of the sale must be posted in at least three of the most public places in the county where the real property is located.[312] The public postings of the sale must be at three separate locations in the county, and posting notice on three sides of a building is not sufficient.[313] The notices must specify the names of the judgment creditor and judgment debtor and describe the real estate to be sold with reasonable certainty.[314] New publication notice and posted notice must be given if the sale is continued or adjourned.[315]

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[305] 735 ILCS 5/12-108(a)
[306] 735 ILCS 5/12-152
[307] 735 ILCS 5/12-153
[308] 735 ILCS 5/12-154
[309] 735 ILCS 5/12-115
[310] 735 ILCS 5/12-115
[311] 735 ILCS 5/12-115
[312] 735 ILCS 5/12-115
[313] *McDaniel v. Wetzel*, 268 Ill. 461, 462 (1915)
[314] 735 ILCS 5/12-115
[315] *First Federal Sav. & Loan Ass'n v. Chapman*, 116 Ill. App. 3d 950, 958-59 (3d Dist. 1983)

A sheriff or officer's failure to satisfy these requirements for public sale and notice thereof may be subject to a penalty of $50.00, plus costs, for each offense.[316] However, defective notice of a sale will not usually allow the sale to be voided, unless the purchaser knew notice was defective.[317] Nonetheless, all sheriffs should strictly observe the posting and notice procedures for real property sales.

After the public sale of any real property, the sheriff must give the purchaser a certificate of sale.[318] This certificate of sale must contain a description of the real estate purchased, the date the redemption period (described below) terminates, and the amount paid or amount of the judgment creditor's bid.[319] The purchaser must file the certificate of sale in the recorder's office in the county in which the real property is located within 10 days of the purchase, and the recorder must record the certificate of sale.[320]

1f. Redemption

The redemption period is a specified time in which the judgment debtor or judgment creditor may void the sale by buying back the real property.[321] The judgment debtor may wish to redeem the real estate if they obtain the money to pay the judgment and they want to keep the real estate, while the judgment creditor may wish to redeem the real property if it is sold at what the judgment creditor considers a low price.

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[316] 735 ILCS 5/12-116
[317] 735 ILCS 5/12-116; *Illinois Service Federal Savings & Loan Ass'n of Chicago v. Academy of Saint James College Preparatory*, 227 Ill. App. 3d 507, 512 (1st Dist. 1992)
[318] 735 ILCS 5/12-119
[319] 735 ILCS 5/12-119
[320] 735 ILCS 5/12-121
[321] 735 ILCS 5/12-122

1g. Judgment debtor's redemption

The judgment debtor may redeem the real estate within six months from the date of sale, except in cases of foreclosure.[322] To redeem, the judgment debtor must pay the purchase price of the real property, plus 10 percent interest, to the purchaser, or to the sheriff who sold the real property to remit to the purchaser.[323] The original sale and the certificate of sale are void if the judgment debtor so redeems.[324] The purchaser or sheriff who receives the redemption money from the judgment debtor must give the judgment debtor a certificate of redemption.[325] The certificate of redemption must be signed and state that a redemption took place.[326] The certificate must be recorded by the sheriff in the recorder's office in which the real estate is located, and the judgment debtor that redeems must pay the recording fees.[327]

1h. Judgment creditor's redemption

A judgment creditor may also redeem the real property. If there are several judgment creditors, the judgment creditor with the most senior judgment has preference to redeem during the first two days of the period during which judgment creditors may redeem.[328] The other judgment creditors have subsequent preference to redeem during two-day periods, in order of their seniority.[329] If two judgment creditors have equal seniority, the first to pay redemption money has preference.[330]

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[322] 735 ILCS 5/12-122
[323] 735 ILCS 5/12-122
[324] 735 ILCS 5/12-122
[325] 735 ILCS 5/12-131
[326] 735 ILCS 5/12-131
[327] 735 ILCS 5/12-131
[328] 735 ILCS 5/12-136
[329] 735 ILCS 5/12-136
[330] 735 ILCS 5/12-136

A judgment creditor may only redeem the real property between three and six months after the date of the original sale, provided that the judgment debtor has not redeemed.[331] The judgment creditor must deliver a certified copy of the judgment to the sheriff, and the sheriff must endorse a levy of the real property on the back of the judgment.[332] The judgment creditor must also pay the purchase price of the real property, plus 10 percent interest, to the sheriff for the use of the purchaser.[333] The sheriff must then file a certificate of redemption with the recorder's office and begin the public sale procedure again.[334]

The amount paid by the redeeming judgment creditor, plus six percent interest from the date of redemption to the day of sale and the cost of such redemption and sale, shall be considered a bid.[335] If subsequent redemptions are possible, the sheriff must execute a certificate of purchase for a deed of the premises sold.[336] If no subsequent redemptions are possible, the sheriff must execute a deed, and no other redemption is allowed.[337] If a greater amount is bid at the sale than the amount paid by the redeeming judgment creditor, the excess shall be applied on the judgment and a certificate of purchase delivered to the new purchaser within 60 days from the date of sale, unless there is redemption within the 60 days by another judgment creditor or the judgment debtor.[338]

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[331] 735 ILCS 5/12-132
[332] 735 ILCS 5/12-132
[333] 735 ILCS 5/12-132
[334] 735 ILCS 5/12-132
[335] 735 ILCS 5/12-133
[336] 735 ILCS 5/12-133
[337] 735 ILCS 5/12-133
[338] 735 ILCS 5/12-134

1i. Successive redemptions

Successive redemptions may be made within 60 days of the last sale if the real property is sold for more than the amount of the previous redemption, and the required certificates of purchase or deed must be prepared by the sheriff.[339]

1j. How are the judgment debtor's redemption right and the judgment creditor's redemption right related?

Even if the judgment creditor redeems the real property, the judgment debtor still has the right to redeem within 6 months from the date of the original sale according to the procedure set forth above.[340] However, if the judgment debtor redeems, the judgment creditor's right to further redemption is terminated.[341]

1k. What portion of the premises is redeemed?

Any person entitled to redeem may redeem the entire premises or part of the premises as the premises was sold.[342] Any joint owner may redeem their interest upon payment of their proportion of the amount required to redeem the whole premises.[343]

1l. Payment of taxes, assessment and other monies due

Except for a sale pursuant to a judgment of foreclosure, the person holding a certificate of sale may pay all taxes and assessments which are or may become a lien on the real estate during the redemption period.[344] A redeeming party must pay the certificate holder or sheriff the amount paid for the taxes and assessments, plus 10% interest, provided that a receipt for those taxes and assessments is filed with the sheriff or exhibited by the certificate holder.[345] If real property sold

[339] 735 ILCS 5/12-135
[340] 735 ILCS 5/12-137
[341] 735 ILCS 5/12-137
[342] 735 ILCS 5/12-138
[343] 735 ILCS 5/12-139
[344] 735 ILCS 5/12-141
[345] 735 ILCS 5/12-141

is subject to a superior mortgage lien, the certificate holder may, during the redemption period, pay any interest or principal due under the superior mortgage.[346] A redeeming party must pay the certificate holder or sheriff the amount paid under the mortgage, plus 10% interest, provided that a receipt for those amounts is filed with the sheriff or exhibited by the certificate holder before the redemption is made.[347]

1m. Late redemption

The general rule is that redemption is not allowed after the redemption period expires. However, there are exceptions to the general rule. Late redemption may be allowed if any irregularities, fraud, or circumstances indicating unfairness exist in connection with the sale.[348] Late redemption may also be allowed if any fraud, mistake or unfair act by the purchaser or sheriff prevents redemption during the redemption period.[349]

1n. What happens after the redemption period?

If the premises are not redeemed, the certificate holder must promptly make a report to the court that issued the underlying judgment, including (1) a copy of the certificate of sale, (2) an affidavit containing a good faith appraisal of the fair market value of the property, and (3) a listing of all liens and mortgages and the value thereof.[350] A motion must be made to hold a hearing to confirm the sale, and notice must be given to the judgment debtor.[351] At the hearing to confirm the sale, the court will consider the purchase price at the sale in relation to the fair market value of the property, minus the value of any mortgages and liens.[352] The court will enter an order confirming

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[346] 735 ILCS 5/12-142
[347] 735 ILCS 5/12-142
[348] *Block v. Hooper*, 318 Ill. 182, 183-84 (1925)
[349] *Mutual Life Ins. Co. of New York v. Chambers*, 88 Ill. App. 3d 952, 957 (1st Dist. 1980) (distinguished with respect to the Illinois Mortgage Foreclosure Law); *American Savings Ass'n v. Conrath*, 123 Ill. App. 3d 140, 147 (5th Dist. 1984) (distinguished with respect to the Illinois Mortgage Foreclosure Law)
[350] 735 ILCS 5/12-144.5(a)
[351] 735 ILCS 5/12-144.5(b)
[352] 735 ILCS 5/12-144.5(b)

the sale unless it finds that requisite notice of the hearing was not given, the terms of the sale were unconscionable, or justice was otherwise not done.[353] The mere fact the sale price is claimed to be too low, without any evidence of mistake, fraud, or violation of duty by the sheriff, is usually not enough to reverse a sale.[354]

1o. The deed

If the real property sold is not redeemed and the court enters an order confirming the sale, the purchaser is entitled to take a deed for the real property anytime within five years after the redemption period expires.[355] The deed must be executed by the sheriff who made the sale, their successor, or another person specially appointed by the court for that purpose.[356] If the purchaser does not take a deed within the five year period, their certificate of purchase becomes void unless the purchaser took possession of the real property within the five year period in reliance on the certificate of sale.[357] This five year period does not include delays that result from court proceedings or the sheriff's wrongful withholding of the deed.[358] A copy of the form for the deed provided by the statute is included on page 25 of the FROMS APPENDIX.[359]

1p. Real property exemptions (the homestead exemption)

Not all the real property a judgment debtor owns is subject to seizure and sale to satisfy a judgment. Specifically, the portion of a judgment debtor's real property which constitutes a homestead is accorded special protections by statute. A "homestead" is a freehold estate in land, the purpose of which is to insure to the family the possession and enjoyment of a home; it further

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[353] 735 ILCS 5/12-144.5(b)
[354] *Mutual Life Ins. Co. of New York*, 88 Ill. App. 3d at 957 (distinguished with respect to the Illinois Mortgage Foreclosure Law); *Bankers Trust Co. v. Chicago Title & Trust Co.*, 89 Ill. App. 3d 1014, 1022 (1st Dist. 1980); *People v. Anderson*, 380 Ill. 158, 162-63 (1942)
[355] 735 ILCS 5/12-145
[356] 735 ILCS 5/12-145
[357] 735 ILCS 5/12-145
[358] 735 ILCS 5/12-145
[359] 735 ILCS 5/12-147

secures to the homesteader a shelter beyond the reach of their improvidence or financial misfortune.[360]

1q. What is the homestead exemption?

The homestead exemption is an artificial estate because, in most situations, the value of the homestead property is much greater than the homestead exemption. As a result, while a judgment debtor's home may be seized and sold in some circumstances, the homeowner is entitled to part of the proceeds of the sale.

The value of the Illinois homestead exemption is $50,000.00 ($100,000.00 for a married couple based upon percentage of ownership), and it applies to whatever an individual occupies as their residence.[361] The amount of the homestead is exempt from attachment, judgment, levy, or judgment sale for the payment of the debts of the individual.[362] The homestead exemption continues after the death of the homestead's owner if that owner is survived by a spouse who continues to use the homestead as a residence, or if the owner is survived by minor children.[363] The surviving spouse's homestead exemption continues for as long as the homestead is used as a residence, and the minor children's homestead exemption continues until the youngest child turns 18 years old.[364] The exemption also continues after the desertion of the homestead's owner in favor of the spouse continuing to occupy the premises as a residence.[365] To determine whether desertion has occurred, the courts focus on intent.[366]

Because the homestead exemption has several limitations, it will not always apply to protect the homestead owner. The homestead exemption cannot be utilized if the land is sold for

[360] *GMAC Mortg., LLC v. Arrigo*, 2014 IL App (2d) 130938, ¶ 15
[361] 735 ILCS 5/12-901
[362] 735 ILCS 5/12-901
[363] 735 ILCS 5/12-902
[364] 735 ILCS 5/12-902
[365] 735 ILCS 5/12-902
[366] *Scogin v. Scogin*, 337 Ill. 427, 430 (1929)

nonpayment of taxes, for any debt incurred for the purchase or improvement of the land, for enforcement of a lien on a condominium, or for enforcement of a judgment of possession related to a condominium or common interest community.[367] The homestead exemption also cannot be used for any property subject to forfeiture as a drug asset.[368]

The homestead exemption cannot be released, waived or conveyed unless the release, waiver or conveyance is in writing and signed by the owner and their spouse.[369] The exemption automatically terminates if possession of the homestead property is given to another (i.e. the land is sold) or if the owner abandons the homestead property.[370] If minor children are claiming the exemption, it cannot be released without a court order.[371] If the owner of the homestead property becomes divorced, the court granting the divorce has the authority to dispense with the homestead exemption as fairness dictates.[372]

When a homestead property is sold or conveyed by the owner, the property does not become subject to whatever liens and judgments were barred by the former owner's homestead exemption that is terminated upon the sale.[373] Therefore, new buyers do not purchase the homestead property subject to the bad debts of the seller. The first $50,000.00 ($100,000.00 for a premises owned by 2 or more individual owners) earned from the sale of a homestead property is immune from judgment and attachment for one year from receipt, and if that money is reinvested in a new homestead property, it is entitled to the protections of the original homestead

[367] 735 ILCS 5/12-903
[368] 735 ILCS 5/12-903.5(a)
[369] 735 ILCS 5/12-904
[370] 735 ILCS 5/12-904
[371] 735 ILCS 5/12-904
[372] 735 ILCS 5/12-905
[373] 735 ILCS 5/12-906

exemption.[374] Any insurance money received on a homestead property as a result of loss is entitled to the homestead exemption as if the homestead property had not been destroyed.[375]

1r. Can real property be sold in spite of the homestead exemption?

If a judgment is sought to be enforced against a premises that is a homestead, the court may, if possible, separate the homestead from the remainder of the property and order that remainder sold.[376] No homestead premises can be sold unless for a greater sum than $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners).[377] If no greater bid is made, the judgment may be set aside or modified, or enforcement of the judgment may be released.[378] If the homestead cannot be divided from the remainder of the property, and the value of the property exceeds $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners), the court may order the entire property sold and the full value of the exemption paid to the owner.[379]

If the judgment creditors or the sheriff with a certified copy of the judgment believe the property claimed as a homestead is worth more than $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners), the sheriff must summon three individuals to appraise the homestead property.[380] If these 3 individuals believe the property may be divided without damage to the interest of the parties, they will separate enough of the property, including the residence, which they believe to be worth $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners) from the remainder of the property and may sell the remainder.[381] These individuals are entitled to be paid $5.00 per day of service.[382] The sheriff is entitled to be paid the

[374] 735 ILCS 5/12-906
[375] 735 ILCS 5/12-907
[376] 735 ILCS 5/12-908
[377] 735 ILCS 5/12-909
[378] 735 ILCS 5/12-909
[379] 735 ILCS 5/12-908
[380] 735 ILCS 5/12-910
[381] 735 ILCS 5/12-910
[382] 735 ILCS 5/12-910

fee for service of summons for obtaining the individuals and mileage for the actual distance traveled from the homestead property to the residences of the individuals.[383] The sheriff is not obligated to summon the 3 individuals and enforce the judgment until the judgment creditor pays one day's fees for the commissioners to the sheriff in advance.[384]

If the three individuals summoned to appraise the homestead property believe it is worth more than $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners) and cannot be divided, they must sign an appraisal to that effect and give it to the sheriff.[385] The sheriff must then deliver a copy of this appraisal to the homestead owner or to someone in the homestead owner's family age 13 years or older.[386] The sheriff must attach a notice to the appraisal copy that states that unless the amount of the debt owed in excess of the $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners) exemption is paid to the sheriff within 60 days, the entire homestead property will be sold.[387] If the homestead owner does not pay within 60 days, the sheriff may advertise and sell the property.[388] Upon sale of the property, the judgment debtor must first be paid their $50,000.00 ($100,000.00 for premises owned by 2 or more individual owners) homestead exemption, and the remainder of the proceeds goes to the judgment creditors.[389]

2. Personal property

2a. Selling personal property (the personal property levy)

A judgment will become a lien on the judgment debtor's personal property when a certified copy of the judgment is delivered to the sheriff of the county in which the personal property is

[383] 735 ILCS 5/12-910
[384] 735 ILCS 5/12-910
[385] 735 ILCS 5/12-911
[386] 735 ILCS 5/12-911
[387] 735 ILCS 5/12-911
[388] 735 ILCS 5/12-912
[389] 735 ILCS 5/12-912

located to be served.[390] When the sheriff receives the certified copy, they must indorse the day, month, year, and hour of receipt on the back of the certified copy.[391]

Generally, the judgment creditor may choose the non-exempt property on which they will impose a levy, provided that personal property must be the last such property taken.[392] All personal property not exempt from execution may be levied.[393] Any judgment debtor who conceals or refuses to turn over personal property demanded by the officer having an order or judgment for the taking of the property is guilty of and may be punished for contempt.[394]

2b. Sheriffs' duties

If the sheriff takes livestock to be sold, the sheriff must provide sufficient sustenance, proper care, and storage until the sale.[395] The officer must receive a reasonable compensation that the court determines and that is assessed as costs, which shall be advanced by the judgment creditor.[396]

If the sheriff takes any perishable property to be sold, the sheriff must make a written request that the judgment creditor obtain a court order permitting the property to be sold within 24 hours of the levy, upon due notice of sale to the judgment debtor and the public.[397] The written request must be delivered to the judgment creditor, their attorney or agent, and the judgment debtor should be informed if found.[398] If the judgment debtor is not found, a copy of the request must be posted on the premises where the perishable items are located.[399] The sheriff will be absolved of

[390] 735 ILCS 5/12-111
[391] 735 ILCS 5/12-111
[392] 735 ILCS 5/12-113
[393] 735 ILCS 5/12-158
[394] 735 ILCS 5/12-301
[395] 735 ILCS 5/12-158
[396] 735 ILCS 5/12-158
[397] 735 ILCS 5/12-158
[398] 735 ILCS 5/12-158
[399] 735 ILCS 5/12-158

responsibility for loss by the failure to sell or care for the perishable property if the judgment creditor fails or refuses to obtain a court order for immediate sale.[400]

If the sheriff has a reasonable doubt as to the ownership of the goods or the goods' liability to be levied to satisfy the judgment, the sheriff may require the judgment creditor to provide sufficient security to indemnify the sheriff for levying upon them.[401] It is best practice for a sheriff to require such security for their own protection.

The judgment debtor may prevent the sheriff from taking their personal property if the judgment debtor delivers to the sheriff, and the sheriff accepts, a bond in the amount of double the value of the judgment payable to the judgment creditor, with the express condition that the judgment debtor will deliver the property levied undamaged at the time and place of sale.[402] If the judgment debtor fails to deliver the property according to the delivery bond, the sheriff with the certified copy of the judgment may enforce the bond as if no levy had been made.[403] If the sheriff does not obtain satisfaction of the judgment, the sheriff must return the delivery bond and the certified copy of the judgment, and the judgment creditor will be allowed to recover the amount of the judgment, or the value of the property levied, if less than the judgment and costs, with 10% damages for the delay.[404] If a judgment debtor fails to comply with a delivery bond, no second bond may be taken from the judgment debtor, and the judgment creditor's consent must be received to take a bond from a surety for the judgment debtor. [405]

2c. Selling personal property

[400] 735 ILCS 5/12-158
[401] 735 ILCS 5/12-161
[402] 735 ILCS 5/12-162
[403] 735 ILCS 5/12-163
[404] 735 ILCS 5/12-164
[405] 735 ILCS 5/12-165

If the judgment creditor desires to sell the judgment debtor's personal property, notice specifying the time and place of the sale must be posted at least 10 days prior to the sale in at least three of the most public places in the county in which the sale will take place.[406] The public postings of the sale must be at three separate locations in the county, and posting notice on three sides of a building is not sufficient.[407] The sheriff may postpone a personal property sale if the sheriff determines that for lack of bidders or other good cause postponement is in the best interest of the concerned parties, but each postponement may not exceed 10 days.[408] Only the sheriff or other officer has the discretion to postpone a sale, and this discretion cannot be delegated.[409] New notice must be given if the sale is postponed more than one day.[410]

After selling the personal property, the sheriff must set forth a particular description of the goods sold and the sum for which each article was sold in their return of the certified copy of the judgment.[411] A sheriff guilty of fraud in the sale or return will be liable to the damaged party for five times the amount of the actual damage sustained as a result of such fraud.[412]

At the request of the judgment debtor or their attorney, any judgment creditor who receives full satisfaction or payment must, at the request of the judgment debtor or their legal representative, execute and deliver a written release from the judgment.[413] If the judgment creditor refuses to execute and deliver a written release, the judgment debtor may petition the court and the court must enter an order satisfying the judgment and releasing all liens based on that judgment.[414] If a

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[406] 735 ILCS 5/12-166
[407] *McDaniel v. Wetzel*, 268 Ill. 461, 462 (1915)
[408] 735 ILCS 5/12-167
[409] *Craddick v. Cotta Gear Co.*, 306 Ill. App. 459, 466 (2d Dist. 1940)
[410] 735 ILCS 5/12-167
[411] 735 ILCS 5/12-168
[412] 735 ILCS 5/12-168
[413] 735 ILCS 5/12-183(a)
[414] 735 ILCS 5/12-183(b)

release or satisfaction signed by the judgment creditor or their attorney is filed, the court may vacate the judgment and dismiss the action.[415]

2d. Personal property exemptions

Similar to real property, Illinois statutes exempt some personal property from judgment and attachment, as discussed in Chapter 3 of this Manual, to prevent everything an individual owns from being taken to satisfy a judgment. Personal property exemptions apply to individuals only and apply to property used for personal purposes only, not for business purposes.[416]

2e. Ten classes of exempt property

Ten classes of personal property are exempt from attachment, judgment and distress for rent: (1) all household goods, including but not limited to, the judgment debtor's and their dependents' food, eating and cooking utensils, bedding, furniture, books, refrigerator, stove, microwave oven, kitchen appliances, necessary provisions, washing machine, clothes dryer, vacuum cleaner, yard equipment and household equipment and tools, all personal possessions, including, but not limited to, clothing, pets, personal health aids, medications, computers or similar electronic devices and telephones, except that a creditor may obtain court permission to levy on any item or furniture, appliance, electronic device, yard equipment, precious item, utensils, set of utensils, or any other item exempted that has a resale value of more than $5,000.00 unless that item is otherwise exempt pursuant to another provision, and the judgment debtor may exempt one piece of jewelry up to a value of $5,000.00; (2) $4,000.00 of the judgment debtor's equity interest in any other property, subject to the automatic exemption found in 735 ILCS 5/12-1001.1; (3) $3,600.00 of the judgment debtor's equity interest in any one automobile; (4) $2,250.00 of the judgment debtor's equity interest in their implements, professional books, or tools of trade; (5)

[415] 735 ILCS 5/12-183(h)
[416] *See* 735 ILCS 5/12-1001

doctor-prescribed health aids for the judgment debtor and their dependents; (6) all life insurance proceeds payable upon the death of the judgment debtor, and the cash value of all insurance policies and annuities payable to a spouse of the judgment debtor or to any dependent of the judgment debtor; (7) the judgment debtor's right to receive social security benefits, unemployment compensation or public aid; veteran's benefits; disability, illness, or unemployment benefits; and alimony, child support, or maintenance as is reasonably necessary for the support of the judgment debtor and their dependents; (8) the judgment debtor's right to receive, or property traceable to, an award under a crime victim's reparation law; payments received due to the wrongful death of a person of whom the judgment debtor was a dependent, as reasonably necessary for the support of the judgment debtor; payments received under a life insurance policy insuring the life of a person of whom the judgment debtor was a dependent, as reasonably necessary for the support of the judgment debtor or his dependents; payments up to $15,000.00 received due to personal bodily injury of the judgment debtor or a person of whom the judgment debtor was a dependent; and certain restitution payments; (9) the judgment debtor's right to receive a crime victim award pursuant to 735 ILCS 5/2-2001; and (10) money in an account invested in the Illinois College Savings pool of which the judgment debtor is a participant or donor, except certain enumerated non-exempt contributions.[417]

The items exempt under item (8) above are further limited: a judgment debtor's right to receive an award of payment is exempt from attachment and judgment for two years after the right to receive the award or payment accrues; property received pursuant to an award or payment is exempt for five years after the award or payment accrues; and the exemption only applies to the amount of the award or payment, without interest or appreciation.[418] Therefore, a diligent judgment

[417] 735 ILCS 5/12-1001 *et seq.*
[418] 735 ILCS 5/12-1001(h)

creditor may eventually recover money or property received by the judgment debtor that is exempt under item (8) above.

In general, the personal property exemptions are interpreted liberally in favor of protecting judgment debtors.[419] If the head of a household dies, deserts the residence, or does not live with their family, the family is still entitled to the exemptions conferred upon the head of a household.[420] In addition, any money received from a sale of exempt personal property is exempt to the same degree as if the property had not been sold.[421] However, if a judgment debtor buys non-exempt property with the intent to convert the property into exempt personal property, or if the judgment debtor buys exempt personal property to defraud judgment creditors, the personal property will not be exempt.[422] Property acquired within six months of filing for bankruptcy is presumed to have been acquired in contemplation of bankruptcy, and such property is unlikely to be exempt.[423] A judgment debtor cannot invoke any of the above exemptions to protect money withheld pursuant to a wage garnishment proceeding.[424] Moreover, these exemptions do not apply to a judgment expressly determined by a court to be for wages.[425]

A judgment debtor's interest in right to receive any pension, annuity, benefits, distributions, refunds of contributions, or any other payments under a retirement plan is exempt if the plan either is intended in good faith to qualify as a retirement plan under the Internal Revenue Code or is a public employee pension plan created under the Illinois Pension Code.[426] All funds

[419] *Auto Owners Insurance v Berkshire*, 225 Ill. App. 3d 695, 699 (2d Dist. 1992)
[420] 735 ILCS 5/12-1003
[421] 735 ILCS 5/12-1001
[422] 735 ILCS 5/12-1001
[423] 735 ILCS 5/12-1001
[424] 735 ILCS 5/12-1001
[425] 735 ILCS 5/12-1004
[426] 735 ILCS 5/12-1006

traceable to these plans are also exempt as long as any money received is held and used for the support of the judgment debtor and his family.[427]

2f. The "wild card" exemption procedure

The exemption of the judgment debtor's equity interest of up to $4,000.00 in "any other property" listed in item (2) above is a catch-all provision commonly called the "wild card" exemption.[428] Although "any other property" is construed broadly, the wild card exemption does not extend to cover real property.[429] The judgment debtor may use the wild card exemption to increase the specific exemptions for other types of property, such as their automobile.[430]

The judgment debtor is under no obligation to file any special forms or papers to claim this $4,000.00 wild card exemption. However, the judgment debtor must file a schedule of their property if they wish to choose the personal property to exempt under the wild card exemption.[431] Service of the judgment or distress warrant upon the judgment debtor is performed under the rules for service of summons in civil cases, as discussed in Chapter 1.[432] A notice signed by the sheriff or authorized process server and notifying the judgment debtor that they have 10 days to file a schedule of property must be attached to the judgment or warrant.[433] This schedule of property must be filed within 10 days of the judgment debtor's receipt of the copy of the judgment or distress warrant.[434]

If the judgment debtor files a schedule of property to choose the personal property to exempt under the wild card exemption, the schedule of property must (1) list every item of personal

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[427] *Auto Owners Insurance v. Berkshire*, 225 Ill. App. 3d 695, 698-99 (2d Dist. 1992)
[428] 735 ILCS 5/12-1001(b)
[429] *In re Woodworth*, 152 B.R. 258, 259 (Bankr. C.D. Ill. 1993)
[430] *In re Cullen*, 21 B.R. 118, 120 (Bankr. S.D. Ill. 1982)
[431] 735 ILCS 5/12-1002
[432] 735 ILCS 5/12-1002
[433] 735 ILCS 5/12-1002
[434] 735 ILCS 5/12-1002

property the judgment debtor owns, (2) the judgment debtor's cash on hand, and (3) all debts owed to the judgment debtor.[435] The schedule must be sworn to by the judgment debtor.[436] The judgment debtor must have the schedule of property delivered to the sheriff, who has a copy of the judgment or warrant, or filed in the court which entered the order.[437] Only property listed on the schedule may be exempted from judgment.[438]

If a schedule of property is filed, the court that entered the order must summon three persons who are heads of households who will swear to fairly appraise the judgment debtor's personal property and will appraise every item of personal property listed on the judgment debtor's schedule.[439] After the personal property is appraised, the judgment debtor may select up to $4,000.00 of personal property listed in the schedule as their wild card exemption and must deliver the remainder to the officer with the schedule.[440] If the judgment debtor files a schedule of property and their personal property is properly appraised, the judgment debtor does not have to file an additional schedule of property within 90 days of the issuance of a certified copy of judgment, unless additional personal property has been acquired.[441] However, separate filings for an execution on a judgment debtor's property will require the filing of a schedule.

If no schedule of property is filed within 10 days after service of the judgment or warrant on the judgment debtor, the sheriff must determine the property to be taken to satisfy the judgment.[442] The sheriff cannot take the exempt personal property listed in items (1), (5), (6), (7) and (8) above.[443] The sheriff cannot take the exempt personal property listed in items (2), (3), and

[435] 735 ILCS 5/12-1002
[436] 735 ILCS 5/12-1002
[437] 735 ILCS 5/12-1002
[438] 735 ILCS 5/12-1002
[439] 735 ILCS 5/12-1002
[440] 735 ILCS 5/12-1002
[441] 735 ILCS 5/12-1002
[442] 735 ILCS 5/12-1002
[443] 735 ILCS 5/12-1002

(4) above if the property in that category is worth less than the amount the judgment debtor is entitled to have exempted under those items.[444] If the exempt personal property listed in items (2), (3), and (4) above in that category is worth more than the judgment debtor is entitled to have exempted under those items, the court that entered the judgment or warrant must issue a fair and impartial appraisal of the property pursuant to the procedure followed when a schedule of property is filed, and the sheriff must select which property will be exempt and which property will be sold.[445]

The statutes also provide for penalties to be imposed upon a sheriff who seizes exempt personal property. If any sheriff takes or seizes any exempt personal property, the sheriff will be liable in a civil lawsuit for double the value of the property wrongfully taken, plus costs.[446] Therefore, sheriffs must be very careful when seizing personal property to satisfy judgments. If there is any uncertainty as to whether personal property claimed as exempt by the judgment debtor really is exempt, the sheriff should seek the advice of the County State's Attorney, who by law is the legal advisor for the sheriff.

3. Conclusion

The procedures outlined in this Chapter for the seizing and selling of real estate and personal property are complex. Sheriffs rarely have to pursue the process to the end and actually sell the property because most people will find a way to "get the money" when faced with the loss of their homes or cars, and that such sales do not occur frequently does not encourage their

[444] 735 ILCS 5/12-1002
[445] 735 ILCS 5/12-1002
[446] 735 ILCS 5/12-1005

understanding. Questions and uncertainties on how to proceed with the sale of either real estate or personal property should be directed to the County State's Attorney, who by law is the legal advisor for the sheriff, for clarification.

CHAPTER 3: REPLEVIN, ATTACHMENT, NE EXEAT, and BODY ATTACHMENT

Replevin, attachment, ne exeat, and body attachment are specific legal proceedings that sheriffs may become involved with. In a nutshell, replevin and attachment deal with the ownership of property, while ne exeat and body attachments are about keeping people in place during legal proceedings. Because these matters will come up from time to time in a sheriff's line of duty, it is a good idea to be familiar with all four proceedings and the unique issues that they raise for service of process and bonds.

A. REPLEVIN

1. What is replevin?

Replevin is defined as an "action whereby the owner or person entitled to possession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken or who wrongfully detains such goods or chattels."[447] In other words, the law says that if someone is in possession of property that does not belong to them, the rightful owner of the property can file a replevin action to try to get their property back through the courts.[448] It is important to note that replevin actions are limited only to the recovery of personal property (such as automobiles, furniture, tools, jewelry, and clothing) rather than for recovery of "real property", which refers to land and anything growing on, attached to, or built upon it. Also, a replevin action cannot be brought against a defendant where a judgment or attachment is in the process of enforcement for the recovery of goods or chattels unless such goods or chattels are, by law, exempt

[447] *Jim's Furniture Mart, Inc. v. Harris*, 42 Ill. App. 3d 488, 489 (4th Dist. 1976)
[448] 735 ILCS 5/19-101

from such enforcement.[449] The proper venue for any replevin suit is "any county in which the goods or chattels or any part of them are located."[450]

To prevail in a replevin suit, the plaintiff must prove they own title and have a right to immediate possession of the goods or chattels.[451] A replevin action can only be brought against a person from whose possession a sheriff can take the property and can only be brought by a person to whose possession the property can be returned. Thus, a replevin action can only be brought against an individual in possession of the contested property at the time suit is filed.[452]

A replevin lawsuit begins when a plaintiff files a verified complaint containing: (1) a description of the property to be replevied, (2) a statement that the plaintiff is the owner of or is then lawfully entitled to possession of the property, (3) a statement that the property is wrongfully detained by the defendant, and (4) a statement that the property has not (i) been taken for any tax, assessment, or fine levied under Illinois law against the plaintiff's property or the plaintiff individually; (ii) been seized under any lawful process against the plaintiff's goods and chattels; and (iii) been held by a replevin order against the plaintiff.[453] The complaint must be verified by oath of the plaintiff or any other person with knowledge of the facts pleaded.[454] A plaintiff filing a complaint for replevin must either show that a prior demand for the property was made and refused, or that such a demand would have been futile under the circumstances.[455] In any event, strict compliance with the requirements for replevin is required.[456]

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[449] 735 ILCS 5/19-102
[450] 735 ILCS 5/19-103
[451] *Frank v. Hayes*, 25 Ill. App. 2d 99, 106 (3d Dist. 1960)
[452] *Milhahn v Sapp*, 338 Ill. App. 12, 17 (3d Dist. 1949); *See also Frank*, 25 Ill. App. 2d at 106
[453] 735 ILCS 5/19-104
[454] 735 ILCS 5/19-104; 735 ILCS 5/2-605(a)
[455] *State Farm Mut. Auto. Ins. Co. v. Loop Operations*, 2016 IL App (1st) 151545
[456] *Universal Credit Co. v. Antonsen*, 374 Ill. 194, 200 (1940)

2. Service of notice of the replevin hearing

The defendant must be served with written notice of a hearing to contest entry of a replevin order at least five days prior to the hearing.[457] A copy of a standardized form for the notice of hearing to determine whether a replevin order will be entered is included on page 26 of the FORMS APPENDIX.[458] The notice of hearing may be served by:

(1) personal service, substitute service, or publication service on an individual, as described in Chapter 1 of this Manual;

(2) any of the methods permitted for service on a corporation, as described in Chapter 1 of this Manual;

(3) any of the methods permitted for service on a business partnership or on business partners, as described in Chapter 1 of this Manual;

(4) any of the methods permitted for service on a voluntary unincorporated association, as described in Chapter 1 of this Manual; or

(5) certified or registered mail by the Circuit Clerk in accordance with Illinois Supreme Court Rule 284.[459]

The right to notice and hearing may be waived in writing, provided that such waiver is voluntary, intelligent and knowing.[460] However, a consumer (an individual who obtained possession of the property for personal, family, household, or agricultural purposes) may not waive notice and hearing.[461]

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[457] 735 ILCS 5/19-105
[458] *See* Ill. Sup. Ct. R. 107(a)
[459] Ill. Sup. Ct. R. 284; Ill. Sup. Ct. R. 107(b); 735 ILCS 5/2-202; 735 ILCS 5/2-204; 735 ILCS 5/2-205
[460] 735 ILCS 5/19-105
[461] 735 ILCS 5/19-105

3. When is notice of the replevin hearing not required?

Under certain circumstances, notice to the defendant is not required, such as when the plaintiff establishes, and the court finds as a matter of record and supported by the evidence, that necessity justifies immediate seizure of the property for one of the following reasons:

(1) the property will be imminently destroyed or concealed;

(2) the property will be imminently removed from Illinois;

(3) the property is perishable;

(4) the property will be imminently sold, transferred, or assigned; or

(5) the defendant obtained the property by theft.[462]

The court, when applicable, must examine any written waiver of rights presented by the plaintiff and if the court finds the waiver is in accordance with law, it must order a hearing as soon as practicable on the entry of an order for replevin.[463]

4. The replevin hearing

Whether or not notice to the defendant is required, a hearing will occur to determine whether a replevin order will be entered.[464] The hearing may be held to contest a replevin order after the defendant receives notice, or the hearing may be held without the defendant after the court determines notice to the defendant is not required.[465] If the plaintiff establishes a superior right to possession of the property and a probability of success on the underlying claim to possession, the court will enter a replevin order.[466]

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[462] 735 ILCS 5/19-106(1)-(5)
[463] 735 ILCS 5/19-106
[464] 735 ILCS 5/19-107
[465] 735 ILCS 5/19-107
[466] 735 ILCS 5/19-107

5. Service of the replevin order – on the defendant and the defendant's property

The replevin order must direct the sheriff to take the property described in the complaint from the defendant's possession and deliver it to the plaintiff; this constitutes service on the defendant's property. The replevin order must also direct an authorized person to be served on the defendant. Accordingly, service of the replevin order includes service on the defendant's property and service of the summons on the defendant. A sheriff must serve the replevin order on the defendant's property, while any authorized person may serve the defendant.

Before the sheriff serves the order of replevin, however, the plaintiff must give the sheriff a bond in the amount of double the value of the property to be replevied.[467] The purpose of this bond, among other things, is to help ensure that the sheriff does not become liable as the sheriff replevies the property.[468] Upon receipt, the sheriff must return the bond and a certified copy of the replevin order to the circuit clerk who issued the certified copy of the order.[469] If the sheriff fails to take and return the bond to the circuit clerk, or if the sheriff returns an insufficient bond, "he or she shall be liable to the party injured for all damages such party may sustain by reason of such neglect, which may be recovered in an action against the sheriff or other officer, or by an action upon the sheriff's or other officer's official bond."[470] In other words, it is very important that the sheriff returns a sufficient bond to the circuit clerk because failing to do so could expose you and/or your department to a lawsuit. Therefore, in accepting replevin bonds, sheriffs should ensure amount of the bond received actually is twice the value of the property about to be replevied. A

[467] 735 ILCS 5/19-112
[468] 735 ILCS 5/19-112
[469] 735 ILCS 5/19-113
[470] 735 ILCS 5/19-114

sheriff is not liable unless the bond was insufficient when taken, or unless suit is filed within three years after the cause of action accrued.[471]

Once the plaintiff delivers their bond to the sheriff, the defendant and the defendant's property may be served. To serve the order on the defendant, the sheriff must serve the order on the defendant in the manner provided for service of summons in other civil cases and described in Chapter 1 of this Manual.[472] The sheriff has the duty to serve the replevin order on the defendant whether or not the property is found and delivered to the plaintiff, unless, when none of the property is found, the plaintiff or their attorney or agent directs otherwise.[473]

If an affidavit submitted by the plaintiff, or their attorney or agent, or the return of service of the officer shows that the defendant (1) is not a resident of Illinois, (2) has departed from Illinois, (3) cannot be found after a reasonable search, or (4) is concealed within Illinois so that the replevin order cannot be served on them, the defendant may be given notice by publication and mail.[474] If notice by publication becomes necessary, the court clerk must publish notice at least once per week for three consecutive weeks in the Illinois newspaper most convenient to the court.[475] The notice must describe the replevin, at whose action, against whose estate, for what sum, before what court the action is pending, and that a judgment may be entered and the replevin order served on property if the defendant does not appear, give bail, and plead.[476] Within 10 days after the first publication of the notice, the court clerk must also mail a copy of the notice to the defendant if the defendant's place of residence is stated in the affidavit.[477]

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[471] 735 ILCS 5/19-115
[472] 735 ILCS 5/19-109
[473] 735 ILCS 5/19-117
[474] 735 ILCS 5/19-118; 735 ILCS 5/4-127
[475] 735 ILCS 5/19-118; 735 ILCS 5/4-127
[476] 735 ILCS 5/19-118; 735 ILCS 5/4-127
[477] 735 ILCS 5/19-118; 735 ILCS 5/4-127

To serve the defendant's property, the sheriff must serve the replevin order by seizing the property described in the order.[478] The property may only be taken if found in the county issuing the replevin order and by a proper officer of the county.[479]

6. What happens after the replevin order is served?

Once the property is taken, the sheriff must deliver the property to the plaintiff as soon as is practicable.[480] However, the defendant may avoid seizure and delivery of their property to the plaintiff if the defendant executes a bond approved by the sheriff in an amount double the value of the property taken before the property is actually delivered to the plaintiff.[481] If the defendant executes such a bond, the sheriff must return the bond to the court on the day the replevin order is returnable.[482] It is worth knowing that the sheriff is under no special duty to inform the defendant being served that they have right to post a bond to prevent the seizure of the disputed property.[483]

7. Mobile Homes

There are specific provisions under the law for replevin orders concerning mobile homes which were updated in 2018 to account for evictions.[484] Accordingly, if the property sought to be seized is a mobile home and is occupied by the defendant or other persons, the court may issue an eviction order directing the sheriff to remove the personal property of the defendant or occupants from the mobile home if the defendant and unknown occupants are given notice of the plaintiff's intent to seek an eviction order.[485] The court may then issue the forcible order and stay execution

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[478] 735 ILCS 5/19-116
[479] 735 ILCS 5/19-116
[480] 735 ILCS 5/19-116
[481] 735 ILCS 5/19-116
[482] 735 ILCS 5/19-116
[483] *Peoples Gas Light & Coke Co. v Weitzman*, 76 Ill. App. 3d 449, 453 (1st Dist. 1979)
[484] 735 ILCS 5/19-129
[485] 735 ILCS 5/19-129

of the order for what it determines to be a reasonable time to allow the defendants and unknown occupants to remove their property from the mobile home.[486]

8. May sheriffs use force to enter property?

The replevin statute also specifically addresses the sheriff's authority to use reasonable force to serve the replevin order and seize the described property. If the defendant fails to deliver the property to the sheriff and the plaintiff has a reasonable belief as to the property's location, the court may authorize the sheriff to use *reasonable force* to enter the property to recover the property.[487] However, the court may also impose terms and conditions the sheriff must follow when entering the property.[488]

If uncertain about the appropriateness of using reasonable force, it is advisable not to engage in a forcible entry unless there exists a court order that so authorizes reasonable force to enter the property. If there is any question, the sheriff should inform the plaintiff's attorney to allow the attorney to seek a court order or the sheriff should solicit the opinion of the County State's Attorney before taking any action.

B. ATTACHMENT

1. What is attachment?

Attachment is defined as the "seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment."[489] Any creditor with a money claim over twenty dollars may have an attachment against the debtor's property if the debtor (1) is not a resident of Illinois; (2) conceals their location or stands in defiance of an officer so that process cannot be served upon them; (3) has left Illinois with the intent to have their property removed from Illinois; (4) is about

[486] 735 ILCS 5/19-129
[487] 735 ILCS 5/19-117
[488] 735 ILCS 5/19-117
[489] *Attachment*, *Black's Law Dictionary*, (11th ed. 2019)

to leave Illinois with the intent to have their property removed from Illinois; (5) is about to remove their property from Illinois to the injury of the creditor; (6) within the last two years, has fraudulently conveyed or assigned any of their property to hinder or delay their creditors; (7) within the last two years, has fraudulently concealed or disposed of any of their property to hinder or delay their creditors; (8) is about to fraudulently conceal, assign, or otherwise dispose of their property to hinder or delay their creditors; (9) fraudulently contracted the debt; or (10) has been convicted of one of certain crimes and the creditor is a "victim" under the Criminal Victims' Asset Discovery Act (725 ILCS 145/1, *et seq*.).[490]

2. What is the difference between attachment and obtaining a lien on property?

In certain instances, attachment allows a creditor to attach a claim to a debtor's property *pending the outcome of a lawsuit against the debtor* and *prior to obtaining a judgment against the debtor*.[491] On the other hand, a creditor may only obtain a lien on the debtor's real or personal property *after the creditor obtains a judgment*; this is discussed further in Chapter 2. Obtaining a lien occurs much more frequently than attachment because attachment can only be accomplished if the above-specified criteria are met.

3. The plaintiff's affidavit

To get an order of attachment, the plaintiff must file with the court an affidavit based on their personal knowledge that shows: (1) the amount of the claim, after all credits and set-offs; (2) facts establishing any of the 10 applicable circumstances warranting attachment discussed above; (3) the defendant's place of residence or, that upon diligent inquiry, the defendant's place of residence has not been ascertained; and (4) facts establishing the cause of action against the

[490] 735 ILCS 5/4-101(1)-(10); *See* 725 ILCS 145/1, *et seq.*
[491] 735 ILCS 5/4-104

defendant.[492] A copy of the form of affidavit as provided in the statute is included on page 27 of the FORMS APPENDIX.[493]

The plaintiff must also file an additional statement, within the affidavit or separately, that states whether the action is a tort action and that designates the return date for the summons to be issued.[494] If the action is a tort action, the plaintiff or their agent or attorney must be examined under oath by the court concerning the action.[495] The court will then designate the amount of damages sought on the affidavit, and no amount in excess thereof may be claimed.[496] If the court determines the affidavit establishes a prima facie case against the defendant, it will enter an attachment order.[497]

4. The plaintiff's bond

After the court enters an attachment order, the plaintiff must file with the court a bond worth double the amount claimed in the plaintiff's affidavit that is payable to the People of the State of Illinois.[498] The bond is for the protection of the debtor in the event of judgment against the creditor because allowing an attachment creditor to wait to file bond opens up the possibility of fraud.[499] Notably, any attachment order entered without a bond and affidavit is considered illegal and void and must be dismissed by the court.[500] In certain circumstances, the plaintiff may describe the particular property of the defendant to be attached, including its value, and the court may require a lesser bond in the amount of double the value of the property to be attached, instead of

[492] 735 ILCS 5/4-104
[493] *See* 735 ILCS 5/4-105
[494] 735 ILCS 5/4-104
[495] 735 ILCS 5/4-104
[496] 735 ILCS 5/4-104
[497] 735 ILCS 5/4-104
[498] 735 ILCS 5/4-107
[499] *ABN AMRO Servs. Co. v. Navarrete Indus., Inc.*, 383 Ill. App. 3d 138, 145 (1st Dist. 2008)
[500] 735 ILCS 5/4-107

double the value of the claim; in this case, the order will direct the sheriff which property may be attached.[501]

5. Service of the attachment order – on the defendant and the defendant's property

The attachment order must be directed to the sheriff to serve the attachment order on the property described in the complaint; this constitutes service on the defendant's property. The attachment order must also be directed to an authorized person to be served on the defendant. Accordingly, service of the attachment order includes service on the defendant's property and service on the defendant. A sheriff must serve the attachment order on the defendant's property, while any authorized person may serve the defendant.

To serve the order on the defendant, the sheriff or authorized person must serve a certified copy of the order on the defendant in the manner provided for service of summons in other civil cases and described in Chapter 1 of this Manual.[502] However, the property seized may only be disposed of for the plaintiff's use if the defendant is personally served or notified by publication and mail.[503] The sheriff must serve the defendant as soon as possible but no later than five days after the attachment order is entered.[504] If the defendant is not served in the required time and no good cause is shown for such delay, the defendant may move to vacate the attachment order.[505] The sheriff must state in the return of service the particular manner in which the defendant was served.[506] If the defendant is served less than 10 days before the return date, the defendant has until 15 days after the return date to answer or plead.[507]

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[501] 735 ILCS 5/4-108
[502] 735 ILCS 5/4-114
[503] 735 ILCS 5/4-128
[504] 735 ILCS 5/4-114
[505] 735 ILCS 5/4-114
[506] 735 ILCS 5/4-114
[507] 735 ILCS 5/4-114

If the affidavit or return of service show that the defendant (1) is not a resident of Illinois, (2) has departed from Illinois, (3) on due inquiry cannot be found, or (4) is concealed within Illinois so the attachment order cannot be served on the defendant, and that the defendant's property has been attached or garnishees have been summoned, the defendant must be given notice by publication and mail.[508] The court clerk must publish notice at least once per week for three consecutive weeks in the Illinois newspaper most convenient to the court.[509] The notice must describe the attachment or garnishment, at whose action, against whose estate, for what sum, before what court the action is pending, and that a judgment may be entered and the estate attached or garnished if the defendant does not appear, give bail, and plead.[510] Within 10 days after the first publication of the notice, the court clerk must also mail a copy of the notice to the defendant if the defendant's place of residence is stated in the affidavit.[511]

If the attachment order names garnishees, or the plaintiff identifies any persons having defendant's property in their possession, the sheriff must also serve those persons in the manner provided for service of summons in civil cases, as described in Chapter 1 of this Manual.[512] The sheriff's return of service must state the names of all persons served, the date on which each person was served, and the manner of service.[513] Garnishees or other persons served must hold the defendant's property subject to the order and the property is considered to have been attached.[514]

To serve the order on the defendant's property, the sheriff must, without delay, serve the attachment order by seizing the property described in the order or the defendant's real and/or

[508] 735 ILCS 5/4-127
[509] 735 ILCS 5/4-127
[510] 735 ILCS 5/4-127
[511] 735 ILCS 5/4-127
[512] 735 ILCS 5/4-126
[513] 735 ILCS 5/4-126
[514] 735 ILCS 5/4-126

personal property sufficient to satisfy the order.[515] If the sheriff levies the order on real estate, the sheriff must file a certificate of levy with the recorder of the county were the property is located.[516] Specific procedures for attachment on watercraft, livestock, and perishable property are set forth in the law.[517]

If the defendant is in the act of removing personal property, the sheriff may pursue and take the property in any Illinois county and return the property to the county issuing the attachment order.[518] A creditor may have a certified copy of an order for attachment issued to another Illinois county where the debtor may have property liable to be attached, and the order may be levied on real property in that county.[519]

6. The defendant's (or person in possession's) bond

The person in possession of the property may prevent the sheriff from seizing the property by posting a bond of double the value of the property attached, and the condition of the bond is that the property will be forthcoming to answer the judgment.[520] If the defendant wants to get the property attached returned, the defendant may give a bond sufficient to cover the amount the plaintiff claims is due, and place a condition on the bond that the defendant will pay the judgment within 90 days.[521] If a sheriff fails to take or return a bond, the plaintiff, at any time during the first 10 days after the day on which the order is returnable, may ask the court to require the sheriff to take a bond or show cause why no bond was taken.[522] If the sheriff does not return a bond within one day or show good cause, judgment will be entered against the sheriff for the amount of the

[515] 735 ILCS 5/4-112
[516] 735 ILCS 5/4-113
[517] 735 ILCS 5/4-201 *et seq*.; 735 ILCS 5/4-124; 735 ILCS 5/4-125
[518] 735 ILCS 5/4-116
[519] 735 ILCS 5/4-118
[520] 735 ILCS 5/4-119
[521] 735 ILCS 5/4-120
[522] 735 ILCS 5/4-121

plaintiff's claim.[523] Accordingly, the sheriff must carefully follow the bond procedures for attachment.

7. What happens after the attachment order is served?

After obtaining an attachment order, the plaintiff must still obtain a judgment and enforce that judgment. After an attachment order is entered, the defendant may request a hearing on the order or affidavit. If the plaintiff cannot show cause for entry of the order or a probability of prevailing in the cause of action, the attachment order must be vacated.[524] The plaintiff must file the complaint within 10 days before the return day of that attachment order, or the court may dismiss the action.[525] The judgment may be enforced like any judgment, against the property attached or any of the defendant's property. Enforcement of judgments is described in Chapter 2 of this Manual.

C. NE EXEAT

1. What is ne exeat?

Ne exeat is "an equitable writ ordering the person to whom it is addressed not to leave the jurisdiction of the court or the state."[526] It is governed by the same principles that apply in England to the writ of ne exeat regno, which was a writ issued to restrain a person from leaving the Kingdom. [527] Although ne exeat may arise in any context where there is a probable or threatened departure of the defendant to evade jurisdiction, it often arises in the context of divorce or child support. Since the remedy of ne exeat can result in an individual being jailed, it is issued rarely and only for very strong reasons.[528]

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[523] 735 ILCS 5/4-121
[524] 735 ILCS 5/4-137
[525] 735 ILCS 5/4-130
[526] *ne exeat*, *Black's Law Dictionary* (11th ed. 2019)
[527] *Andersen v. Andersen*, 315 Ill. App. 380, 387 (1st Dist. 1942)
[528] *Andersen v. Andersen*, 315 Ill. App. 380, 387 (1st Dist. 1942)

Ne exeat is designed to ensure a defendant will appear in court to defend against the claim filed by a plaintiff. To obtain a ne exeat order, the plaintiff must file a complaint and affidavit stating that the information contained in the complaint is true with the circuit court, and a hearing on the complaint must be held.[529] If the court grants the ne exeat order, it will issue an order specifying the amount of the bond the defendant must post and the amount of the bond the plaintiff must post.[530] The ne exeat order will not be issued until the plaintiff's bond is posted.[531] The court cannot waive the requirement that the plaintiff post a bond.[532]

2. Service of the ne exeat order

The method of service for ne exeat orders is not directly specified in the governing statute.[533] Therefore, ne exeat service shall be made according to the procedures for service in civil cases, as detailed in Chapter 1 of this Manual, and a sheriff may or may not be called upon to serve a ne exeat order.

3. What happens after the ne exeat order is served?

After the defendant is properly served, the ne exeat order will require the defendant to file an answer to the plaintiff's complaint and post the required bond.[534] If the defendant cannot post the required amount or fails to answer or appear, the defendant may be jailed.[535]

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[529] 735 ILCS 5/16-104
[530] 735 ILCS 5/16-104
[531] 735 ILCS 5/16-104
[532] *Sweasy v. Snyder*, 192 Ill. App. 3d 749, 753 (3d Dist. 1989)
[533] 735 ILCS 5/16-101 *et seq*.
[534] 735 ILCS 5/16-107
[535] 735 ILCS 5/16-107

D. BODY ATTACHMENT

1. What is a body attachment?

Body attachment is the "arrest of a person who either is in contempt of court or is to be held as security for the payment of a judgment."[536] Judgment creditors may utilize the body attachment process if judgment debtors fail to appear at court proceedings, such as a citation to discover assets. To utilize the body attachment procedure, however, the creditor must follow the specific requirements for service.

2. Filing a petition for rule to show cause is a prerequisite

To petition for a body attachment, the judgment creditor must first file a petition for an order to show cause.[537] If the court determines the circumstances are appropriate, it will enter an order to show cause and set the matter for hearing. The order to show cause must be served on the respondent by personal service or substitute service.[538] If the respondent appears at the hearing, they must show cause why they should not be held in contempt of court. If the respondent does not appear at the hearing, the court will usually issue an order of body attachment.

Moreover, it is important to note that personal or substitute service of the original process is required in some cases. For example, a body attachment is only available for failure to appear at a citation to discover assets hearing if both the citation to discover assets summons and the order to show cause summons are served on the respondent by personal service or substitute service.[539]

3. Service of the body attachment order

The order of body attachment will be issued to the sheriff. The order must contain, if known, (1) date of birth, sex, physical description, and last known address of the person to be taken

[536] *See Attachment*, *Black's Law Dictionary* (11th ed. 2019)
[537] 735 ILCS 5/12-107.5
[538] 735 ILCS 5/12-107.5
[539] 735 ILCS 5/12-107.5

into custody; (2) a statement of the reason the person is being taken into custody; and (3) the date the order is issued.[540] It is worth knowing that an order that fails to include any of the above information is not invalid.[541] The order of body attachment will direct the sheriff of that county or any peace officer in Illinois to bring the respondent before the court to answer the rule to show cause. The order of body attachment will also set the respondent's bond, which cannot exceed $1,000.[542]

4. What happens after the body attachment order is served?

If the sheriff arrests the respondent, the respondent may be released if they pay the bond established in the order of body attachment. The creditor with judgment against the debtor may file a motion for turnover of bond and, if granted, the bond paid by the debtor will be turned over to the creditor. The amount turned over must be applied to the judgment.[543]

[540] 735 ILCS 5/12-1401
[541] 735 ILCS 5/12-1401
[542] 735 ILCS 5/12-107.5
[543] 735 ILCS 5/12-107.5

CHAPTER 4: FORCIBLE ENTRY AND DETAINER (EVICTION)

Forcible entry and detainer is another specific proceeding with which sheriffs often become involved. Forcible entry and detainer, commonly known as an "eviction," is "a quick and simple legal proceeding for regaining possession of real property from someone who has wrongfully taken, or refused to surrender, possession."[544] Forcible entry and detainer actions deal with the immediate right of possession of property only, rather than the title to property or the right of ownership.[545] Forcible entry and detainer actions may seek sole possession or possession and rent.[546] Strict compliance with the requirements for forcible entry and detainer actions is required.[547]

A. ACTIONS FOR POSSESSION

An action seeking possession may occur in eight circumstances: (1) when a forcible entry is made on another's real property; (2) when a peaceable entry is made and possession of the real property is unlawfully withheld; (3) when entry is made on vacant or unoccupied lands without right or title; (4) when a lessee or person holding under a lessee retains possession after the lease terminates by its own limitation, condition, or terms, or after notice to quit the premises; (5) when a vendee under a contract to purchase real property remains in possession of the real property after the contract is breached and written demand for possession is made; (6) when a grantor or owner remains in possession after a conveyance or after a sale pursuant to a court order or judgment, mortgage, or trust deed, and the time for redemption has expired, if allowed, after a demand for

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[544] *Forcible entry and detainer*, *Black's Law Dictionary* (11th ed. 2019)
[545] *See Pipitone v. Mandala*, 33 Ill. App. 2d 461, 464 (2d Dist. 1962) (In an action for forcible entry and detainer, the right to possession is all that is involved, the judgment cannot affect title as it is not determined.); *Saxmann v. Allen*, 410 Ill. 31, 32 (1951) (All that is involved or can be determined in an action to obtain possession of property under the Forcible Entry and Detainer Act is the immediate right to possession.)
[546] 735 ILCS 5/9-102; 735 ILCS 5/9-201
[547] *Biebel Roofing Co. v. Pritchett*, 373 Ill. 214, 215 (1940)

possession is made; (7) when a condominium owner fails to pay expenses or fees after proper demand, the lessor-owner fails to comply with condominium leasing requirements, or the lessee breaches any condominium rules after proper demand; and (8) when a unit owner in common interest communities fails to pay their proportionate share of regular or special assessments or expenses after proper demand, if the community has voted to have these provisions apply.[548] Most commonly, an action for possession occurs when a lessee remains in possession after a lease terminates or after the landlord gives the lessee notice to quit the premises.

1. Notice or demand

If notice or demand is required, as detailed above, the forcible entry and detainer suit for possession cannot be maintained if the required notice or demand is not made.[549] A copy of the Demand for Immediate Possession form is included on page 28 of the FORMS APPENDIX. The demand for immediate possession of the property, as described in the statute, may take the following (or similar) form[550]

To: *[name of occupant]* and *[address of occupant]*:

[I/The undersigned] hereby demand(s) immediate possession of the following-described premises *[OPTIONAL: situated in the City of [name of city], [name of county], Illinois]* namely: *[description of premises with reasonable certainty]*.

Dated: *[date of possession]*
[Name of city], Illinois.
[[Name of Owner]/ [Name of individual claiming possession]]
By:

_____
[Name of agent, if applicable]

[548] 735 ILCS 5/9-102(a)(1)-(8)
[549] *Eddy v. Kerr*, 96 Ill. App. 3d 680, 681 (2d Dist. 1981)
[550] *See* 735 ILCS 5/9-104

On the other hand, if the notice or demand is not expressly required by the statute, no notice or demand is required before a forcible entry and detainer suit.[551]

2. Service of the notice or demand

Any party may serve the notice or demand by personal service to the tenant or leaving a copy with any person at least 13 years old in possession of the premises.[552] Because strict compliance with the notice or demand is required, service is often challenged. Accordingly, a sheriff may or may not be called upon to serve the above notices or demands. The facts within a sheriff or authorized process server's return of service are presumed to be valid.[553] If no one is in actual possession of the premises, service may be had by posting the notice or demand on the premises.[554] If those in possession of the premises are unknown occupants and not parties to any written lease or other agreement, service may be had by personally serving the occupant with a notice or demand directed to "unknown occupants," leaving a copy with any person at least 13 years old in possession of the premises, or posting a copy on the premises.[555]

B. ACTIONS FOR RECOVERY FOR RENT

An action to recover rent may be brought by the owner of property, or their executor or administrator in the following five circumstances: (1) when rent is due on a lease for life or lives; (2) when lands are held and occupied by a person with no special agreement for rent; (3) when possession is obtained under a written or verbal agreement for the purchase of the premises, the right to possession is terminated by forfeiture or non-compliance with the agreement before a deed is given, and possession is wrongfully refused upon written demand; (4) when land is sold pursuant

[551] *North Am. Old Roman Catholic Church v. Bernadette*, 253 Ill. App. 3d 278, 290 (1st Dist. 1992)
[552] 735 ILCS 5/9-104
[553] 735 ILCS 5/9-104
[554] 735 ILCS 5/9-104
[555] 735 ILCS 5/9-104

to a court judgment and the party to such judgment or person holding under wrongfully refuses to surrender possession after written demand by the person entitled to the possession; and (5) when lands are sold pursuant to a mortgage or trust deed and the mortgagor, grantor, or person holding under wrongfully refuses or neglects to surrender possession after written demand by the person entitled to the possession.[556]

1. Notice or demand

If notice or demand is required, as detailed above, the forcible entry and detainer suit cannot be maintained if the required notice or demand is not made.[557]

Additional notices are required in certain cases. At any time after rent is due, a landlord or their agent may demand payment and provide written notice to the tenant that the lease will be terminated unless payment is made within the time specified in the notice, not less than five days after the notice is served; this is often called the "five-day notice."[558] Specific language is set forth in the statute to be included in the five day notice to prevent invalidation if the landlord accepts partial payment of past due rent.[559] A copy of the form for notice of termination for non-payment of rent provided in the statute, which includes the specific language, is included on page 29 of the FORMS APPENDIX.

In addition, at any time after a tenant defaults on any of the terms of a lease, a landlord or their agent must give signed written notice that the tenancy will be terminated and the tenant must quit the premises, not less than ten days before the tenant is to quit the premises; this is often called the "ten-day notice."[560] A copy of the form for notice of termination for lease violation—other

[556] 735 ILCS 5/9-201(1)-(5)
[557] *Cala v. Gerami*, 137 Ill. App. 3d 936, 941 (2d Dist. 1985)
[558] 735 ILCS 5/9-209
[559] *See* 735 ILCS 5/9-209
[560] *See* 735 ILCS 5/9-210

than non-payment of rent is included on page 30 of the FORMS APPENDIX. Such notice of termination for lease violation—other than non-payment of rent may be substantially in the following form:

To A.B.: You are hereby notified that in consequence of your default in (*here insert the character of the default*) of the premises now occupied by you, being, etc. (*here describe the premises*) I have elected to terminate your lease, and you are hereby notified to quit and deliver up possession of the same to me within 10 days of this date (*dated, etc.*).[561]

The notices are to be signed by the lessor or their agent, and no other notice or demand of possession or termination of such tenancy is necessary.[562]

No notice to quit or demand of possession need be given if a lease expires by its own terms.[563] However, the law specifies what notice must be provided to terminate periodic tenancies, or tenancies that automatically continue unless terminated at the end of a period by notice: (1) seven days' written notice is required to terminate a week-to-week tenancy; (2) 30 days' written notice is required to terminate a periodic tenancy other than week-to-week but for less than one year, such as a month-to-month tenancy; (3) 60 days' written notice is required to terminate a year-to-year tenancy; the notice may be given within four months preceding the last 60 days of the year; and (4) four months' written notice is required to terminate a year-to-year tenancy for farmland; this may not be waived in a verbal lease.[564]

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[561] 735 ILCS 5/9-210
[562] 735 ILCS 5/9-210
[563] 735 ILCS 5/9-213
[564] *Wagner v. Kepler*, 411 Ill. 368, 376-77 (1951); 735 ILCS 5/9-205 (Notice to terminate tenancy from year to year); 735 ILCS 5/9-206 (Notice to terminate tenancy of farm land); 735 ILCS 5/9-207 (Notice to terminate tenancy for less than a year)

2. Service of the notice or demand

Any demand or notice, including the five-day notice, may be served by personally serving the tenant with a written or printed copy, by leaving a copy with a person at least 13 years old residing at or possessing the premises, or by sending a copy to the tenant by certified or registered mail, return receipt requested.[565] Because strict compliance with the notice or demand is required, service is often challenged. Accordingly, a sheriff may or may not be called upon to serve the above notices or demands. However, the facts within a sheriff's return of service are presumed to be valid.[566] If no one is in actual possession of the premises, service may be made by posting the demand or notice on the premises.[567]

C. COMPLAINT AND SERVICE

A forcible entry and detainer complaint may seek possession and/or rent.[568] However, only an order of possession may be entered against an unknown defendant, not a judgment for unpaid rent.[569] No other claims may be set forth in the complaint or determined in the proceeding.[570]

1. Service on known and unknown defendants

Generally, known defendants must be personally served, whether the forcible entry and detainer action demands only possession or possession and rent. To serve an unknown occupant, the sheriff may deliver a copy of the summons naming unknown occupants to the tenant, any unknown occupant, or any person at least 13 years old occupying the premises.[571]

If personal service is unsuccessful, the plaintiff, their agent, or their attorney may file an affidavit stating that the defendant or unknown occupant is not a resident of Illinois, has departed

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[565] 735 ILCS 5/9-211
[566] 735 ILCS 5/9-212
[567] 735 ILCS 5/9-211
[568] 735 ILCS 5/9-106; 735 ILCS 5/9-209
[569] 735 ILCS 5/9-107.5(c)
[570] 735 ILCS 5/9-106
[571] 735 ILCS 5/9-107.5(a)

from Illinois, on due inquiry cannot be found, or is concealed within Illinois so process cannot be served and stating the defendant or unknown occupant's place of residence, if known, or if not known, that upon diligent inquiry the defendant's or unknown occupant's place of residence has not been ascertained.[572] If such an affidavit is filed, the defendant may be notified of the action either by the posting and mailing or by publication and mailing.[573] The law specifies that posting and mailing must be done by a sheriff.[574]

2. Service by posting and mailing

For posting and mailing, the sheriff must post three copies of the notices in three public places in the neighborhood of the court in which the suit will be tried at least 10 days before the appearance date.[575] The notices must (1) bear the name of the court clerk and the name of the defendant, (2) state the claim being asserted against the defendant or unknown occupant and the name of the person making the claim, (3) state the time and place for the trial, (4) state that a default judgment will be entered if the defendant does not appear, and (5) state the extent of the potential default judgment.[576] If the defendant or unknown occupant's address is stated in the filed affidavit, the sheriff must mail a copy of the notice to each defendant or unknown occupant at the address so stated.[577] The sheriff must file the notice that is endorsed with statements indicating the time when and places where the sheriff posted the notices and to whom and at what addresses they mailed the notices.[578]

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[572] 735 ILCS 5/9-107
[573] 735 ILCS 5/9-107
[574] 735 ILCS 5/9-107
[575] 735 ILCS 5/9-107
[576] 735 ILCS 5/9-107
[577] 735 ILCS 5/9-107
[578] 735 ILCS 5/9-107

3. Service by publication and mailing

For publication and mailing, the procedures described in Chapter 1 of this Manual regarding service by publication will apply, and a sheriff will not become involved.

D. JUDGMENT AND ENFORCEMENT

It is important to note that the relief available to plaintiffs differs depending on the service method utilized. An order of possession (or order to vacate) may be entered against a defendant or unknown occupant who is served personally, by posting and mailing, or by publication and mailing.[579] However, a judgment for unpaid rent may only be entered against a defendant who is personally served.[580]

An order or judgment for unpaid rent is enforced like all money judgments, as described in Chapter 2 of this Manual. However, if the court enters an order or judgment for possession, the sheriff may be called upon to enforce the judgment.

1. How does the sheriff enforce an order for possession (aka eviction)?

In the past, plaintiffs had to obtain a writ of restitution (or writ of possession) to enforce the judgment for possession. This writ was "an order in aid of a judgment whereby the court in which judgment has been rendered orders that possession of the premises be immediately given up."[581] The writ authorized a sheriff to "use such force as is necessary under the circumstances" to evict the defendant.[582] The writ further authorized the sheriff to forcibly enter the property and remove any of the defendant's belongings present because the plaintiff is only entitled to

[579] 735 ILCS 5/9-107
[580] 735 ILCS 5/9-107
[581] *Bond v. Long*, 338 Ill. App. 1, 4 (4th Dist. 1949)
[582] *Bond*, 338 Ill. App. at 4

possession of the premises.[583] Today, writs have been abolished, and a court order for possession is itself sufficient for enforcement.[584]

Normally an order for possession is not enforced immediately after it is entered. Instead, the court usually orders possession for a short period of time after the order is entered to allow the defendant to pack and leave the property on his own.[585] The defendant may also attempt to negotiate a longer period with the plaintiff, but the plaintiff is not obligated to accept. If the defendant does not vacate the property by the date set by the court or agreed to by the plaintiff, the plaintiff may seek enforcement of the order of possession by following the local court or sheriffs' office procedures for scheduling an eviction by the sheriff, and a fee typically must be paid.

On the day of the eviction, typically the plaintiff or their representative must be present with the sheriff at the property. Local rules may also require the plaintiff to bring additional persons to the eviction to move the defendant's property. The sheriff must remove all persons ordered to be evicted in the order for possession. Local rules may require that the plaintiff provide the sheriff a way into the residence, such as keys, the removal of a lock, or a locksmith. The sheriff should reference and follow the county or department's local rules for enforcing the eviction order.

In the past, sheriffs often played a role in removing and/or disposing of the defendant's personal property. Sheriffs had to exercise reasonable care to ensure no damage was done to the personal property as it was removed, and a sheriff who wantonly harmed the defendant's personal property could be found liable to the extent of the damage.[586] Once the defendant's personal

[583] *Miller v. White*, 80 Ill. 580, 584 (1875)
[584] 735 ILCS 5/2-1501
[585] *See, e.g.*, Kankakee County Sheriff's Office, Guidelines for Eviction Process, https://kankakeecountysheriff.com/info/wp-content/uploads/2022/10/GUIDELINES-FOR-EVICTIONS.pdf (last visited Oct. 3, 2024)
[586] *Miller v. White*, 80 Ill. at 584

property was removed from the property, the sheriff was no longer liable for any damages, and it was the defendant's duty to safeguard their personal property.[587]

Today, sheriffs typically do not remove personal property from the premises during an eviction.

2. What if the sheriff finds unknown occupants while executing a judgment for possession?

If the initial summons and complaint do not name unknown occupants and a judgment for possession is entered in the plaintiff's favor that does not include unknown occupants, but the sheriff determines while executing the judgment that persons not included in the order are in possession of the premises, the sheriff may serve the unknown occupants by leaving a copy of the order with a person at least 13 years old who is occupying the premises.[588] If no one is present or anyone present refuses to accept the order, the sheriff may serve the unknown occupants by posting a copy of the order on the premises.[589] Whether the sheriff leaves or posts a copy of the order, the sheriff must also leave or post a notice addressed to unknown occupants that states the unknown occupants will be evicted from the premises unless they file a written petition with the clerk setting forth their legal claim for possession within seven days of the date the order is left or posted.[590] The eviction cannot proceed until the seven-day period ends.

3. Limits on enforcing an order for possession

Once the plaintiff regains possession of the property, they cannot enforce the judgment or order if the defendant ever comes back into possession of the property. Instead, the plaintiff must file an entirely new forcible entry and detainer action.[591] A judgment for possession may only be

[587] *Przybylski v Remus*, 207 Ill. App. 106, 108 (1st Dist. 1917) (citing to headnote 10)
[588] 735 ILCS 5/9-107.5(b)
[589] 735 ILCS 5/9-107.5(b)
[590] 735 ILCS 5/9-107.5(b)
[591] *Barnett v. Palmer*, 79 Ill. App. 403, 405-406 (3d Dist. 1898)

enforced up to 120 days after entry.[592] The plaintiff must move to extend the period of enforcement and provide notice of this motion to the defendant.[593] The law specifies the language that must be included in the notice.[594]

[592] 735 ILCS 5/9-117
[593] 735 ILCS 5/9-117
[594] 735 ILCS 5/9-117

CHAPTER 5: MORTGAGE FORECLOSURE

The Illinois Mortgage Foreclosure Law ("IMFL") is used to foreclose (*i.e.*, enforce the judgment) on all mortgages filed in Illinois after July 1, 1987.[595] The IMFL defined the term "mortgage" to mean "any consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation."[596] The IMFL covers mortgages and security instruments that are the functional equivalent of mortgages. Moreover, a person holding an instrument that is not a mortgage may foreclose under the IMFL or enforce its rights under the Uniform Commercial Code.[597] The provisions of IMFL apply to all mortgaged real estate. However, residential and agricultural real estate, which are specifically defined[598] in the IMFL, are subject to specific rules in some instances.

A. PARTIES TO THE FORECLOSURE PROCEEDING

Mortgage foreclosure actions have both necessary parties and permissible parties. The mortgagee (usually a bank or other institution) and mortgagor (usually an individual or individuals who have a mortgage) or other persons who owe payment on the indebtedness (but not guarantors) are necessary parties.[599] The foreclosure judgment is voidable and may be vacated if any necessary parties are not joined in the foreclosure action.[600] In addition, the IMFL sets forth various permissible parties.[601] Although the failure to join a permissible party does not affect a foreclosure judgment, the foreclosure will not foreclose the interest of a party who is not joined.[602]

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[595] 735 ILCS 5/15-1106(a)(1)
[596] 735 ILCS 5/15-1207 (the term "mortgage" includes, without limitation: (a) mortgages securing "reverse mortgage" loans; (b) mortgages securing "revolving credit" loans; (c) deeds conveying real estate; and (d) equitable mortgages)
[597] 735 ILCS 5/15-1106(b)
[598] 735 ILCS 5/15-1219 (regarding residential real estate); 735 ILCS 5/15-1201 (regarding agricultural real estate)
[599] 735 ILCS 5/15-1501(a)
[600] *Moenning v. Commonwealth Edison*, 134 Ill. App. 3d 468, 472 (1st Dist. 1985)
[601] 735 ILCS 5/15-1501(b), (c)
[602] 735 ICLS 5/15-1501(a); 735 ILCS 5/15-1509(c)

B. METHODS OF TERMINATING THE MORTGAGOR'S INTEREST

Judicial foreclosure is the primary method of foreclosure provided in the IMFL.[603] However, there are several alternatives to be aware of, including strict foreclosure,[604] deed in lieu of foreclosure,[605] consent foreclosure,[606] and power-of-sale foreclosure.[607]

In a strict foreclosure, the foreclosure decree vests title in the mortgagee if the mortgagor fails to redeem during the redemption period, and there is no judicial sale; strict foreclosures are allowed under the IMFL only (1) if the mortgagor is insolvent, (2) the real estate is worth less than the debt, and (3) a deficiency judgment is waived.[608] With a deed in lieu of foreclosure, the mortgagee accepts a deed from the mortgagor instead of foreclosing; a deed in lieu of foreclosure may only be taken after a mortgagor defaults, not simply because the mortgagor is experiencing financial difficulty.[609] In a consent foreclosure, the mortgagor consents to a foreclosure, and the need for judicial sale may be avoided; however, certain other parties to the foreclosure may have the right to object to a consent foreclosure.[610] In a power-of-sale foreclosure, the mortgage document allows the mortgagee to sell the real estate after minimal public notice; power-of-sale foreclosures are now prohibited under the IMFL.[611]

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[603] 735 ILCS 5/15-1404
[604] *See* 735 ILCS 5/15-1403
[605] *See* 735 ILCS 5/15-1401
[606] *See* 735 ILCS 5/15-1402
[607] *See* 735 ILCS 5/15-1405
[608] 735 ILCS 5/15-1403; *Great Lakes Mortg. Corp. v. Collymore*, 14 Ill. App. 3d 68, 71 (1st Dist. 1973)
[609] 735 ILCS 5/15-1401
[610] 735 ILCS 5/15-1402
[611] 735 ILCS 5/15-1405

C. JUDICIAL FORECLOSURE

As mentioned above, judicial foreclosures are the primary foreclosure method pursuant to the IMFL. The mortgagee's interest in the property is terminated by the judicial sale process.[612]

1. Foreclosure complaint and service

The information that must be included in a foreclosure complaint is specifically set forth in the IMFL and use of the IMFL form complaint may provide a plaintiff with additional protections.[613] A copy of the IMFL form complaint is included on pages 31-32 of the FORMS APPENDIX. Service of the foreclosure complaint must be done in the same manner as required for service of process, as detailed in Chapter 1 of this Manual. For residential real estate foreclosures, a homeowner notice must be attached to the summons.[614] The homeowner notice sets forth the homeowner's rights with respect to possession, ownership, reinstatement, redemption, surplus, workout options, payoff, advice and representation.[615] The required homeowner notice of foreclosure is set forth in the IMFL, and a copy is included on pages 33-34 of the FORMS APPENDIX.

2. Notice of foreclosure

Plaintiffs or their attorneys must execute a notice of foreclosure that contains (1) the names of all plaintiffs and the case number, (2) the court, (3) the names of title holders of record, (4) a legal description of the real estate sufficient to identify it with reasonable certainty, (5) a common address or description of the location of the real estate, and (6) identification of the mortgage sought to be foreclosed.[616] The notice of foreclosure must be recorded in the county where the

[612] 735 ILCS 5/15-1404; *In re Kohler*, 107 B.R. 167, 169 (Bankr. S.D. Ill. 1989)
[613] 735 ILCS 5/15-1504
[614] 735 ILCS 5/15-1504.5
[615] 735 ILCS 5/15-1504.5
[616] 735 ILCS 5/15-1503(a)

mortgaged real estate is located.[617] A notice of foreclosure made in accordance with 5/15-1503 and recorded in the county in which the mortgaged real estate is located is constructive notice to every person claiming an interest or lien on the mortgaged real estate, whose interest or lien has not been recorded prior to the recording of such notice of foreclosure.[618] An incorrect common address or description of the location, or an immaterial error in identifying the plaintiff or title holder of record, does not invalidate the notice of foreclosure.[619]

D. REINSTATEMENT AND REDEMPTION

Generally, mortgagors have both reinstatement and redemption rights.[620] To reinstate, the mortgagor must cure all existing defaults, other than the payment of the portion of the principal that would not have been due had no acceleration occurred and must pay all costs and expenses that the mortgage requires to be paid in the event of default.[621] The mortgagor must reinstate within 90 days after the date each mortgagor has been served with summons or by publication or has otherwise submitted to the court's jurisdiction.[622] If service was by publication, the first date of publication is used for the calculation.[623] Upon reinstatement, the foreclosure and any other proceedings for the collection or enforcement of the obligation secured by the mortgage must be dismissed and the mortgage remains in full force and effect as if no acceleration or default had occurred.[624] The mortgagor is not limited to a single reinstatement but, if the court makes an express finding that the mortgagor has reinstated, the mortgagor may not reinstate under the same mortgage for 5 years after the foreclosure is dismissed.[625]

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[617] 735 ILCS 5/15-1503(a)
[618] 735 ILCS 5/15-1503(a)
[619] 735 ILCS 5/15-1503(a)
[620] 735 ILCS 5/15-1601
[621] 735 ILCS 5/15-1602
[622] 735 ILCS 5/15-1602
[623] 735 ILCS 5/15-1602
[624] 735 ILCS 5/15-1602
[625] 735 ILCS 5/15-1602

To redeem, the mortgagor must pay the principal amount due, as well as all required interest, costs and expenses, within the redemption period.[626] A mortgagor of residential property must redeem within 7 months from date of service, or 3 months from the date of the foreclosure judgment, whichever is later; other mortgagors must redeem within 6 months from date of service, or 3 months from the date of the foreclosure judgment, whichever is later.[627] There are certain situations in which the redemption period is shortened.[628] The procedure the mortgagor must follow to redeem is set forth in the IMFL.[629] The IMFL further provides a special right of redemption if the purchaser at the sale of residential real estate was a mortgagee who was a party to the foreclosure and the sale price was less than the amount required to redeem.[630]

E. JUDICIAL SALE

The property must be sold at a judicial sale upon the entry of a foreclosure judgment unless there is a consent foreclosure or strict foreclosure.[631] The judicial sale occurs after the reinstatement and redemption periods expire or after the right(s) are waived and a foreclosure judgment is entered.[632]

1. Public notice of the sale

The mortgagee must give public notice of the sale that includes: (1) the name, address, and phone number of the person to contact for information about the real estate; (2) the common address and any common description of the real estate; (3) a legal description of the real estate sufficient to identify it with reasonable certainty; (4) a description of the improvements on the real estate; (5) any times specified in the judgment when the real estate may be inspected before the

[626] 735 ILCS 5/15-1603(d)
[627] 735 ILCS 5/15-1603(b)(1), (2)
[628] 735 ILCS 5/15-1603(b)(3), (4)
[629] 735 ILCS 5/15-1603(f)
[630] 735 ILCS 5/15-1604
[631] 735 ILCS 5/15-1507(a); 735 ILCS 5/15-1401; 735 ILCS 5/15-1402; 735 ILCS 5/15-1403
[632] 735 ILCS 5/15-1507(b)(1), as amended by P.A. 103-930, §5 (S.B. 2919) (eff. Jan. 1, 2025)

sale; (6) the time and place of the sale; (7) the terms of the sale; (8) the foreclosure case title, number, and court; and (9) any court-ordered information.[633] Regarding public notice as to the time and place of the sale, beginning on January 1, 2025, such notice must include whether the sale will take place online, in person, or both; and the website where the online bidding may take place, if applicable.[634] Additional information is required for condos and units of a common interest community.[635] The notice of sale must be published once each week for at least three consecutive calendar weeks (Sunday through Saturday).[636] The first notice must be published not more than 45 days before the sale, and the last notice must be published not less than 7 days prior to the sale.[637] The specific requirements for newspaper publication are set forth in the IMFL.[638]

2. Actual notice of the sale

The mortgagee must also give actual notice to all parties in the action who have appeared and have not been found by the court to be in default for failure to plead.[639] The actual notice must be provided not more than 45 days and not less than 7 days prior to the sale.[640] The notice may be served as a summons or as prescribed by Illinois Supreme Court Rule 105. Rule 105 allows service in three ways: (1) by any method provided by law for service of summons, as described in Chapter 1 of this Manual; (2) by prepaid certified or registered mail, return receipt requested; and (3) by publication.[641] Accordingly, a sheriff may or may not become involved in serving the notice. A

[633] 735 ILCS 5/15-1507(c)(1)(A)-(H)
[634] 735 ILCS 5/15-1507(c)(1)(F)(i)-(ii), as amended by P.A. 103-930, §5 (S.B. 2919) (eff. Jan. 1, 2025)
[635] 735 ILCS 5/15-1507(c)(1)(H-1 – H2)
[636] 735 ILCS 5/15-1507(c)(2)
[637] 735 ILCS 5/15-1507(c)(2)
[638] *See* 735 ILCS 5/15-1507(c)(2)
[639] 735 ILCS 5/15-1507(c)(3)
[640] 735 ILCS 5/15-1507(c)(3)
[641] *See* 735 ILCS 5/15-1507(c)(3); Ill. Sup. Ct. R. 105(b)

copy of the notice and a certificate of service must be filed with the court.[642] New notice must be given if the sale is continued or adjourned more than 60 days.[643]

3. Who may conduct the sale?

The IMFL provides that the sale may be conducted by a judge or sheriff.[644] Moreover, the IMFL specifically provides that the court may appoint an official or other person to be the officer to conduct the sale.[645] In such case, the appointed person must conduct the sale and may not delegate his authority to conduct the sale to another person.[646] Accordingly, a sheriff may or may not become involved with foreclosure in conducting the judicial sale. The IMFL does not address whether a non-sheriff officer conducting a sale is required to post a bond.

4. How is the sale conducted?

There is a conflict within the IMFL as to whether the sale must be by public auction. In one section, the IMFL requires the foreclosure sale to be conducted by public auction.[647] In another section, however, the IMFL provides that the foreclosure judgment may provide that the property be sold by other means.[648] Starting January 1, 2025, the IMFL will allow the mortgagee to request that the judge, sheriff, or other person conduct the sale either in person, online, or both, if available.[649] This conflict makes it difficult to determine whether a sheriff may conduct a sale by any means other than public auction. Sheriffs should consult their County State's Attorney, who by law is their legal advisor.

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[642] 735 ILCS 5/15-1507(c)(3)
[643] 735 ILCS 5/15-1507(c)(4)
[644] 735 ILCS 5/15-1507(b)(1), as amended by P.A. 103-930, §5 (S.B. 2919) (eff. Jan. 1, 2025)
[645] 735 ILCS 5/15-1506(f)(3)
[646] *In re Fitch*, 102 B.R. 139, 141 (Bankr. N.D. Ill. 1989)
[647] 735 ILCS 5/15-1507(b)
[648] 735 ILCS 5/15-1506(f)(1) (providing for "a manner of sale other than public auction")
[649] 735 ILCS 5/15-1507(b)(2), as amended by P.A. 103-930, §5 (S.B. 2919) (eff. Jan. 1, 2025)

The sheriff must conduct the sale according to any terms and conditions set forth by the court in the foreclosure judgment, including minimum price.[650] If the court finds that the sheriff failed to comply with any terms and conditions of the foreclosure judgment and that there is good cause, the court may invalidate or set aside the sale.[651] Moreover, failure to comply with the notice requirements for the sale may result in the sale being set aside.[652]

5. The receipt of sale

Upon and at the sale of mortgaged real estate, the sheriff must give the purchaser a receipt of sale.[653] The receipt must (1) describe the real estate purchased and state the amount bid, (2) the amount paid, (3) the total amount paid to date, and (4) the amount still to be paid.[654] After each subsequent payment an additional receipt must be given.[655]

6. The certificates of sale

After the amount bid is paid in full, the sheriff must issue and give the purchaser two certificates of sale.[656] The certificate must (1) be in recordable form; (2) describe the real estate purchased; and (3) state the date and place of sale, the amount paid, and that it is subject to confirmation by the court.[657] The duplicate certificate may be recorded.[658]

7. The sheriff's report and confirmation of the sale

The sheriff must promptly make a report to the court and include a copy of all receipts and the certificate of sale.[659] Upon motion and notice in accordance with court rules applicable to

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[650] 735 ILCS 5/15-1507(b); *Illini Federal Sav. & Loan Ass'n v. Doering*, 162 Ill. App. 3d 768, 772 (5th Dist. 1987)
[651] 735 ILCS 5/15-1508(d)
[652] 735 ILCS 5/15-1507(c); 735 ILCS 5/15-1508(c)
[653] 735 ILCS 5/15-1507(e)
[654] 735 ILCS 5/15-1507(e)
[655] 735 ILCS 5/15-1507(e)
[656] 735 ILCS 5/15-1507(f)
[657] 735 ILCS 5/15-1507(f)
[658] 735 ILCS 5/15-1507(f)
[659] 735 ILCS 5/15-1508(a)

motions generally, the court must conduct a hearing to confirm the sale.[660] Notice must be served on all parties.[661] For residential real estate, the mortgagor must be given notice of the confirmation hearing, even if the mortgagor has been defaulted, and the notice must comply with the requirements set forth in the IMFL.[662]

The IMFL provides that the court must confirm the sale unless (1) proper notice was not given, (2) the terms of the sale were unconscionable, (3) the sale was conducted fraudulently, or (4) justice was not otherwise done.[663] The party opposing the sale has the burden to prove that there are grounds to disallow the sale.[664] Generally, a low sale price alone is not sufficient grounds to disallow the sale unless there is also fraud, mistake, or an illegal practice.[665]

8. The deed

After the sale is confirmed and the purchase price is paid in full, the court may order the sheriff to issue a deed to the person holding the certificate of sale.[666] The deed must identify the court and case caption.[667]

F. THE PERSONAL DEFICIENCY AND APPLICATION OF SALE PROCEEDS

After the sale, a mortgagor has the right to seek a personal deficiency against a liable party if (1) it is authorized, (2) it is requested in the complaint and proven on the report of sale, and (3) the person liable was personally served.[668] The mortgagor need not personally serve the person

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[660] 735 ILCS 5/15-1508(b)
[661] 735 ILCS 5/15-1508(b)
[662] 735 ILCS 5/15-1508(b-5)
[663] 735 ILCS 5/15-1508(b)
[664] *Firstar Bank NA v. Goldman*, 2004 WL 1212099, at *2 (N.D. Ill. June 2, 2004) (applying Illinois law)
[665] *Lyons Sav. & Loan Ass'n v. Gash Ass'n*, 189 Ill. App. 3d 684, 688-89 (1st Dist. 1989); *Illini Federal Sav. & Loan Ass'n*, 162 Ill. App. 3d at 771-72
[666] 735 ILCS 5/15-1509(a)
[667] 735 ILCS 5/15-1509(a)
[668] 735 ILCS 5/15-1508(e)

liable if that person has already entered their appearance in the foreclosure action.[669] A deficiency judgment becomes a lien and is enforced like any other judgment for the payment of money, as discussed in Chapter 3 of this Manual.[670] The mortgagee may waive the right to a deficiency judgment in the mortgage document or during the foreclosure proceeding.[671] Moreover, under the so-called "full debt bid rule," a mortgagee is deemed to have received repayment of its loan in full if it successfully bids the full amount of the loan.[672] Such a bid is construed as completely satisfying the mortgage debt as there is no longer a deficiency.[673]

The IMFL provides how the proceeds from a sale are to be applied to expenses, fees, and claims.[674] Any surplus must be held by the person appointed by the court to conduct the sale until the court orders its distribution.[675] If there is a surplus, the person conducting the sale must send written notice to all parties to the proceeding advising them of the amount of surplus, and that the surplus must be held until a party obtains a court order for its distribution or until, in the absence of an order, the surplus is forfeited to the State.[676]

G. POSSESSION ISSUES

The IMFL sets forth the circumstances under which the mortgagor may be entitled to remain in possession of the property prior to the foreclosure judgment.[677] In some cases, a mortgage entitled to possession will request, and the court will order, that a receiver be appointed

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669 735 ILCS 5/15-1508(e)
670 735 ILCS 5/15-1508(f)
671 *Bank of Benton v. Cogdill*, 118 Ill. App. 3d 280, 289 (5th Dist. 1983); 735 ILCS 5/15-1401; 735 ILCS 5/15-1402(c)
672 *Partel, Inc. v. Harris Trust & Sav. Bank*, 106 Ill. App. 3d 962, 965 (1st Dist. 1982) (quoting *Whitestone Savings & Loan Association v. Allstate Insurance Co*., 28 N.Y.2d 332, 335-37 (1971) ("Because a mortgagee is entitled to one satisfaction of his debt and no more, the bidding in of the debt to purchase the mortgaged property, thus cutting off other lower bidders, has always constituted a satisfaction of the debt [Citations]. *** [T]he mortgagee has voluntarily converted the debt into the property and has done so by taking the property in satisfaction of the debt.”))
673 *Gaskin v. Smith*, 375 Ill. 59, 67 (1940); *Partel*, 106 Ill. App. 3d at 965-66
674 735 ILCS 5/15-1512(a)(b)(c)
675 735 ILCS 5/15-1512(d)
676 735 ILCS 5/15-1512(d)
677 735 ILCS 5/15-1701(b) (subject to certain exceptions mortgagor shall be entitled to prejudgment possession of the real estate); 735 ILCS 5/15-1219 (defining residential real estate)

to manage the property.[678] The receiver has the duty to manage the property as a prudent person would, and the court may require the receiver to post a bond.[679] If the mortgagee is placed in possession, it has the same duty to manage the property as a prudent person would, and the court may require a bond.[680] If the mortgagee requests to be placed in possession or that a receiver be appointed, and the mortgagor has not yet been served with the foreclosure complaint, the mortgagor must be served with the request in the same manner as required for service of process, as detailed in Chapter 1 of this Manual.[681]

After the sale, the order confirming the sale must include an order of possession commencing no earlier than 30 days after the entry of the order.[682] Unless the mortgagee follows the procedures set forth in the IMFL to gain possession prior to the expiration of the 30-day period, the mortgagor has the right to remain in possession until possession is ordered.[683] The purchaser must honor existing leases as required by federal law and the IMFL.[684]

Rental properties, corresponding leases, and rent raise additional issues for pre-judgment and post-judgment possession. The mortgagor is entitled to rents as long as they stay in possession and does not have to account to the mortgagee for rents collected.[685] If a mortgagee is placed in possession, a receiver is appointed, or an order confirming sale is entered, certain notices must be given to all known occupants of the change in control within 21 days. The mortgagee, receiver or

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[678] 735 ILCS 5/15-1702(a) ("Whenever a mortgagee entitled to possession so requests, the court shall appoint a receiver"); 735 ILCS 5/15-1704
[679] 735 ILCS 5/15-1704(c); 735 ILCS 5/15-1705(b)
[680] 735 ILCS 5/15-1703(a)(3); 735 ILCS 5/15-1704(c); 735 ILCS 5/15-1705(a)
[681] 735 ILCS 5/15-1706(d)
[682] 735 ILCS 5/15-1508(g)
[683] 735 ILCS 5/15-1701(b)(1), (c)(2)
[684] *See* 12 U.S.C. § 5201, *et seq*.; *see also* "Protecting Tenants at Foreclosure Act of 2009", Public Law 111-22 (May 20, 2009) (codified at 12 U.S.C. sec. 5220 note); 735 ILCS 5/15-1701(h)(5)
[685] *In re Wheaton Oaks Office Partners Ltd.*, 27 F.3d 1234, 1241 (7th Cir. 1994) (citing *De Kalb Bank v. Purdy*, 166 Ill. App. 3d 709, 715 (2d Dist. 1988); *Taylor v. Osman*, 239 Ill. App. 569, 575 (2d Dist. 1926); and 27 Illinois Law and Practice, Mortgages § 117 at 201 (1956))

purchaser must give written notice that (1) identifies the occupant being served by the known name; (2) informs the occupant that the property is subject to foreclosure and that the control of the property has changed; (3) provides the name, address, and telephone number of the individual or entity occupants may contact with concerns or repair requests; (4) states, in substantially similar language: "This is NOT a notice to vacate the premises. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights that you may have."; (5) includes the case name, number, and court where the foreclosure is pending; and (6) provides instructions to pay future rent, if any.[686] The notice must be served by personal service or substitute service to the known occupant, as detailed in Chapter 1 of this Manual, or mailed by first-class mail to the known occupant.[687] The IMFL does not specify who may serve the notice.[688] Accordingly, a sheriff may or may not become involved. The mortgagee or receiver must also post a written notice on the primary entrance of each dwelling unit that (1) informs the occupant that the property is subject to foreclosure and that the control of the property has changed; (2) includes the language "This is NOT a notice to vacate the premises."; (3) provides the name, address, and telephone number of the individual or entity occupants may contact with concerns or repair requests; and (4) provides instructions to pay future rent, if any.[689]

[686] 735 ILCS 5/15-1703(a-5)(2); 735 ILCS 5/15-1704(f)(2); 735 ILCS 5/15-1508.5(a)(2)
[687] 735 ILCS 5/15-1703(a-5)(3); 735 ILCS 5/15-1704(f)(3); 735 ILCS 5/15-1508.5(b)
[688] 735 ILCS 5/15-1703(a-5)(3); 735 ILCS 5/15-1704(f)(3); 735 ILCS 5/15-1508.5(b)
[689] 735 ILCS 5/15-1703(a-5)(6); 735 ILCS 5/15-1704(f)(6); 735 ILCS 5/15-1508.5(e)

CHAPTER 6: DOMESTIC VIOLENCE ORDERS OF PROTECTION

Due to the high rates of divorce in society and increasing attention devoted to incidents of domestic violence, sheriffs are increasingly called upon to serve domestic violence orders of protection. While actual service of such orders is fairly straightforward, the extreme importance and sensitivity of these orders makes it imperative that sheriffs understand the procedures involved.

The Illinois statutes governing domestic violence are found in the Illinois Domestic Violence Act of 1986 (the "Act").[690] Different portions of the Act specify the individuals entitled to the Act's protection, how alleged violators are served and/or notified of any lawsuits filed seeking relief, and the repercussions that those who violate the terms of a domestic violence order of protection may face. Orders of protection are governed by Article II of the Act,[691] which will be discussed in more detail below.

A. PROTECTED INDIVIDUALS

There are five classes of individuals entitled to Article II's protections:[692]

(1) any person abused[693] by a family or household member;

(2) any high-risk adult with disabilities who is abused, neglected, or exploited by a family or household member;

[690] 750 ILCS 60/101, *et. seq.*
[691] 750 ILCS 60/201-227.1
[692] 750 ILCS 60/201(a)
[693] 750 ILCS 60/103(1) (defining "abuse" as "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or [person acting in the place of a parent]")

(3) any minor child or dependent adult in the care of a person abused by a family or household member or a victimized high-risk adult with disabilities;

(4) any person residing or employed at a private home or public shelter which is housing an abused family or household member; and

(5) any of the following persons if the person is abused by a family or household member of a child:

(A) a foster parent of that child if that child has been placed in the foster parent's home by the Department of Children and Family Services or by another state's public child welfare agency;

(B) a legally appointed guardian or legally appointed custodian of that child;

(C) an adoptive parent of that child; or

(D) a prospective adoptive parent of that child if the child has been placed in the prospective adoptive parent's home pursuant to the Adoption Act or pursuant to another state's law.

The formal definition of "family or household member" is broad and construed liberally by the courts.[694] In this context, "family or household members" include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriages; persons who shared or used to share a common dwelling; persons who have or allegedly have a child in common; persons who share or allegedly share a blood relationship through a child; persons who are or used to be dating or engaged; disabled persons and their personal assistants; and certain caregivers of long term care facilities.[695] The law does not consider casual

[694] 750 ILCS 60/103(6); *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1021-22 (4th Dist. 2008)

[695] 720 ILCS 5/12-4.4a; 750 ILCS 60/103(6); *In re Marriage of McCoy*, 253 Ill. App. 3d 958, 963 (4th Dist. 1993) ("Once one member of a household is abused, the court has maximum discretionary power to fashion the scope of an

acquaintanceship or ordinary fraternization in business or social settings to be a dating relationship.[696]

For a high-risk adult with disabilities, a "family or household member" includes any person who has responsibility for the high-risk adult resulting from a family relationship or by assuming all or part of the care voluntarily, by express or implied contract, or by court order.[697] A "high-risk adult with disabilities" is an individual 18 years of age or older with a physical or mental disability that impairs the individual's ability to seek or obtain protection from abuse, neglect, or exploitation.[698]

B. PETITION FOR ORDER OF PROTECTION

A request made to a court for a domestic violence order of protection is called a "petition for an order of protection." Only the following five categories of individuals can file a petition for an order of protection:

(1) a person filing for themselves who has been abused by a family or household member or by any person on behalf of a minor child or an adult who has been abused by a family or household member and who, because of age, health, disability, or inaccessibility, cannot file the petition;

(2) any person on behalf of a high-risk adult with disabilities who has been abused, neglected, or exploited by a family or household member ;

(3) any of the following persons if the person is abused by a family or household member of a child:

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order of protection to include other household members or relatives who may be at risk of retaliatory acts by the abuser.")

[696] 750 ILCS 60/103(6)

[697] 750 ILCS 60/103(6)

[698] 750 ILCS 60/103(8)

(A) a foster parent of that child if the child has been placed in the foster parent's home by the Department of Children and Family Services or by another state's public child welfare agency;

(B) a legally appointed guardian or legally appointed custodian of that child;

(C) an adoptive parent of that child; or

(D) a prospective adoptive parent of that child if the child has been placed in the prospective adoptive parent's home pursuant to the Adoption Act or pursuant to another state's law.

(4) a crime victim who was abused by an offender prior to the incarceration of the offender in a penal institution and such offender is incarcerated in a penal institution at the time of the filing of the petition; or

(5) any person who has previously suffered abuse by a person convicted of (1) domestic battery, aggravated domestic battery, aggravated battery, or any other offense that would constitute domestic violence; or (2) a violent crime, as defined in Section 3 of the Rights of Crime Victims and Witnesses Act[699], committed against another person.[700]

Illinois law also provides that the petitioner (*i.e.*, the individual seeking the order) and/or the respondent (*i.e.*, the alleged abuser) may be a minor child.[701] The petition can seek relief for any individuals entitled to the protections of Article II of the Act, as detailed above.

A petition for an order of protection may be filed as its own separate civil suit standing alone or as part of an already-pending civil or criminal matter.[702] The petition may be joined with

[699] *See* 725 ILCS 120/3
[700] 750 ILCS 60/201(b)
[701] 750 ILCS 60/214(a); *Wright v. Wright*, 221 Ill. App. 3d 659, 662 (4th Dist. 1991)
[702] 750 ILCS 60/202(a)

a pending civil suit when that civil suit is for a divorce, a declaration of parentage, or child support so long as the petitioner and the respondent are a party to or the subject of that suit.[703] The petition may also be joined with a civil suit when the civil suit is a guardianship action under the Probate Act, a suit for involuntary commitment to a mental institution, or any suit under the Juvenile Court Act, other than a delinquency suit, if either the petitioner or the respondent is a party to these actions.[704] Joinder of a petition for an order of protection with a criminal case or a delinquency action may be done in certain circumstances.[705]

1. What remedies are available under Article II of the Act?

There are 20 remedies that are specifically mentioned in Article II: (1) prohibition of abuse, neglect, or exploitation; (2) grant of exclusive possession of a residence; (3) stay away order and additional prohibitions; (4) counseling; (5) physical care and possession of a minor child; (6) temporary allocation of parental responsibilities, including significant decision-making; (7) parenting time; (8) removal or concealment of a minor child; (9) order to appear; (10) possession of personal property; (11) protection of property; (12) protection of animals; (13) order for payment of support; (14) order for payment of losses; (15) prohibition of entry onto real property; (16) prohibition of firearm possession; (17) prohibition of access to records; (18) order for payment of shelter services; (19) order for injunctive relief; and (20) transfer of telephone services.[706]

To grant any of these remedies, the court must determine that the petitioner was abused by a family or household member or that the petitioner is a high-risk adult with disabilities who was abused, neglected, or exploited.[707] The court is not allowed to require physical manifestations of

[703] 750 ILCS 60/202(a)(2)
[704] 750 ILCS 60/202(a)(2)
[705] 750 ILCS 60/202(a)(3); 725 ILCS 5/112A-20
[706] 750 ILCS 60/214(b)
[707] 750 ILCS 60/214(a)

abuse by the petitioner to find that abuse has occurred.[708] Additionally, a petitioner must not be denied an order of protection simply because they or the respondent are a minor.[709] The petitioner must also satisfy the appropriate requirements for an emergency order, an interim order, or a plenary order depending on what type of relief they are seeking from the court, as will be further explored below.[710]

2. Service of an order of protection

Regardless of whether a petition for an order of protection is filed separately or joined with a pending civil or criminal suit, the circuit court clerk must issue a summons as the law considers it to be a distinct cause of action in itself.[711] The summons must be served at the earliest time by a sheriff, other law enforcement officer, or an appointed special process server, and must take precedence over other summonses except those of a similar emergency nature.[712] Service of a summons for a petition for an order of protection is governed by the rules for service on individuals set forth in Chapter 1 of this Manual, with the nuance that the summons must require the respondent to answer or appear within seven days of service instead of the usual 30 days set forth in Illinois Supreme Court Rule 101(d).[713]

If the petition for an order of protection is joined with a pending civil or criminal case, formal service of summons is unnecessary as the summons may be served by personally delivering it to the respondent in open court in the pending suit.[714] If the pending suit is a civil case in which the court has obtained jurisdiction over the respondent, and respondent has filed a general

[708] 750 ILCS 60/214(a)
[709] 750 ILCS 60/214(a)
[710] 750 ILCS 60/214(a)
[711] 750 ILCS 60/210(a)
[712] 750 ILCS 60/210(c)
[713] 750 ILCS 60/210(a) ("The summons shall be in the form prescribed by Supreme Court Rule 101(d), except that it shall require respondent to answer or appear within 7 days."); Ill. Sup. Ct. R. 101(d)
[714] 750 ILCS 60/210(a)(1)

appearance, it is not necessary that a separate summons be issued.[715] The original notice of a hearing on a petition for an order of protection may be given, and the documents served, in accordance with Illinois Supreme Court Rules 11 and 12.[716] If the respondent is represented by an attorney of record in the pending lawsuit, the attorney must be served instead of the respondent and, unless otherwise specified by rule or order of the court, documents must be served electronically.[717] If a self-represented party does not have an e-mail address, or if service other than electronic service is specified by rule or order of the court, or if extraordinary circumstances prevent timely electronic service in a particular instance, service of documents may be made by one of the following alternative methods: (1) personal service, (2) substitute service, or (3) certified or registered mail.[718] If an emergency order of protection is sought without notice in a pending suit, the respondent must be served personally in open court in that pending suit.[719] In any event, these notices must contain language indicating that a two-year plenary order of protection may be entered by default for any remedies sought in the petition if the respondent fails to appear.[720] Although it is not likely that sheriffs will be called upon to perform service according to this paragraph, a general knowledge of the alternative methods of service applicable could prove useful in certain circumstances.

Notably, if certain remedies are sought by a petitioner such as counseling, payment of support, payment of losses, and payment of shelter services, these remedies may only be granted if the respondent is personally served with process, has answered or has made a general appearance in the matter.[721] All remaining remedies available to a petitioner may be granted if (1) the

[715] 750 ILCS 60/210(a)(2); 750 ILCS 60/210.1(a); Ill. Sup. Ct. R. 11; Ill. Sup. Ct. R. 12
[716] 750 ILCS 60/210.1(a)
[717] Ill. Sup. Ct. R. 11(a),(c)
[718] Ill. Sup. Ct. R. 11(c)(2)(i)-(iv); *See* 750 ILCS 60/210(a)(2); *See* 750 ILCS 60/210.1(a)
[719] 750 ILCS 60/210(a); 750 ILCS 60/210.1(a)
[720] 750 ILCS 60/210.1(b)
[721] 750 ILCS 60/210(d)

respondent was served by substitute service or publication service; (2) the petitioner has made all reasonable efforts to personally serve the respondent, but the respondent cannot be found; and (3) the respondent files an affidavit or presents sworn testimony as to their efforts.[722] The petition, any supporting affidavits, and any emergency orders of protection which may have been issued must be attached to the summons.[723]

Sheriffs should ensure procedures are established in their departments to guarantee these summonses are served quickly and given the requisite special treatment required by law.

3. Service of notice of hearings on anything related to orders of protection

Except as provided above, notice of hearings on petitions or motions related to orders of protection must be served by personal service, by substitute service, or by certified or registered mail.[724] If the respondent has an attorney, the attorney must be served instead of the respondent and may be served by personal service, by substitute service, by certified or registered mail, or by facsimile transmission or e-mail service, if the attorney has consented to such.[725]

C. THREE TYPES OF ORDERS OF PROTECTION

If a court grants the petitioner's order of protection, the order will take one of three forms: an emergency order of protection, an interim order of protection, or a plenary order of protection.[726]

1. The emergency order of protection

Despite their name, petitions for emergency orders of protection are a common occurrence and are frequently granted by Illinois judges. In order to acquire an emergency order of protection,

[722] 750 ILCS 60/210(e)
[723] 750 ILCS 60/210(a)
[724] *See* 750 ILCS 60/211; Ill. Sup. Ct. R. 11; Ill. Sup. Ct. R. 12
[725] 750 ILCS 60/211; Ill. Sup. Ct. R. 11(a); Ill. Sup. Ct. R. 12
[726] 750 ILCS 60/217; 750 ILCS 60/218; 750 ILCS 60/219

the petitioner is not required to notify the respondent of the emergency proceedings being filed against them,[727] so the court only hears one version of the events in an *ex parte* hearing, *i.e*., the petitioner's version. To obtain an emergency order of protection, the petitioner must establish, for each remedy sought, that (1) the court has jurisdiction; (2) that the petitioner was abused by a family or household member or that the petitioner is a high-risk adult with disabilities who was abused, neglected, or exploited; and (3) that there is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent.[728] The specific bases to establish good cause to grant each remedy are set forth in the Act.[729] Emergency orders cannot include counseling, legal custody, payment of support, or remedies involving monetary compensation.[730] Emergency orders are effective for not less than 14 and not more than 21 days[731] and may be extended by the court if a petitioner succeeds in a later-filed motion for extension.[732]

2. The interim order of protection

An interim order of protection may be granted regardless of whether the respondent appears at the hearing, but may only be granted if the respondent was duly served with notice of the hearing.[733] To obtain an interim order of protection, the petitioner must establish, for each remedy sought, that (1) the court has jurisdiction; (2) that the petitioner was abused by a family or household member or that the petitioner is a high-risk adult with disabilities who was abused, neglected, or exploited; and (3) that the respondent filed an appearance, was properly served as discussed above, or was not served despite diligent attempts to perform service.[734] An interim order

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[727] 750 ILCS 60/217(a)(3)
[728] 750 ILCS 60/217(a); *See* 750 ILCS 60/208; 750 ILCS 60/214(a)
[729] 750 ILCS 60/217(a)(3)(i)-(iii)
[730] 750 ILCS 60/217(a)
[731] 750 ILCS 60/220(a)(1)
[732] 750 ILCS 60/220(e)
[733] 750 ILCS 60/218(a); *See* 750 ILCS 60/211
[734] 750 ILCS 60/218(a); *See* 750 ILCS 60/208; *See* 750 ILCS 60/214(a)

may not include counseling, payment of support, or remedies involving monetary compensation, unless the respondent has filed a general appearance or has been personally served.[735] Interim orders are effective for up to 30 days[736] and may be extended by the court if a petitioner succeeds in a later-filed motion for extension. [737]

3. The plenary order of protection

Because it is for the longest duration of the three types of orders of protection, a plenary order of protection may only be issued if the respondent was duly served with notice of the hearing.[738] To obtain a plenary order of protection, the petitioner must establish, for each remedy requested, that (1) the court has jurisdiction; (2) that the petitioner was abused by a family or household member or that the petitioner is a high-risk adult with disabilities who was abused, neglected, or exploited; (3) that the respondent filed an appearance or was properly served; and (4) that the respondent has answered or is in default.[739] Therefore, like interim orders, plenary orders may not be issued unless the respondent has been notified of the hearing date; however, unlike interim orders, plenary orders also require the respondent have answered or be in default. Plenary orders of protection are effective for up to two years[740] and may be extended by the court if a petitioner succeeds in a motion for extension.[741] In 2021, the Fourth District Appellate Court determined that there is no limit to the number of times a judge can extend a two-year plenary order of protection under the Act, provided, of course, each extension request is timely sought by the petitioner and the circumstances warrant an extension.[742]

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[735] 750 ILCS 60/218(a)
[736] 750 ILCS 60/220(a)(2)
[737] 750 ILCS 60/220(e)
[738] 760 ILCS 60/219; *See* 750 ILCS 60/211
[739] 760 ILCS 60/219; *See* 750 ILCS 60/208; 750 ILCS 60/214(a)
[740] 750 ILCS 60/220(b)(0.05)
[741] 750 ILCS 60/220(e)
[742] *Dale v. Bennett*, 2021 IL App (4th) 200188, ¶ 39

4. Required contents of all orders of protection

All orders must contain the following: (1) each remedy granted, in reasonable detail; (2) the reason for denial of any remedies sought; (3) the name of each petitioner found to be abused, neglected, or exploited by the respondent and a statement that the respondent is a family or household member of the petitioner; (4) the name of every person protected by the order and that they are entitled to the protections of the Act; (5) a reservation by the court of the right to rule on any remedies not addressed in the order; (6) the date and time the order was entered, the type of the order, and its duration; (7) the date, time, and place for a scheduled hearing on extension of the order or for another broader or longer order; (8) the reason for entering any remedy in an emergency order without prior notice or more notice; and (9) a notice of the potential consequences for violation of the terms of the order.[743] Emergency and interim orders also must contain a notice that the respondent may ask the court to reconsider if they did not have actual notice of the emergency hearing.[744]

D. SERVICE OF AN ORDER OF PROTECTION

Upon issuance of an order of protection, the court clerk must file the order and provide a filed-stamped copy to both the petitioner and respondent, if the respondent is present in court.[745] On the day the order is issued, the clerk of the issuing judge must file a certified copy of the order with the sheriff or other law enforcement official charged with maintaining Department of State Police records or charged with serving the order on the respondent, or the petitioner may file the certified copy with the sheriff.[746] If the respondent was not present in court when the order of protection was issued, the sheriff must promptly serve the order upon the respondent through

[743] 750 ILCS 60/221(a)(b)(c)
[744] 750 ILCS 60/221(b)(6)
[745] 750 ILCS 60/222(a)
[746] 750 ILCS 60/222(b)

personal service as discussed in Chapter 1 of this Manual.[747] Alternatively, a short form notification may be served on the respondent by a sheriff, other law enforcement official, special process server, or assigned personnel of the Department of Corrections or Department of Juvenile Justice.[748] The required contents of that short form notification are set forth in section 222.10 of the Act.[749] If the respondent has not yet been served with the summons at the time that a protective order has been issued, the sheriff must make service of the summons and the order at the same time.[750] Any court order which extends, modifies, or revokes an order of protection must be promptly recorded, issued, and served.[751] While service of an order of protection should not ordinarily be given the same degree of urgency as service of a summons for a petition for an order of protection, an order should nonetheless be served as soon as is practicable.

Whether sheriffs are entitled to collect fees for service of a summons for an order of protection and service of the order itself is not clearly answered by the Act. The Act states both that "[n]o fee shall be charged by the sheriff for service by the sheriff of a petition, rule, motion, or order in an action commenced under [Section 202(b)]" and that "[a] single fee may be charged for service of an order obtained in civil court, or for service of such an order together with process."[752] Therefore, while one part of the Act seems to bar sheriffs from collecting any fees for service of any documents relating to orders of protection, another part of the Act appears to allow sheriffs to collect fees. The conflict between these two provisions makes it difficult to determine whether sheriffs have the legal right to collect fees for service of order of protection documents.

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[747] 750 ILCS 60/222(c)
[748] 750 ILCS 60/222(c); *See* 750 ILCS 60/222.10
[749] 750 ILCS 60/222.10
[750] 750 ILCS 60/222(c)
[751] 750 ILCS 60/222(d)
[752] 750 ILCS 60/202(b); 750 ILCS 60/222(c)

Sheriffs are advised to consult their County State's Attorney, who by law is their legal advisor, for any questions as to the availability of fees for serving orders of protection.

CHAPTER 7: INVOLUNTARY COMMITMENT TO A MENTAL INSTITUTION

The involuntary commitment of an individual to a mental hospital or other institution is an extraordinary remedy and thus, it is infrequently used. Nevertheless, sheriffs are typically the law enforcement officials called upon to bring the individual to the hospital or institution if and when involuntary commitment becomes necessary. Therefore, sheriffs should become familiar with the procedures.

The law governing involuntary commitment is found throughout the Mental Health and Developmental Disabilities Code (the "Code").[753] The Code provides three methods by which an individual may be involuntarily committed: (1) filing a petition directly with a mental health facility, (2) filing a petition with a court seeking an order of involuntary commitment on an inpatient basis, or (3) filing a petition with a court seeking an order of involuntary commitment on an outpatient basis.[754] The procedures for the three methods are similar, and regardless of the method used, a formal court hearing must take place.[755]

An individual can be involuntarily committed to a mental health facility if they are (1) mentally ill and, due to that mental illness, are reasonably expected, unless treated on an inpatient basis, to place themself or another in physical harm or in reasonable expectation of being physically harmed; (2) mentally ill and, due to that mental illness, is unable to provide for their basic physical needs so as to protect themself from serious harm without the assistance of family or others, unless treated on an inpatient basis; or (3) a person with mental illness who (i) refuses or is not adhering adequately to prescribed treatment; (ii) is unable to understand their need for

[753] 405 ILCS 5/3-600 *et seq.*; 405 ILCS 5/3-700 *et seq.*; 405 ILCS 5/3-800 *et seq.*
[754] *See* 405 ILCS 5/3-600 *et seq.*; *See* 405 ILCS 5/3-700 *et seq.*; *See* 405 ILCS 5/3-750 *et seq.*
[755] 405 ILCS 5/3-800 *et seq.*

treatment because of the nature of their illness; and (iii) if not treated on an inpatient basis, is reasonably expected, based on their behavior history, to suffer mental or emotional deterioration and is reasonably expected, after such deterioration, to meet the criteria of either (1) or (2) set forth above.[756] Involuntary admissions proceedings cannot be initiated against anyone under 18 years of age.[757]

A. EMERGENCY INVOLUNTARY COMMITMENT

Emergency involuntary admission proceedings occur in the event of an emergency warranting the immediate hospitalization of the person sought to be admitted. The respondent (or subject of the emergency involuntary commitment), must meet one of the three criteria set forth above (*i.e.*, be mentally ill and pose a danger of harm to themself or others or unable to care for their own physical needs or refuses or is not adhering adequately to prescribed treatment), and their immediate hospitalization must be necessary to protect themself or others from harm.[758] Anyone 18 years of age or older can submit a petition for emergency involuntary commitment to the director of a mental health facility located in the county in which the respondent lives or is presently located.[759]

1. Required contents of the petition for emergency involuntary commitment

The petition for emergency involuntary commitment must contain the following: (1) a detailed statement of the reason for seeking involuntary admission, including the signs and symptoms of their mental illness and the time, place, and description of acts, threats, other behavior, or pattern of behavior of the respondent which justify their involuntary commitment; (2) the name and address of the respondent's spouse, parent, guardian, or substitute decision maker,

[756] 405 ILCS 5/1-119
[757] 405 ILCS 5/3-600; 405 ILCS 5/3-700
[758] 405 ILCS 5/3-601(a); *In re David M.*, 2013 IL App (4th) 121004, ¶ 30
[759] 405 ILCS 5/3-601(a)

if any, and close relative of the respondent, or if none, the name and address of any known friend of the respondent whom may have that information, or a statement that diligent inquiry was made to learn this information, detailing the steps taken; (3) the petitioner's relationship to the respondent and whether petitioner has any legal or financial interest in the matter, or is involved in litigation with the respondent; and (4) the name, address, and telephone number of all witnesses to the above facts.[760]

2. Examiner's certificate

A certificate completed by a physician, qualified examiner, psychiatrist, advanced practice psychiatric nurse, or clinical psychologist stating that the respondent is subject to involuntary admission and requires immediate hospitalization must accompany the petition.[761] Notably, the law defines a "qualified examiner" as (1) a clinical social worker who is also a licensed clinical social worker licensed under Illinois' Clinical Social Work and Social Work Practice Act, (2) a registered nurse with certain training and experience, (3) a licensed clinical professional counselor with certain training and experience, (4) a licensed marriage and family therapist with certain training and experience, or (5) a physician assistant with three years of post-graduate clinical experience in evaluating and treating mental illness.[762] The respondent must be examined by the qualified examiner completing the certificate within 72 hours before admission, and the examiner must inform the respondent, in a simple comprehensible manner, of the purpose of the examination, that respondent does not have to talk to the examiner, and that any statements made by the respondent may be introduced at a court hearing on involuntary commitment.[763] Notably, if the respondent is not given this information by the examiner before the examination, the examiner

[760] 405 ILCS 5/3-601(b)
[761] 405 ILCS 5/3-602
[762] 405 ILCS 5/1-122
[763] 405 ILCS 5/3-208; 405 ILCS 5/3-602

cannot testify at a court hearing on respondent's involuntary commitment.[764] The certificate must contain the examiner's clinical observations, other factual information relied upon in making the diagnosis, and a statement that the respondent was advised of their rights.[765]

If none of the above-mentioned medical professionals can be located to perform an examination of the respondent, the respondent may still be placed in a mental health facility pending obtaining a certificate.[766] Under these circumstances, the petition must also state the petitioner's belief, based on personal examination, (1) that the respondent is subject to involuntary admission; (2) that a diligent attempt was made to have a certificate issued by an examiner; (3) that no examiner was found to examine the respondent; and (4) that a diligent effort was made to convince the respondent to appear voluntarily for an examination, unless the petitioner reasonably believes the effort would impose a risk of harm.[767] Anyone involuntarily committed on the basis of a petition alone and without a certificate may not be held at a mental health facility for more than 24 hours, unless a certificate is submitted to the facility within that time.[768]

3. Transporting the respondent to the facility

After the above-described petition and certificate are properly completed and submitted, a sheriff may become involved to transport a respondent to a facility. In Cook County, the director of the mental health facility must, upon receipt, deliver the petition and certificate to the appropriate sheriff, and the sheriff must take the respondent into custody and transport them to the mental health facility.[769] The sheriff will also transport the respondent to another facility if it is

[764] 405 ILCS 5/3-208
[765] 405 ILCS 5/3-602
[766] 405 ILCS 5/3-603(a)
[767] 405 ILCS 5/3-603(b)
[768] 405 ILCS 5/3-604
[769] 405 ILCS 5/3-605(a)

determined to be necessary.[770] In Cook County, the sheriff may delegate their transportation duties to another law enforcement body in the county if that body agrees.[771]

In all other Illinois counties, the Department of Human Services must, upon receipt of a petition and certificate, make arrangements to appropriately transport the respondent to a mental health facility.[772] The Department of Human Services will also make arrangements to transport the respondent to another facility if it is determined to be necessary.[773] A transporting authority that acts in good faith and without negligence will incur no civil or criminal liability in connection with transporting the respondent to a mental health facility.[774] The respondent or their estate is responsible for paying the transportation costs, and the respondent's responsible relatives are severally liable if the respondent is unable to pay.[775] The respondent's insurance carrier is liable for paying the transportation costs to the extent authorized by the applicable insurance policy.[776]

4. May sheriffs forcibly enter a residence to take the respondent into custody?

If a respondent is found in a public place, taking them into custody is not likely to present problems. If a respondent is inside their home, however, the question of whether a sheriff may forcibly enter the home to take a respondent into custody may arise.

The law does not contain an express authorization for sheriffs to forcibly enter a residence to take a respondent subject to involuntary commitment proceedings into custody. The Illinois Supreme Court has noted that commitment proceedings under the Mental Health Code are civil in nature, not criminal.[777] A petition and certificate sent to a sheriff by the director of a mental health

[770] 405 ILCS 5/3-605(a)
[771] 405 ILCS 5/3-605(b)
[772] 405 ILCS 5/3-605(b-5)
[773] 405 ILCS 5/3-605(b-5)
[774] 405 ILCS 5/3-605(c)
[775] 405 ILCS 5/3-605(d)
[776] 405 ILCS 5/3-605(d)
[777] *In re Nau,* 153 Ill. 2d 406, 429 (1992)

facility that does not bear the seal of any court are not official court documents. Therefore, sheriffs likely do not have the authority to forcibly enter a home to take a respondent into custody and transport them to a mental health facility for the purpose of emergency involuntary commitment.

However, a contrary argument may be made that sheriffs have the implied legal authority of forcible entry in emergency involuntary commitment cases due to the emergency nature of the proceedings and the need to protect either the respondent or the general public from physical harm due to the respondent's mental illness. Nonetheless, no statute or judicial opinion has been found providing such legal authority.

Accordingly, since the commitment proceeding is civil in nature, and civil orders generally do not confer upon the server the right of forcible entry, unless a court order contains some express language granting the right of forcible entry to the executing officers, sheriffs should not forcibly enter a home in order to take a respondent into custody. The sheriff should consult their County State's Attorney, who by law is their legal advisor, if they have any questions.

5. May a sheriff or judge initiate the process for emergency involuntary commitment on their own initiative?

A peace officer has the authority to take a person into custody and transport them to a mental health facility when the officer has reasonable grounds to believe the person is subject to involuntary admission on an inpatient basis and is in need of immediate hospitalization to protect themself or others from physical harm.[778] The law defines a "peace officer" as any sheriff, police officer, or person properly deputized as a peace officer.[779] The peace officer may complete and submit the required petition for commitment.[780] If the peace officer transporting the person does

[778] 405 ILCS 5/3-606
[779] 405 ILCS 5/1-118
[780] 405 ILCS 5/3-606

not complete the petition, the peace officer's name, badge number, and employer must be included in the petition as a potential witness.[781]

Judges have similar authority to enter an order for temporary detention and examination of a person if, based on personal observation and testimony in open court, the judge has reasonable grounds to believe the person is subject to involuntary admission and in need of immediate hospitalization to protect himself themself or others from physical harm.[782] The order must set forth in detail the facts which are the basis for its conclusion, and the judge may order a peace officer to take the person into custody and transport the person to a mental health facility.[783]

6. What must occur after the respondent is admitted?

Within 12 hours of the respondent's admission, a copy of the petition and statement containing the address and phone number of the Guardianship and Advocacy Commission must be provided to the respondent.[784] Within 24 hours of the respondent's admission, a copy of the petition and statement must be provided or sent to the respondent's attorney and guardian, if any.[785] The respondent must also be asked if they want a copy of the petition and statement sent to any other person(s) and at least two such persons identified by the respondent must receive such documents.[786] The respondent must also be allowed at least two phone calls at the time of admission to such person(s) they choose.[787]

Also within 24 hours of the respondent's admission, excluding weekends and holidays, the respondent must be personally examined by a psychiatrist, and the psychiatrist must execute a

[781] 405 ILCS 5/3-606
[782] 405 ILCS 5/3-607
[783] 405 ILCS 5/3-607
[784] 405 ILCS 5/3-609; *See* 405 ILCS 5/3-206
[785] 405 ILCS 5/3-609
[786] 405 ILCS 5/3-609
[787] 405 ILCS 5/3-609

second certificate as to the respondent's mental condition.[788] The psychiatrist cannot be the same individual who executed the first certificate.[789] If a psychiatrist first examined the respondent and completed the first certificate, the respondent must be examined by another psychiatrist or by a physician, clinical psychologist, advanced practice psychiatric nurse, or other qualified examiner, who is to complete the second certificate.[790] The respondent must be released if no second certificate is completed within 24 hours of admission.[791] The second certificate must be promptly filed with the court. [792]

Also within 24 hours of the respondent's admission, excluding weekends and holidays, the director of the mental health facility must file two copies of the petition, the first certificate, and proof of service of the petition and statement of rights upon the respondent with the court in the county where the facility is located.[793] The second certificate must be filed with the court by the facility director and a copy must be provided to the respondent.[794]

7. When is the court hearing held?

The court must schedule a hearing on the petition to be held within five days after receipt of the petition and first certificate, excluding the weekends and holidays.[795] The respondent, their responsible relatives, and the persons entitled to receive a copy of the petition must be notified of the time and place of the hearing.[796]

[788] 405 ILCS 5/3-610
[789] 405 ILCS 5/3-610
[790] 405 ILCS 5/3-610
[791] 405 ILCS 5/3-610
[792] 405 ILCS 5/3-610
[793] 405 ILCS 5/3-611
[794] 405 ILCS 5/3-611
[795] 405 ILCS 5/3-611
[796] 405 ILCS 5/3-611

8. Strict compliance

Strict compliance with the procedural requirements for emergency involuntary commitment is required because a liberty interest is involved.[797] Illinois courts have determined that "[a]ny noncompliance" with the statutory procedures for emergency involuntary commitment "renders the judgment entered … erroneous and of no effect."[798] The failure to comply with the timing requirements for getting a psychiatric examination and filing a petition for emergency involuntary commitment are not harmless errors and cannot be waived, and any resulting order is void.[799] However, insufficient notice may not render the judgment void if there is actual notice and no prejudice to the respondent.[800]

B. COURT-ORDERED INVOLUNTARY COMMITMENT ON AN INPATIENT OR OUTPATIENT BASIS

The second and third methods of involuntary commitment are court-ordered involuntary commitment on an inpatient basis and court-ordered involuntary commitment on an outpatient basis.[801] The procedures for inpatient and outpatient involuntary commitment are similar to the procedures for involuntary emergency commitment discussed in Part A of this Chapter. The major difference is that the respondent is normally allowed to remain free pending a court hearing on court-ordered involuntary commitment on an inpatient or outpatient basis, while in an emergency involuntary commitment the respondent is placed in a mental health facility pending a court hearing. Any differences in the procedures for inpatient involuntary commitment and outpatient involuntary commitment are noted in this Part.

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[797] *In re Wiessing*, 229 Ill. App. 3d 737, 739 (4th Dist. 1992)
[798] *People v. Valentine*, 201 Ill. App. 3d 10, 13-14 (5th Dist. 1990); *In re Elkow*, 167 Ill. App. 3d 187, 193 (4th Dist. 1988)
[799] *In re La Touche*, 247 Ill. App. 3d 615, 620 (2d Dist. 1993)
[800] *In re Clark*, 220 Ill. App. 3d 1024, 1028 (4th Dist. 1991)
[801] 405 ILCS 5/3-700 *et. seq.*; 405 ILCS 5/3-750 *et. seq.*

1. Required contents of the petition for involuntary commitment on an inpatient or outpatient basis

Anyone 18 years of age or older may file a petition for involuntary commitment on an inpatient or outpatient basis with the circuit court in the county in which the respondent lives or is present.[802] Like a petition for involuntary emergency commitment, the petition must contain the following: (1) a detailed statement of the reason for seeking involuntary admission, including the signs and symptoms of their mental illness and the time, place, and description of acts, threats, other behavior, or pattern of behavior of the respondent which justify their involuntary commitment; (2) the name and address of the respondent's spouse, parent, guardian, or substitute decision maker, if any, and close relative of the respondent, or if none, the name and address of any known friend of the respondent whom may have that information, or a statement that diligent inquiry was made to learn this information, detailing the steps taken; (3) the petitioner's relationship to the respondent and whether petitioner has any legal or financial interest in the matter, or is involved in litigation with the respondent; and (4) the name, address, and telephone number of all witnesses to the above facts.[803] A petition for inpatient involuntary commitment and a petition for outpatient involuntary commitment may be combined.[804]

2. Questioning the petitioner

The court may question the petitioner whether there are reasonable grounds for the facts set forth in the petition.[805] The law differs for petitions for inpatient involuntary commitment and outpatient involuntary commitment on an outpatient basis regarding notice to the respondent of such questioning. The statute on inpatient involuntary commitment states that this questioning may

[802] 405 ILCS 5/3-701(a); 405 ILCS 5/3-751(a)
[803] 405 ILCS 5/3-601(b); 405 ILCS 5/3-701(a); 405 ILCS 5/3-751(a)
[804] 405 ILCS 5/3-701(c); 405 ILCS 5/3-751(c)
[805] 405 ILCS 5/3-701(b); 405 ILCS 5/3-751(b)

occur without notice to the respondent if the petitioner alleges facts to show an emergency exists to warrant immediate hospitalization and testifies as to the factual basis for their allegations before the court.[806] The statute on outpatient involuntary commitment does not state whether the questioning may proceed without notice to the respondent.[807]

3. Examiner's certificate

The petition may, but need not, be accompanied by a certificate completed by a physician, qualified examiner, psychiatrist, advanced practice psychiatric nurse, or a clinical psychologist stating that the respondent is subject to involuntary admission.[808] Any such certificate must also contain the same information required for certificates submitted in emergency commitment proceedings: (1) the respondent must be examined by an examiner within the 72 hour period before admission; (2) the examiner conducting the examination must inform the respondent (i) the purpose of the examination, (ii) that the respondent does not have to talk to the examiner, and (iii) that any statements made by the respondent may be introduced at a court hearing on involuntary commitment; and (3) the certificate must contain the examiner's clinical observations, other factual information relied upon in making the diagnosis, and a statement that the respondent was advised of their rights.[809]

A hearing on the petition will not be scheduled until two certificates have been filed with the court.[810] If the required two certificates are not filed with the petition, the court may issue orders providing for the respondent to be examined at a time and place designated by the court.[811] If no certificate was filed with the petition, the respondent must be examined by a physician, or

[806] 405 ILCS 5/3-701(b)
[807] 405 ILCS 5/3-751(b)
[808] 405 ILCS 5/3-702(a); 405 ILCS 5/3-752(a)
[809] 405 ILCS 5/3-208; 405 ILCS 5/3-602; 405 ILCS 5/3-702(a); 405 ILCS 5/3-752(a)
[810] 405 ILCS 5/3-702(b); 405 ILCS 5/3-752(b)
[811] 405 ILCS 5/3-702(b); 405 ILCS 5/3-752(b)

clinical psychologist, advanced psychiatric nurse, or qualified examiner and by a psychiatrist.[812] If one certificate was executed by a psychiatrist and filed with the petition, the respondent must be examined by a physician, clinical psychologist, qualified examiner, advanced practice psychiatric nurse, or psychiatrist, and a second certificate must be completed.[813] At least one of the certificates must be completed by a psychiatrist.[814]

4. Is the respondent transported to the facility for examination?

The respondent may remain at their residence pending any examinations unless the court finds it necessary that the respondent be committed to a mental health facility to conduct the examinations.[815] The respondent cannot be detained at any such facility for examination for more than 24 hours.[816] The respondent must be released after the examination unless the examiner executes a certificate stating the respondent is subject to inpatient involuntary commitment and in need of immediate hospitalization to protect themself or others from immediate harm.[817] The outpatient involuntary commitment statute also requires that a petition for inpatient involuntary commitment be filed to detain the respondent.[818]

The court has the authority to order a peace officer to physically transport the respondent to a mental health facility for examination.[819] A peace officer is any sheriff, police officer, or person properly deputized as a peace officer.[820]

5. What must occur after the respondent is transported to the facility for examination?

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[812] 405 ILCS 5/3-703; 405 ILCS 5/3-753
[813] 405 ILCS 5/3-703; 405 ILCS 5/3-753
[814] 405 ILCS 5/3-703; 405 ILCS 5/3-753
[815] 405 ILCS 5/3-704(a); 405 ILCS 5/3-754(a)
[816] 405 ILCS 5/3-704(a); 405 ILCS 5/3-754(a)
[817] 405 ILCS 5/3-704(a); 405 ILCS 5/3-754(a)
[818] 405 ILCS 5/3-754(a)
[819] 405 ILCS 5/3-704(a); 405 ILCS 5/3-754(a)
[820] 405 ILCS 5/1-118

If a respondent is transported to a mental health facility for examination, the admitting facility must (1) ask the respondent upon their arrival if they want any person(s) notified of their detention, (2) promptly make all reasonable attempts to locate the individual identified or at least two of the persons identified by the respondent if more than one has been requested, and (3) notify them of the respondent's detention for mandatory examination.[821] The inpatient involuntary commitment statute also requires that, within 24 hours of their admission for examination, excluding weekends and holidays, the respondent must be asked if they want a copy of the petition and a statement containing the address and phone number of the Guardianship and Advocacy Commission sent to any person(s) and the documents must be sent to at least two of the persons identified by the respondent.[822] The respondent must also be allowed to complete at least two phone calls.[823]

A copy of the petition, order of examination, and statement of rights must be personally delivered to the respondent and personally given or mailed to their attorney and any guardian at least 36 hours before the time of examination set by the court.[824] If the respondent is admitted to a facility for examination, the notices may be delivered with the order for admission.[825]

6. When is the court hearing held?

The timing for the court hearing differs for inpatient involuntary commitment and outpatient involuntary commitment. For inpatient involuntary commitment, the court hearing must take place within five days, excluding weekends and holidays, of the earlier of the court's receipt of the second certificate or of the respondent's admission to a mental health facility.[826] For

[821] 405 ILCS 5/3-704(a-5); 405 ILCS 5/3-754(b)
[822] 405 ILCS 5/3-704(b)
[823] 405 ILCS 5/3-704(b)
[824] 405 ILCS 5/3-705; 405 ILCS 5/3-755
[825] 405 ILCS 5/3-705; 405 ILCS 5/3-755
[826] 405 ILCS 5/3-706

outpatient involuntary commitment, the court hearing must take place within 15 days of the same.[827] Notice of the time and place of the hearing must be served upon the respondent, their attorney, and guardian, if any, and their responsible relatives.[828] For inpatient involuntary commitment, notice must also be served on the facility director.[829]

7. Is the respondent transported to the facility for the hearing?

The respondent may remain at their home pending the hearing unless they have already been admitted for inpatient involuntary commitment.[830] If the court finds it necessary, it may order a peace officer or other person to have the respondent brought to court for the hearing.[831]

8. May sheriffs forcibly enter a residence to take the respondent into custody for examination or the hearing?

Once again, since the commitment proceeding is civil in nature, and civil writs generally do not confer upon the server the right of forcible entry, unless the court order contains some language granting the right of forcible entry to the executing officers, sheriffs should not forcibly enter a home in order to take a respondent into custody for transport. The sheriff should immediately consult the County State's Attorney, who by law is the sheriff's legal advisor.

9. Strict compliance

Strict compliance with the procedural requirements for inpatient involuntary commitment is required because a liberty interest is involved.[832] Nonetheless, the court may not reverse an inpatient involuntary commitment order if there is no prejudice to the respondent.[833] Moreover,

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[827] 405 ILCS 5/3-756
[828] 405 ILCS 5/3-706; 405 ILCS 5/3-756
[829] 405 ILCS 5/3-706
[830] 405 ILCS 5/3-706; 405 ILCS 5/3-756
[831] 405 ILCS 5/3-706; 405 ILCS 5/3-756
[832] *See In re Rovelstad*, 281 Ill. App. 3d 956, 965 (2d Dist. 1996)
[833] *In re Louis S.*, 361 Ill. App. 3d 763, 768 (4th Dist. 2005)

the court may not reverse an inpatient involuntary commitment order due to insufficient notice if there is actual notice and no prejudice to the respondent.[834]

No case law was found discussing strict compliance with the procedural requirements for outpatient involuntary commitment, likely in part because the provisions were enacted in 2010. Nonetheless, sheriffs should always attempt to strictly comply with procedural requirements. If in doubt, the sheriff should immediately consult the County State's Attorney, who by law is the sheriff's legal advisor.

C. COURT HEARINGS

Whenever possible (and to the extent practicable), hearings on involuntary commitment are to occur at the mental health facility where the respondent has been placed.[835] The respondent may request to have the proceedings transferred to a court in the county where they reside and the respondent is entitled to a six-member jury on the question of involuntary commitment.[836] The respondent may continue to be detained if the court grants a continuance or one party moves for a continuance, but the continuance may not exceed 15 days unless requested by the respondent.[837] At any time prior to adjudication for involuntary commitment, a respondent may request informal or voluntary admission or enter an agreed order for admission on an outpatient basis, provided certain conditions are met.[838]

[834] *In re Splett*, 143 Ill. 2d 225, 231-32 (1991)
[835] 405 ILCS 5/3-800(a)
[836] 405 ILCS 5/3-800(a); 405 ILCS 5/3-802
[837] 405 ILCS 5/3-800(b)
[838] 405 ILCS 5/3-801; 405 ILCS 5/3-801.5

1. Is the hearing open to the press and public?

If the respondent requests, and no one objects, the court must close a commitment hearing to the press and public.[839] If the court fails to close the hearing at the respondent's request, the commitment order must be reversed, regardless of whether the respondent was prejudiced.[840]

2. May the respondent be represented by an attorney?

Just like in serious criminal matters, every respondent of involuntary commitment proceedings must be represented by an attorney, and if the respondent cannot afford an attorney, one must be provided to them.[841] The attorney should be appointed when the hearing is set, rather than at the hearing itself.[842] Although a respondent may waive their right to an attorney, the court must first determine that the respondent has the mental capacity to make an informed waiver.[843] A commitment order will be reversed if the court fails to make this determination and the respondent is prejudiced.[844] The respondent has the right to be present during the entire hearing unless their attorney waives this right and the court finds the respondent's attendance would subject them to substantial risk of serious physical or emotional harm.[845]

3. Additional examinations of the respondent

The court may order an additional examination of the respondent, and a detailed written report must be filed by the examiner.[846] The respondent may also secure an independent examination by a qualified person of their choosing or may request a court-ordered examination

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[839] 405 ILCS 5/3-800(c)
[840] *In re Michael D.*, 306 Ill. App. 3d 25, 28 (1st Dist. 1999)
[841] 405 ILCS 5/3-805
[842] *Matter of Walters*, 183 Ill. App. 3d 452, 455 (3d Dist. 1989)
[843] 405 ILCS 5/3-805
[844] *In re Tiffin*, 269 Ill. App. 3d 581, 586 (4th Dist. 1995)
[845] 405 ILCS 5/3-806(a)
[846] 405 ILCS 5/3-803

by an impartial medical expert or qualified person if the respondent is unable to obtain an independent examination; the independent examiner may submit a detailed report to the court.[847] The independent examiner may be employed by the State of Illinois and/or the Department of Mental Health.[848]

4. What is required to involuntarily commit a respondent?

No respondent may be found subject to involuntary commitment on an inpatient or outpatient basis unless that finding has been established by clear and convincing evidence.[849] A court may not commit a respondent unless at least one examiner testifies during the hearing or the respondent waives this requirement and the court approves the waiver.[850] The person testifying must have actually examined the respondent, not just the respondent's medical records.[851]

5. The facility director's written report

Before the court issues a ruling, the facility director or another person directed by the court must prepare a written report that includes (1) whether alternative treatment plans are appropriate and available, (2) a social investigation of respondent, (3) a preliminary treatment plan, and (4) any other information ordered by the court.[852] The treatment plan must describe (1) the respondent's problems and needs, (2) treatment goals, (3) proposed treatment methods, and (4) a projected timeline.[853] The failure to file the facility director's written report is not harmless error and cannot be waived, and any resulting order is void.[854]

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[847] 405 ILCS 5/3-804
[848] *In re Barnard*, 247 Ill. App. 3d 234, 247-53 (5th Dist. 1993)
[849] 405 ILCS 5/3-808
[850] 405 ILCS 5/3-807
[851] *In re Michelle J.*, 209 Ill. 2d 428, 437 (2004)
[852] 405 ILCS 5/3-810
[853] 405 ILCS 5/3-810
[854] *In re Lamb*, 202 Ill. App. 3d 725, 729-30 (2d Dist. 1990)

The court must consider the alternative treatments contained in the report and must order the least restrictive alternative for treatment that is appropriate.[855] However, the court is not required to make a specific finding that the treatment it is ordering is the least restrictive alternative.[856] If the respondent is found subject to involuntary admission on an outpatient basis, the court may order the respondent to undergo an alternative treatment plan, or the court may place the respondent in the care of a willing and able relative or some other person.[857] The court cannot order both involuntary commitment and agreed alternative treatment because the two remedies are mutually exclusive.[858]

6. Limitations on orders for involuntary commitment

Orders of involuntary commitment cannot exceed 90 days.[859] A new petition and two new certificates must be filed with the circuit court if the facility director believes additional hospitalization is necessary.[860] A hearing on a new petition must proceed according to the rules discussed above.[861]

7. What must occur after the respondent is admitted?

Within 30 days of admission, the facility director must file a current treatment plan with the circuit court, that includes: (1) an assessment of the respondent's treatment needs, (2) a description of the recommended treatment services, (3) the goal of each type of service element, (4) an anticipated timeline for the accomplishment of goals, and (5) a designation of the qualified professional responsible for the implementation of the plan.[862] After reviewing the treatment plan,

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[855] 405 ILCS 5/3-811(a)
[856] *In re Devine*, 214 Ill. App. 3d 1, 7 (2d Dist. 1991)
[857] 405 ILCS 5/3-811(a)
[858] *In re Robert F.*, 396 Ill. App. 3d 304, 311-13 (4th Dist. 2009)
[859] 405 ILCS 5/3-813(a),(a-1)
[860] 405 ILCS 5/3-813(a), (a-1)
[861] 405 ILCS 5/3-813(a), (a-1)
[862] 405 ILCS 5/3-209; 405 ILCS 5/3-814(a)4(a)

the court may hold a hearing on its own initiative or the request of the respondent or an interested party.[863] After the hearing, the court may modify the terms of its original order or may order the respondent to be released.[864]

8. What if an alternative treatment order is revoked?

If the court revokes an alternative treatment order for any reason, the court may order a peace officer to take the respondent into custody and transport them to a mental health facility according to the provisions set forth in Part A above.[865] Keep in mind, a peace officer is any sheriff, police officer, or person properly deputized as a peace officer.[866]

9. Who else may be authorized to transport a respondent ordered to be admitted?

In Cook County, a court ordering a respondent hospitalized may authorize a relative, friend, or the Department of Human Services to transport them to the facility or may order the sheriff to do so.[867] The court must determine whether a friend, relative, the Department of Human Services, or sheriff will transport the respondent to another facility if it is determined to be necessary.[868] In those counties, the sheriff may make arrangements with another public or private entity to transport the respondent to the facility.[869] A transporting entity that acts in good faith and without negligence will incur no civil or criminal liability in connection with transporting the respondent to a mental health facility.[870] In all Illinois counties other than Cook, the court may authorize a relative or friend to transport the respondent to the facility, or may order the Department of Human Services to do so.[871] The court must determine whether a friend, relative, or the Department of Human

[863] 405 ILCS 5/3-814(d)
[864] 405 ILCS 5/3-814(d)
[865] 405 ILCS 5/3-812(c)
[866] 405 ILCS 5/1-118
[867] 405 ILCS 5/3-819(a)
[868] 405 ILCS 5/3-819(a)
[869] 405 ILCS 5/3-819(a)
[870] 405 ILCS 5/3-819(a)
[871] 405 ILCS 5/3-819(a-5)

Services will transport the respondent to another facility if it is determined to be necessary.[872] In those counties, the Department of Human Services must make arrangements with another public or private entity to transport the respondent to the facility.[873] A transporting entity that acts in good faith and without negligence will incur no civil or criminal liability in connection with transporting the respondent to a mental health facility.[874]

10. Transportation costs

The transporting entity may bill the respondent or their estate, the legally responsible relatives, or the respondent's insurance carrier for the cost of providing transportation of the respondent to a mental health facility.[875] The respondent's insurance carrier is liable for payment to the extent authorized by the respondent's insurance policy.[876]

11. May sheriffs forcibly enter a residence to take the respondent into custody?

Because involuntary commitment proceedings are civil in nature, and civil writs generally do not confer upon the server the right of forcible entry, unless the court order contains some express language granting the right of forcible entry to the executing officers, sheriffs should not forcibly enter a home in order to take a respondent into custody for transport. The sheriff should consult their County State's Attorney, who by law is their legal advisor, if they have any questions.

[872] 405 ILCS 5/3-819(a-5)
[873] 405 ILCS 5/3-819(a-5)
[874] 405 ILCS 5/3-819(a-5)
[875] 405 ILCS 5/3-819(b)
[876] 405 ILCS 5/3-819(b)

CHAPTER 8: ISSUES THAT MAY ARISE IN ATTEMPTING OR MAKING SERVICE

Regardless of the complaint, order, or other process being served, complications often arise for sheriffs attempting or making service.

A. SERVING INDIVIDUALS

Individuals are legally prohibited from evading service of process and the courts do not look kindly upon those who do.[877] In addition, defendants cannot attempt to evade service of process by refusing to accept a summons or by refusing to open a door to allow for delivery.[878] Anyone who knowingly resists or obstructs authorized service of process or execution of process or a court order has committed a criminal offense – namely, they can be charged with a Class B misdemeanor.[879] Nonetheless, individuals often do not cooperate with being served. In each such instance, the court will consider the circumstances of the evasion.[880]

Going all the way back to the 1800s, the Illinois Supreme Court has stated that officers executing civil process do not have the authority to forcibly enter the home of a defendant to serve them.[881] This is not completely debilitating, however, because there is no requirement that the sheriff has to physically place the papers into the defendant's hand.[882] As previously mentioned in Chapter 1 of this Manual, Illinois has adopted the general method of placing the summons in the general vicinity of the person to be served and announcing the nature of the documents.[883]

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[877] *Hatmaker v. Hatmaker,* 337 Ill. App. 175, 182 (1st Dist. 1949)
[878] *Hatmaker*, 337 Ill. App. at 180-81
[879] 720 ILCS 5/31-3
[880] *Hatmaker*, 337 Ill. App. at 180-81
[881] *Snydacker v. Brosse*, 51 Ill. 357, 359-60 (1869)
[882] *Freund Equip. Inc. v. Fox*, 301 Ill. App. 3d 163, 167–68 (2d Dist. 1998)
[883] *Freund Equip. Inc.*, 301 Ill. App. 3d at 168

B. SERVING OR SEIZING PERSONAL PROPERTY

Needless to say, defendants often will not cooperate and/or willingly turn over their personal property to be served or surrendered in certain cases, such as pursuant to replevin or attachment orders. Accordingly, questions may arise regarding how much authority a summons or order confers upon a sheriff and whether the sheriff may forcibly enter a defendant's home to seize or serve property. Illinois court opinions from the late 1800s and early 1900s provide some guidance to these questions. The Illinois Supreme Court has determined that officers executing civil process do not have the authority to forcibly enter the home of a defendant to serve or seize personal property.[884] Thus, if a defendant is not home, or if a defendant is home but refuses to allow the sheriff entry to their home, the sheriff should not forcibly enter the home.

If the outer door is open, or if a window is open, the sheriff may have the authority to enter through that outer door or window under certain circumstances. For instance, the First District Appellate Court has determined that a sheriff may enter either an open outer door or window, provided it can be accomplished without committing a breach of the peace.[885]

Because what constitutes an "open" door or window was not specified by the First District Appellate Court, the following additional questions may arise: Is it necessary that the outer door actually be open or is it sufficient that the outer door be unlocked? May the sheriff enter through an unlocked screen door with an open main door? If there is a screen in the window, can it be removed to allow the sheriff to enter? While any of these acts in question would not likely constitute a breach of the peace and, therefore, could be a valid means for a sheriff to enter a home,

[884] *Snydacker*, 51 Ill. at 359-60; *People v. Miller*, 273 Ill. App. 422, 427 (1st Dist. 1934); *Connor v. Greenberg*, 198 Ill. App. 129, 142 (1st Dist. 1916)
[885] *Miller*, 273 Ill. App. at 429

a sheriff is strongly advised to solicit the opinion of the County State's Attorney before attempting any of the above-described entrances.

The First District Appellate Court has also given insight as to what constitutes an "other outside protection."[886] In a 1916 case, the sheriff entered a home through the outside doors into a vestibule and then proceeded through another door into the main hall of the home.[887] Pursuant to the facts of the case, the court determined that the door leading from the vestibule into the hall was an "outer door or other outside protection" which the sheriff could not break for the purpose of executing civil process.[888] The court reasoned that the sheriff could not break the door leading from the vestibule into the hall because the inside of the home could only be reached through that doorway.[889] Therefore, it is important to note that the sheriff may not break every doorway beyond the first outside entrance to serve process.

Once again, if uncertain, the sheriff should not affect a forcible entry. Rather, the sheriff should inform the plaintiff's attorney to allow the attorney to seek a court order that would permit entry or should directly solicit the opinion of the County State's Attorney.

[886] *See Connor*, 198 Ill. App. at 142 (referencing *Snydacker*, 51 Ill. at 359)
[887] *Connor*, 198 Ill. App. at 138
[888] *Connor*, 198 Ill. App. at 142
[889] *Connor*, 198 Ill. App. at 142

CHAPTER 9: SHERIFF'S FEES

The fees sheriffs may charge for service of the various civil process documents are governed by statute, which classifies all Illinois counties on the basis of population,[890] as follows:

- a first class county has a population under 25,000;
- a second class county has a population between 25,000 and 1,000,000; and
- a third class county has a population over 1,000,000.[891]

Each class of county is assigned its own fee schedule for the service of civil process documents.

First and second class counties are governed by the same rate schedule.[892] Some of the fees relevant to the procedures set forth in this Manual include, but are not limited to, the following:[893]

1. Serving or attempting to serve summons on each defendant - $10
2. Serving or attempting to serve an order or judgment granting injunctive relief - $10
3. Serving or attempting to serve each garnishee - $10
4. Serving or attempting to serve a replevin order - $10
5. Serving or attempting to serve an attachment order on each defendant - $10
6. Serving or attempting to serve an arrest warrant - $8 (to be paid upon conviction)
7. Returning a defendant from outside Illinois – the cost (assessed as court costs upon conviction)
8. Serving or attempting to serve a subpoena on each witness - $10
9. Advertising property for sale - $5
10. Returning each process - $5
11. Mileage for necessary travel to serve any process stated above - 50¢ per mile each way (calculating from court to the residence of the defendant or witness)
12. Summoning each juror - $3 with 30¢ mileage each way
13. Serving or attempting to serve notice of judgments or levying to enforce a judgment - $3 with 50¢ mileage each way
14. Taking possession of and removing property levied on – the actual cost
15. Serving or attempting to serve an order or judgment for possession of real estate in an ejectment or other action, or restitution in an eviction action - $10 (without aid), or $10 plus actual costs and 50¢ mileage for necessary travel each way (with aid)

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[890] *See* 55 ILCS 5/4-1001
[891] 55 ILCS 5/4-1001
[892] *See* 55 ILCS 5/4-5001
[890] 55 ILCS 5/4-5001

16. Attending any criminal proceeding in court with a prisoner - $10 per day
17. For each mile of necessary travel in taking a prisoner to court as stated - ¢15 per mile each way
18. Executing and acknowledging a deed of sale of real property - $4 (in first class counties); $4 (in second class counties)
19. Preparing, executing, and acknowledging a deed on redemption from a court sale of real property - $5
20. Making certificates of sale and making and filing duplicate - $3
21. Making certificate of redemption - $3
22. Certificate of levy and filing - $3 (fee for recording advanced by judgment creditor and charged as costs)
23. Taking all civil bonds on legal process - $1
24. For executing copies in criminal cases - $4 and ¢20 mileage for each mile of necessary travel each way
25. For executing requisitions from other states - $5
26. For conveying each prisoner from their county jail to another county's jail, or from another county's jail to their county jail - ¢30 per mile for going only
27. For conveying a person from the penitentiary to the county jail when required by law - ¢35 per mile
28. For selling real property upon court judgment - $600 ($150 if the property is unimproved real estate which sells for under $10,000)
29. For selling personal property upon court judgment - $75 (judgments up to $1,000); $150 (judgments from $1,001 to $15,000); $300 (judgments over $15,000)

The rates specified in that statute are the maximum rates a sheriff may charge.[894] A county board has the authority to increase these rates by ordinance if an acceptable cost study demonstrates the statutory fee is not enough to cover the cost incurred by the sheriff to provide the service, but no fee in excess of the statutory fee can be collected from any officer, agency or department of the State.[895] Whenever the judgment is settled by all parties, replevied, stopped by injunction or paid, or if the levied property is not actually sold, the sheriff must be allowed their fee for levying and mileage, along with half the fee for all the money collected by the sheriff to which the sheriff would have been entitled to if that money had been made by sale to enforce the

[894] 55 ILCS 5/4-5001
[895] 55 ILCS 5/4-5001

judgment, but in no case can this fee exceed the amount of money arising from the sale.[896] The statutory fee schedule does not apply to police departments or other law enforcement agencies.[897]

A separate fee schedule governs third class counties (*i.e.* Cook County).[898] Some of the fees relevant to the procedures set forth in this Manual include, but are not limited to, the following:[899]

1. Serving or attempting to serve summons filed in person on each defendant - $60. For serving or attempting to serve summons filed electronically on each defendant - $35.
2. Serving or attempting to serve each alias summons or other process – mileage (when the address for service differs from the address on the original summons or other process)
3. Serving or attempting to serve all other process filed in person on each defendant - $60. For serving or attempting to serve all other process filed electronically on each defendant - $35.
4. Serving or attempting to serve a subpoena on each witness - $35
5. Serving or attempting to serve each warrant - $35
6. Serving or attempting to serve each garnishee - $35
7. Summoning each juror - $10
8. Serving or attempting to serve each order or judgment for replevin - $35
9. Serving or attempting to serve an attachment order on each defendant - $35
10. Serving or attempting to serve an order or judgment for the possession of real estate in any action, or restitution in an eviction action - $60 (without aid); $35 and actual costs of service (with aid)
11. Serving or attempting to serve notice of judgments - $35
12. Levying to satisfy an order in an attachment action - $25
13. Executing a court order to seize personal property - $25
14. Making certificate of levy on real property and filing or recording it - $8 (fee for filing or recording advanced by plaintiff or judgment creditor and taxed as costs)
15. Taking possession of or removing property levied on – the actual cost
16. Advertising property for sale - $20
17. Making certificates of sale and making and filing duplicate - $15 (fee for recording advanced by judgment creditor and taxed as costs)
18. Preparing, executing and acknowledging a deed on redemption from a court sale of real property - $15
19. Preparing, executing and acknowledging other deeds on sale of real property - $10
20. Making and filing certificate of redemption - $15 (fee for recording advanced by redeeming party and taxed as costs)

[896] 55 ILCS 5/4-5001
[897] 55 ILCS 5/4-5001
[898] *See* 55 ILCS 5/4-12001
[899] *See* 55 ILCS 5/4-5001

21. Making and filing certificate of redemption from court sale - $11 (fee for recording advanced by redeeming party and taxed as costs)
22. Taking all bonds on legal process - $10
23. Returning each process initially filed in person - $25. For returning each process initially filed electronically - $15.
24. Mileage for service or attempted services of all process - $10 flat fee
25. Executing requisitions from other states - $13
26. Conveying prisoners from the prisoner's county to another county's jail - 25¢ per mile for going only
27. For committing or discharging each prisoner from jail - $3
28. For selling real property upon court judgment - $900
29. For selling personal property upon court judgment - $100 (judgments up to $1,000); $300 (judgments from $1,000 to $15,000); $500 (judgments over $15,000)

As with first and second class counties, the statutory fee schedule does not apply to police departments or other law enforcement agencies.[900] The fees a third class county can charge school districts and units of local government are separately listed.[901]

If a statute requires a specific method for service of the document, the prescribed method must be used. The sheriff is authorized to retain the mileage fees they charge when service is achieved by mailing a copy of the civil process document to the individual instead of personal service, or even when service has failed, provided that: (1) the applicable statute to be followed does not include refund language; (2) the manner of service that was attempted (even through mail) is reasonable under the circumstances; and (3) the retained costs by the sheriff is used to defray generally the costs of administrating the court system.[902]

[900] 55 ILCS 5/4-12001
[901] *See* 55 ILCS 5/4-12001.1
[902] *Glenview Credit Union v. Elrod*, 112 Ill. App. 3d 842, 845 (1st Dist. 1983)

CHAPTER 10: THE LAW AND THE PROCESS SERVER

Often citizens being served with legal papers are upset or angry upon receiving the process. The person being served may not realize the sheriff is simply doing their job to give notice to the person of a dispute to be settled in a court of law. The law provides several protections to those lawfully serving legal process. Sheriffs are among those authorized to serve process pursuant to Section 2-202 of the Code of Civil Procedure.

Moreover, some protections exist for individuals who are classified as peace officers. A peace officer is defined as (1) any person who, by virtue of their office or public employment, has a duty to maintain public order or to make arrests for offenses, whether the duty extends to all offenses or is limited to specific offenses; or (2) any person who, by statute, is granted and authorized to exercise powers similar to those of any peace officer employed by an Illinois law enforcement agency.[903] Any individual using this Manual who is not a sheriff should consult with the sheriff and/or County State's Attorney to determine whether he qualifies as a peace officer. Knowingly resisting or obstructing the authorized service or execution of any civil or criminal process or order of any court is a Class B misdemeanor under Illinois law.[904] Further, an individual commits "Intimidation" when, with intent to cause another to perform or to omit the performance of any act, they communicate to another, directly or indirectly by any means, a threat to perform without lawful authority any of the following acts:

(1) Inflict physical harm on the person threatened or any other person or on property; or
(2) Subject any person to physical confinement or restraint; or

[903] 720 ILCS 5/2-13, as amended by P.A. 103-822, § 20 (H.B. 4500) (eff. Jan. 1, 2025)
[904] 720 ILCS 5/31-3

(3) Commit a felony or Class A misdemeanor; or
(4) Accuse any person of an offense; or
(5) Expose any person to hatred, contempt, or ridicule; or
(6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
(7) Bring about or continue a strike, boycott, or other collective action.[905]

Intimidation is a Class 3 felony punishable by at least 2 and up to 10 years in prison.[906]

Assault and battery against an authorized process server are both aggravated if the perpetrator knows the victim's status.[907] It is aggravated assault to assault a peace officer performing their official duties, to prevent them from performing their official duties, or in retaliation for performing their official duties, and such aggravated assault is a Class 4 felony.[908] On the other hand, it is aggravated assault to assault an authorized process server while that individual is performing their duties as a process server, and such aggravated assault is a Class 4 felony.[909] It is also aggravated battery to batter a peace officer performing their official duties, to prevent them from performing their official duties, or in retaliation for performing their official duties, and such aggravated battery is a Class 2 felony.[910] Finally, it is aggravated battery to batter an authorized process server while that individual is performing their duties as a process server, and this kind of aggravated battery is a Class 3 felony.[911]

Even though the above statutes protect a sheriff or another person authorized to serve process when that person is lawfully acting to serve the process, it must be realized and accepted that the legal authority to serve legal process creates the legal obligation to properly serve legal process. If the obligation is not properly fulfilled, the individual serving process may be subject to

[905] 720 ILCS 5/12-6(a)
[906] 720 ILCS 5/12-6(b)
[907] 720 ILCS 5/12-2(b)(10); 720 ILCS 5/12-3.05(d)(10)
[908] 720 ILCS 5/12-2(b)(4.1), (d)
[909] 720 ILCS 5/12-2(b)(10), (d)
[910] 720 ILCS 5/12-3.05(d)(4), (h)
[911] 720 ILCS 5/12-3.05(d)(10), (h)

the offenses of official misconduct or simulating legal process. Official misconduct occurs when a public officer or employee, in their official capacity, or a special government agent, in their capacity, (1) intentionally or recklessly fails to perform any mandatory duty as required by law, (2) knowingly performs an act which they know they is forbidden by law to perform, (3) performs an act in excess of their lawful authority with the intent to obtain a personal advantage for themselves or another, or (3) solicits or knowingly accepts a fee or reward they know is not authorized by law for the performance of any act.[912]

Official misconduct also occurs when any employee of a law enforcement agency knowingly uses or communicates information they acquired in the course of their employment, whether directly or indirectly, with the intent to obstruct, impede, or prevent the investigation, apprehension, or prosecution of any criminal offense or person.[913] Official misconduct is a Class 3 felony, and a person convicted of official misconduct forfeits their office, employment, or position as a special government agent.[914]

Aside from official misconduct, a party that must serve process but who fails to properly do so may be criminally liable for simulating legal process. A person commits simulating legal process when they issue or deliver any document they know falsely purports to be or simulates any civil or criminal process.[915] Simulating legal process is a Class B misdemeanor.[916]

Finally, a sheriff should note that they may be suspended or terminated from employment for misconduct for the failure to conduct themselves professionally in serving process.

[912] 720 ILCS 5/33-3(a)
[913] 720 ILCS 5/33-3(b)
[914] 720 ILCS 5/33-3(c)
[915] 720 ILCS 5/32-7(a)
[916] 720 ILCS 5/32-7(b)

FORMS APPENDIX

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SUMMONS

IN THE STATE OF ILLINOIS, CIRCUIT COURT

☐ **Alias Summons**

Check if this is not the 1st Summons *issued for this Defendant/Respondent.*

COUNTY: _____

County Where You Are Filing the Case

Enter the case information as it appears on your other court documents.

PLAINTIFF/PETITIONER OR IN RE: _____

Who started the case. *First, Middle, and Last Name, or Business Name*

DEFENDANTS/RESPONDENTS: _____

Who the case was filed against.

_____

_____

First, Middle, and Last Name, or Business Name

_____

Case Number

The Defendant/Respondent named above has been sued. Read this form for information about how to respond to this lawsuit. Also see page 4 for next steps.

For the person filling out this form: Read all instructions in this box.

This *Summons* can only be used for certain types of cases. See the *How To Serve a Summons* Instructions for more information: ilcourts.info/how-to-summons.

Check 1 if this is a 30-day summons or check 2 if this is a date certain summons. Fill in all the information in 1 or 2.

- Use a **date certain summons** if you are asking for money of $50,000 or less or recovery of your personal property that you think the Defendant has, and for some mandatory arbitration cases. In 2, fill in your court date and how to go to court. You may get the court date when you e-file or you may need to ask the Circuit Clerk's office.
- Use a **30-day summons** for most other case types.

Complete the rest of the form with the Defendant/Respondent's information and information about the lawsuit.

If you are suing more than 1 Defendant/Respondent, attach an *Additional Defendant/Respondent Address and Service Information* form for **each** additional Defendant/Respondent.

☐ 1. 30-DAY SUMMONS

To participate in this case, you must **file** your *Appearance* and *Answer/Response* forms with the court within 30 days after you are served with this *Summons* (not counting the day of service) by e-filing or at:

Court Address: _____

Courthouse Street Address

- or -

☐ 2. DATE CERTAIN SUMMONS

Your court date is listed below. Information about getting a court date and how to attend is available from the Circuit Clerk. You can find their contact information at ilcourts.info/clerks.

To respond to this *Summons*, you must **attend court** in one of the ways checked below on:

_____ at _____ ☐ a.m. ☐ p.m. in _____.

Month, Day, Year *Time* *Courtroom Number*

Going to Court for a Date Certain Summons

Court dates may be in-person, remote, or a combination of in-person and remote.

☐ **In person** at: _____
Courtroom Address *Courtroom Number*

☐ **Remotely** (video or telephone)

By video conference at: _____
Video Conference Website

Log-in information: _____
Video Conference Log-in Information, Meeting ID, Password, etc.

By telephone at: _____
Call-in Number for Telephone Remote Appearance

To find out more about remote court options:

Phone: _____ or Website: _____
Circuit Clerk's Phone Number *Website URL*

_____  _____

3. ADDITIONAL INFORMATION ABOUT THE LAWSUIT

a. I am asking for the following amount of money in my *Complaint/Petition*: $ _____.
(Enter 0 if you are not asking for money)

b. I am asking for the return of tangible personal property (items in the Defendant/Respondent's possession) in my *Complaint/Petition*.

☐ Yes ☐ No

4. DEFENDANT/RESPONDENT'S INFORMATION

a. Number of Defendants/Respondents being served:

☐ I am having 1 Defendant/Respondent served and their information is on this form below.

☐ I am having more than 1 Defendant/Respondent served. The first is listed below. I have attached *Additional Defendant/Respondent Address and Service Information* forms for the following number of additional Defendants/Respondents: _____.
Number

b. First Defendant/Respondent's **primary address/information** for service:

Name: _____
First, Middle, and Last Name, or Business Name

Registered Agent's Name *(if you are serving the Registered Agent of a business)*:

_____
First, Middle, and Last Name

Street Address: _____
Street, Apt #

City, State, ZIP: _____
City *State* *Zip*

Telephone: _____ Email: _____

c. **Second address** for this Defendant/Respondent:

☐ I do **not** have another address where the Defendant/Respondent might be found.

☐ I have another address where this Defendant/Respondent might be found. It is:

Street Address: _____
Street, Apt #

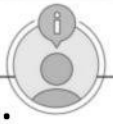
City, State, ZIP: _____
City *State* *Zip*

Telephone: _____ Email: _____

d. Person who will serve your documents on this Defendant/Respondent:

☐ Sheriff in Illinois ☐ Special process server ☐ Licensed private detective

☐ Sheriff outside Illinois: _____
County & State



PLAINTIFF/PETITIONER INFORMATION:

Enter your information below.

Name _____
First, Middle and Last Name

Registered Agent's name, if any _____
First, Middle and Last Name

Street Address_____
Street, Apt #

City, State, ZIP: _____
City *State* *Zip*

Telephone: _____ Email: _____

Be sure to **check your email every day** so you do not miss important information, court dates, or documents from other parties.



The Circuit Clerk and officer or process server will fill in this section.

To be filled in by the Circuit Clerk:

Witness this Date: _____ *Seal of Court*

Clerk of the Court: _____

To be filled in by an officer or process server:

Date of Service: _____

Fill in the date above and give this copy of the Summons to the person served.

Note to officer or process server:

- If **1** is checked, this is a 30-day *Summons* and must be served within 30 days of the witness date.
- If **2** is checked, this is a date certain *Summons* and must be served at least 21 days before the court date, unless 3b is checked yes.
  - If **2** is checked **and 3b** is checked yes, the *Summons* must be served at least 3 days before the court date.
- Fill in the date above and give this copy of the *Summons* to the person served.
- You must also complete the attached *Proof of Service* form and file it with the court or return it to the Plaintiff.

Case Number _____

WHAT'S NEXT

NEXT STEPS FOR PERSON FILLING OUT THIS FORM:

When you file a lawsuit, you must notify the person or business you are suing of the court case by having the *Summons* and Complaint or Petition delivered to them. This is called "serving" them.

File your *Summons* and Complaint or Petition with the Circuit Clerk in the county where your court case should be filed. The Circuit Clerk will "issue" the *Summons* by putting a court seal on the form.

Have the sheriff or a private process server serve the *Summons* and a copy of the Complaint or Petition on the Defendant/Respondent. You cannot serve the *Summons* yourself.

Learn more about each step in the process and how to file in the instructions: ilcourts.info/how-to-summons.

NEXT STEPS FOR PERSON RECEIVING THIS DOCUMENT:

You have been sued:

- Read all documents attached to this *Summons*.
- All documents referred to in this *Summons* can be found at ilcourts.info/forms. Other documents may be available from your local Circuit Court Clerk's office or website.
- You may be charged filing fees, but if you cannot pay them, you can file an *Application for Waiver of Court Fees (Civil)*.
- When you go to court, it is possible that the court will allow you to attend the first court date in this case in-person or remotely by video or phone. Contact the Circuit Court Clerk's office or visit the Court's website to find out whether this is possible and, if so, how to do this.

If Section 1 on page 1 of this *Summons* is checked (30-day summons*)*:

- You **must** file official documents called an *Appearance* and an *Answer/Response* with the court within 30 days of the date you were served with this *Summons*.
- If you do not file an *Appearance* and *Answer/Response* on time, the judge may decide the case without hearing from you. This is called "default." As a result, you could lose the case.
- After you fill out the necessary documents, you need to electronically file (e-file) them with the court. To e-file, you must create an account with an e-filing service provider. For more information, go to ilcourts.info/efile. If you cannot e-file, you can get an exemption that allows you to file in-person or by mail.
- You should be notified of any future court dates.

If Section 2 on page 1 of this *Summons* is checked (date certain summons):

- You **must** attend court on the date listed in Section 2 of this *Summons.*
- If you do not attend that court date, the judge may decide the case without hearing from you. This is called "default." As a result, you could lose the case.

Need Help? ¿Necesita ayuda?

- Call or text Illinois Court Help at 833-411-1121 or go to ilcourthelp.gov for information about going to court, including how to fill out and file documents.
- Llame o envíe un mensaje de texto a Illinois Court Help al 833-411-1121, o visite ilcourthelp.gov para obtener información sobre los casos de la corte y cómo completar y presentar formularios.
- You can also get free legal information and legal referrals at illinoislegalaid.org.
- If there are any words or terms that you do not understand, please **visit Illinois Legal Aid Online** at ilao.info/glossary. You may also find more information, resources, and the location of your local legal self-help center at: ilao.info/lshc-directory.

Case Number _____

PROOF OF SERVICE OF SUMMONS AND COMPLAINT/PETITION

IN THE STATE OF ILLINOIS, CIRCUIT COURT

☐ **Alias Summons**

Check if this is not the 1st Summons *issued for this Defendant/Respondent.*

COUNTY: _____

County Where You Are Filing the Case

Enter the case information as it appears on your other court documents.

PLAINTIFF/PETITIONER OR IN RE: _____

Who started the case. *First, Middle, and Last Name, or Business Name*

DEFENDANTS/RESPONDENTS: _____

Who the case was filed against.

_____

_____

First, Middle, and Last Name, or Business Name

_____

Case Number

STOP

Do not complete the rest of the form. **The sheriff or special process server will fill in the form.**
Give them one copy of this blank *Proof of Service* form for each Defendant/Respondent who will be served.

My name is _____ and I state:

Officer/Process Server First, Middle, Last Name

SERVICE INFORMATION

Defendant/Respondent: _____

First, Middle, Last Name, or Business Name

☐ I was not able to serve the *Summons* and Complaint/Petition on the Defendant/Respondent named above.

- or -

☐ I served the *Summons* and Complaint/Petition on the Defendant/Respondent named above as follows:

☐ **Personally** on the Defendant/Respondent:

☐ Male ☐ Female ☐ Non-Binary Approx. Age: _____ Race: _____

On this date: _____ at this time: _____ ☐ a.m. ☐ p.m.

Address, Unit#: _____

City, State, ZIP: _____

☐ On **someone else at the Defendant/Respondent's home** who is at least 13 years old and is a family member or lives there:

Name of person served: _____

First, Middle, Last Name

☐ Male ☐ Female ☐ Non-Binary Approx. Age: _____ Race: _____

On this date: _____ at this time: _____ ☐ a.m. ☐ p.m.

Address, Unit#: _____

City, State, ZIP: _____

and by sending a copy to this Defendant/Respondent in a postage-paid, sealed envelope to the above address on this date: _____.

☐ On the **Business's agent:** _____
First, Middle, Last Name

☐ Male ☐ Female ☐ Non-Binary Approx. Age: _____ Race: _____

On this date: _____ at this time: _____ ☐ a.m. ☐ p.m.

Address, Unit#: _____

City, State, ZIP: _____

SERVICE ATTEMPTS

I made the following attempts to serve the *Summons* and Complaint/Petition on the Defendant/Respondent:

First Attempt: On this date: _____ at this time: _____ ☐ a.m. ☐ p.m.

Address, Unit#: _____

City, State, ZIP: _____

Other information about service attempt:

_____

_____

_____

Second Attempt: On this date: _____ at this time: _____ ☐ a.m. ☐ p.m.

Address, Unit#: _____

City, State, ZIP: _____

Other information about service attempt:

_____

_____

_____

Third Attempt: On this date: _____ at this time: _____ ☐ a.m. ☐ p.m.

Address, Unit#: _____

City, State, ZIP: _____

Other information about service attempt:

_____

_____

_____

SIGN

I certify under 735 ILCS 5/1-109 that:

1) everything in this document is true and correct, or I have been informed or I believe it to be true and correct, and

2) I understand that making a false statement on this form is perjury and has penalties provided by law.

Your Signature /s/_____ Print Your Name _____

You are: ☐ Sheriff in Illinois ☐ Special process server

☐ Sheriff outside Illinois: _____ ☐ Licensed private detective, license number: _____
County and State *License number*

FEES:

Service and Return: $_____ Miles: $_____ Total: $_____

FORMS APPENDIX: ARTICLE II. RULES ON CIVIL PROCEEDINGS IN THE TRIAL COURT

Rule 101. Summons and Original Process-Form and Issuance
(b) Summons Requiring Appearance on Specified Day.

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois
(Or, In the Circuit Court of Cook County, Illinois)

A.B., C.D., *etc*.	)	
(naming all plaintiffs),	)	
Plaintiffs,	)	
v.	)	No. _____
	)	Amount Claimed _____
H.J., K.L. *etc*.,	)	
(naming all defendants),	)	
Defendants.	)	

SUMMONS

To each defendant:

You are hereby summoned and required to appear before this court at _____ at _____ o'clock _____ M., on _____20__, to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

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.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Witness _____

(Seal of Court)

_____

Clerk of Court

Plaintiff's Attorney (or plaintiff, if he is not represented by attorney)

_____

Address_____
Telephone No. _____
Facsimile Telephone No. _____
E-mail Address_____

(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is additionally required.)

Date of service _____, 20__ (to be inserted by officer on copy left with defendant or other person).

NOTICE TO DEFENDANTS

[Here simple and specific instructions, conforming to local practice, shall be set out outlining procedure for appearance and trial of the type of case covered by the summons.]

(2) In any action for forcible detainer or for recovery of possession of tangible personal property, the summons shall be in the same form, but shall require each defendant to appear on a day specified in the summons not less than seven or more than 40 days after the issuance of summons.

(3) If service is to be made under section 2-208 of the Code of Civil Procedure the return day shall be not less than 40 days or more than 60 days after the issuance of summons, and no default shall be taken until the expiration of 30 days after service.

(d) Summons Requiring Appearance Within 30 Days After Service.

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois
(Or, In the Circuit Court of Cook County, Illinois)

A.B., C.D., *etc*.	)	
(naming all plaintiffs),	)	
Plaintiffs,	)	
v.	)	No. _____
H.J., K.L. *etc*.,	)	
(naming all defendants),	)	
Defendants.	)	

SUMMONS

To each defendant:

You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, not counting the day of service. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

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.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

Witness _____

(Seal of Court)

_____

Clerk of Court

Plaintiff's Attorney (or plaintiff, if he is not represented by attorney)
_____

Address_____
Telephone No. _____
Facsimile Telephone No. _____
E-mail Address_____

(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is additionally required.)

Date of service _____, 20__ (to be inserted by officer on copy left with defendant or other person).

(f) Waiver of Service of Summons.

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois (Or, In the Circuit Court of Cook County, Illinois)

A.B., C.D., *etc.*	)	
(naming all plaintiffs),	)	
Plaintiffs,	)	No. _____
v.	)	Amount Claimed _____
H.J., K.L., *etc*.	)	
(naming all defendants),	)	
Defendants.	)	

Notice and Acknowledgment of Receipt of Summons and Complaint

NOTICE

To: (Insert the name and address of the person to be served)

The enclosed summons and complaint are served pursuant to section 2-213 of the Code of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within _____* days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within ____* days, you (or the party on whose behalf you are being served) may be served a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within ____** days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this notice and acknowledgment of receipt of summons and complaint will have been mailed on _____. (Insert Date)

Signature _____

Date of Signature _____

ACKNOWLEDGMENT OF RECEIPT OF
SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (inset address).

PRINT or TYPE Name _____

Relationship to Entity/Authority to Receive Service of Process

_____

(Not Applicable if you are the named Defendant or Respondent)

Signature _____

Date of Signature _____

*(To be completed by the person sending the notice.) Date for return of waiver must be at least 30 days from the date on which the request is sent, or 60 days if the defendant is addressed outside the United States.

**(To be completed by the person sending the notice.) Date for answering complaint must be at least 60 days from the date on which the request is sent, or 90 days if the defendant is addressed outside the United States.

In the Circuit Court of the Judicial Circuit

[Name of County], Illinois

[Name of Creditor],

Judgment Creditor,

No. *[case number]*

v.

[Name of Debtor],

Judgment Debtor.

CITATION NOTICE

Name and address of court: *[Name of court]*, *[address of court]*, *[name of county]*, Illinois
Name and last-known address of judgment debtor: *[Name of judgment debtor]*, *[last-known address of judgment debtor]*, *[name of county]*, Illinois
Name and address of judgment creditor's attorney or of judgment creditor (if no attorney is listed): *[[Name of judgment creditor]/[Name of attorney for judgment creditor]]*, *[[address of judgment creditor]/[address of attorney for judgment creditor]]*, *[name of county]*, Illinois
Amount of judgment: $*[Dollar amount of judgment]*
Name of person receiving citation: *[Name of person receiving citation]*
Court date and time: *[Specification of return date]*, *[time of day]*

NOTICE: The court has issued a citation against the person named above. IF THE PERSON FAILS TO APPEAR IN COURT AT THE DATE AND TIME PROVIDED, THE PERSON MAY LOSE THE RIGHT TO PROTECT MONEY IN A BANK, SAVINGS BANK, OR CREDIT UNION ACCOUNT AND OTHER ASSETS AND COULD BE SUBJECT TO ARREST AND IMPRISONMENT. The citation directs that person to appear in court to be examined for the purpose of allowing the judgment creditor to discover income and assets belonging to the judgment debtor or in which the judgment debtor has an interest. The citation was issued on the basis of a judgment against the judgment debtor in favor of the judgment creditor in the amount stated above. On or after the court date stated above, the court may compel the application of any discovered income or assets toward payment on the judgment.

The amount of income or assets that may be applied toward the judgment is limited by federal and Illinois law. The JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED ABOVE:

1. Under Illinois or federal law, the exemptions of personal property owned by the debtor include: the debtor's equity interest, not to exceed $4,000 in value, in any personal property as chosen by the debtor, of which $1,000 will be automatically applied to a debtor's bank, savings bank, or credit union account through the end of the hearing noted above; Social Security and SSI benefits; public assistance benefits; unemployment compensation benefits; worker's compensation benefits; veteran's benefits; circuit breaker property tax relief benefits; the debtor's equity interest, not to exceed $3,600 in value, in any one motor vehicle; and the debtor's equity interest, not to exceed $2,250 in value, in any implements, professional books, or tools of the trade of the debtor.

2. Under Illinois law, every person is entitled to an estate in homestead, when it is owned and occupied as a residence, to the extent in value of $50,000 for an individual and $100,000 for two or more individual owners, which homestead is exempt from judgment.

3. Under Illinois law, the amount of wages that may be applied toward a judgment is limited to the lesser of: (i) 15% of gross weekly wages or (ii) the amount by which disposable earnings for a week exceed the total of 45 times the federal minimum hourly wage or, under a wage deduction summons served on or after January 1, 2006, the Illinois minimum hourly wage, whichever is greater.

4. Under federal law, the amount of wages that may be applied toward a judgment is limited to the lesser of: (i) 25% of disposable earnings for a week or (ii) the amount by which disposable earnings for a week exceed 30 times the federal minimum hourly wage.

5. Pension and retirement benefits and refunds may be claimed as exempt under Illinois law.

The judgment debtor may have other possible exemptions under the law.

THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. The judgment debtor also has the right to seek a declaration at an earlier date, by notifying the clerk in writing at *[name of court]*, *[address of court]*. When so notified, the clerk of the court will obtain a prompt hearing date from the court and will provide the necessary forms that must be prepared by the judgment debtor or the attorney for the judgment debtor and sent to the judgment creditor and the judgment creditor's attorney regarding the time and location of the hearing. This notice may be sent by regular first class mail.

INCOME AND ASSET FORM

To Judgment Debtor: Please complete this form and bring it with you to the hearing referenced in the enclosed citation notice. You should also bring to the hearing any documents you have to support the information you provide in this form, such as pay stubs and account statements. The information you provide will help the court determine whether you have any property or income that can be used to satisfy the judgment entered against you in this matter. The information you provide must be accurate to the best of your knowledge.

If you fail to appear at this hearing, you could be held in contempt of court and possibly arrested.

In answer to the citation proceedings served upon the judgment debtor, he or she answers as follows:

Name: _____

Home Phone Number: _____

Home Address: _____

Date of Birth: _____

Marital Status: _____

I have ___ dependents.

Do you have a job? YES NO

Company's name I work for: _____

Company's address: _____

Job:

I earn $_____ per _____

If self employed, list here your business name and address:

_____

Income from self employment is $_____ per year.

I have the following benefits with my employer:

_____

I do not have a job, but I support myself through:

Government Assistance $_____ per month

Unemployment $_____ per month

Social Security $_____ per month

SSI $_____ per month

Pension $_____ per month

Other $_____ per month

Real Estate:

Do you own any real estate? YES NO

I own real estate at _____, with names of other Owners

_____

Additional real estate I own: _____

I have a beneficial interest in a land trust. The name and address of the trustee is: _____. The beneficial interest is listed in my name and _____.

There is a mortgage on my real estate. State the mortgage company's name and address for each parcel of real estate owned:

_____

An assignment of beneficial interest in the land trust was signed to secure a loan from _____.

I have the following accounts:

Checking account at _____;

account balance $_____

Savings account at _____;

account balance $_____

Money market or certificate of deposit at _____

Safe deposit box at _____

Other accounts (please identify): _____

I own:

A vehicle (state year, make, model, and VIN): _____

Jewelry (please specify): _____

Other property described as: _____

Stocks/Bonds _____

Personal computer _____

DVD player _____

Television _____

Stove _____

Microwave _____

Work tools _____

Business equipment _____

Farm equipment _____

Other property (please specify):

_____

Signature: _____

GARNISHMENT NOTICE

[Name of court], *[address of court]*

[Name of judgment creditor],

Judgment Creditor,

v. Case No. *[case number]*

[Name of judgment debtor],

Judgment Debtor.

Address of Judgment Debtor: *[Last-known address of judgment debtor]*
Name and Address of Attorney for judgment creditor or of judgment creditor (if no attorney is listed): *[Name of judgment creditor]/[Name of attorney for judgment creditor]*, *[address of judgment creditor]/[address of attorney for judgment creditor]*, *[name of county]*, Illinois
Amount of Judgment: $*[Dollar amount of judgment]*
Name of Garnishee: *[Name of garnishee]*
Return Date: *[Date of return]*

NOTICE: The court has issued a garnishment summons against the garnishee named above for money or property (other than wages) belonging to the judgment debtor or in which the judgment debtor has an interest. The garnishment summons was issued on the basis of a judgment against the judgment debtor in favor of the judgment creditor in the amount stated above.

The amount of money or property (other than wages) that may be garnished is limited by federal and Illinois law. The judgment debtor has the right to assert statutory exemptions against certain money or property of the judgment debtor which may not be used to satisfy the judgment in the amount stated above.

Under Illinois or federal law, the exemptions of personal property owned by the debtor include the debtor's equity interest, not to exceed $4,000 in value, in any personal property as chosen by the debtor, of which $1000 will be automatically applied to a debtor's bank, savings bank, or credit union account until the return date; Social Security and SSI benefits; public assistance benefits; unemployment compensation benefits; workers' compensation benefits; veterans' benefits; circuit breaker property tax relief benefits; the debtor's equity interest, not to exceed $3,600 in value, in any one motor vehicle, and the debtor's equity interest, not to exceed $2,250 in value, in any implements, professional books, or tools of the trade of the debtor.

The judgment debtor may have other possible exemptions from garnishment under the law.

The judgment debtor has the right to request a hearing before the court to dispute the garnishment or to declare exempt from garnishment certain money or property or both. To obtain a hearing in counties with a population of 1,000,000 million or more, the judgment debtor must notify the Clerk of the Court in person and in writing at *[insert address of Clerk]* before the return date specified above or appear in court on the date and time on that return date. To obtain a hearing in counties with a population of less than 1,000,000 million, the judgment debtor must notify the Clerk of the Court in writing at *[insert address of Clerk]* on or before the return date specified above. The Clerk of the Court will provide a hearing date and the necessary forms that must be prepared by the judgment debtor or the attorney for the judgment debtor and sent to the judgment creditor and the garnishee regarding the time and location of the hearing. This notice may be sent by regular first class mail.

CERTIFICATE OF MAILING

I hereby certify that, within 2 business days of service upon the garnishee of the garnishment summons, interrogatories and garnishment notice, I served upon the judgment debtor in this cause a copy of the garnishment summons and garnishment notice by first class mail to the judgment debtor's address as indicated in the garnishment notice.

Dated: *[date of mailing copies]*

_____

[Signature]

WAGE DEDUCTION NOTICE

[Name of court], *[address of court]*

[Name of Judgment Creditor]

Judgment Creditor

v. No. *[Case number]*

[Name of Judgment Debtor]

Judgment Debtor

Address of Judgment Debtor: *[Last-known address of judgment debtor]*
Name and Address of Attorney for Judgment Creditor or of Judgment Creditor (if no attorney is listed):
[[Name of attorney for judgment creditor]/[Name of judgment creditor]]
[[Address of attorney for judgment creditor]/[Address of judgment creditor]], *[name of county]*, Illinois
Amount of Judgment: $*[Dollar amount of judgment]*
Employer: *[Name of employer]*
Return Date: *[Date of return]*

NOTICE: The court shall be asked to issue a wage deduction summons against the employer named above for wages due or about to become due to you. The wage deduction summons may be issued on the basis of a judgment against you in favor of the judgment creditor in the amount stated above.

The amount of wages that may be deducted is limited by federal and Illinois law.

(1) Under Illinois law, the amount of wages that may be deducted is limited to the lesser of (i) 15% of gross weekly wages or (ii) the amount by which disposable earnings for a week exceed the total of 45 times the federal minimum hourly wage, or under a wage deduction summons served on or after January 1, 2006, the minimum hourly wage prescribed by Section 4 of the Minimum Wage Law, whichever is greater.

(2) Under federal law, the amount of wages that may be deducted is limited to the lesser of (i) 25% of disposable earnings for a week or (ii) the amount by which disposable earnings for a week exceed 30 times the federal minimum hourly wage.

(3) Pension and retirement benefits and refunds may be claimed as exempt from wage deduction under Illinois law.

You have the right to request a hearing before the court to dispute the wage deduction because the wages are exempt. To obtain a hearing in counties with a population of 1,000,000 or more, you must notify the Clerk of the Court in person and in writing at (*[insert address of Clerk]*) before the Return Date specified above or appear in court on the date and time on that Return Date. To obtain a hearing in counties with a population of less than 1,000,000, you must notify the Clerk of the Court in writing at (*[insert address of*

Clerk]) on or before the Return Date specified above. The Clerk of the Court will provide a hearing date and the necessary forms that must be prepared by you or your attorney and sent to the judgment creditor and the employer, or their attorney, regarding the time and location of the hearing. This notice may be sent by regular first-class mail.

SHERIFF'S CERTIFICATE OF LEVY ON REAL ESTATE

[EITHER:]

In the Circuit Court of the
[Designation of Judicial Circuit]
Judicial Circuit

[Name of County], Illinois

[Law/Chancery/Probate/County/
Domestic Relations/Criminal] Division

[OR:]

In the Circuit Court of Cook County, Illinois

County Department, *[Law/Chancery/Probate/County/Domestic Relations/Criminal]* Division

[OR:]

In the Circuit Court of Cook County, Illinois

Municipal Department, *[Designation of District]* District

[Names of plaintiffs],

Plaintiff(s),

v. Case No. *[case number]*

[Names of defendants],

Defendant(s).

[Name of paper]

Pursuant to a certified copy of judgment issued by the clerk of the Circuit Court of *[name of county]*, Illinois, in the above matter and a direction to levy executed by the plaintiff, I, *[name of sheriff]*, sheriff of *[name of county]*, Illinois, did on *[date of levy]*, levy on the right, title, and interest of the defendant *[name of defendant]* in and to the following-described real estate: *[Legal description of property]*.

Dated: *[date of signing]*

_____
[Name of sheriff]
[Title of sheriff]

735 ILCS 5/12-147 Form of Deed

Whereas, A.B. _____ in the _____ court of _____ county recovered a judgment against C.D. for the sum of _____ and costs on *(insert date)*, and a certified copy of the judgment, issued on *(insert date)*, by virtue of which _____ levied upon the premises hereinafter described, and the time and place of the sale thereof having been duly advertised according to law, the same were struck off and sold to _____, he or she being the highest and best bidder therefor. *(If the certificate has been transferred, recite the fact.)*

Now, therefore, I, _____, of the county of _____, in consideration of the premises, hereby convey to _____, his or her heirs and assigns, the following described lot or parcel of land *(here describe the premises)* to have and to hold the same with all the appurtenances thereto belonging forever.

_____ (Date)
_____ (Signature)

NOTICE OF HEARING FOR REPLEVIN

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois
(Or, In the Circuit Court of Cook County, Illinois)

A.B., C.D., *etc*. (naming all plaintiffs),	)	
Plaintiffs,	)	
v.	)	No._____
H.J., K.L., *etc*. (naming all defendants),	)	
Defendants.	)	

Notice

To: *[name of defendant]*, Defendant

You are given notice that on *[filing date of complaint]*, the plaintiff filed a complaint in this court for the issuance of an order of replevin for the possession of the following property: *[description of property]*.

You are further notified that a hearing on the issuance of this order of replevin will be held before the court at the courthouse at *[address of courthouse]*, in *[name of city]*, Illinois, on *[date of hearing]*, at *[time of hearing]*, at which time and place you may appear and contest the issuance of the order if you so desire.

Dated: *[date of notice]*

_____
[Name of attorney for plaintiff]
Attorney for Plaintiff
[E-mail address of attorney for plaintiff]

PLAINTIFF'S AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

A B, being duly sworn, says: That (*here state if affiant is agent or attorney of the creditor; if the action is by an individual or corporation, the name of the individual or corporation, and if the action is by a firm, the name of the partners*) has a just claim against (*name of debtor*), on account of (*here state facts giving rise to the cause of action and amount of the claim*), and the affiant believes (*the name of the creditor*) is entitled to recover of (*name of debtor*), after allowing all just credits and set-offs _____ dollars and _____ cents, which is now due, and that he, she or it has good reason to believe and does believe that (*name of debtor*) (*here state facts which give rise to some one or more of the causes which authorize an attachment*). (*name of debtor*) resides at (*here state the residence of the debtor if known, or if not, that the affiant has made diligent inquiry and cannot ascertain his or her or its place of residence.*)

Affiant has personal knowledge that the foregoing statements are true.

_____
(Name of affiant)

Subscribed and sworn to before me on this _____ day of _____, 20_____,

_____
Notary Public

(If action sounds in tort here include the endorsement of the court as to amount of damages for which order shall be entered)

DEMAND FOR IMMEDIATE POSSESSION

NOTE: **This form can only be used in limited circumstances *(for example, when evicting squatters or trespassers)*. Read *How to File & Present an Eviction Case* for more information.**

Instructions ▾

Enter today's date.

Date: _____

To:

Identify the occupants and mailing address.

_____
Occupant Names and Any Unknown Occupants

_____ _____
Street Address *Unit*

_____
City *State* *ZIP*

In **1**, enter the address of the leased property.

1. You have no right to be in the property located at:

_____ _____
Street Address *Unit*

_____
City *State* *ZIP*

2. I demand you leave immediately. If you do not leave immediately, I may file an eviction case against you and any unknown occupants living at the property.

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

Enter your complete address, telephone number, and email address, if you have one.

_____ _____
Landlord or Agent Signature *Street Address*

_____ _____
Print Your Name *City, State, ZIP*

_____ _____
Telephone *Email*

NOTE: **After this *Notice* is served, the person who serves this *Demand* should complete the *Affidavit of Service of a Demand or Notice* available at illinoiscourts.gov/documents-and-forms/approved-forms.**

This form is approved by the Illinois Supreme Court.

Instructions

This *Notice* is commonly called a "5-Day Notice." However, the lease or local law may require a longer notice period (see **2b** below).

Identify the tenants and mailing address.

NOTICE OF TERMINATION FOR NON-PAYMENT OF RENT

Date: _____

To:

_____
Tenant Names

And any unknown occupants.

_____ _____
Street Address *Unit*

_____
City *State* *ZIP*

In **1**, enter the total amount of rent currently due.

1. You owe $_____ in rent for the property located at:

_____ _____
Street Address *Unit*

_____
City *State* *ZIP*

In **2**, check **2a** unless the law or lease requires you to give the tenant more time to pay. If you check **2b**, enter the number of days the tenant has to pay.

2. You must pay the full amount you owe within:

a. ☐ 5 days, OR

b. ☐ _____ days *(must be more than 5 days)*

after the date this *Notice* is served. If you do not, your lease will be terminated and your landlord may file an eviction case against you and unknown occupants.

NOTE:

- **For how to determine when the 5 days end, see *How to File & Present an Eviction Case.***
- **Only FULL PAYMENT of the 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.**

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

Enter your complete current address, telephone number, and email address, if you have one.

_____ _____
Landlord or Agent Signature *Street Address*

_____ _____
Print Your Name *City, State, ZIP*

_____ _____
Telephone *Email*

NOTE: **After this *Notice* is served, the person who serves this *Notice* should complete the *Affidavit of Service of a Demand or Notice* available at illinoiscourts.gov/documents-and-forms/approved-forms.**

This form is approved by the Illinois Supreme Court.

Instructions

This *Notice* is commonly called a "10-Day Notice." However, the lease or local law may require a longer notice period.

Identify the tenants and their mailing address.

This *Notice* cannot be used to terminate a lease for non-payment of rent. For those cases, use the *Notice of Termination for Non-Payment of Rent* form.

NOTICE OF TERMINATION FOR LEASE VIOLATION (OTHER THAN NON-PAYMENT OF RENT)

Date: _____

To:

_____
Tenant Names

And any unknown occupants.

_____ _____
Street Address *Unit*

_____ _____ _____
City *State* *ZIP*

In **1**, describe the violation, and state when it happened.

1. You have violated your lease by: _____

_____

_____

_____ .

In **2**, enter the address of the leased property.

2. Because you violated your lease, I am terminating your lease for the property located at:

_____ _____
Street Address *Unit*

_____ _____ _____
City *State* *ZIP*

NOTE: **The lease or local law may give the tenant a right to correct the lease violation. If the tenant has this right, the landlord must inform the tenant of this right by checking the correct box in 3 below.**

In **3**, check **3a** if the lease or a local law gives the tenant a right to correct the violation. Otherwise, check box **3b**.

3. Correcting the violation (*check a or b*):

a. ☐ You have the right to correct the lease violation. You must fix the violation described above within _____ days *(it must be at least 10 days)* or your lease will terminate when this period ends and I may file an eviction case against you.

b. ☐ You do not have the right to correct the lease violation. Your lease will end in _____ days *(it must be at least 10 days)*. If you do not move out of the property by the end of this period, I may file an eviction case against you.

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

Enter your complete current address, telephone number, and email address, if you have one.

_____ _____
Landlord or Agent Signature *Street Address*

_____ _____
Print Your Name *City, State, ZIP*

_____ _____
Telephone *Email*

NOTE: **After this *Notice* is served, the person who serves this *Notice* should complete the *Affidavit of Service of a Demand or Notice* available at** illinoiscourts.gov/documents-and-forms/approved-forms.

COMPLAINT

(1) Plaintiff, *[name of plaintiff]*, files this complaint to foreclose the *[mortgage/[type of other conveyance]]* (hereinafter called "mortgage") hereinafter described and joins the following person as defendants: *[Names of defendants]*.

(2) Attached as Exhibit *[designation of exhibit 1]* is a copy of the mortgage and as Exhibit *[designation of exhibit 2]* is a copy of the note secured thereby.

(3) Information concerning mortgage:

(A) Nature of instrument: *[type of instrument]*

(B) Date of mortgage: *[date of mortgage]*

(C) Name of mortgagor: *[name of mortgagor]*

(D) Name of mortgagee: *[name of mortgagee]*

(E) Date and place of recording: *[date and location of recording]*

(F) Identification of recording: *[book and page number of recording]*

(G) Interest subject to the mortgage: *[fee simple/estate for years/undivided interest/[other type of interest]]*

(H) Amount of original indebtedness, including subsequent advances made under the mortgage: $*[dollar amount of indebtedness]*

(I) Both the legal description of the mortgaged real estate and the common address or other information sufficient to identify it with reasonable certainty: *[description of property]*

(J) Statement as to defaults, including, but not necessarily limited to, date of default, current unpaid principal balance, per diem interest accruing, and any further information concerning the default: *[identification of defaults]*

(K) Name of present owner of the real estate: *[name of owner]*

(L) Names of other persons who are joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated: *[names of joined defendants]*

(M) Names of defendants claimed to be personally liable for deficiency, if any: *[none/[names of defendants claimed to be personally liable for deficiency]]*

(N) Capacity in which plaintiff brings this foreclosure (here indicate whether plaintiff is the legal holder of the indebtedness, a pledgee, an agent, the trustee under a trust deed or otherwise, as appropriate): *[identification of plaintiff's capacity]*

(O) Facts in support of redemption period shorter than the longer of (i) seven months from the date the mortgagor or, if more than one, all the mortgagors (I) have been served with summons or by publication or (II) have otherwise submitted to the jurisdiction of the court, or (ii) three months from the entry of the judgment of foreclosure, if sought (here indicate whether based upon the real estate not being residential or real estate value less than 90% of amount owed, etc.): *[description of facts supporting claim of shorter redemption period]*

(P) Statement that the right of redemption has been waived by all owners of redemption, if applicable: *[none/[description of facts supporting claim of waiver]]*

(Q) Facts in support of request for attorneys' fees and of costs and expenses, if applicable: *[none/[description of facts supporting claim of attorneys' fees, costs, and expenses]]*

(R) Facts in support of a request for appointment of mortgagee in possession or for appointment of receiver, and identity of such receiver, if sought: *[none/[description of facts supporting claim of appointment of mortgagee in possession or receiver]]*

(S) Offer to mortgagor in accordance with Section 15-1402 to accept title to the real estate in satisfaction of all indebtedness and obligations secured by the mortgage without judicial sale, if sought: *[none/[description of offer to mortgagor]]*

(T) Name or names of defendants whose right to possess the mortgaged real estate, after the confirmation of a foreclosure sale, is sought to be terminated and, if not elsewhere stated, the facts in support thereof: *[names of defendants whose rights are sought to be terminated] [OPTIONAL: [description of facts supporting claim]]*

REQUEST FOR RELIEF

Plaintiff requests:

(i) A judgment of foreclosure and sale.

(ii) An order granting a shortened redemption period, if sought.

(iii) A personal judgment for a deficiency, if sought.

(iv) An order granting possession, if sought.

(v) An order placing the mortgagee in possession or appointing a receiver, if sought.

(vi) A judgment for attorneys' fees, costs and expenses, if sought.

Dated: *[date of complaint]*

_____
[Name of attorney for plaintiff]
Attorney for Plaintiff
[E-mail address of attorney
for plaintiff]

FORM OF NOTICE OF FORECLOSURE

Document No _____, filed for record in Recorder's office of _____ County, Illinois on _____*[date]*, at _____*[time]*.

IN THE CIRCUIT COURT OF _____

_____*[Name]*, Plaintiff,

No. _____

v.

_____*[Name]*, Defendant.

CHANCERY DIVISION
LIS PENDENS
(NOTICE OF FORECLOSURE)

The undersigned, _____*[name]*, certifies, pursuant to Illinois Revised Statutes Chapter 110, paragraph 15-1503, that the above-entitled mortgage foreclosure action was filed on _____*[date]*, and is now pending. The undersigned further certifies that:

1. The names of all plaintiffs involved in the action and the case number are set forth above.

2. The court in which the action is pending is set forth above.

3. The names of the title holders of record are: _____*[specify]*.

4. The following is a legal description of the mortgaged property which is sufficient to identify it with reasonable certainty: _____*[set forth legal description of property]*.

5. The common address or location of the property is: _____*[specify]*.

6. The following information pertains to the mortgage sought to be foreclosed in the above-referenced action:

(a) Names of mortgagors: _____

(b) Name of mortgagee: _____

(c) Date of mortgage: _____

(d) Date of recording: _____

(e) County where recorded: _____

(f) Recording document identification: _____

Pursuant to paragraph 15-1218, Chapter 110, of the Illinois Revised Statutes, the undersigned further certifies that:

A. The address of the plaintiff in the above-entitled action is _____*[specify]*.

B. The plaintiff claims a mortgage lien on the above-described property.

C. The plaintiff seeks by this action to foreclose its mortgage on the above-described property.

D. The names of the persons against whom the claim is set forth above.

E. The legal description of the mortgaged property is set forth above.

F. The name and address of the person who prepared and executed this Notice is set forth below.

Dated: _____
Prepared by:_____
Return to:_____
_____

[Signature of attorney of record]
_____*[Address of attorney of record]*
_____*[Telephone number of attorney of record]*