

Illinois Law of Eviction

Thomas E. McClure, JD, MS

Associate Professor & Director of Legal Studies

Illinois State University

- I. Lease formats
 - A. Written v. oral
 - B. Statute of Frauds: Any contract concerning real estate that is incapable of performance within the term of one year must be in writing.

- II. Lease terms
 - A. Written terms are expressly set forth in document.
 - B. Oral lease terms set forth in oral communication and course of dealings.
 - C. Unless there is an express covenant to the contrary, the landlord must give tenant advance notice of intent to terminate lease.
 1. Week-to-week lease: If the tenant holds over, the landlord may terminate by 7 days written notice. § 9-207 (a)¹
 2. Lease more than 7 days & less than year: The landlord shall give the tenant 30 days advance notice. § 9-207 (b)
 3. Year-to-year lease: The landlord shall give the tenant at least 60 days advance notice. The notice must be given within 4 months before the last 60 days of the term. § 9-205
 4. Mutual termination of lease: The parties may end an oral or written lease by mutual agreement. Exception: Safe Homes Act *See* VI.B.7

- III. Breach of lease
 - A. Most common: non-payment of rent
 1. Less than six months owed, the landlord must give the tenant the opportunity to cure the default before an eviction action can be filed.
 - a. Landlord must serve a 5-day notice to give the tenant opportunity to pay rent due. § 9-209
https://courts.illinois.gov/forms/approved/eviction/EVC_NoticeTerminationNonpaymentRent.pdf
 - b. If tenant fails to pay the rent within 5 days, landlord may file suit for both possession of the premises and for a money judgment. § 9-209
 - c. Date of service excluded; last day excluded if Saturday, Sunday or holiday. Statute on Statutes, 5 ILCS 70/1.11

¹ Unless indicated otherwise, citations are to provisions of the Illinois Code of Civil Procedure, Article IX, 735 ILCS 5/9-101 *et seq.*

- d. Acceptance of partial payments may invalidate right to terminate.
 - 2. Six months or more owed, the landlord does not have to give the tenant notice and can file suit immediately. § 9-204; *but see* § 9-209
 - B. Breach of other lease covenants
 - 1. Landlord must serve 10-day notice to quit to terminate. § 9-210
https://courts.illinois.gov/forms/approved/eviction/EVC_NoticeTerminationLeaseViolation.pdf
 - 2. Date of service excluded; last day excluded if Saturday, Sunday or holiday. Statute on Statutes, 5 ILCS 70/1.11
 - C. When a tenant fails to leave premises after expiration of lease, the landlord is not required to give notice to the tenant. § 9-213.
 - A holdover tenant is liable for double rent if the landlord gives notice for immediate possession. § 9-202
https://courts.illinois.gov/forms/approved/eviction/EVC_DemandforPossession.pdf
 - D. No notice is required for squatters or unwelcome guests.
- IV. Service of notice
 - A. Methods of service: (1) personal service on tenant; (2) personal service on person 13+ years old residing or occupying premises; (3) registered/certified mail sent to tenant with return receipt from addressee; & (4) if no one in actual possession - posting on premises. §§ 9-104, 9-211
 - B. Affidavit of service § 9-212
https://courts.illinois.gov/court/Forms/approved/eviction/EVC_AffidavitofServiceofDemandorNotice.pdf
- V. Specific procedures for certain tenancies & tenants
 - A. Mobile homes § 9-103
 - B. Condominiums §§ 9-104.1, 9-104.2, 9-104.3, 9-106.1, 9-111
 - C. Farmland §§ 9-105, 9-206, 9-206.12
 - D. Military personnel § 9-107.10
 - E. Subsidized housing § 9-119
 - F. Mortgage foreclosures §§ 15-1101 *et. seq.*
- VI. Filing suit
 - A. Eviction complaint with attachments plus date certain summons § 9-106
 - 1. Standardized Complaint form used statewide § 9-109.6
https://courts.illinois.gov/court/Forms/approved/eviction/EVC_EvictionComplaint.pdf
 - a. Documents not attached

https://courts.illinois.gov/Forms/approved/eviction/Eviction_Affidavit_Supporting_Documents.pdf

b. Summons

https://courts.illinois.gov/forms/approved/eviction/EVC_EvictionSummons.pdf

2. Landlord may sue one or several tenants on the same lease. § 9-113
- B. The tenant can generally deny the allegations of the complaint and raise any issues “germane to the distinctive purpose of the proceedings. § 9-106
 1. Rent not owed; past due rent paid in time; landlord refused tender
 2. Tenant did not violate lease
 3. Improper notice; no notice; suit filed before notice deadline expired
 4. Breach of implied warranty of habitability *Jack Spring v. Little*, 50 Ill. 351 (1972)
 5. Retaliatory eviction *Clore v. Fredman*, 59 Ill. 20 (1974)
 6. Eviction because tenant is sexual assault/DV victim § 9-106.2
 7. Safe Homes Act, 765 ILCS 750/15 – Tenant or household member
 - a. Threat of domestic or sexual violence on premises
 - b. Domestic or sexual violence occurred on premises
 8. Retaliation on the basis of immigration status § 9-106.3
 9. Race discrimination 42 U.S.C. §§ 3604, 3612
 10. Violation of COVID-19 Moratorium Executive Order
 - a. Exceptions:
 - i. Tenant poses a direct threat to the health and safety of other tenants,
 - ii. An immediate and severe risk to property, or
 - iii. Property is non-residential.
 - b. Certificate of compliance with Governor’s Executive Order (12/20/20 Order of Illinois Supreme Court) <https://courts.illinois.gov/SupremeCourt/Announce/2020/122220-1.pdf> [page 4 of this handout]
 - i. Certify one of the three exceptions applies, or
 - ii. Service of Illinois Housing Development form & did not receive a qualifying declaration from tenant. <https://df7qosnywqs6g.cloudfront.net/wp-content/uploads/2021/01/Tenant-Declaration-Forms-1.8.21.pdf> [pages 5-6 of this handout]
 11. Landlord’s duty to mitigate damages § 9-213.1
- C. Either party may demand a jury trial § 9-108
- D. Summary of proceedings
 1. Notice

2. Complaint & summons
3. Default or trial
4. Judgment (eviction order)

https://courts.illinois.gov/forms/approved/eviction/Eviction_Order_Approved.pdf

5. Execution of judgment

IN THE CIRCUIT COURT OF THE ___ JUDICIAL CIRCUIT
FOR _____ COUNTY, ILLINOIS

Plaintiff(s))	
)	
v.)	Case No.
)	
Defendant(s))	

Plaintiff's Certification of Compliance with the Governor's Executive Order on Evictions

I, [name], hereby state as follows: (check all applicable box(es))

1. I am: The named plaintiff; or An Agent of the named plaintiff.
2. The filing of this eviction case does not violate the Governor's Executive Order 2020-72, as amended by Executive Order 2020-74 and any subsequent executive order extending or reissuing Executive Order 2020-72 (together, the "Executive Order"), because:
 - a. One or more of the following applies:
 - The defendant(s) poses a direct threat to the health and safety of other tenants;
 - The defendant(s) poses an immediate and severe risk to property; and/or
 - The property at issue is non-residential;

OR
 - b. Prior to commencing the action:
 - I served each defendant with a form declaration made available by the Illinois Housing Development Authority (or a similar declaration under penalty of perjury) on [date]; and
 - I did not receive a qualifying declaration from any of the defendant(s) that they qualify as a "Covered Person" under the Executive Order before filing this action.

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

Sworn:

Date

Plaintiff (or Agent) (spell name)

Plaintiff (or Agent) (signature)

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
STATE OF ILLINOIS EXECUTIVE ORDER 2020-72**

This declaration is for tenants, lessees, sub-lessees, and residents of residential properties who are covered by State of Illinois Executive Order 2020-72 ("EO 2020-72") temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Pursuant to EO 2020-72, you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or any other person or entity who has a right to have you evicted or removed from where you live in order to invoke the protections of EO 2020-72. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. EO 2020-72 prohibits any person who submits this declaration from being evicted or removed from their residence through December 12, 2020, unless the person poses a direct threat to the health and safety of other tenants or an immediate and severe risk to property. EO 2020-72 may be amended or extended. EO 2020-72 does not relieve you of the obligation to pay rent or comply with any other obligation that you may have pursuant to your lease or rental agreement. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 720 ILCS 5/32-2, that the foregoing are true and correct:

- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment pursuant to Section 2001 of the CARES Act;
- I am unable to make a full rent or housing payment due to a COVID-19 related hardship including, but not limited to, substantial loss of income, loss of compensable hours of work or wages, or an increase in out-of-pocket expenses directly related to the COVID-19 pandemic;
- I am using best efforts to make timely partial payments that are as close to the full payment as my circumstances may permit, taking into account other non-discretionary expenses;¹ and
- If evicted, I would likely become homeless, or be forced to move into and live in close quarters in a new congregate or shared living setting because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions, my landlord, the owner of the residential property where I live, or any other person or entity who has a right to have me evicted or removed from where I live, may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state laws and local ordinances.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

¹ "Non-discretionary expenses" include, but are not limited to, food, utilities, phone and internet access, school supplies, cold-weather clothing, medical expenses, child care, and transportation costs, including car payments, maintenance and insurance.

Tenant Declaration Form Overview

TAKE ACTION: Sign the Tenant Declaration Form to protect yourself and your household from eviction for nonpayment of rent. Under Governor Pritzker's [Executive Order 2020-72](#), as amended by [Executive Order 2020-74](#) and [2021-01](#), eviction protections are now limited to specific households. If you owe rent, your landlord may not file an eviction action against you if you provide your landlord with a declaration stating that you meet the following 4 criteria:

1. **INCOME:** At least one of the following applies to me:
 - (i) I expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), or
 - (ii) I was not required to report any income in 2019 to the U.S. Internal Revenue Service (IRS), or
 - (iii) I received an Economic Impact Payment (i.e., the stimulus check) pursuant to Section 2001 of the CARES Act.
2. **INABILITY TO MAKE PAYMENT DUE TO COVID-19:** I am unable to make a full rent or housing payment due to a COVID-19 related hardship including, but not limited to, substantial loss of income, loss of compensable hours of work or wages, or an increase in out-of-pocket expenses directly related to the COVID-19 pandemic; and
3. **BEST EFFORTS:** I am making my best efforts to make timely partial payments that are as close to the full payment as my circumstances permit, taking into account other expenses that I must pay (e.g., food, utilities, phone and internet access, school supplies, cold-weather clothing, medical expenses, child care, and transportation costs, including car payments, maintenance, and insurance); and
4. **AT RISK:** If evicted, I would likely become homeless, or be forced to move into and live in close quarters in a new shared living setting because I have no other available housing options.

Anyone with a legal right to evict you, including your landlord, is required to provide a copy of this 2-page declaration form to every tenant on the lease at least 5 days before your landlord can give you a notice of termination of your tenancy. If you are a tenant who fits the criteria listed above, **you must sign the declaration form under penalty of perjury and return it to your landlord to be protected under the Executive Order.** You should also retain a copy of the signed declaration for yourself.

If a landlord has reason to believe that a tenant poses a direct threat to the health and safety of other tenants or an immediate and severe risk to property, they can file an eviction action against that person, even if they have completed a declaration.

Please note that, when Executive Order 2020-72 is no longer in effect, your landlord may require full payment of rent.

For any additional questions, view our FAQ or reach out to one of our Community Partners for additional support, [here](#).