

## District Court Case Processing: *Summary Proceedings*

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### Generally

- Summary proceedings are civil actions to recover the possession of premises and to obtain other ancillary relief provided by law and court rule.
- Before starting a summary proceeding action with the court, the landlord must serve a notice to quit or demand for possession upon the tenant.
- Parties that are not individuals and that do business as another entity (for example they are incorporated, such as LLCs or Partnerships), require attorney representation.
  - Power of Attorney paperwork is not the same as attorney representation.

## Initial Notice: *Demand For Possession or Notice to Quit*

- This is the notice given by the landlord to the tenant informing the tenant of the landlord's desire to regain possession of the residence and instructing the tenant that he must move out (or pay back rent) within a specified period of time.
- This notice is required before initiating summary proceedings
- If a tenant does not comply with the demand for possession or notice to quit, then the landlord can initiate the summary proceeding
- It is the landlord's responsibility to use the appropriate forms.
  - If there is a question whether notice is required or is sufficient it is up to the judge to decide

## How much notice is required?

- 24 hour notice:
  - Illegal drug activity (DC100e)
- 7 day notice:
  - Nonpayment of rent (DC100a)
  - Damage to property (DC100b)
  - Health hazard (DC100b)
  - Domestic Violence MCL 600.5714(1)(e)
- 30 day notice:
  - Violation of lease provision (and lease allows for termination for said violation) (DC100c)
  - Holding over after expiration of lease term (DC100c)
  - Just cause for mobile home or subsidized housing (DC100d)

## How is the Notice served?

- The notice must be served one of three ways:
  - personally on the defendant,
  - to a member of the household of suitable age, or
  - by first class mail addressed to the tenant. MCL 600.5718.
- If the notice is mailed, the date of service is the next regular day for delivery of mail *after* the day when it was mailed.

## After the Notice is served

- The notice does not give the landlord authority to evict a tenant.
- Expiration of the timeframe in the notice to quit or demand for possession simply allows the landlord to file a lawsuit.

## Filing the Summary Proceeding

- Jurisdiction and Venue
  - The district court for the county where the rental property is located has proper jurisdiction over the proceeding.
  - The district in which the rental property is located, in districts of the second or third class
  - Venue is a legal issue to be determined by the judge. If questions about proper venue, see your court administrator or judge.
- Complaint must have attached:
  - Copy of the Demand for Possession or Notice to Quit
  - Lease (attach to complaint, unless an oral agreement)
- Summons
  - If the defendant's name is unknown, the plaintiff may list it as John Doe/Jane Doe or Unknown Tenant and then amend his/her pleadings once the tenant's name is available.

## Joining Claims/Counterclaims

- A party may join a money claim (or counterclaim) with the possession claim
  - Need service under MCR 2.105 to obtain a money claim
  - If no MCR 2.105 service, the money claim portion may be either dismissed without prejudice or adjourned until service is complete if defendant doesn't appear or file an answer
- A party may join a claim (or counterclaim) for equitable relief

## Filing Fees

- The eviction lawsuit is \$45
- If the landlord is seeking money damages, he must pay an additional filing fee as follows:
  - \$25 for damage claims up to \$600
  - \$45 for damage claims from \$600 to \$1,750
  - \$65 for damage claims over \$1,750 to \$10,000
  - \$150 for damage claims over \$10,000 to \$25,000
- If the landlord prevails in court, these fees may be added to the judgment amount against the defendant

## Summons

- The clerk issues the summons
- On the summons, the clerk fills in the date of the hearing
- The hearing date is within 10 days of issuance of the summons unless there is a local court rule that provides for a different timeframe.
- The summons must be served not less than 3 days before the hearing date.

## Serving the lawsuit

- Serving the complaint, its attachments, and the summons notifies the tenant of the lawsuit.
- Two methods of service are required MCR 4.201(D):
  - Service by Mail is Required
    - Service by Mail to the tenant; the court typically handles this mailing
  - Plus one other method
    - In a method provided by MCR 2.105
    - Upon a member of the household of suitable age (and inform of contents of papers and asked to deliver to defendant)
    - After diligent attempts at personal service, by attachment papers to main entrance of unit
- The landlord is a party to the case and cannot serve the paperwork himself

## Defendant's Answer

- Appearance and Answer may be made as follows
  - Filing a written answer or motion and serving copy on plaintiff
  - Orally answering each allegation in the complaint at the hearing
- Jury demand by defendant must be made in defendant's first response (either written or oral) and fee paid. MCR 4.201(F)(3).

## Hearing/Default

- Proceedings are recorded. MCR 4.201(E).
- If the parties appear at the hearing, court must inform them of the right to retain an attorney/legal aid available
- If defendant does not appear for the hearing date, the court on plaintiff's motion may enter a default judgment
  - The clerk must mail the judgment to the defendant
- If plaintiff fails to appear, a default judgment for costs may be entered
- If either party fails to appear, the court may choose to adjourn for up to 7 days/send out new notice by mail.

## Hearing/Money Claim

- Money Claim
  - Need service under MCR 2.105 to obtain a money claim
  - If no MCR 2.105 service, the money claim portion may be either dismissed without prejudice or adjourned until service is complete if defendant doesn't appear or file an answer

## Money claims or Counterclaims Exceeding District Court Jurisdiction

- If a money or counterclaim is filed that exceeds \$25,000, the court shall order removal of that portion of the action to the circuit court.
- Eviction proceeding stays with the district court.
- Check with your court administrator or your chief judge to determine process.

## Hearing/Escrow Orders

- If the hearing is adjourned more than 7 days and plaintiff shows need for protection, the court may order defendant to pay a reasonable rent amount into escrow
- Payments are made to the court and held in trust
- Only the court may order the disbursement of money in escrow (DCH 110 Order to Release Escrow)

## Hearing/Consent Judgments – No attorney

- The following applies to consent judgments when either party is unrepresented:
  - Judge shall review in court with the parties the proposed consent judgment; terms of consent judgment are put on the record
  - Judgment may not be enforced for 3 regular court business days after entry of judgment
  - Unrepresented party may move to set aside consent judgment during 3 day period
  - Court shall set aside consent judgment/order on showing that the moving party didn't understand the basis for or the rights given up in the judgment – party has 3 days to file the motion to set aside.

## Trial

- The appearance date (hearing date) and trial date are often the same day.
- The court may adjourn the trial up to 56 days.
  - May enter escrow order
- Payment or acceptance of money by a party before trial does not necessarily prevent or delay the proceedings.

## Judgment after hearing or trial

- Court must mail or deliver a copy of the judgment to the parties
- The timeframe for applying for an order of eviction does not begin to run until the judgment is mailed or delivered.
- The judgment may provide that acceptance of partial payment of an amount due under the judgment will not prevent issuance of an order of eviction
- The judgment indicates the date that plaintiff may apply for an order of eviction.

## Requesting Order of Eviction

- An order of eviction may be issued 10 days after the entry of the judgment.
- The order of eviction shall be delivered to the person serving said order within 7 days after the order is filed.
- Unless there is a hearing held and defendant provided notice:
  - An order of eviction may not be issued more than 56 days after judgment is entered
  - An order of eviction may not be executed more than 56 days after it is issued

## Requesting Order of Eviction

- A court may issue an order of eviction immediately upon entering judgment in certain circumstances. MCR 4.201(L)(3).
- An order may not be issued if there has been a partial payment unless the judgment provides for partial payment or a hearing is held with defendant provided notice/opportunity to appear.
- Order shall not issue if the tenant paid everything due under the judgment of possession for nonpayment of rent. MCL 600.5744(6).
- Fee is \$15
- Sheriff or Court officer is authorized to execute the order of eviction

## Post Judgment Motions

- Post-judgment motions must be filed no later than 10 days after the judgment enters.
  - Except as provided in MCR 2.612 which provides different time frames if there is clerical error, defendant not personally notified, others grounds for relief such as mistake, fraud
  - Except for consent judgment, motion to set aside must be filed in 3 regular court business days/no motion fee.
- Motions might challenge possession judgments or money judgments.

## Post Judgment Motions

- If the motion is challenging judgment for possession
  - To stay proceedings: Motion must be accompanied by 1 month's rent escrow OR court is satisfied there are grounds for relief under 2.612(C) and enters order waiving escrow – order may be done ex parte
  - If a stay is granted, then hearing is held within 14 days

## Post Judgment Motions

- If the motion is to set aside a default money judgment:
  - MCR 4.201 was amended, effective May 1, 2015
  - Amendment clarifies that 10 day timeframe applies to a post-judgment motion to set aside default money judgment
  - The motion must include an affidavit of facts showing a meritorious defense
  - The court may not grant the motion unless there is a meritorious defense and good cause is shown

## Appeals from Possessory Judgments

- Appeal must be filed with Circuit Court within 10 days after judgment
- Party exercising the appeal must pay any costs of appeal (\$25) and appeal bond MCR 4.201(N)(4).
  - Landlord appeal bond: file a bond providing that he will pay the appeal costs if he loses appeal.
  - Tenant appeal bond: file a bond providing that he will pay the appeal costs\*, the amount due stated in the judgment, and damages.
    - \*may be waived
- The filing of a claim of appeal together with a bond or escrow order of the court stays all proceedings. MCR 4.201(N)(3)(b).
- Escrow must be ordered for appeals from judgments where landlord was awarded possession MCR 4.201(N)(4)(c).

## Miscellaneous

- Accepting rent payment after filing landlord tenant proceeding?
  - Payment or acceptance of money by a party before trial does not necessarily prevent or delay the proceedings. MCR 4.201(J)
  - The judgment may provide that acceptance of partial payment of an amount due under the judgment will not prevent issuance of order of eviction. MCR 4.201(K)
  - An order of eviction may not issue if any part of the amount due under the judgment has been paid, unless a hearing is held or the judgment allows for such payment. MCR 4.201(L)(5)
- Does the Notice to Quit or Demand for Possession have an expiration date? No.

## Mobile Homes

- MCL 600.5771 to 600.5785
- Need “just cause” to terminate a mobile home tenancy
  - See MCL 600.5775(2) for definition of “just cause”
- The same procedures and service requirements for the demand, complaint for termination, filing an answer, judgment and eviction apply to mobile homes.
  - Note that the judgment for possession in a mobile home matter requires the defendant to move out within 10 days.

## Mobile Homes

- Demand for Possession – SCAO Form DC 100d
- Tenant receives Demand for Possession for Just Cause
  - Within 10 days, tenant has right to request an in-person conference with park owner/operator/representative
  - Meeting must be scheduled within 20 days of tenant’s request
- Continuing Duty to Pay Rent
  - Tenant is expected to make all rent and other payments that come due during this time
- If tenant does not move out by date specified in the Demand, then owner can file the Termination of Tenancy Mobile Home Park

## Mobile Homes

- Termination of Tenancy is filed with the court, copy of lease and demand are attached
- Defendant may file an Answer with the court
- Hearing is held on the matter

## Mobile Homes

- If judgment for possession is entered by the court then:
  - Tenant must move out within 10 days
  - Tenant has 90 days from judgment date to sell or move the mobile home
  - Tenant expected to make all rent payments during this 90 day period
  - The 90 days must be extended in certain circumstances when a bona fide offer is made to purchase the mobile home
  - After 10 days from the judgment of possession, the park may disconnect park-supplied utility services
  - Tenant has 10 days from judgment of possession to provide owner with proof that home has been properly winterized
- If tenant does not move, owner files for an Order of Eviction.

## Land Contract Forfeiture

- Terms: *Vendor* (seller) and *Vendee* (buyer)
- If the terms of the land contract must expressly provide for termination or forfeiture following nonpayment of rent or other material breach, summary proceedings may be appropriate.
- Vendor must send a notice of forfeiture first before starting summary proceedings in court
  - Notice of forfeiture may be served by personal delivery, delivery on premises to a member of the family/household of suitable age with request it be delivered to the vendee, or by first class mail. Publication is allowed after exhausting other methods. MCL 600.5730.
  - Vendee has 15 days from the date served with the notice to pay the money required under the contract and to cure any material breaches or to surrender property. Summary proceedings are authorized by MCL 600.5726

## Land Contract Forfeiture

- Vendor then files the Complaint (\$45) with the court and must have a copy of the notice of forfeiture attached showing it was served
- Summons issued by the court, commands the appearance of the defendant for trial within 30 days of issuance; summons must be served not less than 10 days before the trial date.
  - Local rule may shorten this time frame.
- Vendee must be served with a copy of the complaint and summons under MCR 2.105

## Land Contract Forfeiture

- Defendant may file an Answer.
- Proceedings are on the record. MCR 4.202(G).
- A judgment for possession must be mailed or delivered by the court to the parties.
- If the judgment for possession is based on nonpayment, the judgment must indicate the amount of money owed to the vendor – this is the redemption amount.
- The length of the redemption period depends on how much of the purchase price the vendee has paid.
  - A writ of restitution (eviction order) shall not be issued until the expiration of 90 days after the entry of judgment for possession if less than 50% of the purchase price has been paid or until the expiration of 6 months after the entry of judgment for possession if 50% or more of the purchase price has been paid.
- When the time stated in the judgment expires, a party awarded possession may apply for an order of eviction.

## Questions?

Contact

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