

Proposal 20-07
Proposes a New Supreme Court Rule
Offered by the Supreme Court Commission on Access to Justice

New Rule. Practice and Procedure in Eviction Act Cases

(a) Applicability of the Rule. This Rule supplements, but does not replace, the requirements set forth in 735 ILCS 5/9-101 *et seq.* (The Eviction Act), and applies only to eviction actions filed on or after the effective date of _____.

(b) Supporting Documents for Eviction Act Complaints.

(1) At the time of filing, the plaintiff shall attach a copy of the eviction notice or demand upon which the action is based, including any affidavits or other proof of service, to the eviction complaint. If the plaintiff does not have the eviction notice or demand, they may attach an affidavit instead, using a standardized form approved for use by the Illinois Supreme Court.

(2) When an eviction action is based on a breach of a written lease and brought pursuant to Section 9-210 of the Eviction Act (735 ILCS 5/9-210), the plaintiff shall also attach a copy of the lease, or the relevant portions of the lease, to the eviction complaint at the time of filing. If the plaintiff does not have the lease, or if there is no written lease, the plaintiff may attach an affidavit instead, using a standardized form approved for use by the Illinois Supreme Court.

Committee Comments

The Eviction Act does not require that a plaintiff include all of the facts necessary to establish a *prima facie* case in the eviction complaint. Instead, the Eviction Act provides that an eviction complaint state that the plaintiff is "entitled to the possession of such premises (describing the same with reasonable certainty), and that the defendant (naming the defendant) unlawfully withholds the possession thereof from him, her or them." 735 ILCS 5/9-106.

The factual basis for a termination of tenancy or lease, or authority for a demand for possession, is detailed in the "notice of termination" or "demand for possession" served on the tenant prior to the filing of the eviction action. Additionally, demands and notices must provide language indicating termination of tenancy and, when applicable, provide for a cure period. The notices and demands provide tenants with a basis for understanding why their landlords are seeking to evict them, and ways to cure the violations, when applicable.

However, although a demand for possession or a notice of termination is almost always a prerequisite to the filing of an eviction action, these documents, generally, have not been attached to eviction complaints. Similarly, although the breach of a lease term may form the basis for a termination notice and eviction complaint, the lease, or relevant portion of the lease, also rarely have been attached to eviction complaints.

Section 2-606 of the Code of Civil Procedure does require that "[i]f a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her

pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes." 735 ILCS 5/2-606. However, section 2-606 of the Code of Civil Procedure, generally, has not been applied to eviction actions because the pleading requirements described in section 9-106 of the Eviction Act does not expressly require that any documents be attached to the complaint. Section (b) supplements the complaint requirements of the Eviction Act in a manner consistent with section 2-606.

The requirements of section (b), that a copy of the predicate written demand, termination notice (including affidavits or proof of service) and, where applicable, the relevant lease provisions, be attached to the complaint, allow courts and tenants to have these documents upon the initiation of eviction actions and assure that the documents are available in court for use by both landlords and tenants for more efficient and just resolution of these cases.