

Termination and Eviction (Involuntary)

If a person is voluntarily allowed to stay in a place and establishes the incidents of residency (e.g. moves their stuff in), then eviction is the only recourse.³⁵ Before the initiating the FED, the landlord's conduct is restricted by Iowa Code Chapter 562A, the Uniform Residential Landlord and Tenant Law.

Pre-Eviction Notices & Investigation

Cause for Eviction

There are four general grounds to evict:

1. Non-payment of rent³⁶
2. Clear and present danger³⁷
3. Lease violation³⁸
4. Non-renewal of lease³⁹

Instructions

³³ 562A.29(3)

³⁴ D.R. Mobile Home Rentals v. Frost, 345 N.W.2d 302 (Iowa 1996) and §562A.29(3)

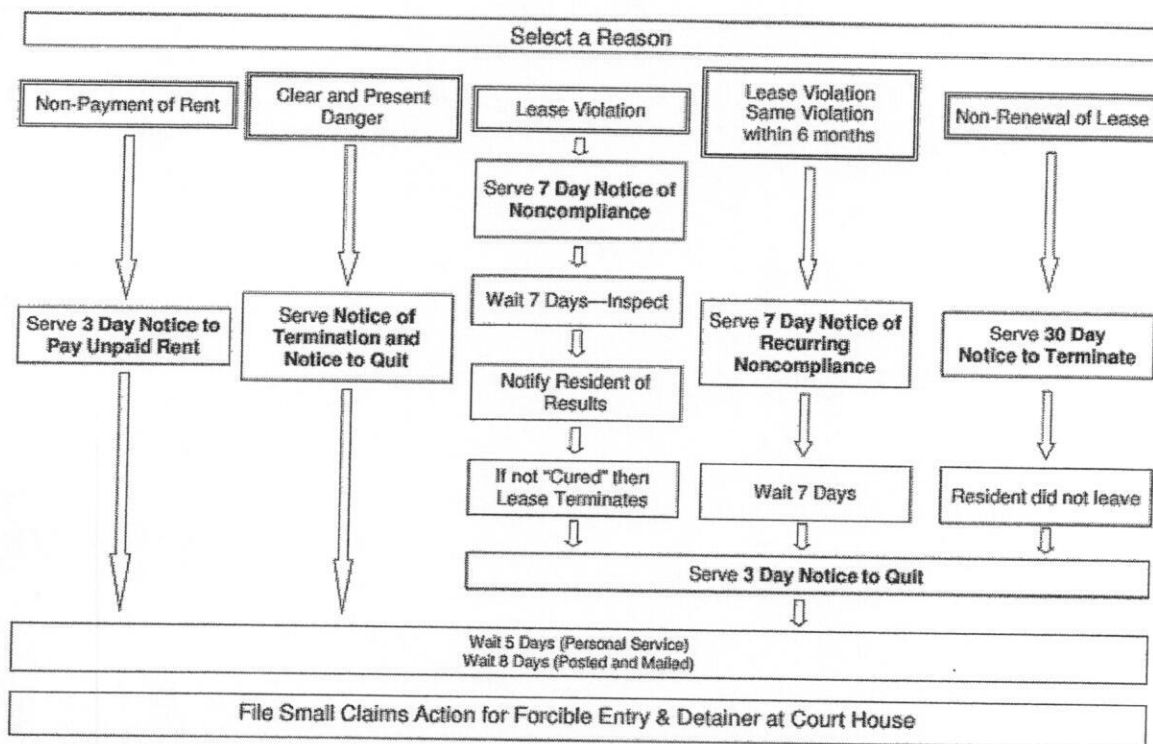
³⁵ Telephone call to Cedar Rapids Police lieutenant (4/22/2013)

³⁶ § 562A.27, 648.1(5)

³⁷ § 562A.27A

³⁸ § 648.1(3)

³⁹ § 648.1(2)



41

Preliminary Investigation

1. Verify property ownership at assessor and recorder websites
2. Review notices SAFE-CR provisions
<http://www.cedar-rapids.org/government/departments/police/safecr/Pages/Rental-Business-Training.aspx>
3. Verify landlord registration and training
 - a. A landlord must complete training.⁴²
4. Verify property registrations
 - a. The property cannot be leased until it is registered.⁴³
 - b. Property cannot be registered until owner completed training.⁴⁴
 - c. Failure to train and register might not affect ability to evict.⁴⁵

⁴¹ Landlords of Iowa, Inc.

⁴² CR Ord. 29.16 202 RENTAL BUSINESS TRAINING. Means training required of Landlords and those who manage rental property subject to regulation hereunder.

⁴³ CR Ord. 29.34(a) No person shall lease, rent, or let for occupancy, a residential rental unit in the City of Cedar Rapids, Iowa without first obtaining from the code official proper Rental Property or Rental Unit Registration, as the case may be.

⁴⁴ CR Ord. 29.34 Application for Rental Property or Rental Unit Registration required by this code shall be made to the code official in such form and detail as prescribed by the code official, and shall include proof that Rental Business Training has been completed as set forth in this Subchapter.

⁴⁵ CR Ord. 29.40 This Subchapter shall not be construed so as to affect in any manner the application of the

Tenancy Termination Notices

Non-Renewal

1. When? At least 30 days prior to the periodic rental date (e.g. 1st of the month).⁴⁶
2. Notice of Terminating Tenancy and Demand for Possession.⁴⁷ (ISBA 366). If the tenant willfully holds over, then the landlord may recover attorney fees.⁴⁸
3. For service, use ordinary *and* certified mail.⁴⁹ Complete an Affidavit of Mailing (ISBA P222)⁵⁰ as evidence.⁵¹ Mail at least five days before any applicable deadline.⁵²
4. Notice served by mail is deemed completed four days after the notice is deposited in the mail and postmarked for delivery, whether or not the recipient signs a receipt for the notice⁵³
5. If held over, serve Notice to Quit (ISBA 174),⁵⁴ then bring an FED within 30 days of the default,⁵⁵ requesting costs and attorney fees.⁵⁶
6. Deadline to return rental deposit - Termination Date + 30 days⁵⁷

Lease Violation

- Notice of Noncompliance with Rental Agreement (ISBA 168)⁵⁸
 - Served in same manner as Notice of Past Due Rent.⁵⁹
 - Termination date should be at least 12 days later. ($7^{60} + 4^{61} = 12$.)
- Notice of Termination of Rental Agreement (ISBA 170)⁶²

Uniform Residential Landlord and Tenant Law, presently codified as Chapter 562A of the 2012 Iowa Code, and as amended from time to time.

⁴⁶ § 562A.34(1)

⁴⁷ § 562A.34(3)

⁴⁸ § 562A.34(4)

⁴⁹ § 562A.8(1)(a)(4); This notice is not subject to the more restrictive provisions of § 562A.29A

⁵⁰ Yes, it's a probate form, but it still works. In the matter of: [notice name]. Probate no.: [street address],
Type of mailing: [ordinary & certified], (5/26/2015).

⁵¹ IRCP 1.308(5)

⁵² § 562A.29A(2)

⁵³ § 562A.8(2)

⁵⁴ § 648.3(1)

⁵⁵ § 648.18

⁵⁶ §§ 562A.34(4), 648.1(2)

⁵⁷ § 562A.12(3)

⁵⁸ § 562A.21 (landlord breach) or -.27 (tenant breach)

⁵⁹ § 562A.29A(1)

⁶⁰ § 562A.27(1)

⁶¹ § 562A.29A(2)

⁶² § 562A.21 or -.27

Non-Payment of Rent

1. Notice of Past Due Rent (ISBA 169)⁶³
 - a. When? As soon as possible after rent was due.
 - b. The Notice to Quit is *not* included unless you add the following language: You are further notified that the landlord demands that you vacate and surrender possession of the above-described premises to the landlord within 3 days of the date of service of this notice upon you, provided you fail to pay the delinquent rent in full during said time period.
 - c. (ISBA 344 form doesn't actually say anything about terminating the lease. Further, notice terminating tenancy is expressly unnecessary.⁶⁴)
 - d. For non-payment of rent, Do not demand more than 1 month rent.⁶⁵ Do not list penalties; rent only.⁶⁶
 - e. Serve via
 - i. process server.⁶⁷
 - ii. posting and mailing by regular and certified mail.⁶⁸
 - f. ISBA 344 is a combination of forms ISBA 169 Notice of Past Due Rent and ISBA 366 Notice of Termination of Tenancy and Demand for Possession.

Eviction/Enforcement (FED)

Jurisdiction

Landlord can sue on own behalf. Venue is the county where the premises are located.⁶⁹ Tried in equity.⁷⁰

Filing

1. Wait three full days after notice to quit.⁷¹
2. File the following in person so that you can choose a hearing date and serve with delay of regular mail:
 - g. Original Notice and Petition for Forcible Entry and Detainer with small claims court (eForm 3.6).
 - i. Basis for demand: failure to pay \$____ rent when due on ____, and before expiration of 3-day notice thereafter
 - ii. If you file the Petition for Money Judgment at the same time, the hearing

⁶³ §§ 562A.27(2), 562B.25(2), 648.3(1)

⁶⁴ § 648.4

⁶⁵ § 648.18. Demanding more than 1 month rent will result in a dismissal for defective notice.

⁶⁶ Lorraine Machacek speaking to Landlords of Linn County (March 2014).

⁶⁷ § 562A.29A(1)(b)

⁶⁸ § 562A.29A(1)(c)

⁶⁹ § 648.5(1)

⁷⁰ § 648.5(1)

⁷¹ § 648.3(1). Iowa Code §4.1(34) states that the day notice is given is excluded and the last day is included, unless the last day is a Sunday, in which case the time is extended to include the whole of the following Monday.

will be on a different day, since FEDs are scheduled sooner than the time allowed to respond to a Petition for Money Judgment.⁷²

- h. Verification of Account (Form e3.27) is necessary for each defendant.⁷³
- i. Bring 3 copies (original, server, file) plus one for each defendant-tenant.
- j. Include \$85 filing fee.

Service of Original Notice

- 3. Service of Original Notice. Iowa Code § 648.5(2) ("Venue") allows service by any of the following:
 - a. Acceptance of Service.⁷⁴
 - b. Personal Service. More than 3 days prior to the hearing.⁷⁵ File return with court before hearing.⁷⁶
 - c. Twice Attempted, Posting, Mailing. Because the Tenant may refuse to answer the door, you must also: (1) attempt personal service twice by having a disinterested person knock on the door, turnaround, knock on the door again; (2) post notice on the door; and (3) send notice via regular and certified mail, and complete an affidavit thereof, attaching a duplicate copy and filing with the court.⁷⁷

Trial/Hearing

- 1. 7 to 15 days after filing⁷⁸
- 2. Before any default hearing, make sure proof of service for all notices is on file.⁷⁹
- 3. This is a summary proceeding, meaning the plaintiff's petition is treated like a motion for summary judgment. If the court discovers an issue of material fact, then the hearing will be continued so that an evidentiary hearing may be scheduled.⁸⁰
- 4. A custom praecipe form is available at the Small Claim window, and you should complete it before the hearing so that it may be delivered to the magistrate at the conclusion of the hearing.
- 5. Bring the lease agreement.
- 6. The landlord should attend in order to testify if necessary, even if tenant is not expected to show up.
- 7. The Order will set a date when the Clerk may issue the Writ of Possession (1 day later). In Johnson, the magistrate may allow the landlord to walk the Order over to the

⁷² Telephone call to Johnson Small Claims (4/30/2013) c.f. § 648.19(2), -.5

⁷³ Telephone call to Linn Small Claims (2/15/2013) cf. Telephone call to Johnson Small Claims (4/30/2013), where Clerk said Verification is only necessary if asking for a money judgment.

⁷⁴ § 648.5(2)(a)

⁷⁵ § 648.5(2)(b); IRCP 1.305

⁷⁶ Linn County Eviction Procedures; § 648.5(2)(b); § 631.4; IRCP 1.308; Add 4 days like there is for notice by mail. § 648.5(3), cf. § 562A.8(2).

⁷⁷ § 648.5(2)(c), IRCP 1.308(5)

⁷⁸ Telephone call to Linn Small Claims (2/15/2013)

⁷⁹ Telephone call to Linn Small Claims (2/15/2013)

⁸⁰ § 648.5(6)

Clerk, request the writ, and the Clerk drops the writ in the Sheriff's mailbox at the courthouse.⁸¹

Execution

1. Defendant must be removed within 3 days after judgment.⁸²
2. At this time, it is economical to turn further administration over to the client. Have him/her follow the Linn Sheriff's instructions and Johnson Sheriff's instructions.
3. The Plaintiff should go back to see the Clerk and they will provide a form called "Request to Issue Writ."⁸³ This form is used for writs of possession and replevin only.
4. The Plaintiff should take the Writ of Possession and the Directions to Sheriff to the Sheriff's Office.⁸⁴ The Plaintiff should be ready to pay any advance fees.
5. The Sheriff will assign the writ to a deputy.⁸⁵ The deputy will contact the Plaintiff to schedule a suitable date and time for the eviction. The Sheriff will supervise the eviction, and will provide moving labor only for a fee.
2. Disposition of Physical Property
 - a. The Plaintiff may leave the tenant's property on the side of the street for 48 hours after eviction.⁸⁶ After 48 hours, the street or county road department will dispose of the property at Plaintiff's cost.
 - b. If the property is believed abandoned, has little or no value, and is arguably trash, then it can be discarded as such, because no one is going to complain if it is missing.⁸⁷
 - c. If the property is believed abandoned, but it has value and somebody might come looking for it, then the landlord should not discard it, because it could be held liable. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.⁸⁸ Upon filing the report, the holder of property presumed abandoned shall pay, deliver, or cause to be paid

⁸¹ Telephone call to Johnson Small Claims (4/30/2013)

⁸² § 648.22

⁸³ Telephone call to Linn County Small Claims Clerk of Court (7/27/2012)

⁸⁴ Linn County Eviction Procedures

⁸⁵ Linn County Eviction Procedures

⁸⁶ Linn County Eviction Procedures

⁸⁷ See Revised Uniform Residential Landlord Tenant Act 2013, § 1001, providing:

If personal property remains on the premises after possession of a dwelling unit has been relinquished to the landlord, the landlord shall send the tenant notice in a record signed by the landlord of the tenant's rights to retrieve the personal property. (g) Unless a landlord and tenant otherwise agree, if the tenant fails to contact the landlord as provided in subsection (c) or to retrieve personal property as provided in subsection (d): (1) if the landlord reasonably estimates the value of the personal property to be no more than \$[1,000], the landlord may dispose of the property in any manner the landlord considers appropriate; or (2) if the landlord reasonably estimates the value of the personal property to be greater than \$[1,000], the landlord shall sell it in a commercially reasonable manner and treat the net proceeds as a part of the tenant's security deposit. (h) Nothing in this section prohibits the landlord from immediately disposing of perishable food, hazardous materials, or other garbage, or turning over animals or livestock to an animal control officer, humane society, or other individual or organization willing to care for such animal or livestock.

⁸⁸ § 556.11(1)

or delivered to the treasurer of state.⁸⁹ Upon the payment or delivery of property to the treasurer of state, the state assumes custody and responsibility for the safekeeping of the property. A person who páys or delivers property to the treasurer of state in good faith is relieved of all liability.⁹⁰

4. Deposit

- d. The landlord must send a written statement of repairs and other charges within 30 days if he or she intends to retain any portion of the deposit. The landlord should not transfer the deposit from the trust account until 30 days have elapsed.



NOTICE OF TERMINATION OF TENANCY AND DEMAND FOR POSSESSION

To: _____

You and each of you are hereby notified that your tenancy of the following described real estate, to wit:

locally known as _____,
terminates and will expire on _____, or as soon thereafter as thirty (30) days have
elapsed from the date of service of this notice upon you, in accordance with your existing lease, and
that said lease will not be renewed.

This notice is given to you pursuant to the provisions of Chapter 562 of the Code of Iowa.

You are further notified that the undersigned demands of you that you vacate, surrender, and
deliver possession of said premises on said date.

You will therefore take notice and govern your self accordingly.

Dated: _____

_____, Landlord

By: _____

ACKNOWLEDGMENT OF SERVICE

The undersigned hereby acknowledges due, timely, and legal service of the foregoing Notice
and acknowledges receipt of a copy thereof for each on the date hereof, at
_____, Iowa.

Dated: _____

_____, Tenant

In the Iowa District Court for LINN County

LANDLORD NAME AND ADDRESS

Plaintiff(s),

Vs.

TENANT(S) NAME AND ADDRESS

Defendant(s).

Civil No. ***case number***

Certificate of Service

I, PERSON MAILING, hereby certify under penalty of perjury and pursuant to the laws of the State of Iowa that, on January 12, 2017, I served a paper copy of the documents attached hereto upon the following named person via ordinary and certified mail (USPS First-Class Mail® and USPS Certified Mail®) at the address shown as follows:

TENANT(S) NAME AND ADDRESS

defendant respondent address

/s/ PERSON MAILING
PERSON MAILING

matter number

Notice to Quit, #174 (Template)

^PUBIOWADOCS\PUBIOWADOCS\174.RTF /ov="AttorneyPickList.anx"

Notice to Quit, #174 (Template)

^PUBIOWADOCS\PUBIOWADOCS\174.RTF /ov="AttorneyPickList.anx"

Notice to Quit, #174 (Template)

^PUBIOWADOCS\PUBIOWADOCS\174.hpt /ov="AttorneyPickList.anx"

Notice to Quit, #174 (Template)

^PUBIOWADOCS\PUBIOWADOCS\174.hpt /ov="AttorneyPickList.anx"



NOTICE OF NONCOMPLIANCE WITH RENTAL AGREEMENT

TO: _____

You are notified that the undersigned claims the following material noncompliance by you of the Rental Agreement with the undersigned, covering the property at _____

IF THE ABOVE-SPECIFIED BREACH IS NOT REMEDIED WITHIN 7 DAYS AFTER YOU RECEIVE THIS NOTICE, THE RENTAL AGREEMENT WILL TERMINATE ON _____

Dated: _____

(Landlord) (Tenant)

By _____, Attorney

ICIS PIN No: _____

Address: _____

§562A.21 or §562A.27 Iowa Code

NOTE: If the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., applies to this communication, attach Form No. 172, Notice of Validation of Debt.

AFFIDAVIT OF SERVICE

STATE OF IOWA, COUNTY OF _____

The undersigned being sworn states the above notice was given to each of the persons to whom the notice is addressed, by delivering or mailing by certified or registered mail a copy of the notice to each of the persons at the date and at the place set opposite their respective names:

Name	Date	City and County	State

Signed and sworn to (or affirmed) before me on _____

Signature of Notary Public



NOTICE OF TERMINATION OF RENTAL AGREEMENT

TO: _____

You are notified that the Rental Agreement with the undersigned will terminate on _____, because of the following specified breach of the Rental Agreement, covering the property at _____

which has not been remedied by you within the time specified by the Uniform Residential Landlord and Tenant Act:

Dated: _____

(Landlord) (Tenant)

By _____, Attorney

ICIS PIN No: _____

Address: _____

§562A.21 or §562A.27 Iowa Code

NOTE: If the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., applies to this communication, attach Form No. 172, Notice of Validation of Debt.



**NOTICE TO QUIT
NOTICE OF NONPAYMENT OF RENT AND NOTICE OF
TERMINATION OF RENTAL AGREEMENT**

TO: _____

You are hereby notified that the undersigned landlord claims the following past due rent from you under the terms of your rental agreement covering the property at

	\$
	\$
	\$
	\$
	\$
	\$
	\$
Total:	\$ 0.00

If the delinquent rent is not paid within three days after the date of service of this notice on you, then the rental agreement shall be immediately terminated without any further notice to you.

You are further notified that the landlord demands that you vacate and surrender possession of the above described premises to the landlord within three (3) days of the date of service of this notice upon you, provided you fail to pay the delinquent rent in full during said time period.

You will therefore take notice and govern yourself accordingly.

Landlord: _____

By: _____ See 1 in Addendum

Attorney for Landlord

Section 562A.27(2) and 648.3 Code of Iowa

NOTE: If the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., applies to this communication, attach Form No. 172, Notice of Validation of Debt.

MEMO AND AFFIDAVIT OF SERVICE

STATE OF _____ COUNTY OF _____ ss.

The undersigned, first being duly sworn, upon oath deposes and states that he/she served the notice on the obverse side hereof on each of the persons to whom said notice is addressed, and named below, by delivering a copy of said notice to each of said persons at the time and place set opposite their respective names, to-wit:

Name	Date	City Or Township	County	State

, Affiant

Subscribed in my presence and sworn to before me by said affiant on _____.

Signature of Notary Public

eForm 3.6: Original Notice and Petition for Forcible Entry and Detainer

In the Iowa District Court for _____ County

Plaintiff(s)

(Name)

(Address)

(Name)

(Address)

vs.

Defendant(s)

(Name)

(Address)

(Name)

(Address)

**Original Notice and Petition
for Forcible Entry and Detainer
(Iowa Code chapter 648)**

To Defendant(s):

1. **You are notified** that Plaintiff(s) demand(s) from you possession of (state exact address of real property): _____
because (state basis of demand): _____

2. **Hearing is set for** the date, time, and court location listed on the last page of this Original Notice and Petition. The court will electronically record the hearing. If either party desires that a certified court reporter report the hearing, that party must arrange and pay for the costs of reporting. **Failure to appear at the hearing may result in judgment entered against you for possession of the property and court costs.**

Plaintiff(s): The court shall set the date of hearing to occur within **8 days** from the filing date of the Original Notice unless you check the box below:

☐ Plaintiff(s) request(s) or consent(s) to the court setting the date of hearing to occur no later than **15 days** from the filing of the Original Notice.

/s/ _____
Filing Plaintiff or Attorney

Law firm, or entity for which filing is made, if applicable

Mailing address

Telephone number

Email address

Additional email address, if applicable

/s/ _____
Second Plaintiff, if applicable

Law firm, or entity for which filing is made, if applicable

Mailing address

Telephone number

Email address

Additional email address, if applicable

eForm 3.27: Verification of Account, Identification of Judgment Debtor, and Certificate Re Military Service

In the Iowa District Court for Linn County

Plaintiff(s) (Name) (Name) vs. Defendant(s) (Name) (Name)	Verification of Account, Identification of Judgment Debtor, and Certificate Re Military Service Small Claim No. _____ For Defendant: _____ (This form required for each Defendant.)
---	--

1. I, _____, am a party or an employee of Plaintiff(s) whose claim(s) is (are) shown in the attached statement(s). I have personal knowledge that the attached statement(s) is (are) a true copy of the original creditor's records showing the balance due is true and correct. I further state that the sum of \$_____ is the balance due and owing as of _____ from Defendant(s) to Plaintiff(s) and any interest amount owing is accurately stated in the Petition or Original Notice.

2. I further state that Defendant resides at _____,
is employed at _____,
and Defendant's occupation is _____.

3. Check A, B, or C for Defendant:

A. ☐ Defendant **is not** in the military service of the United States government, I have verified this fact by (check one):

☐ Checking the Defense Manpower Data Center (DMDC) (requires name and SSN or name and date of birth) at <https://www.dmdc.osd.mil/appi/scra/scraHome.do>.

☐ Contacting Defendant who informed me.

☐ Regularly seeing Defendant and believing Defendant is not active in the U.S. military.

OR B. ☐ I have investigated, and I am unable to determine whether or not Defendant is in the military service of the United States government.

OR C. ☐ Defendant **is** in the military service of the United States government.

4. I also state to the best of my knowledge (check one):

Defendant ☐ **is** ☐ **is not** under a disability or confined in a reformatory, jail, or penitentiary.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that these facts are true and correct.

Date: _____

Phone # _____

E-Mail address _____

Additional email address, if applicable _____

Signature of Affiant _____

/s/ _____

Filing Plaintiff or Attorney _____

Law firm, or entity for which filing is made, if applicable _____

Mailing Address _____

Civil Law

<< Back to Iowa Civil Law Library

Evictions: Resource for Volunteer Lawyers Project

Table of Contents

Click on a link in the Table of Contents to jump to that section.

INTRODUCTION

I. EVICTION PRACTICE AND PROCEDURE

- A. When an Action for Forcible Entry and Detainer Lies
- B. Service and Notice of Hearing
- C. Right to Jury Trial

II. EVICTION DEFENSES

- A. Nonpayment of Rent Defenses
 - 1. Notice Defenses
 - 2. Reduction in Fair Market Value
 - 3. Repair and Deduct
- B. Eviction for Cause Defenses (not including evictions for clear and present danger)
 - 1. Notice Required
 - 2. Substantial Compliance
- C. Defenses to Evictions Brought Under Clear and Present Danger
 - 1. Tenant Took Defensive Measures
 - 2. Defective Notice
 - 3. Insufficient Service of Process
- D. Eviction Without Cause -- Notice Required
- E. Common Defenses
 - 1. Notice Required
 - 2. Retaliatory Eviction
 - 3. Equitable Defenses
 - 4. Title in Issue
 - 5. Peaceable Possession
 - 6. Real Party in Interest
 - 7. Waiver
 - 8. Unconscionability

III. APPEALING THE ORDER OF EVICTION

- A. Right of Appeal
- B. Post-Trial Motions
- C. Appeal Bonds and Filing Fees
- D. Certiorari Review of Bond Issues
- E. Standard of Review

Introduction

In Iowa, there are no "self-help" or nonjudicial evictions. An action for forcible entry and detainer (eviction or FED) is governed by its own peculiar statute (Chapter 648) and by the Iowa Uniform Residential Landlord and Tenant Act (Chapter 562A). The Landlord and Tenant Act specifically prohibits self-help evictions and authorizes judicial action by the landlord. Iowa Code §§562A.31, 562A.32 and 562A.33.

While other judicial remedies are available, such as an ejectment under Chapter 646, a proceeding against residential tenants is almost always brought under Chapter 648, because it is the fastest proceeding available. A forcible entry and detainer proceeding is summary, and the statute relating to it must be strictly complied with. *Town of Lakota v. Gray*, 35 N.W.2d 841, 844 (Iowa 1949). However, the statute is to be liberally construed to promote the object of allowing the person entitled to possession of the real estate to obtain possession. *Rudolph v. Davis*, 30 N.W.2d 484, 486 (Iowa 1948).

[back to top](#)

I. EVICTION PRACTICE AND PROCEDURE

A. When an Action for Forcible Entry and Detainer Lies

An action for forcible entry or detention of real property is allowable only in the following cases:

1. The defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property and detains the same.
2. The lessee holds over after the termination of the lease.
3. The lessee holds contrary to the terms of the lease.
4. The defendant continues in possession after a sale by foreclosure or on execution.
5. The tenant has not paid rent when due.
6. The defendant remains in possession after the issuance of a valid tax deed.

Iowa Code §648.1. Iowa Code §648.1A exempts from coverage occupants in housing owned by a nonprofit organization whose purpose is to provide transitional housing for persons released from drug or alcohol treatment facilities or to provide housing for homeless persons. By removing transitional housing from coverage under Chapter 648, ejectment from the housing may now be covered by Iowa Code Chapter 646, although there is no case law on this. The statute asserts that absent an applicable provision in a lease, contract, or other agreement, a person who unlawfully remains on the premises of such housing may be subject to criminal trespass penalties pursuant to section 716.8. This exemption appears to be rarely used. However there may well be due process issues because of the termination of a property interest or, depending on the funding, federal regulations which govern removal from the premises. See 24 C.F.R. §583.300(i) which requires that the landlord give a clear notice of the reasons and give the tenant a chance for

administrative review. In small claims court, jurisdiction over evictions is limited to cases brought under subsections 1,2,3 and 5. Iowa Code §631.1(2).

[back to top](#)

B. Service and Notice of Hearing

Iowa Code §648.5 provides that upon receipt of a petition for FED the Court shall enter an order setting hearing no later than eight days from the filing date, except that the court shall set a later hearing date no later than fifteen days from the date of filing if the plaintiff requests or consents. Notice of the hearing must be received not less than three days prior to the hearing. Iowa Code §648.5. Original Notices must be served by one of the following methods:

- Signed acknowledgment
- Personal service
- If service cannot be made by either signed acknowledgement or personal service after two attempts, alternative service is allowed. That service requires posting on the primary entrance door, and mailing by both certified and regular mail. Iowa Code §648.5. If service includes mail service, then service by mail is deemed completed four days after the notice. Iowa Code §648.5(3). Additionally, landlords are required to file an affidavit establishing that the notice was properly posted and mailed. The law was changed as a result of *War Eagle v. Plummer* 775 N.W.2d 714 (Iowa 2009). Iowa Code §648.22 requires that the writ for the defendant's removal issue within three days from the judgment. Therefore, many courts are of the opinion that they have the discretion of allowing the tenant to stay up to three days only; however, some judges have interpreted this statute to permit an order that the defendant move by a certain date beyond three days so long as the plaintiff makes their request for the writ to the clerk within three days of the entry of judgment.

In cases covered by Chapter 562B, mobile or manufactured home owners renting a lot, Chapter 648.22A allows a procedure for delaying execution of evictions from mobile home parks. If the mobile home park and the tenant agree, the removal of the mobile home can be delayed 60 days to allow the tenant to arrange for the removal or purchase of the mobile home. The tenant is not allowed to live in the mobile home during the 60 days, and must terminate all utility services to the mobile home within 3 days of the filing of the election to proceed under this section. If the tenant fails to remove or sell the mobile home to an approved purchaser within 60 days, the mobile home park may sell or dispose of the mobile home and proceeds of the sale are first applied to any money judgment entered in favor of the mobile home park and against the tenant as well as any unpaid rents, costs and attorney's fees. Any remaining proceeds shall be applied to any tax lien and the remainder is held in accordance with §555B.9(3)(c). Any judgment entered against defendant and in favor of plaintiff shall be deemed satisfied, except for independent torts. If the plaintiff elects to keep the home, he does so pursuant to §555B.9. Nothing in this section precludes the tenant from removing the home prior to the expiration of the 3 days after judgment. After the 3 days have passed, the mobile home may not be removed without payment of all money owed and interest and per diem rent and taxes. The mobile home park is required to notify any third party lienholder of its intent to delay execution. See Iowa Code §648.6.

[back to top](#)

C. Right to Jury Trial

There is an argument for the right to a jury trial in an eviction. In Iowa, the right to a trial by jury is guaranteed by Article I, Section 9 of the State Constitution. This constitutional right is limited only to those cases where a jury trial was allowed at common law. *Littleton v. Fritz*, 65 Iowa 488, 491, 22 N.W. 641, 643 (1885).

The United States Supreme Court has held that a tenant in the District of Columbia has the right to a trial by jury under the Seventh Amendment to the Constitution in an action for forcible entry and detainer brought under the laws of the District of Columbia. *Pernell v. Southhall Realty*, 416 U.S. 363 (1974). While cases involving the Seventh Amendment are not binding on the state, the Iowa Supreme Court gives great deference to such decisions, noting a "nexus between interpretations of Iowa's jury provision and the federal provision." *Iowa National Mutual Insurance Company v. Mitchell*, 305 N.W.2d 724, 726 (Iowa 1981).

In Iowa, the right to trial by jury in eviction actions was set forth on the Laws of the Territory of Iowa (1839). Section 3 of the forcible entry and detainer statute stated that "a justice of the peace shall have authority to enquire by jury." In 1944, the Iowa Supreme Court held that defendants in an action for forcible entry and detainer were entitled to trial by jury in municipal court, even though the cause was docketed in equity. The court also stated in dicta that, after certain statutory amendments, an eviction brought in district court is in equity and not subject to a jury trial. *Missildine v. Brightman*, 14 N.W.2d 700, 705 (Iowa 1944).

In *Garrison v. Fetters*, the court noted the issue but did not decide whether a party may demand a trial by jury in an action for forcible entry and detainer. 383 N.W.2d 550, 552 (Iowa 1986).

[back to top](#)

II. EVICTION DEFENSES

Most landlord/tenant evictions arise from situations where (1) the tenant holds over after termination of the lease, or (2) the tenant has not paid rent when due. Iowa Code §648.1(2),(5). Defenses available to tenants vary depending on the grounds on which the eviction action is brought.

A. Nonpayment of Rent Defenses

1. Notice Defenses

A rental agreement can be terminated for nonpayment of rent. The landlord can terminate the tenancy by delivering a three-day notice of nonpayment of rent. The notice must indicate that the tenant is behind in rent, and that the landlord intends to terminate the tenancy if rent is not paid in three days. Iowa Code §562A.27(2). When the landlord is terminating the tenancy for nonpayment of rent, a three day notice of nonpayment of rent is a condition precedent to the landlord's termination of a rental agreement. The trial court lacks jurisdiction to hear the action unless the landlord can show s/he served a

proper notice to cure. *Symonds v. Green*, 493 N.W. 2d 801, 803 (Iowa 1992). Termination notices for lease violations, nonpayment of rent, clear and present danger, and notices to quit, are covered by Iowa Code §562A.29(a) and Iowa Code §648.3. Basically, there are three options for serving these types of notices:

- Signed, dated acknowledgment
- Personal service
- Posting and mailing by regular and certified mail

The statute specifically provides that when notice is mailed, it is deemed completed four days after the notice is deposited in the mail and postmarked.

Landlords (and landlords' attorneys) often confuse the three day notice of nonpayment of rent with the three-day notice to quit described in Section 648.3. To terminate a tenancy in three days for nonpayment of rent, the notice must give the tenant the opportunity to pay the unpaid rent, and must announce the landlord's intention to terminate the rental agreement if the rent is not paid. Iowa Code §562A.27(2). A notice to cure under Iowa Code §562A.27(2) need not advise the tenant of the amount of rent due or the date when due, as that information is known or readily available to the tenant. *Garrison v. Fetters*, 383 N.W.2d 550, 553 (Iowa 1986). Despite the language in *Garrison v. Fetters*, a notice to cure under section 562A.27(2) which is confusing or which demands an amount in excess of what is legally owing may be defective. See *Seldin v. Calabro*, 702 N.W.2d 504, 508-9 (Iowa App., 2005) (FED dismissed for lack of jurisdiction because inclusion of late fees and other charges in violation of HUD policy invalidated the notice). There is also an argument that inclusion of *any* late fees on the notice to cure invalidates it, because §648.1(5) allow a landlord to use the forcible entry and detainer process for nonpayment of rent, and a late fee is not rent but "a charge imposed for late payment of rent." Iowa Code § 535.2(7).

An issue may also arise as to how many days a tenant has to cure. Iowa Code §562A.8A was enacted in 1999 to clarify that Iowa Code §4.1(34) governs the calculation of all time periods under the chapter. Iowa Code §4.1(34) states that the day notice is given is excluded and the last day is included, unless the last day is a Sunday, in which case the time is extended to include the whole of the following Monday. The statute suggests that a tenant is entitled to 3 full days to cure after the notice is served. *Aiken v. Appleby, Morris* 8 (Iowa 1839) supports this proposition. ("The law disregards fractions of a day."). But see *Bell v. Linn County District Court*, 494 N.W.2d 729, 731 (Iowa Ct. App. 1992) (Defendant received required three days notice following initial appearance at contempt hearing, even though initial appearance occurred in afternoon and contempt hearing was held on the morning of the third day following notice.).

[back to top](#)

2. Reduction in Fair Market Value

In an action for possession based upon nonpayment of the rent, one issue that must be addressed is whether rent is actually owed. One reason that a tenant may claim that rent may not be owed is that the condition of the property is

such that it is not worth the amount of rent the tenant has been paying. The tenant may counterclaim for an amount which the tenant may recover under the rental agreement or Chapter 562A. The court may order the tenant to pay into court all or part of the rent accrued and shall, presumably after hearing and deciding the case, determine the amount due to each party. If rent does not remain due (that is, if the tenant has paid into court as much as, or more than, the amount owed the landlord, or if the court decides that the tenant has overpaid the landlord in the past), judgment shall be entered for the tenant. If the defense or counterclaim by the tenant is without merit and not raised in good faith, the landlord may recover reasonable attorney's fees. Iowa Code §562A.24. The eviction statute expressly allows claims and counterclaims under Chapter 562A and 562B (The Mobile Home Park Landlord and Tenant Law). Iowa Code §648.19. See Iowa Code §§562A.24, 562A.32, 562B.22, 562B.25, 562B.27, and Chapter 562A. The modern concept of landlord/tenant law views the relationship as a contractual one, not as a transfer of an interest in real estate. The covenants of the parties are interdependent. See *Mease v. Fox*, 200 N.W.2d 791, 797 (Iowa 1972) ("Since the basic contract remedies are available to tenant, the basic contract duties are imposed upon him. The tenant is under an obligation to give landlord notice of a deficiency or defect not known to the latter.") The duty to maintain the premises and the duty to pay rent are inseparable. Iowa Code §562A.2(c). It necessarily follows that the failure of the landlord to maintain the premises should be available as a defense. However, the court will often look at how long the problem has been apparent and whether the tenant has effectively waived their claim. It is important that tenants can document that they have given notice to the landlord about the problem and made efforts to get it corrected. *Mease v. Fox*, 200 N.W. 2d at 797 (discussing factors the Court will consider in assessing whether the landlord has breached his duty of habitability).

A tenant may withhold rent and deposit the money into the court. Iowa Code §562A.24. (although certainly should be raised as a defense to an eviction, there are better avenues for a tenant to use if there are habitability issues). See *Dittmer v. Baker*, 280 N.W.2d 398, 400 (Iowa 1979) (dicta); Lovell, *The Iowa Uniform Residential Landlord and Tenant Act*, 31 Drake L. Rev. 253 p 356 et. seq. (1981-82). Even where the court does not require that the disputed amount be paid into court, it is a good idea to tender the money. Small claims court judges deal daily with tenants unable to pay rent who raise habitability arguments in desperation. By tendering the money into court, the tenant demonstrates that his or her ability to raise the unpaid rent is not at issue. Credibility of the tenant is important in this situation, and tendering the unpaid rent into court adds greatly to the tenant's credibility.

Finally, a tenant may wish to counterclaim for damages in excess of \$5,000.00, the jurisdictional limit of small claims courts. Iowa Code §631.1(1). Under the small claims statute, the court has the option of ordering the counterclaim to be tried in district court, or ordering both the claim and counterclaim to be tried there. Iowa Code §631.8(4). Small claims judges may be inclined to retain jurisdiction of the claim to expedite proceedings. When the tenant's counterclaim arises from the same transaction as the original

claim, both should be tried in district court. See *Wilson v. Iowa District Court*, 297 N.W.2d 223, 225 (Iowa 1980).

A decision against a tenant in an action for forcible entry and detainer can have a preclusive effect, barring the tenant from recovering based on another theory in a later proceeding. See *Palmer v. Tandem Management Services*, 505 N.W.2d 813 (Iowa 1993) (tenant barred by claim preclusion from bringing an abuse of process claim against landlord when a retaliatory eviction claim was unsuccessfully raised in the landlord's forcible entry and detainer action).

Although counterclaims are not compulsory in small claims, Palmer suggests that claims arising out of the same transaction are compulsory in cases where nonpayment of rent is at issue.

[back to top](#)

3. Repair and Deduct

In an action for possession based upon nonpayment of rent, proper proof of the following shall permit a deduction from the amount claimed by the landlord as unpaid rent:

- a. The landlord failed to comply either with the rental agreement or with Iowa Code §562A.15 (landlord to maintain fit premises) or local rental housing ordinance.
- b. The tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in "a" above.
- c. The reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent.
- d. The tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

Iowa Code §562A.27(4)

[back to top](#)

4. Rental Certificate

If a city has an ordinance requiring landlords to obtain a rental certificate before collecting rent, a tenant does not have to pay rent if the property is not properly registered. Iowa Code §§364.17(3)(h), 562A.15(1)(a); *Burlington and Summit Apartments v. Monalato*, 7 N.W.2d 26 (Iowa 1942); *City of Fort Dodge v. Martin*, 2004 WL 2677235 (Iowa App., 2004).

[back to top](#)

B. Eviction for Cause Defenses (not including evictions under clear and present danger)

1. Notice Required

Whenever the tenant materially breaches the rental agreement or violates the

Landlord/Tenant Act in a way materially affecting health and safety, the landlord may give a written notice specifying the breach and stating that, if the material noncompliance is not remedied within seven (7) days after receipt of the notice, the tenancy will terminate in seven days, without further notice. The tenancy will terminate after seven days if the breach is not remedied in seven days. The tenancy will continue if the breach is remedied in seven days. Iowa Code §562A.27(1). The seven day cure provision is required and is jurisdictional, regardless of whether the breach is of a type that is "remediable." For example, lease violations like repeated disturbance of neighbors or chronic late payments of rent still require the seven day notice to cure. See *Liberty Manor v. Rinnels*, 487 N.W.2d 324, 326 (Iowa 1992). Such a breach, however, may be a basis for eviction even if the tenant has not engaged in the behavior since the notice. *Id.* ("This is not to say, however, that a trial court faced with repeated, obnoxious behavior must find that the breach has been remedied simply because the tenant has not been guilty of such behavior since the notice.") For this reason a tenant facing termination under this section should affirmatively seek to remedy any material breach. If substantially the same breach occurs within six months after such a notice is given, the aggrieved party may terminate the tenancy upon seven (7) days written notice. Iowa Code §562A.27(1). A three-day notice to quit must be given in this and most other cases, except as noted below, prior to starting an FED. Iowa Code §648.3 (see II.E., page 6-27, below.)

[back to top](#)

2. Substantial Compliance

Substantial compliance with the terms of the lease will avoid forfeiture; minor breaches of a lease do not warrant its cancellation. *Bentler v. Poulson*, 141 N.W.2d 551, 552 (Iowa 1966); *Beck v. Trovato*, 150 N.W.2d 657, 659 (Iowa 1967). See *Kaydon Acquisition Corp. v. Americal Central Industries*, 179 F.Supp. 2d 1022 (N.D.Iowa, 2001) for a thorough analysis by Judge Bennett.

[back to top](#)

3. Fair Housing

A tenant may raise fair housing claims as a defense to an eviction. *Newell v. Rolling Hills Apts.*, 134 F.Supp. 2d 1026, 1036 (N.D. Iowa, 2001).

a. Familial Status

A tenancy may not be terminated based on alleged noncompliance with the rental agreement concerning misbehavior by children, unless the parents have been negligent in their supervision, and the behavior is not just the normal behavior of children. Fair housing laws protect tenants against discrimination based on familial status. 42 U.S.C. §3602(k).

b. Domestic Violence

Evicting a tenant who is the victim of domestic violence violates the Fair Housing Act, in that a policy of evicting victims of abuse has a disparate impact on women. *Bouley v. Young-Sabourin*, 394 F.Supp.2d 675, 678 (D.Vt., 2005) (plaintiff made out prima facie case for gender

discrimination under the Fair Housing Act when defendant attempt to evict her less than 72 hours after she was assaulted by her husband); *Lewis v. North End Village*, Case No. 2:07-cv-10757, unreported, (E.D.Mich.2007); *Warren v. Ypsilanti Housing Commission*, Case No. 4:02-cv-40034, unreported, (E.D.Mich.2003); *Alvera v. C.B.M. Group*, Case No. 01-857, unreported, (D. Oregon 2001) (invalidating a "zero tolerance" policy when used to terminate the tenancy of a victim of domestic abuse). Amendments in VAWA 2005 added protections for victims of domestic violence. An individual's status as a victim of domestic violence, dating violence or stalking is not an appropriate basis for denial of admission or termination of housing assistance. The law provides a defense to eviction for incidents of actual or threatened domestic violence, dating violence or stalking. 42 U.S.C. §§1437d(c)(3); 1437d(l)(5), (6); 1437f(c)(9)(A), (B), (C); 1437f(d)(1)(A), (B), (C); 1437f(o)(7)(B), (C), (D); 1437f(o)(20)(A), (B).

c. Disability

Evicting a tenant for behavior related to a disability is a violation of the Fair Housing Act, which prohibits discrimination in the terms, conditions and privileges of tenancy because of the tenant's disability ("handicap"). 42 U.S.C. §3604(f)(2); Iowa Code §216.8(2).

[back to top](#)

C. Defenses to Evictions Brought Under Clear and Present Danger

Iowa Code §562A.27A states that if a tenant has "created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, or the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property." the landlord can file an eviction action "after a single three days' written notice of termination and notice to quit." The statute requires the F.E.D. notice to state "the incident or incidents giving rise to the notice of termination and notice to quit." Notice must also be given at least three days before an F.E.D. hearing.

The clear and present danger necessary for a landlord to utilize this section is defined to include, but not be limited to the following:

- a. Physical assault or threat of physical assault.
- b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.
- c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice.

Iowa Code §562A.27A. The law can also be used if the above described activities are caused by a person on the premises with the consent of the tenant.

The tenant may raise the following defenses to an eviction based upon clear and present danger:

1. Tenant Took Defensive Measures

If the activities are conducted by a person other than the tenant, the law provides that the tenant can avoid the termination by taking any one of the following measures: (1) the tenant seeks a protective order or restraining order; (2) the tenant reports the activities to a law enforcement agency attempting to initiate criminal action, or (3) the tenant writes a letter to the person (with a copy to a law enforcement agency and the landlord) advising the person not to return to the premises. Iowa Code §562A.27A(3). Written proof of these measures must be given to the landlord prior to the commencement of the suit. *Id.*

2. Defective Notice

Pursuant to Iowa Code §562A.27(A)(1), the FED notice must state the incident or incidents giving rise to the notice of termination and notice to quit and state the protective measures that a tenant may take including setting forth the specific language from the statute.

3. Reasonable Accommodation

The Fair Housing Act prohibits discrimination against tenants on the basis of disability. If the inability to comply with lease term is due to the disability, then the tenant should request reasonable accommodation. A disabled tenant may request reasonable accommodation up until the time of eviction *Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997). If the landlord shows that the tenant poses a direct threat to the safety or property of others even after the landlord has made reasonable efforts to accommodate the tenant's disability, then the landlord may terminate the tenancy. *Roe v. Sugar River Mills Associates*, 820 F.Supp. 636, 639 (D.N.H. 1993) (despite tenant's conviction for disorderly conduct, court held that "only if he constitutes a threat to the safety of others after defendants have made reasonable efforts to accommodate his handicap may defendants [evict him]."); *Boston Housing Authority v. Bridgewater*, 452 Mass. 833, 898 N.E.2d 848, 855 (Mass., 2009) (housing authority was required to consider whether causal link existed between tenant's disability and assault.). *Roe v. Housing Authority*, 909 F. Supp. 814, 822 (D. Colo. 1995). But see *Evans v. UDR, Inc.*, 644 F.Supp.2d 675, 685 (E.D.N.C., 2009) (landlord's refusal to relax its "no criminal history" policy for prospective tenant, even when tenant alleged that her criminal conduct arose from her mental disabilities, did not violate FHA); *Arnold Murray Construc. v. Hicks*, 621 N.W.2d 171 (S.D. 2001) ("we do not believe that Congress intended accommodations to be attempted or implemented if there is no reasonable expectation that the accommodation will protect the other tenants."). For a more detailed discussion as well as an overview of the intersection between these issues and the tenant's right to privacy concerning their mental health, see Article: *Outing the Madman*: Fair Housing for the Mentally Handicapped and their Right to Privacy Versus the Landlord's Duty to Warn and Protect*, 28 *Fordham Urb. L.J.* 783 (2001).

[back to top](#)

D. Eviction Without Cause - Notice Required

A month to month tenancy may be terminated by giving a thirty-day written notice prior to the periodic rental date specified in the notice. Iowa Code §562A.34(2). A ten day written notice is sufficient to terminate a week-to-week tenancy. Iowa Code §562A.34(1). In addition, a three-day notice to quit must be given to the defendant in writing after the expiration of the notice to terminate and prior to the filing of the Forcible Entry and Detainer. Iowa Code §648.3.

[back to top](#)

E. Common Defenses

The following defenses may generally be raised in an action for forcible entry and detainer, whether for nonpayment of rent, for cause, or without cause (except where noted).

1. Notice Required

A notice to quit must be given to the defendant in writing before an action for forcible entry and detainer can be brought, except as outlined below. Iowa Code §648.3.

A notice to quit is not required in the following cases:

- a. The defendant has, by force, intimidation, fraud, or stealth entered upon the prior actual possession of another real property, and detains the same.
Iowa Code §§648.1(1). Iowa Code §648.3.
- b. A notice of nonpayment of rent has been given pursuant to Iowa Code §562A.27. Iowa Code §648.3.
- c. A notice of clear and present danger has been served pursuant to Iowa Code §562A.27A. Iowa Code §648.3.

No notice to quit is required if the person does not have a legal interest in the real estate. For example, no notice is required prior to action against a live-in party. *Bernet v. Rogers*, 519 N.W.2d 808, 811-2 (Iowa 1994).

An action may be dismissed or continued because of improper notice. If the notice terminating the tenancy is inadequate, the action will be dismissed. (See II.A.1., above). If the notice of hearing is served less than three days prior to the hearing, the action may be continued. Iowa Code §648.5. A default cannot be made upon a tenant unless the three days' notice has been given. Iowa Code §648.5.
Additional time can always be given. The number of days required by statute

are minimums. A 30 day notice to quit, in lieu of a three-day notice, is sufficient to give the court jurisdiction. *Shuver v. Klinkenberg*, 67 Iowa 544, 25 N.W. 770, 771, (1885) ("We think that the defendant cannot complain because she was allowed more than three days after service of the notice in which to surrender the possession."). However, if more than 30 days pass after the cause of action has accrued, there may be defense under thirty days peaceable possession. (See subsection 5 below) *McRobert v. Bridget*, 168 Iowa 28, 149 N.W. 906, 908 (1914) (30 days peaceable possession barred eviction action when 3 day notice to quit and 30 day notice to quit were served on the same day, but landlord waited until the 30 day notice had elapsed before bringing the action).

[back to top](#)

2. Retaliatory Eviction

A landlord may not increase rent, decrease services, or bring or threaten to bring an action for possession after:

- a. The tenant has complained to a governmental agency with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety,
- b. The tenant has complained to the landlord of a violation under Iowa Code §562A.15 (landlord to maintain premises); or
- c. The tenant has organized or become a member of a tenants' union or similar organization.

Iowa Code §562A.36(1). The Mobile Home Park Landlord and Tenant Chapter contains a slightly broader protection (includes retaliation for exercising any rights and remedies under the chapter). Iowa Code §562B.32.

In such cases, the tenant may recover actual damages and reasonable attorney's fees, and has a defense in an action by the landlord for possession. Evidence of a good faith complaint within one year prior to the alleged retaliatory action creates a rebuttable presumption that the landlord's conduct was, in fact, retaliatory. Evidence that legitimate costs and charges have increased shall be a defense against the presumption of retaliation.

"Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence. Iowa Code §562A.36(2).

The Iowa Supreme Court found the owner of a mobile home park retaliated against several members of a tenant's union. *Hillview Assoc. v. Bloomquist*, 440 N.W.2d 867 (Iowa 1989). One tenant who physically assaulted the manager was properly evicted, but termination of leases of other tenants present during the dispute who did not encourage or participate in the assault on the manager constituted retaliatory eviction. See also *Sunset Mobile Home Park v. Parsons*, 324 N.W. 2d 452 (Iowa 1982) (landlords' termination of tenants' lease was not in retaliation for a gathering of mobile home park

tenants) and *Newell v. Rolling Hills Apts.*, 134 F.Supp. 2d 1026 (N.D. Iowa, 2001).

A landlord may still bring an action for possession if the building or housing code violation was caused primarily by the tenant, someone in the tenant's household, or upon the premises with the tenant's consent; if the tenant is behind in rent; or compliance with the building or housing code would effectively deprive the tenant of use of the dwelling unit. Iowa Code §562A.36(3).

A constitutional defense of retaliatory eviction exists in addition to the statutory defense outlined above. The United State Supreme Court held that a state court cannot allow a private litigant to violate another person's rights, even though the Constitution does not reach the private action sought to be enforced. The involvement of the state court constitutes state action. At the time *Shelley v. Kraemer*, 334 U.S. 1 (1948), was decided, the use of racially discriminatory restrictions on alienation of real estate was legal for a private property owner. The Supreme Court held, though, that a state court could not enforce a covenant repugnant to the Fourteenth Amendment. Subsequent decisions suggest that *Shelley v. Kraemer*, though never explicitly overturned, has limited application in this context. *Higbee v. Starr*, 698 F.2d 945, 946-7 (8th Cir. 1983) (discussing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982)), the Court stated "whether a constitutional deprivation is effected by state action depends on two things: one, whether the deprivation has resulted from the exercise of a right or privilege having its source in state authority, and two, whether the private parties may appropriately be characterized as state actors.").

In *Edwards v. Habib*, 397 F.2d 687, 694-5 (D.C.Cir. 1968), the court ruled that a tenant had a fundamental speech right to complain to housing authorities.

[back to top](#)

3. Equitable Defenses

An action for forcible entry and detainer may be considered an equitable proceeding. Iowa Code §648.5. There are numerous equitable defenses, such as estoppel or laches, which can be used in an eviction action. "[E]quity abhors a forfeiture." *Jamerson v. Knosby*, 423 N.W.2d 2, 4 (Iowa 1988). A party seeking forfeiture must show that the equities are clearly on his or her side before relief will be awarded. *Roshek Realty Co. v. Roshek Brothers Co.*, 249 Iowa 349, 358, 87 N.W.2d 8, 13 (1945). Substantial compliance with the terms of a lease will avoid a forfeiture, a minor breach of the lease will not justify a forfeiture. *Bentler v. Poulson*, 141 N.W.2d 551, 552 (Iowa 1966); *Beck v. Trovato*, 150 N.W.2d 657, 659 (Iowa 1967). The "clean hands doctrine" ("he who would come into equity must come with clean hands") may also apply. *Sisson v. Janssen*, 244 Iowa 123, 130, 56 N.W.2d 30, 34 (1952); *Boss Hotels Co. v. City of Des Moines*, 258 Iowa 1372, 141 N.W.2d 541, cert. denied. 365 U.S. 852 (1966). The doctrine, however, is only reluctantly used by the courts. *Butler v. Butler*, 253 Iowa 1084, 1125, 114 N.W.2d 595, 619 (1962).

[back to top](#)

4. Title in Issue

When title is germane to forcible entry and detainer issues, it may be the subject of inquiry, provided statutory prerequisites are met. *Steele v. Northrup*, 168 N.W.2d 785, 788 (Iowa 1969).

When title is at issue, the eviction action should be brought in district court and not in small claims. Iowa Code §648.1, 631.1(2); see *Robinson v. Black* 607 N.W.2d 676, 677-8 (Iowa 2000) and *Garrison v. Feters*, 383 N.W.2d 550 (Iowa 1986).

[back to top](#)

5. Peaceable Possession

Thirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to an action for forcible entry and detainer. Iowa Code §648.18. In *Petty v. Faith Bible Christian Outreach Center*, 584 N.W.2d 303 (Iowa 1998), the Iowa Supreme Court reaffirmed that the 30-day peaceable possession defense of Iowa Code §648.18 applies in situations where tenants hold over after termination of the lease. The court concluded that the lease in this case had terminated more than 30 days prior to the date that the landlord filed an FED action. Since the cause of action accrued on the date that the lease terminated and the landlord did not file the FED until more than 30 days past that date, the court held that the eviction was barred by 30 days peaceable possession.

The thirty day limitation period begins to run when the cause of action accrues, even though the landlord may not learn of the accrual of the cause of action until a later date. *Thomas v. Brodsack*, 215 N.W.2d 503, 505 (Iowa 1974); *Heiple v. Reinhard*, 100 Iowa 525, 69 N.W. 871, 873 (1897) (“[A] landlord is presumed to know whether his real property in the possession of another is held rightfully or not; and if the possession is peaceable and uninterrupted for 30 days, with the knowledge of the landlord, his right to that action is barred, even though he may not, in fact, have known that the right of possession had ceased to exist by reason of the breach of a covenant. . .”).

Iowa courts have consistently held that “the service of a three-day notice to quit does not interrupt peaceable possession.” *Petty v. Faith Bible Christian Outreach Center, Inc.*, 584 N.W.2d 303, 307 (Iowa 1998); see also *Warren v. Yocum*, 223 N.W.2d 258, 263 (Iowa 1974); *Roshek Realty Co. v. Roshek Bros. Co.*, 87 N.W.2d 8, 14-15 (Iowa 1957); *McRobert v. Bridget*, 149 N.W. 906, 908 (Iowa 1914); *Heiple v. Reinhart*, 69 N.W. 871, 873 (Iowa 1897). Iowa courts have not clarified, however, whether service of a three day notice to cure in a nonpayment case interrupts peaceable possession. Some magistrates hold that a notice to cure is analogous to a notice to quit, and that only the filing of an FED action interrupts peaceable possession. Other magistrates are of the opinion that the cause of action does not accrue until a tenant fails to cure within 3 days of receiving notice of nonpayment, and therefore the defense is only applicable in a nonpayment case when the landlord waits more than 30 days after the cure period is up to file. The Iowa Supreme Court has held that

when a tenant is several months behind on the rent, the landlord could still maintain an action based on subsequent defaults, and was not barred from using the Chapter 648 process to evict a tenant. *Garrison v. Fethers*, 383 N.W.2d 550, 553 (Iowa 1986).

[back to top](#)

6. Real Party in Interest

As in all other actions, the eviction must be brought by the real party in interest. Iowa R. Civ. P. 1.201. After a person's death, an action for forcible entry and detainer can be brought by the legal representative of the person. Generally, if someone other than the owner appears pro se, issues of unauthorized practice of law may be raised. *Commission on Unauthorized Practice v. A-1*, 623 N.W. 2d 803 (Iowa 2001). Iowa Code §631.14 was amended in 2006 to permit other persons to bring or defend an action when the residential rental property is titled in the name of one or more individuals. It permits an employee of one of the owners or an officer or employee of a property management entity acting on behalf of one or more of the owners to bring or defend an action on behalf of the owners. Iowa Code §631.14(2). This amendment raises issues regarding unauthorized practice, as was noted in the Veto Message for this bill. If the plaintiff is a corporation, then an agent may appear.

[back to top](#)

7. Waiver

The Landlord/Tenant Act states:

Acceptance of performance by the tenant that varies from the terms of the rental agreement or rules subsequently adopted by the landlord constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Iowa Code §562A.30. In *Jack Moritz Co. v. Walker*, 429 N.W. 2d 127 (Iowa 1988), the court held that the landlord, by giving a cure notice not required by law, had waived the right to terminate a lease when the tenant did cure the default as required by the notice. In *Greenwich Gardens v. Pint.*, 126 Misc. 2d 947, 950-1 (New York District 1984), the court held that monthly Section 8 subsidies were rents and the landlord's acceptance of these payments constituted a waiver of the landlord's right to evict the tenant. See also *Central Brooklyn Urban Development Corp. v. Copeland*, 471 N.Y.S.2d 989, 993 (N.Y. City Civ. Ct. 1984). For a contrary opinion, see *Midland Management Co. v. Helgeson*, 630 N.E.2d 836, 841 (Ill. 1994) (housing assistance payments not deemed "rent" when contract between Housing Authority and landlord provided the landlord was entitled to "vacancy payments" for up to two months after a tenant was evicted).

[back to top](#)

8. Unconscionability

The equitable defense of unconscionability should be an available defense in an eviction proceeding. Chapter 562A contains an explicit provision allowing courts to refuse to enforce unconscionable rental agreement or provisions. The court may also limit the application of unconscionable lease provisions to avoid an unconscionable default. Iowa Code §562A.7. Most likely, courts will continue to apply an unconscionability defense under a very narrow set of circumstances.

[back to top](#)

III. APPEALING THE ORDER OF EVICTION

A. Right of Appeal

A party has the opportunity as a matter of right to obtain a review of an adverse small claims decision. Iowa Code §631.13 provides that an appeal must be perfected by filing a notice of appeal within 20 days from the date judgment is "rendered." In *Lau v. City of Oelwein*, 336 N.W.2d 202, 204 (Iowa 1983), the Iowa Supreme Court interpreted "rendered" to mean the date the judgment is filed as opposed to signed by the judge. A docket fee must be paid to the clerk within this twenty (20) day period. Time deadlines are jurisdictional. See *Lau*, 336 N.W.2d at 203. If a default judgment was entered, appeal may still be taken concerning issues of law, such as jurisdiction. The default does not have to be set aside first. *Rowan v. Everhard*, 554 N.W.2d 548, 550 (Iowa 1996).

Iowa Code §631.13(4)(a), requires that only an associate or district court judge has authority to review a small claims decision; and only a district court judge, if the lower decision was by an associate district court judge. If the appellant loses a review of a small claims decision, discretionary review from the Supreme Court may be sought. Iowa Code. §631.16.

[back to top](#)

B. Post-Trial Motions

Iowa Code §631.7(2) provides that "[m]otions . . . shall be heard only at the time set for a hearing on the merits." Generally, the small claims court will not entertain post-trial motions. A motion to set aside default is allowed. Iowa Code §631.12. In *Barnes Beauty College v. McCoy*, 279 N.W.2d 258, 260 (Iowa 1979), the Iowa Supreme Court held that a motion for a new trial is not allowed in small claims. Motions under Iowa R. Civ. P. 1.1016 and 1.1017 are not permitted. *Schrock v. Iowa Dist. Ct.*, 541 N.W.2d 256 (Iowa 1995). Nor are motions to vacate or modify judgment. *Hyde v. Anania*, 578 N.W.2d 647, 650 (Iowa 1998). In *Midwest Recovery Services v. Cooper*, 465 N.W.2d 855, 857 (Iowa 1991), the Iowa Supreme Court held that the legislature deliberately omitted any provision for post-trial motions either at the small claims hearing or on appeal, holding that a 179(b) motion (now Rule 1.904) filed in the district court after the decision on appeal from a small claim was rendered was improper. Therefore, any post-trial motion, as well as being denied, will not toll the running of the 30 day appeal period.

[back to top](#)

C. Appeal Bonds and Filing Fees

In *Lemon v. Pasternak*, 340 N.W.2d 268, 269-70 (Iowa 1983), the Iowa Supreme Court held that Chapter 631 did not authorize the imposition of an appeal bond, unless the bond is meant to secure a stay of execution on the judgment pending appeal to district court. A court may authorize the commencement of an appeal without the prepayment of fees, costs or security. The tenant must simply file an affidavit and request for deferral of fees, costs and security. The court, upon an adequate showing, shall order deferral until final disposition of the proceeding and may do so ex parte Iowa Code §610.1.

[back to top](#)

D. Certiorari Review of Bond Issues

Especially in eviction actions, the advocate may be faced with an order to vacate even prior to the twenty (20) day appeal period and a supersedeas bond which the tenant cannot make. The small claims judge may or may not set a bond staying eviction either from the bench or in a subsequent decision on the FED. Iowa Code Chapter 610 states that persons who meet the requirements of the Chapter, the court shall waive surety.

In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the U.S. Supreme Court held that the state's refusal to waive court fees and costs of service of process for indigent plaintiffs seeking a divorce violated due process of law. The Court analogized the Plaintiff in a divorce case to a defendant in a civil suit. In *Lecates v. Justice of Peace*, 637 F.2d 898 (3rd Cir. 1980), the court noted that *Boddie* and its progeny evidence a concern "with the theoretical voluntariness of the plaintiff's entry into court." 637 F.2d at 908. In a case concerning a mandatory supersedeas bond, the federal court for the Northern District of Mississippi held that requiring a prohibitive bond violated due process of law, especially when the probable liability to the opposing party was slight. *Henry v. First Nat. Bank of Clarksdale*, 424 F.Supp. 633, 639 (N.D. Miss. 1976). In *Harrington v. Harrington*, 269 A.2d 310, 316 (Me. 1970), the court struck down two statutes, one which required an appeal bond, and one which required both parties to post bond when title to real property was in dispute. The Defendant in *Harrington* apparently had a meritorious defense to a Forcible Entry and Detainer Action, but was precluded from presenting it because she was indigent, and could not afford to provide the required securities. Her appeal to the Superior Court was likewise dismissed for failure to provide the required securities. The Supreme Judicial Court of Maine held that both requirements as applied to indigent parties violated the Equal Protection Clause of the United States Constitution. The defendant in *Harrington* was faced with the loss of her home, which the court stated "involved the forfeiture of a right of substantial magnitude when viewed in relation to her poverty status." 269 A.2d at 315.

Barnes Beauty College v. McCoy, 279 N.W.2d 658 (Iowa 1979), broadly holds that there is no post-trial motion procedure in small claims, but one is left with either moving the small claims judge to stay execution, if no stay has been ordered, or to reduce an excessive bond. The advocate can try to do the same with a district court judge sitting in that county or district. There appears to be no settled procedure. If unsuccessful, advocates may attempt filing for a writ of certiorari with the Supreme

Court and attempt to obtain a stay from an individual justice. Note that Iowa Rules of Appellate Procedure provide for a supersedeas bond, but justices may accept a monetary deposit or possibly an "undertaking" in the form of rental installments paid into the district court's escrow account. *Thompson v. Maza*, 421 F.2d 1156, 1161-2 (D.C. Cir 1979). But, see also, *Oaks v. District Court of Rhode Island*, 631 F.Supp. 538, 549 (D.R.I. 1986) (statute requiring appeal bond was a constitutionally acceptable response to significant societal problem of protecting interest of landlord who had prevailed in eviction proceeding).

[back to top](#)

E. Standard of Review

Iowa Code §631.13, defines the procedure and standard of review upon appeal of a small claims judgment. Review is de novo (whether at law or in equity) and upon application of either party or upon the court's own motion, additional evidence may be submitted if the court deems the record insufficient. *Roeder v. Nolan*, 321 N.W.2d 1, 3 (Iowa 1981). Note that under Iowa R. Civ. P. 1.907(2), either party may request oral argument on specified issues within twenty (20) days of the notice of appeal. If a small claims housing action involves a request for monetary relief in excess of the jurisdictional limits, the action is removed to district court unless the court severs the small claim. Iowa Code §631.8(4). If tried as a regular civil action, all the rules of civil procedure apply including appellate procedure. See *Wilson v. Iowa Dist. Ct.*, 297 N.W.2d 223 (Iowa 1980).

[back to top](#)

- [New Cases](#)
- [Roster](#)
- [Library](#)
- [Groups](#)
- [Help](#)
- [About the Civil Law Practice Area](#)

© 1999-2013 [Pro Bono Net](#). All rights reserved.