

# Residential Eviction (FL)

A Lexis Practice Advisor® Practice Note by Meghan O. Serrano, Shumaker, Loop & Kendrick, LLP



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This practice note outlines the requirements for bringing a residential eviction action under Florida law and explains how to ensure compliance with all pre-suit requirements. Although the note is written from the landlord's perspective, the information provided is also relevant to the tenant and tenant's counsel.

For guidance on commercial evictions in Florida, see [Commercial Eviction \(FL\)](#). For a compilation of Florida eviction resources, see [Eviction Resource Kit \(FL\)](#).

## Pre-suit Requirements

Part II of Chapter 83 of the Florida Statutes (ss. 83.40–83.683) governs residential tenancies and outlines the notice required prior to filing an action to evict a residential tenant from the landlord's property. However, if the tenancy is governed by a written lease, it is imperative to review the lease and abide by any specific or additional notice provisions included in that contract to ensure compliance with all conditions precedent to filing an action for possession.

### Notice of Default Due to Failure to Pay Rent

Prior to filing any action to evict a tenant for failure to pay rent, the landlord must serve the statutorily required three-day notice demanding payment of rent or possession of the premises within three days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of the notice.

This notice requirement cannot be waived in the lease. Fla. Stat. Ann. § 83.56(3) provides the form of the notice. For an annotated version of this form, see [3-Day Notice \(Residential Eviction\) \(FL\)](#).

The notice may be mailed to the tenant, personally served, or, if the tenant is absent from the premises, a copy may be left at the residence. Fla. Stat. Ann. § 83.56(3), (4). Because compliance with the statutory notice requirements is a precondition to obtaining a judgment for possession, it is advisable to send the notice in a manner that will confirm delivery and receipt by the tenant, such as by sending via Federal Express, certified mail, or through a process server who can prepare an affidavit attesting to service, if necessary.

If the tenant cures the default by paying the past due rent, the landlord cannot bring an action for possession based on the prior default. If the tenant makes a partial rent payment, the landlord may proceed with the action for possession but must:

- Provide the tenant with a receipt stating the date and amount received and the agreed upon date and balance of rent due before filing an action for possession
  - Place the amount of partial rent accepted from the tenant in the registry of the court upon filing the action for possession –or–
  - Post a new three-day notice reflecting the new amount due
- Fla. Stat. Ann. § 83.56(5)(a).

### Notice of Default for Any Reason Other Than Failure to Pay Rent

If a tenant is in default of any lease obligation other than the payment of rent, Florida law makes a distinction between defaults for which the tenant should or should not be given notice and an opportunity to cure the default.

If notice must be provided, the notice provided to the tenant must specify the default, the action required to cure the default, and must provide seven days from the date of delivery of the notice to cure the default. Fla. Stat. Ann. § 83.56(2)(b). Here, too, because notice is a precondition to obtaining a judgment for possession in the event that the default is not cured, it is advisable to send the notice in a manner that will confirm delivery and receipt by the tenant, such as by sending via Federal Express, certified mail, or through a process server who can prepare an affidavit of service if the tenant later claims that service was defective or no notice was received.

Circumstances when no notice and opportunity to cure should be given are rare. The non-exhaustive list of examples of such circumstances listed in the statute are “if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation” and “destruction, damage, or misuse of the landlord’s or other tenants’ property by intentional act or a subsequent or continued unreasonable disturbance.” In these circumstances, the landlord may deliver notice to the tenant of the termination of the lease and advise the tenant that the tenant shall have seven days from the date that the notice is delivered to vacate the premises. Fla. Stat. Ann. § 83.56(2)(a). Again, it is advisable to serve the notice in a manner that confirms the tenant’s receipt.

Forms of seven-day notice are set forth in Fla. Stat. Ann. § 83.56(2)(a) and Fla. Stat. Ann. § 83.56(2)(b). For annotated forms, see [7-Day Notice \(Opportunity to Cure\) \(Residential Eviction\) \(FL\)](#) and [7-Day Notice \(Immediate Termination\) \(Residential Eviction\) \(FL\)](#).

## Actions for Possession

### Jurisdiction

If the landlord seeks only to recover possession of the property, the action must be filed in the county court. Fla. Stat. Ann. § 83.59(2). Until December 31, 2019, if the landlord seeks to recover possession of the property and damages that exceed \$15,000, the action must be filed in circuit court. Effective January 1, 2020, the circuit court has jurisdiction of matters where the amount in controversy exceeds \$30,000, and for matters in which the amount in controversy is less than \$30,000, the county court has jurisdiction. Effective January 1, 2023, the circuit court has jurisdiction of matters where the amount in controversy exceeds \$50,000, and for matters in which the amount in controversy is less than \$50,000, the county court has jurisdiction. See Fla. Stat. § 26.012, as amended in 2019.

### Complaint for Possession

If the tenant fails to cure a default for the nonpayment of rent after notice, the lease is terminated and the landlord may file an action seeking possession of the property (eviction). Fla. Stat. Ann. §§ 83.56(3), 83.59(1). See Fla. R. Civ. P. Form 1.947 for the statutory form. For an annotated version of this form, see [Complaint for Eviction \(Failure to Pay Rent\) \(FL\)](#). For an annotated version of a form complaint based on a default other than the nonpayment of rent, see [Complaint for Eviction \(Default other than Failure to Pay Rent\) \(FL\)](#). Attorney’s fees and court costs are recoverable under Florida law in an action to enforce the terms of the lease. Fla. Stat. Ann. §§ 83.48, 83.59.

The court is required by statute to “advance the cause on the calendar” and the landlord is entitled to summary procedure provided for in Section 51.011, Florida Statutes, which means that the tenant’s response to the claim for possession must be filed within five days after service of process, again, excluding Saturdays, Sundays, and legal holidays. Fla. Stat. Ann. §§ 83.59(2), 51.011; Fla. R. Jud. Admin. 2.514(a)(3).

As discussed below, Florida law provides that a tenant must deposit all past due rent into the court registry in order to defend the eviction action. Because this procedure provides a prompt and effective mechanism to obtain a judgment for possession quickly, the practitioner should avoid any issues or delays and confirm prior to filing that the complaint accurately summarize all rent due.

### Complaint for Possession and Damages

The landlord can include a claim for damages for breach of the lease in the same lawsuit as the eviction claim but this claim is not governed by summary process and the tenant will have the standard 20 days to file and serve a response to a damages claim. Fla. R. Civ. P. 1.140(a)(1). For a form, see [Complaint for Eviction and Damages \(FL\)](#).

### Complaint Due to Lease Defaults Other Than Failure to Pay Rent

Where the landlord seeks to evict a residential tenant due to a default under the lease other than the failure to pay all rent due, the complaint must describe:

- The residence
- The lease terms
- The default under the lease –and–
- The notice provided to the tenant regarding the default

The standard form of eviction complaint may be modified to address the defaults applicable in these circumstances. Attorney’s fees and court costs are recoverable under Florida

law in an action to enforce the terms of the lease. Fla. Stat. Ann. §§ 83.48, 83.59(4). See Fla. R. Civ. P. Form 1.947 for the statutory form. For an annotated version of this form, see [Complaint for Eviction \(Default other than Failure to Pay Rent\) \(FL\)](#).

## Service of Complaint

Because the landlord is entitled to summary process under Chapter 51, the summons served on the tenant along with the complaint seeking possession of the property notifies the tenant that to defend an eviction proceeding on any basis other than payment, the tenant must (1) file a motion to determine rent or (2) deposit all past due rent described in the complaint with the registry of the court and serve an answer stating the legal basis for the defense within five days of being served (excluding Saturdays, Sundays, and legal holidays). Fla. Stat. Ann. § 83.60(2); Fla. R. Jud. Admin. 2.514(a)(3) and [Summons \(Eviction\) \(FL\)](#). Although the requirements vary by county, typically, funds deposited to the court registry must be in cash, cashier's check, or money order, and clerk fees apply.

As noted, the landlord can include a claim for damages for breach of the lease in the same lawsuit as the eviction claim, but this claim is not governed by summary process and the tenant will have the standard 20 days to file and serve a response to a damages claim. Fla. R. Civ. P. 1.140(a)(1). The landlord need only serve the tenant with one summons for the lawsuit provided that the summons specifies that the tenant has five days to answer the claim for possession and 20 days to respond to the money damage claim. *Stein v. Hubbs*, 439 So. 2d 1005 (Fla. Dist. Ct. App. 1983) (noting that it "would be duplicative of court time and costs to require service of both a five-day and a twenty-day summons in such cases [where a complaint seeks remedies of possession and damages]"). For a sample summons that specifies the different time periods for response to claim for eviction and damages, see [Summons \(Eviction and Damages\) \(FL\)](#).

## Tenant's Failure to Respond to Complaint

If the tenant fails to answer the complaint for possession after the expiration of five business days after personal service on the tenant or, if service is by posting, five business days after service is effective (the date of posting or mailing, whichever occurs later), the landlord may file the return of service confirming that the tenant was validly served along with a motion for entry of a default. The landlord will also need to confirm that the tenant is not an active military member by searching Department of Defense records for the tenant's name and filing an affidavit of nonmilitary service, because if the tenant is an active military member, his or her service could excuse the tenant's failure to respond to the

complaint. Upon the entry of the default, the landlord may file a motion for final judgment for possession. Fla. Stat. Ann. §§ 51.011, 48.031(1)(a); Fla. R. Civ. P. 1.500.

For forms, see [Motion for Clerk's Default \(Possession\) \(Eviction\) \(FL\)](#), [Motion for Clerk's Default \(Damages\) \(Eviction\) \(FL\)](#), and [Non-Military Affidavit \(Eviction\) \(FL\)](#).

If the tenant fails to file a motion to determine rent or deposit the past due rent into the court registry within five days of service, the tenant has absolutely waived his or her defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing. Fla. Stat. Ann. § 83.60(2).

## Tenant's Defenses

The tenant may raise any legal or equitable defense that he or she has to the action for possession. Possible defenses include the landlord's failure to comply with the notice provisions included under Fla. Stat. Ann. § 83.56, or that eviction is not based on legitimate grounds but is instead retaliatory and prohibited under Fla. Stat. Ann. § 83.64. The court must give the landlord an opportunity to cure a deficiency in a notice or in the pleadings before an action for possession can be dismissed. Fla. Stat. Ann. § 83.60(1)(a).

If a tenant asserts a defense to an eviction claim alleging that the landlord has failed to maintain the premises as required under Fla. Stat. Ann. § 83.51, the tenant must demonstrate that "7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof." Fla. Stat. Ann. § 83.60(2). "A material noncompliance with Section 83.51(1) by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with Section 83.51(1)." Fla. Stat. Ann. § 83.60(1)(b). After consideration of all other relevant issues, the court shall enter appropriate judgment. Fla. Stat. Ann. § 83.60(1)(b).

For a form of notice, see [Tenant's Notice of Intention to Withhold Rent \(FL\)](#).

## Tenant's Motion to Determine Rent

If the tenant files a motion to determine rent, "documentation in support of the allegation that the rent as alleged in the complaint is in error is required." Fla. Stat. Ann. § 83.60(2). The court is required to advance the cause on the calendar. Fla. Stat. Ann. § 83.59(2).

If the tenant deposits the past due rent into the court registry, and the landlord is in actual danger of losing the property or other personal hardship due to the loss of rent, the landlord may apply to the court for the disbursement of all or part of the funds deposited and for a prompt final hearing. Fla. Stat. Ann. § 83.61.

### **Process If Tenant Voluntarily Leaves Premises after Service of Eviction Complaint**

In practice, some tenants voluntarily leave the property after being served with an eviction action. Because Florida law clearly prohibits the landlord from taking any self-help measures to remove the tenant, unless the tenant has clearly communicated his or her intent to permanently leave the premises and return possession to the landlord, it is advisable to proceed to obtain entry of a default judgment for possession and to serve a writ of possession, as described in the prior section. Fla. Stat. Ann. § 83.67.

## **Final Judgment and Writ of Possession**

### **Judgment for Possession**

As explained above, if the tenant has failed to respond to the complaint for possession, the landlord should file a motion for entry of a default by the clerk. Upon entry of the default, the landlord can file a motion for final judgment of possession. The form judgment for possession states that the landlord is entitled to possession of the property and must include a description of the property. It is imperative that the property description is accurate because any writ of possession issued will be based on the final judgment.

For forms, see [Motion for Clerk's Default \(Possession\) \(Eviction\) \(FL\)](#), [Motion for Default Final Judgment \(Possession\) \(Eviction\) \(FL\)](#), and [Final Judgment \(Possession\) \(Eviction\) \(FL\)](#).

### **Judgment for Damages**

If the tenant has failed to respond to the complaint for damages, the landlord should file a motion for entry of a default by the clerk. Upon entry of the default, the landlord can file a motion for final judgment awarding damages. If the amount of damages has changed since the complaint was filed, the landlord can prepare an affidavit outlining damages.

For forms, see [Motion for Clerk's Default \(Possession\) \(Eviction\) \(FL\)](#), [Motion for Clerk's Default \(Damages\)](#)

[\(Eviction\) \(FL\)](#), [Affidavit of Damages \(Eviction\) \(FL\)](#), and [Final Judgment \(Damages\) \(Eviction\) \(FL\)](#).

The landlord is entitled to pursue the tenant for any damages owed as a result of the breach of the terms of the lease. If the lease includes an acceleration clause, the landlord can also seek to recover future rent from the tenant. *Jimmy Hall's Morningside, Inc. v. Blackburn & Peck Enterprises, Inc.*, 235 So. 2d 344 (Fla. Dist. Ct. App. 1970) (holding that acceleration clauses in leases are valid and enforceable). The landlord "has a duty to mitigate the tenant's damages by making a good faith effort to release the property at a fair rental. And, the landlord must credit the tenant for any rents obtained from another tenant, during the lease term." *Hudson Pest Control, Inc. v. Westford Asset Mgmt., Inc.*, 622 So. 2d 546, 549 (Fla. Dist. Ct. App. 1993). It is reversible error for a court to enter a judgment that includes accelerated rent without a reservation of jurisdiction to consider a motion for an accounting should the landlord relet the premises during the remainder of the lease term. *Horizon Med. Group v. City Center of Charlotte Cty.*, 779 So. 2d 545 (Fla. Dist. Ct. App. 2001).

### **Writ of Possession and Removal of the Tenant and the Tenant's Personal Property**

Upon the entry of the judgment for possession, the clerk may issue a writ of possession. Fla. R. Civ. P. 1.580. The writ of possession directs the sheriff of the county where the property is located to put the landlord in possession of the property 24 hours after service of the writ. Fla. Stat. Ann. § 83.62(1). Because the writ issued will be based on the description of the property included in the final judgment, it is imperative that this description is accurate to avoid delays. The writ must be served by the sheriff, who charges a fee, typically about \$100. When the sheriff executes the writ, the landlord or its agent "may remove any personal property found on the premises to or near the property line." After executing the writ of possession, the landlord "may request sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises[.]" and the landlord must pay the sheriff's reasonable hourly rate in order to stand by. Importantly, the statute provides that "[n]either the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed." Fla. Stat. Ann. § 83.62(1), (2).

For the statutory form, see Fla. R. Civ. P. Form 1.915. For an annotated form, see [Writ of Possession \(Eviction\) \(FL\)](#).

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## Disposal of Personal Property Left after Conclusion of Tenancy

If the tenant leaves personal property at the premises following the expiration of the lease or his or her abandonment of or eviction from the premises, the landlord must give notice to the tenant or presumed owner of its intent to dispose of the personal property. The notice must describe the personal property sufficiently to allow the owner of the property to identify it. The notice must also advise the owner that the reasonable costs of storage may be charged before the property is returned and state where the property may be claimed and the date before which the claim must be made, which shall be a date not fewer than 10 days after the notice is personally delivered or, if mailed, not fewer than 15 days after the notice is deposited in the mail. The notice must be personally delivered or sent first-class mail to the owner's last known address or any other address where the owner can reasonably be expected to receive it. Fla. Stat. Ann. § 715.104(2), (3).

The statute provides the form of the notice notifies the owner where the property can be claimed and if it is not claimed, it can be disposed of. Fla. Stat. Ann. § 715.105. (For an annotated version of the form, see [Notice to Tenant Regarding Abandoned Property \(Residential Lease\) \(FL\)](#).) The notice must also specify what will happen to the personal property if it is not claimed, which depends on the value of the property. Fla. Stat. Ann. § 715.105(1), (2).

If the owner fails to claim the personal property after notice, the landlord can sell it at a properly noticed public sale, and the owner may claim and proceeds of the sale from the county after the costs of storage, advertising, and sale are deducted. Fla. Stat. Ann. §§ 715.109, 111, 105(2)(a). If the owner pays all costs associated with the storage, advertising, etc., of the property before the date specified in the notice, the property can be released to him or her and the sale canceled. Fla. Stat. Ann. § 715.108. If the owner fails to claim the personal property after notice and the landlord reasonably believes that the personal property is worth less than \$500, it can be kept, sold, or destroyed. Fla. Stat. Ann. § 715.105(2)(b). The landlord must exercise "reasonable care" in storing the personal property but "is not liable to the tenant or any other owner for any loss unless caused by the landlord's deliberate or negligent act." Fla. Stat. Ann. §§ 715.107 and 715.11.

## Evictions after Foreclosure

Tenants who reside in foreclosed property have protections under both Florida and federal law. After the federal Protecting Tenants at Foreclosure Act (PTFA) expired on December 31, 2014, the Florida legislature passed its own version of the PTFA, which became effective on June 2, 2015, and provides that a bona fide tenant may remain in possession of the property for 30 days after notice from the new owner of the termination of the lease. See Fla. Stat. Ann. § 83.561 for the statutory form of notice. Notably, Florida's PTFA expressly provides that the purchaser of property at a foreclosure sale does not assume the obligations of the lease. Fla. Stat. Ann. § 83.561.

On May 24, 2018, President Trump signed into law a permanent extension of the federal PTFA, which provides that a bona fide tenant may remain in possession of the property for 90 days after notice from the new owner of the termination of the lease. Economic Growth, Regulatory Relief, and Consumer Protection Act, PL. 115-174, 2018 Enacted S. 2155. The federal PTFA provides that it does not affect any state or local law that provides longer time periods or other additional protections for tenants. 12 U.S.C. § 5220. Since Florida's version of the PTFA is less restrictive, purchasers taking title to properties pursuant to a foreclosure must follow the federal standards and provide 90-days' notice to any tenants. For a form, see [90-Day Notice \(Residential Eviction\) \(FL\)](#).

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