

Evictions Provision of Notice to Quit

Before proceeding with an eviction action under the Illinois Code of Civil Procedure it is a non-waivable requirement that a tenant be provided with an appropriate notice to quit. This could be a five day notice for failure to pay rent, a ten day notice for breach of the lease or a 30 day notice that a month-to-month lease will not be renewed, or other applicable notice.

735 ILCS 5/9-211 provides:

Any demand may be made or notice served by delivering a written or printed, or partly written and printed, copy thereof to the tenant, or by leaving the same with some person of the age of 13 years or upwards, residing on or in possession of the premises; or by sending a copy of the notice to the tenant by certified or registered mail, with a returned receipt from the addressee; and in case no one is in the actual possession of the premises, then by posting the same on the premises.

Service in person, abode service or certified mail **with a signed receipt** of a five day or other appropriate notice to quit upon the tenant is required **before** the filing of suit pursuant to the Evictions Act (formerly known as the Forcible Entry and Detainer Act). This notice requirement is different from and contrary to the common law, so a landlord-plaintiff seeking summary relief pursuant to the statute must strictly comply with the requirements of the statute, especially in relation to jurisdiction. *Avdich v. Kleinart*, 69 Ill.2d 1, 6 (1977). When using certified mail, the signed receipt serves not only as proof of service but indicates the date of receipt by the tenant and the beginning of the five day (or other) period. *Id.* at 8-9.

The notice requirement of the Evictions Act may not be waived by a lease or other written agreement. If a landlord-plaintiff wishes to seek eviction under the Act, the requirement of notice must be satisfied. *Avdich*, at 7.

If a tenant is avoiding service of the notice to quit, a landlord-plaintiff may demonstrate that a tenant is refusing to accept delivery of a notice to quit because he or she knows the contents of the document. If the court is satisfied that personal service of the notice has been attempted and that the tenant knows service of the notice to quit has been attempted, the court may find that the tenant has constructive receipt of the notice, thus meeting the statutory requirement. See *Helland v. Larson*, 138 Ill.App.3d 1 (3d Dist. 1985).