

## INSTRUCTIONS FOR EVICTION

### IMPORTANT! READ BEFORE USING THIS PACKET

**ND Legal Self Help Center staff and court employees cannot help you fill out the form(s). If you are unsure how to proceed, you should consult a lawyer.**

To protect your rights, carefully read this information and any instructions to which you are referred.

You may go to court without a lawyer, but you will have to abide by the state or federal laws that apply to your case, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at [www.ndcourts.gov](http://www.ndcourts.gov).

A glossary with definitions of legal terms is available at [www.ndcourts.gov/ndlshc](http://www.ndcourts.gov/ndlshc).

*This information is not a complete statement of the law. This covers basic procedure for eviction. If the forms do not fit your circumstances, consult a lawyer. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center.*

[Chapter 47-32 of the North Dakota Century Code](#) governs evictions in North Dakota. The most common reason to evict a tenant is failure to pay their rent. However, a tenant can be evicted for other material violations of a lease or rental agreement. Examples of a material violation are: unreasonable peace disturbances, illegal activity on the premises, unreported pets, too many occupants, or damage to the premises.

**IMPORTANT!** If the property is part of a legal entity, such as a corporation or limited liability company, consult a lawyer licensed to practice in North Dakota before using the eviction forms. Non-lawyers are generally not allowed to represent legal entities in court.

Laws constantly change through legislation, administrative rulings and court decisions. To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws apply to your situation.

## **EVICTIION FORMS**

1. Notice to Evict
2. Summons
3. Complaint
4. (Proposed) Findings of Fact, Conclusions of Law and Order
5. (Proposed) Judgment
6. (Proposed) Writ of Eviction
7. Affidavit of Identification

### **Before Completing and Signing the Forms:**

Review the forms carefully and determine if the forms apply to your situation. If you do not know if you should use these forms, consult a lawyer who is licensed to practice in North Dakota.

When you sign the forms, your signature tells the court that you:

- Made reasonable inquiries about the eviction circumstances and requirements; and
- Based on your inquiries, to the best of your knowledge, information, and belief:
  - You are not presenting the eviction action for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
  - The claims, defenses, and other legal contentions in the eviction action are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
  - The facts are supported by evidence or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
  - Denials of any facts are warranted on the evidence or are reasonably based on belief or a lack of information.

See [North Dakota Rules of Civil Procedure Rule 11](#) for signature requirements, representations to the Court, and sanctions for documents presented to a court.

### **STEP ONE: PREPARE AND SERVE THE NOTICE TO EVICT**

Serving the Notice to Evict is the required first step in the eviction process in North Dakota. The tenant must be given notice of the intention to evict. A copy of the Notice to Evict and proof that the notice to evict was properly served must be filed with the court in Step Three.

(Review [Chapter 47-32](#) for circumstances when the Notice to Evict may not be required.)

### **Prepare the Notice to Evict:**

- This gives the tenant notice to move out of the residence within 3 days.
- The first line should be filled in with the name of the person renting from you (tenant).
- Fill in the street address, city and zip code of the property.
- Fill in the date the lease was signed or the date of the rental agreement.
- Check #1 if there is unpaid rent – fill in the amount of unpaid rent and the period of time that was unpaid.
- No. 1-6: Check all that apply. Use #5 and #6 to explain violations that aren't already listed.
- Date and sign the document.
- Make at least one copy for the court and one copy for your records.

### **Serve the Completed Notice to Evict on the Tenant(s):**

The Notice to Evict must be served on the tenant. Review the section of law that deals with service of the Notice to Evict in [North Dakota Century Code Section 47-32-02](#). See also [Rule 4 of the North Dakota Rules of Civil Procedure](#) for service requirements that also apply.

General information about service to start a civil action and affidavit of service forms are available at the [ND Legal Self Help Center](#) website by clicking on the Service link.

When the tenant(s) can be found, there are three ways to serve the Notice to Evict.

1. You may give the Notice to Evict to the Sheriff of the county for personal service. (You will be charged a fee.) The Sheriff will provide an affidavit of service. The completed, notarized affidavit of service is your proof of service.
2. You may have another person who is at least 18 years of age and not a party to or interested in the eviction action serve the Notice to Evict. The person must serve the documents as required by Rule 4(d) of the North Dakota Rules of Civil Procedure. The person who served the notice to evict must fill out an Affidavit of Service by Personal Delivery and sign the affidavit in the presence of a clerk of court or notary public. The completed Affidavit of Service by Personal Delivery is your proof of service.
3. A person who is at least 18 years of age may mail the Notice to Evict. The Notice to Evict must be mailed by Certified Mail, Return Receipt Requested (Restricted Delivery). The envelope should be marked "Deliver to Addressee Only." The person who mailed the Notice to Evict must fill out an Affidavit of Service by Mail and sign the affidavit in the in the presence of a clerk of court or notary public. The completed Affidavit of

Service by Mail and the green card receipt showing actual delivery is your proof of service.

When the tenant(s) cannot be found, there is one way to serve the Notice to Evict.

1. The Sheriff of the county or a process server posts the Notice to Evict conspicuously upon the premises. An affidavit of service by the Sheriff or process server is your proof of service.

**STEP TWO: PREPARE THE SUMMONS AND COMPLAINT, PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, PROPOSED JUDGMENT, AND PROPOSED WRIT OF EXECUTION**

If the tenant does not move out of the premises within the 3 days given on the Notice to Evict, you may file the original Summons and Complaint with the District Court and serve a copy of the Summons and Complaint on the tenant(s). The Summons and Complaint give notice to the tenant(s) of the date and time of the eviction hearing, and the reason(s) for the eviction action.

Make at least two copies of each completed form. One copy of the Summons and Complaint must be served on each tenant. Keep one copy of each completed form for your records.

**Prepare the Summons :**

- Fill out the heading:
  - Name of County – this is the county in North Dakota where you will file the case.
  - Plaintiff – you are the Plaintiff. Fill in your full name.
  - Defendant – The tenant is the Defendant. Fill in the tenant’s full name.
  - Case Number – You will get a case number from the Clerk of Court when you file the case and pay the filing fee. You will fill in the case number at that time.
- #1 – On the blanks provided, write the reasons why you are trying to evict the tenant.
- #3 – You will get the hearing information from the Clerk of Court after you file the case and pay the filing fee. You will fill in the day, month, year, time and location of the hearing at that time.
  - The hearing must be set no less than three (3) days and no more than fifteen (15) days after the Summon and Complaint are served on the tenant.
- Date and signature:
  - Date and sign the Summons. Print your name and fill in your address and telephone number.
  - If your mailing address is different than your street (physical) address, write your mailing address in the space next to the physical address.

### **Prepare the Complaint:**

- Fill in the heading the same as you did for the Summons.
- #1 – Fill in the address of the property and the length of the lease (e.g. 6 months, 1 year).
- #2 – Fill in the amount of the rent per month, the date the rent is due each month, the amount of the late fee, if any, and the circumstances when the late fee is charged.
- #3 – Check the reasons for the eviction. If one of the reasons is unpaid or delinquent rent, fill the amount owed and the timeframe of the unpaid or delinquent rent.
- WHEREFORE #3 – Fill in the amount owed in rent and fees.
- WHEREFORE #4 – If you are claiming there is physical damage to the property, fill in the amount for physical damage to the property.
- Sign and print your name, address and phone number.
  - If your mailing address is different than your street (physical) address, write your mailing address in the space next to the physical address.

### **Prepare Findings of Fact, Conclusions of Law and Order:**

- Only fill out the heading. These are your proposed Findings of Fact, Conclusions of Law and Order.
- The District Court Judge will decide whether to use these forms.
- An eviction cannot proceed until a District Court Judge completes, then signs and dates a findings of fact, conclusions of law and order.

### **Prepare the Judgment:**

- Only fill out the heading. This is your proposed Judgment.
- If the District Court Judge completes, then signs and dates a findings of fact, conclusions of law and order, the Clerk of Court will complete and sign a judgment.
- If the District Court Judge decides to use your proposed Findings of Fact, Conclusions of Law and Order, the Clerk of Court may decide to use your proposed judgment form.

### **Prepare the Writ of Eviction:**

- Only fill out the heading. This is your proposed Writ of Eviction.
- The District Court Judge will decide whether to use this form.

### **STEP THREE: FILE THE ORIGINAL, COMPLETED FORMS WITH THE CLERK OF COURT AND SCHEDULE A DATE FOR THE EVICTION HEARING**

File the following completed, original forms with the Clerk of Court:

1. Summons
2. Complaint
3. Notice to Evict
4. Proof of Service of the Notice to Evict
5. (Proposed) Findings of Fact, Conclusions of Law and Order
6. (Proposed) Judgment
7. (Proposed) Writ of Eviction

You will be asked to pay a filing fee. Verify the amount of the filing fee with the Clerk of Court. At the time of filing and fee payment, the Clerk of Court will schedule a hearing date.

The hearing date may not be fewer than three nor more than fifteen days from the date on which the Summons is issued.

### **STEP FOUR: SERVE COPIES OF THE COMPLETED SUMMONS AND COMPLAINT ON THE TENANT(S)**

There are a number of ways to serve a copy of the summons and complaint on the tenant(s). The deadline for service depends on the way the copy of the summons and complaint are served.

You will be required to file proof of service with the court of a copy of the summons and complaint on each tenant.

General information about service to start a civil action and affidavit of service forms are available at the [ND Legal Self Help Center](#) website by clicking on the Service link.

**In person service on the tenant(s) within the county.** Service must be completed at least three days before the time set for the hearing.

- You may give the copy of the Summons and Complaint to the Sheriff of the county for personal service. (You will be charged a fee.) The Sheriff will provide an affidavit of service. The completed, notarized affidavit of service is your proof of service.
- You may have another person who is at least 18 years of age and not a party to or interested in the eviction action serve the copy of the Summons and Complaint. The

person must serve the documents as required by Rule 4(d) of the North Dakota Rules of Civil Procedure. The person who served the notice to evict must fill out an Affidavit of Service by Personal Delivery and sign the affidavit in the presence of a clerk of court or notary public. The completed Affidavit of Service by Personal Delivery is your proof of service.

**For service in any other county**, service must be completed at least seven days before the time set for the hearing.

**If the person cannot be found in the county**, the following conditions apply to service:

- Proof that the sheriff or process server attempted service, and that service was attempted at least once between the hours of six p.m. and ten p.m.
- An affidavit must be filed by the plaintiff or the plaintiff's attorney that states:
  - The defendant cannot be found, or the defendant is not in this state.
  - a copy of the summons has been mailed to the tenant at the tenant's last-known address if any is known to the plaintiff.
- Then, service of the summons may be made upon the defendant by the sheriff or process server posting the summons upon the door of the residential unit.

### **ATTEND THE EVICTION HEARING:**

Prior to the hearing, file proof of service with the court of a copy of the summons and complaint on each tenant.

You should bring all of your evidence with you to the hearing. This may include copies of the lease, ledgers showing payments, photos, etc.

### **IF THE EVICTION IS GRANTED BY THE COURT:**

If required, you will be asked to file a notarized Affidavit of Identification with the Clerk of Court.

#### **Prepare the Affidavit of Identification:**

- Read the full statement. By filling out the form and signing it in front of a notary public, you swear that the statement and the information you include about the Defendant(s) is accurate.
- Fill out the heading.
- Fill in your full name.
- Fill in each Defendant's full name, address and occupation.
- Sign the affidavit only when a notary public can witness your signature.