

Chapter 21-16.

**POSSESSION OF REAL PROPERTY  
(Forcible Entry and Detainer)**

**COMMISSION NOTE:(1)**

**21-16-1. Forcible entry and detainer - grounds..**

An action of forcible entry and detainer, or of detainer only, is maintainable:

- (1) If a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property or the occupied structure of another, and detains the same;
- (2) If a party, after entering peaceably upon real property or an occupied structure, turns out by force, threats, or menacing conduct, the party in possession;
- (3) If a party by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property, or occupied structure, whether the same was acquired peaceably or otherwise;
- (4) If a lessee in person or by subtenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due;
- (5) If a party continues in possession after a sale of the real property or occupied structure under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed or instrument of ownership;
- (6) If a party continues in possession after a judgment in partition, or after a sale under an order or decree of a circuit court;
- (7) If a lessee commits waste upon the leased premises, or does or fails to perform any act which, under the terms of the lease operates to terminate the same.

The term, occupied structure, used in this chapter is defined in subdivision 22-1-2 (28).

**Source:(2)**

**21-16-2.\*Notice to quit - service and return.**

In all cases arising under subdivisions 21-16-1 (4), (5) and (6), three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. On the second service attempt, at least six hours after the previous service attempt, the notice to quit may be posted in a conspicuous place on the property, and also delivered to a person there residing, if such person can be found; and also sent by first class mail addressed to the tenant at the place where the property is situated.

**Source:(3)**

**21-16-3. Jurisdiction - circuit court or law trained magistrate.**

Any circuit court or magistrate court presided over by a law trained magistrate has

jurisdiction in any case of forcible entry and detainer, or of detainer only, of real property or an occupied structure within its county.

**Source:(4)**

**21-16-4. Joinder of actions.**

An action under the provisions of this chapter cannot be brought in connection with any other except for rents and profits or damages but the plaintiff may bring separate actions for the same if he so desire.

**Source:(5)**

**21-16-5.\*Remedy survives death of plaintiff.**

The legal representative of a person who might have been plaintiff, if alive, may bring an action under this chapter after his death.

**Source:(6)**

**21-16-6. Verified complaint required - service with summons.**

The complaint must be in writing and verified by the plaintiff or his agent or signed by his attorney, and served with a summons, and the procedure, except as otherwise provided, shall be the same as in other actions in the court where the action is pending.

**Source:(7)**

**21-16-7. Time for appearance by defendant - bond/undertaking required for adjournment.**

The time for appearance and pleading shall be four days from the time of service on the defendant, and no adjournment or continuance shall be made for more than five days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety to be approved by the court, conditioned for the payment of the rent that may accrue, together with costs if judgment be rendered against the defendant.

**Source:(8)**

**21-16-8. Speedy trial - 2 days notice - special venire in jury cases.**

An action under this chapter may be brought on for trial upon two days' notice after issue is joined. If a jury trial be demanded and no jury is in attendance on the day the action is noticed for trial, the court shall cause a special venire to issue as in cases where extra jurors are required, and proceed to impanel a jury and try the action as in other civil cases.

**Source:(9)**

**21-16-9. Certification to circuit court of title boundary questions.**

If the title to or boundary of the real property or the title to an occupied structure in any wise comes in question, in magistrate court, the case shall be certified to the circuit court as provided by rule of the Supreme Court.

**Source:(10)**

**21-16-10. Judgment for plaintiff - rents/damages/costs..**

If the finding of the court or the verdict of the jury be in favor of the plaintiff, the judgment shall be for the delivery of possession to the plaintiff, and for rents and profits or damages, where the same are claimed in the complaint, and for costs.

**Source:(11)**

**21-16-11. Attorney fees taxed as costs -\$5 limit.**

In any case of forcible entry and detainer, or detainer only, the court may tax as a part of the costs in the case, to the prevailing party, reasonable attorney fees, whether a trial is had or not, if prevailing party is represented by a licensed attorney.

**Source:(12)**

**Amendments - 2000:(13)**

**21-16-12. Time of serving execution - daytime.**

No execution for possession can be served except in the daytime.

**Source:(14)**

## Endnotes

### 1 (Popup - Commission Note)

#### Commission Note:

Chapter 130, SL 1973, abolished all district county courts, municipal courts, justice of the peace courts, and police magistrate courts, and transferred jurisdiction to the circuit courts. See §§ 16-6-9, 16-6-9.1, and 16-6-10. Section 11 of chapter 130 specified that "in the event courts of limited jurisdiction are established appropriate addition or change shall be made to correspond to the jurisdiction of that court or those courts." Chapter 137, SL 1973, established magistrate courts; see Chapter 16-12A. The code commission has made changes in text throughout this chapter to show these changes.

### 2 (Popup - Source)

#### Source:

JustC 1877, §34; CL 1887, §6073; RJustC 1903, §44; RC 1919, §2171; SL 1931, ch 122; SDC 1939 & Supp 1960, §37.3902; SL 1992, ch 156, §1.

### 3 (Popup - Source)

#### Source:

JustC 1877, §35; CL 1887, §6074; RJustC 1903, §45; RC 1919, §2172; SDC 1939 & Supp 1960, §37.3903; SL 1986, ch 173.

### 4 (Popup - Source)

#### Source:

JustC 1877, §33; CL 1887, §6072; RJustC 1903, §43; SL 1907, ch 191, §10, subdiv 5; 1909, ch 176, §4, subdiv 5; 1911, ch 196, §3, subdiv 6; 1913, ch 278, §1, subdiv 6; RC 1919, §§2122 (6), 2170; SDC 1939 & Supp 1960, §37.3901; SL 1974, ch 153, §38; 1992, ch 156, §2.

### 5 (Popup - Source)

#### Source:

SL 1881, ch 87, §2; CL 1887, §6080; RJustC 1903, §51; RC 1919, §2178; Supreme Court Rule 596, 1939; SDC 1939 & Supp 1960, §37.3906.

### 6 (Popup - Source)

#### Source:

JustC 1877, §36; CL 1887, §6075; RJustC 1903, §46; RC 1919, §2173; SDC 1939 & Supp 1960, §37.3904.

### 7 (Popup - Source)

#### Source:

JustC 1877, §37; CL 1887, §6076; RJustC 1903, §47; RC 1919, §2174; SDC 1939 & Supp 1960, §37.3905.

### 8 (Popup - Source)

#### Source:

JustC 1877, §38; CL 1887, §6077; RJustC 1903, §48; RC 1919, §2175; Supreme Court Rule 597, 1939; SDC 1939, §37.3907; Court Rule adopted September 29, 1945.

### 9 (Popup - Source)

**Source:**

SL 1907, ch 191, §20; 1909, ch 176, §7; 1911, ch 196, §6; 1913, ch 278, §4; RC 1919, §2246; Supreme Court Rule 597, 1939; SDC 1939, §37.3907; Court Rule Adopted September 29, 1945.

**10 (Popup - Source)**

**Source:**

JustC 1877, §37; CL 1887, §6076; RJustC 1903, §47; SL 1907, ch 191, §10; 1909, ch 176, §4; 1911, ch 196, §3; 1913, ch 278, §1; RC 1919, §§2122 (6), 2174; SDC 1939 & Supp 1960, §37.3905; SL 1974, ch 153, §39; 1992, ch 156, §3.

**11 (Popup - Source)**

**Source:**

SL 1881, ch 87, §1; CL 1887, §6078; RJustC 1903, §49; RC 1919, §2176; SDC 1939 & Supp 1960, §37.3908.

**12 (Popup - Source)**

**Source:**

SL 1883, ch 51, §1; CL 1887, §6079; RJustC 1903, §50; RC 1919, §2177; SDC 1939 & Supp 1960, §37.3909; SL 2000, ch 95, §1.

**13 (Popup - Amendments - 2000)**

**Amendments - 2000:**

The prior statute provided:

"In all cases of forcible entry and detainer, or detainer only, the court shall tax as a part of the costs in the case, to the prevailing party, five dollars as attorney fees, whether a trial is had or not, whenever an attorney who is licensed by the Supreme Court of this state shall have appeared in such action in behalf of such prevailing party."

**14 (Popup - Source)**

**Source:**

SL 1881, ch 87, §2; CL 1887, §6080; RJustC 1903, §51; RC 1919, §2178; SDC 1939 & Supp 1960, §37.3908.