

Provisional Remedies: Illinois

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A Q&A guide to the various provisional remedies available in Illinois state courts. This Q&A addresses the legal standards in Illinois for obtaining provisional remedies, the application procedures for each remedy, and limitations imposed on each remedy. Answers to questions can be compared across a number of jurisdictions (see Provisional Remedies: State Q&A Tool).

Due to the ongoing 2019 novel coronavirus disease (COVID-19) public health emergency, Illinois courts have modified or suspended many court rules and procedures, including conducting some proceedings remotely. For the latest developments in this jurisdiction, see Practice Note, [Impact of COVID-19 on Illinois Practice: Overview and Illinois Courts: COVID-19 Information and Updates](#).

OVERVIEW OF STATE PROVISIONAL REMEDIES

1. List each provisional remedy available in your jurisdiction, and the statutory authority (if any) for each.

Illinois law provides for several provisional remedies, including:

- Temporary restraining order (735 ILCS 5/11-101).
- Preliminary injunction (735 ILCS 5/11-102).
- Attachment (735 ILCS 5/4-101 to 5/4-145), with a separate section in 735 ILCS 5/4-201 to 5/4-228 pertaining to watercraft.

- Notice of pendency (*lis pendens* notice) (735 ILCS 5/2-1901 to 5/2-1903).
- Replevin (735 ILCS 5/19-101 to 5/19-129).
- Possession during foreclosure, including receivership (735 ILCS 5/15-1701 to 5/15-1706).

In addition, *ne exeat republica*, which prevents a party seeking to evade jurisdiction from leaving the state, is also available in Illinois (735 ILCS 5/16-101 to 5/16-111). However, it is rarely used.

2. For each remedy listed in Question 1, describe:

- The nature of each remedy.
- Whether the remedy is limited to certain categories of actions or only available under certain conditions.

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

Under Illinois law, a temporary restraining order (TRO) is an emergency remedy by which a court immediately orders a litigant to perform or refrain from performing a particular act until a hearing for a preliminary injunction can be held.

Although Illinois law does not specify whether a TRO is limited to certain categories of actions, it is deemed to be a drastic remedy to be issued only in exceptional circumstances (*Bartlow v. Shannon*, 399 Ill.App.3d 560, 567 (2010)). A TRO may be entered without notice to the defendants only where the plaintiff shows, by verified complaint or affidavit, that it will suffer immediate irreparable harm in the time it would take to provide notice to the defendant (735 ILCS 5/11-101).

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

A preliminary injunction is a remedy by which a court orders a litigant to perform or refrain from performing a particular act pending trial on the merits of the plaintiff's claims.

Illinois law does not specify whether a preliminary injunction is limited to certain categories of actions. However, it is deemed to be an extraordinary remedy reserved for situations where "an extreme emergency exists and serious harm would result if not issued" (*Hartlein v. Ill. Power Co.*, 151 Ill.2d 142, 156 (1992); *City of Kankakee v. Dep't of Revenue*, 2013 IL App (3d) 120599, ¶ 17).

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

An order of attachment allows a plaintiff to seize a defendant's personal property or place a levy on a defendant's real property as security, to be applied to the plaintiff's judgment if the plaintiff's claim succeeds on the merits.

Attachment is only available for money claims exceeding \$20 and where the defendant either:

- Is not an Illinois resident.
- Hides from or defies an officer to prevent service of process.
- Has left or is about to leave Illinois intending to remove the defendant's property from the state.
- Is about to or has, within two years before filing the affidavit required for obtaining an attachment, fraudulently conveyed, assigned, or disposed the defendant's effects or property to hinder or delay the creditors.
- Fraudulently contracted the debt being sued for, if the contract was signed and in writing.
- Is convicted of certain types of crimes.

(735 ILCS 5/4-101.)

NOTICE OF PENDENCY (LIS PENDENS NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

A notice of pendency (*lis pendens* notice) is a document recorded by the plaintiff to notify third parties that a parcel of real property is the subject of litigation affecting its title, and that all parties having or obtaining an interest in the property will be bound by the court's judgment.

Lis pendens is available for actions involving real property (735 ILCS 5/2-1901).

REPLEVIN: 735 ILCS 5/19-101 TO 5/19-129

An order of replevin is a legal remedy that allows a plaintiff to recover wrongfully detained or taken goods from a defendant's possession, pending a hearing on the merits of the plaintiff's claim (735 ILCS 5/19-101; *Union Bank of E. St. Louis v. Mattingly*, 217 Ill.App.3d 131, 133 (1991)).

Replevin is available for actions where the plaintiff owns or has an immediate right to possession of any goods or chattels that have been wrongfully taken or detained (735 ILCS 5/19-101). However, it is unavailable to take back property previously seized for sale by execution or attachment unless the goods are exempt from the execution or attachment (735 ILCS 5/19-102).

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

Under Illinois law, a party may seek possession of the mortgaged real estate, including residential real estate, during a foreclosure proceeding. This provisional remedy is available in actions involving the foreclosure of real property. (735 ILCS 5/15-1701 to 5/15-1706.)

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

Under Illinois law, a court may grant a temporary restraining order (TRO) with or without notice to the adverse party. To obtain a TRO to be issued with notice to the adverse party, a plaintiff must show that it:

- Possesses a certain and clearly ascertainable right needing protection.
- Has no adequate legal remedy.
- Will suffer irreparable harm without the TRO.
- Has a likelihood of success on the merits of its claims.

(*Wilson ex rel. Geiger v. Hinsdale Elementary Sch. Dist. 181*, 349 Ill. App.3d 243, 248 (2004).)

For a TRO to be issued without notice to the adverse party, the applicant must also show, by verified complaint or affidavit, that it will suffer immediate and irreparable injury, loss, or damage before the notice can be served and a hearing held on the TRO request (735 ILCS 5/11-101; *Nagel v. Gerald Dennen & Co.*, 272 Ill.App.3d 516, 520 (1995)).

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

To obtain a preliminary injunction, a party must show that:

- It has a clear right requiring protection.
- Irreparable harm will occur without the injunction.
- There is no adequate legal remedy for the injury.
- Success on the merits is likely.

(*Hartlein*, 151 Ill.2d at 156.)

The court must also consider whether the harm caused to the plaintiff if the court were to deny the preliminary injunction would outweigh the harm caused to the defendant if the court were to grant the preliminary injunction (*Roxana Cmty. Unit Sch. Dist. No. 1 v. WRB Ref., LP*, 2012 IL App (4th) 120331, ¶ 23. The court also may consider the effect of the preliminary injunctive relief on the public (*Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App.3d 374, 378 (2010)).

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

To obtain an order of attachment, a plaintiff must submit an affidavit establishing a prima facie case that the claim:

- Is a monetary claim exceeding \$20.
- Falls within one of the factors specified in 735 ILCS 5/4-101.

(735 ILCS 5/4-101; see Question 2: Attachment.)

NOTICE OF PENDENCY (LIS PENDENS NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

A notice of pendency is filed in the office of the recorder where the real property is located. Court approval is not required. For the *lis pendens* notice to have effect:

- The property must be subject to the *lis pendens* statute; that is, it must be real property.
- The court in the underlying litigation must have jurisdiction over both the parties to the litigation and the real property.

3. For each remedy listed in Question 1, provide the legal standard used by the court when deciding to grant the remedy.

- The pleadings in the underlying litigation must sufficiently describe the real property.

(735 ILCS 5/2-1901; *First Midwest, a Div. of Jacksonville Sav. Bank v. Pogge*, 293 Ill.App.3d 359, 363 (1997).)

REPLEVIN: 735 ILCS 5/19-101 TO 5/19-129

For an order of replevin to issue, a plaintiff must:

- Establish a prima facie case to the plaintiff's superior right to possession of the disputed property.
- Show a likelihood of success on the merits.

(735 ILCS 5/19-107.)

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

To gain possession of nonresidential real estate during foreclosure, the mortgagee must demonstrate that it is:

- Authorized by the terms of the mortgage or other written instrument to take possession of the property.
- Likely to prevail on a final hearing of the cause.

(735 ILCS 5/15-1701(b).)

The mortgagor can object to the transfer of possession and retain possession if the mortgagor shows good cause (735 ILCS 5/15-1701(b)).

For residential real estate, the mortgagee may be granted possession if it can show:

- Good cause.
- That the mortgagee is authorized to obtain possession by the terms of the mortgage or other written instrument's terms.
- The mortgagee is likely to prevail on a final hearing of the cause.

(735 ILCS 5/15-1701(b).)

APPLYING FOR STATE PROVISIONAL REMEDIES

4. For each remedy listed in Question 1, what is the procedure for applying for that relief? Include any limits placed on the method of applying for that remedy (for example, whether the state disallows applications for preliminary injunctions to be brought by orders to show cause).

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

Under Illinois law, a plaintiff seeking a temporary restraining order (TRO) must file:

- A motion seeking a TRO.
- An affidavit or verified complaint demonstrating that the plaintiff will suffer immediate and irreparable injury, loss, or damage before notice can be served and a hearing had on the case.

(735 ILCS 5/11-101.)

If the plaintiff gives notice to the defendant, the complaint does not have to be verified or supported by an affidavit establishing that immediate irreparable injury, loss, or damage will occur before notice can be served and a hearing held.

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

A plaintiff seeking a preliminary injunction must file a motion seeking a preliminary injunction and give the adverse party notice of the motion (735 ILCS 5/11-102).

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

A plaintiff seeking an order for attachment must file an affidavit based on the plaintiff's personal knowledge showing:

- The amount of the claim, so far as practicable, after allowing all just credits and set-offs.
- Facts establishing any of the factors specified in 735 ILCS 5/4-101 (see Question 2: Attachment).
- The defendant's place of residence, if known. However, if the defendant's place of residence is unknown, a statement that the plaintiff was unable to determine the place of residence after diligent inquiry.

- Facts establishing the cause of action against the defendant. (735 ILCS 5/4-104.)

The form the affidavit must take is specified in 735 ILCS 5/4-105.

The plaintiff also must file a written statement, either in the affidavit or separately, indicating:

- Whether the action involves a tort claim.
- The return day for the summons.

(735 ILCS 5/4-104.)

NOTICE OF PENDENCY (*LIS PENDENS* NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

A party seeking to file a notice of pendency (*lis pendens* notice) must do so in the Office of the Recorder in the county where the real property is located. The notice must be signed by a party to the action or the party's attorney and include:

- The title of the action.
- The parties to the action.
- The court where the action was brought.
- A description of the real property.

(735 ILCS 5/2-1901.)

REPLEVIN: 735 ILCS 5/19-101 TO 5/19-129

A plaintiff seeking replevin must file a verified complaint that:

- Describes the property to be replevied in specific terms.
- States that the plaintiff is the owner of the property or is otherwise entitled to immediate possession.
- Alleges that the defendant has wrongfully detained the property.
- States that the property has not been taken because of:
 - an Illinois tax, fine, or other assessment;
 - any other lawful process; or
 - any order of replevin against the plaintiff.
- States that the plaintiff has made a demand for the return of the property but the defendant has refused to return it, unless the demand would be futile.

(735 ILCS 5/19-104; *Mattingly*, 217 Ill.App.3d at 133; *First Illini Bank v. Wittek Indus., Inc.*, 261 Ill.App.3d 969, 970 (1994).)

The plaintiff must bring the action in any county where venue is proper under Part 1 of the Illinois Civil Practice Law (735 ILCS 5/2-101 to 5/2-109), or in any county where the property, or part of it, is located (735 ILCS 5/19-103).

Ordinarily the plaintiff must give notice of the replevin hearing to the defendant (Ill. S. Ct. R. 107; 735 ILCS 5/19-105).

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

To obtain possession of real property during foreclosure, the mortgagee must make a motion to the court that is supported by affidavit or other sworn pleading. The request to obtain possession during foreclosure or to appoint a receiver need not be included in the complaint or other pleading. (735 ILCS 5/15-1701 and 5/15-1706(a).)

5. For each remedy listed in Question 1, list any documents that are required as part of the application.

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

In Illinois, an application for a temporary restraining order (TRO) typically includes:

- The complaint, which must be verified or supported by affidavit if the plaintiff seeks an ex parte TRO.
- The motion or application for a TRO.
- A notice of motion, if the plaintiff seeks a TRO with notice and opts to give the defendant formal written notice.

The plaintiff also typically files a memorandum of law with supporting affidavits and prepares a proposed order.

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

An application for a preliminary injunction includes:

- The complaint.
- A motion or application for a preliminary injunction.
- A notice of motion, unless the court sets the preliminary injunction motion for hearing when the plaintiff presents its motion for TRO (when this is the case, the order stands as notice).

The plaintiff also typically files a memorandum of law and supporting affidavits and prepares a proposed order.

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

To obtain prejudgment attachment, the plaintiff must file an affidavit. In addition, the plaintiff must file a written statement, either in the affidavit or separately, indicating:

- Whether the action involves a tort claim.
- The return day for the summons.

(735 ILCS 5/4-104; see Question 4: Attachment.)

The plaintiff also prepares an attachment order to be entered by the court (735 ILCS 5/4-110).

NOTICE OF PENDENCY (LIS PENDENS NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

The plaintiff records a notice of pendency stating:

- The title of the action.
- The parties to the action.
- The court where the action was brought.
- A description of the real property.

(735 ILCS 5/2-1901.)

REPLEVIN: 735 ILCS 5/19-101 TO 5/19-129

A party seeking replevin must file a complaint that includes the information specified in Question 4: Replevin. The plaintiff must also prepare and file a notice of replevin hearing, unless it is entitled to obtain an ex parte order of replevin (see Question 6: Replevin).

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

To obtain possession of real property during a foreclosure proceeding, a party must file:

- A motion for possession.
- An affidavit or sworn pleading that supports the motion for possession.

(735 ILCS 5/15-1706(a).)

6. For each remedy listed in Question 1, if the remedy is requested on notice, indicate:

- What notice is required.
- Any time limits applicable to the notice.
- Whether the adverse party may submit opposition, and if so, when and how.
- Whether the adverse party is entitled to a hearing.

NOTICE

Temporary Restraining Order and Preliminary Injunction

Under Illinois law, a party generally must provide notice to the adverse party when applying for a temporary restraining order (TRO) or preliminary injunction (735 ILCS 5/11-101 and 5/11-102). However, Illinois law has not specified the form the notice must take. For TROs, Illinois courts primarily consider whether the notice is sufficient to allow a defendant an opportunity to show that the TRO should not be issued (*Bd. of Trs. of Cmty. Coll. Dist. No. 508, Cook Cty. v. Cook Cty. Coll. Teachers Union, Local 1600*, 42 Ill.App.3d 1056, 1061-62 (1976) (brief telephonic notice not adequate where TRO was entered before defendant's counsel could appear in court); *Am. Warehousing Servs., Inc. v. Weitzman*, 169 Ill.App.3d 708, 715 (1988) (30 minutes' notice by telephone was sufficient notice)).

However, a party may obtain a TRO without issuing notice to the adverse party only if the party faces immediate and irreparable injury before notice can be served (see Question 3: Temporary Restraining Order).

In the preliminary injunction context, plaintiff's counsel typically prepares a formal notice of motion in accordance with local rules,

unless the court sets a date for the preliminary injunction hearing in an order entered at the TRO hearing.

Attachment

A plaintiff typically obtains an attachment order *ex parte*, but then must serve the order of attachment on:

- The property.
- The opposing party.

(735 ILCS 5/4-112 and 5/4-114.)

Service of the order of attachment on the opposing party must be in the same manner as service of a summons in other civil cases (735 ILCS 5/4-114). The attachment order includes a return date, at which time the defendant can appear and contest the plaintiff's claims.

Notice of Pendency (*Lis Pendens* Notice)

A party need not provide notice before filing a notice of pendency. However, recording the notice with the recorder of deeds is constructive notice of the pending proceedings to subsequent buyers or other parties obtaining an interest in the real property. For constructive notice to take effect:

- The *lis pendens* notice must be filed in the recorder's office.
- The plaintiff must serve the defendant with process within six months of filing the complaint.

(735 ILCS 5/2-1901; *First Midwest*, 293 Ill.App.3d at 363.)

Replevin

Generally, a party must provide the opposing party written notice of a court hearing in the manner required by Rule 107 of the Illinois Supreme Court (735 ILCS 5/19-105). In commercial transactions, a non-consumer party can waive the right to notice and a hearing, but the waiver must be both:

- In writing.
- Given "voluntarily, intelligently, and knowingly."

(735 ILCS 5/19-105.)

There are other limited exceptions to the notice requirement. A party need not give notice to the defendant if the court finds as a matter of record and supported by evidence that the property seizure was justified to protect the plaintiff from an immediately impending harm resulting:

- In the imminent destruction or concealment of the disputed property.
- In the imminent removal of the disputed property from Illinois, taking into consideration the availability of judicial remedies if the property is removed.
- From perishable nature of the disputed property, under the particular circumstances at the time of the action.
- From the imminent sale, transfer, or assignment of the disputed property.

Notice also is not required if the court finds that the seizure is to recover property from a defendant who obtained possession by theft. (735 ILCS 5/19-106.)

Possession During Foreclosure, Including Receivership

A party must provide reasonable notice to the mortgagor and other parties before a hearing on the request to place the mortgagee in possession of the real property or for the appointment of a receiver. If the mortgagor has not been served with the complaint, then the mortgagor must be served in the same manner as required for service of process. (735 ILCS 5/15-1706(d).) The Illinois rules governing the service of process can be found in 735 ILCS 5/2-201 to 5/2-213 and Ill. S. Ct. R. 101 to 114.

Parties who have been served with process and are in default are not entitled to notice of a motion for possession, except for a mortgagor of residential property who has not abandoned the property (735 ILCS 5/15-1706(d)).

If the mortgagor is not served before the hearing, a party must give the mortgagor notice of the hearing in the same manner as those for post-hearing notices of emergency and *ex parte* motions (735 ILCS 5/15-1706(d)).

After reasonable notice has been given to all other parties, the court must promptly hold a hearing on the issue. If no objection is made before the hearing, the court can rule without a hearing. (735 ILCS 5/15-1706(c).)

TIME LIMITS FOR NOTICE

Temporary Restraining Order and Preliminary Injunction

There are no statewide rules in Illinois about how much notice an adverse party must receive for a TRO or preliminary injunction. Local rules may dictate how much notice counsel must give for motions, including emergency motions.

To determine whether a TRO without notice is proper, Illinois courts consider whether:

- During the period it takes to give notice, the opposing party may:
 - take measures to destroy the substance of the litigation; or
 - otherwise obstruct the court from dealing effectively with the issues.
- Proper notice may avert litigation by immediately testing the validity of the injunctive relief.

(*Nagel*, 272 Ill.App.3d at 520.)

Notice before a TRO is issued can be short and informal. For example, the Illinois Appellate Court held that notice by telephone given 30 minutes before a TRO motion was granted was sufficient (*Am. Warehousing Servs., Inc.*, 169 Ill.App.3d at 715).

A TRO issued without notice to the other party cannot be longer than ten days unless, within the time fixed by the order, either:

- The court extends the order for good cause shown.
- The party against whom the order is directed consents to an extension.

(735 ILCS 5/11-101; *Walter v. City of W. Chi.*, 39 Ill.App.3d 297, 298 (1976).)

Notice of Pendency (*Lis Pendens* Notice)

See Notice: Notice of Pendency (*Lis Pendens* Notice).

Replevin

See Notice: Replevin.

Attachment

After a court enters an order of attachment, the order must be served:

- “Without delay” on the property that is the subject of the order of attachment (735 ILCS 5/4-112).
- On the defendant within five days in the same manner as service of summons in other civil cases (735 ILCS 5/4-114).

Possession During Foreclosure, Including Receivership

The mortgagee must give reasonable notice to the mortgagor before a hearing on the request to place the mortgagee in possession or for the appointment of a receiver. Notice is considered reasonable if it is both:

- Given as much in advance of the hearing as is generally required for notice of motions.
- Served in the same manner as motions are generally served.

(735 ILCS 5/15-1706(d).)

However, if the mortgagor has not been served with the complaint, then the mortgagor must be served in the same manner as required for service of process (735 ILCS 5/15-1706(d)).

OPPOSING AN APPLICATION**Temporary Restraining Order and Preliminary Injunction**

A party opposes a motion for TRO or a motion for preliminary injunction at the hearing on the motion and may make a motion to dissolve an injunction any time before or after filing the answer (735 ILCS 5/11-108).

If a TRO is obtained without notice, the adverse party may appear and move for the TRO’s dissolution or modification with two days’ notice to the party who obtained the TRO (735 ILCS 5/11-101).

Attachment

If the plaintiff fails to serve the defendant the order of attachment within five days after its entry, the defendant may move at any time to vacate the order for attachment. The delay, in the absence of good cause shown, is grounds for vacating the order. (735 ILCS 5/4-114.)

If the defendant is served the order of attachment within the five-day period, the defendant may oppose the order by filing an answer to the order of attachment, which must be verified by affidavit. The answer may deny the facts stated in the affidavit supporting the order of attachment. (735 ILCS 5/4-131.)

The defendant may make a motion for a hearing at any time after the entry of an order for attachment (see Hearing). If the defendant moves for a hearing, the hearing must be held within five days of service of notice on the plaintiff. (735 ILCS 5/4-137.)

Notice of Pendency (*Lis Pendens* Notice)

A party need not provide notice before filing the notice of pendency. However, recording the notice of pendency with the recorder of

deeds is constructive notice of the of the pending proceedings to all subsequent buyers or others obtaining an interest in the real property. For constructive notice to take effect:

- The notice of pendency must be filed in the recorder’s office.
- The plaintiff must serve the defendant with process within six months of filing the complaint.

(735 ILCS 5/2-1901; *First Midwest*, 293 Ill.App.3d at 363.)

Replevin

A defendant may execute a bond in the sum of twice the property’s value (forthcoming bond), with security approved by the sheriff, to prevent the property’s seizure. The bond must be executed before the property is delivered to the plaintiff. (*Mattingly*, 217 Ill.App.3d at 133.)

The defendant may also appear at the replevin hearing and contest entry of the order of replevin.

HEARING**Temporary Restraining Order and Preliminary Injunction**

A motion for a temporary restraining order or preliminary injunction generally requires an evidentiary hearing if the defendant files a verified answer denying the material allegations in the complaint (*Five Mile Capital Westin N. Shore SPE, LLC v. Berkadia Commercial Mortg., LLC*, 2012 IL App (1st) 122812, ¶22).

If the defendant does not file a verified answer, a court may issue a temporary restraining order or preliminary injunction without a hearing and based solely on the allegations in the complaint (*Schliksup Drug Co. v. Schliksup*, 129 Ill. App. 2d 181, 186-87 (1970)).

Attachment

The defendant may move for a hearing at any time after the entry of an order of attachment. The hearing must be held within five days of service of notice on the plaintiff. (735 ILCS 5/4-137.)

At the hearing, either party may introduce affidavits or oral testimony. The order for attachment must be vacated unless the plaintiff both:

- Shows by a preponderance of evidence that a cause for the entry of the order exists.
- Demonstrates that the plaintiff is likely to prevail in the action.

(735 ILCS 5/4-137.)

Notice of Pendency (*Lis Pendens* Notice)

A notice of pendency doesn’t require a hearing because it’s a notice filed by a party, rather than a court order. However, a party that wants to challenge a notice of pendency may file a motion or application to discharge the notice (735 ILCS 5/2-1901).

Replevin

A hearing on the entry of an order for replevin may be either:

- To contest the order, following notice.
- Ex parte:
 - based on a waiver executed by a non-consumer in a commercial transaction; or
 - following a finding of statutory grounds.

(735 ILCS 5/19-105, 5/19-106, and 5/19-107.)

During the hearing, the court reviews the basis of the plaintiff's claim to possession. To obtain an order of replevin, the plaintiff must:

- Establish a prima facie case to a superior right to possession of the disputed property.
- Demonstrate that it is likely to prevail on the underlying claim to possession.

(735 ILCS 5/19-107.)

Possession During Foreclosure, Including Receivership

After reasonable notice has been given to all other parties, the court must hold a hearing on possession of property that is subject to foreclosure. If no objection is made before the hearing, the court can rule without a hearing. (735 ILCS 5/15-1706(c).)

7. For each remedy listed in Question 1, please describe:

- Whether ex parte applications are allowed.
- The procedure for obtaining ex parte relief.
- Any additional standard that must be met if the remedy is sought ex parte.

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

Ex Parte Applications

Under Illinois law, an application for a temporary restraining order (TRO) may be made ex parte (735 ILCS 5/11-101).

Procedure for Ex Parte Relief

An ex parte application for a TRO is made by submitting a motion to the court. The motion for an ex parte TRO must show that:

- The party seeking the order faces immediate and irreparable injury, loss, or damage.
- The harm will occur before notice can be served.

(735 ILCS 5/11-101; *Nagel*, 272 Ill.App.3d at 519-20.)

In addition, a motion for a TRO without notice must be supported by a verified complaint or affidavit (735 ILCS 5/11-101). After the party submits the motion, the court either grants or denies the motion. If the motion is granted, it remains in place for ten days, unless it is extended for an additional ten days on a showing of good cause or by agreement of the parties (735 ILCS 5/11-101). The court may also require that notice be given before entering the order.

Additional Standards for Ex Parte Applications

The moving party must show that it will suffer immediate and irreparable injury, loss, or damage before notice can be served (735 ILCS 5/11-101).

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

Preliminary injunctions cannot be issued ex parte (735 ILCS 5/11-102).

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

Ex Parte Applications

A court may issue an order for attachment ex parte (735 ILCS 5/4-101 to 5/4-114).

Procedure for Ex Parte Relief

A court may issue an order for attachment ex parte where a plaintiff files an affidavit based on personal knowledge showing:

- The amount of the claim.
- Facts establishing one or more statutory causes under 735 ILCS 5/4-101.
- The defendant's residence, or that, on due diligence, the plaintiff cannot determine the defendant's place of residence.
- Facts establishing the plaintiff's cause of action.

(735 ILCS 5/4-104.)

After being served with the order of attachment, the defendant has the right to file a motion with the court requesting a prompt hearing on the plaintiff's claims. The hearing must take place no more than five days after the defendant serves its motion and notice of motion on the plaintiff. (735 ILCS 5/4-137).

Additional Standards for Ex Parte Applications

There are no additional standards.

NOTICE OF PENDENCY (*LIS PENDENS* NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

Ex Parte Applications

An ex parte application is inapplicable to a notice of pendency because no court approval is required for a *lis pendens* notice (*First Midwest*, 293 Ill.App.3d at 363.) A *lis pendens* notice is filed in the office of the recorder where the real property is located (735 ILCS 5/2-1901).

Procedure for Ex Parte Relief

There are no procedures for ex parte relief.

Additional Standards for Ex Parte Applications

There are no additional standards.

REPLEVIN

Ex Parte Applications

In a commercial transaction, a non-consumer party may waive its right to notice in writing, and other ex parte applications for orders of replevin are permitted in limited circumstances (735 ILCS 5/19-105 and 5/19-106).

Procedure for Ex Parte Relief

To obtain replevin, a party must file verified complaint alleging that the property is wrongfully detained by defendant and that the plaintiff either is the owner of the property or lawfully entitled to possession.

At an *ex parte* hearing to determine whether notice is required, the court must examine the evidence on either:

- Each element required by 735 ILCS 5/19-106 about whether *ex parte* seizure of the property is justified by the need to:
 - protect the plaintiff from an immediately impending harm that will result from the imminent destruction, concealment,

removal, sale, transfer, or perishable nature of the disputed property in derogation of the plaintiff's rights in the property; or

- recover the property from a defendant who has obtained possession by theft.
- Any written waiver of rights executed by a non-consumer party to a commercial transaction.

(735 ILCS 5/19-105 and 5/19-106.)

If the court finds that notice is not required or that the waiver is in accordance with law, the court must order a hearing as soon as practicable after entering the order for replevin (735 ILCS 5/19-106).

Additional Standards for Ex Parte Applications

There are no additional standards.

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

Ex Parte Applications

Ex parte applications are allowed for possession during foreclosure only if both:

- The disputed property is not residential property.
- The mortgagor is in default or the party making the request shows good cause by affidavit.

(735 ILCS 5/15-1706(d).)

Procedure for Ex Parte Relief

A party may file a motion for *ex parte* possession during foreclosure. The party need not include the request in a complaint or other pleading (735 ILCS 5/15-1706(a)).

If the mortgagor is not served before the hearing, the mortgagor must be given notice of the hearing consistent with applicable court rules for post-hearing notice of emergency and *ex parte* motions. (735 ILCS 5/15-1706(d).)

Additional Standards for Ex Parte Applications

There are no additional standards.

OTHER ISSUES FOR PROVISIONAL REMEDIES

8. For each remedy listed in Question 1, are any limits placed on the duration of the remedy (for example, whether a temporary restraining order is limited by statute to a certain number of days)?

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

Under Illinois law, an *ex parte* TRO cannot be longer than ten days from the time the TRO is issued unless, within the time fixed by the order, either:

- The court extends the order for good cause shown.
- The party against whom the order is directed consents to an extension.

(735 ILCS 5/11-101; *Walter*, 39 Ill.App.3d at 298.)

A TRO issued on notice is not limited to ten days, but typically extends only until the court schedules a hearing on the plaintiff's

motion for a preliminary injunction (*Friedman v. Thorson*, 303 Ill. App.3d 131, 136 (1999); *Peoples Gas Light & Coke Co. v. City of Chicago*, 117 Ill.App.3d 353, 355-57 (1983)).

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

Illinois law does not specify a set limit on the duration of a preliminary injunction.

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

Illinois law does not specify a set limit on the duration for an order of attachment.

REPLEVIN: 735 ILCS 5/19-101 TO 5/19-129

Illinois law does not specify a set limit on the duration for an order of replevin.

NOTICE OF PENDENCY (*LIS PENDENS* NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

If the petitioner does not provide notice to the defendant within six months of filing the petition, the *lis pendens* notice is no longer effective constructive notice until the service of summons is served (735 ILCS 5/2-1901).

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

Illinois law does not specify a set limit on the duration of the possession or receivership during foreclosure proceedings.

9. For each remedy listed in Question 1, state whether a bond or other form of security must be provided if the remedy is granted, and include any guidelines for the amount and form of the bond or security.

TEMPORARY RESTRAINING ORDER: 735 ILCS 5/11-101

Under Illinois law, the court may require the party seeking the temporary restraining order to provide a bond. However, the bond requirement does not apply to government offices or agencies. (735 ILCS 5/11-103.)

PRELIMINARY INJUNCTION: 735 ILCS 5/11-102

The court may require the party seeking the temporary restraining order to provide a bond. However, the bond requirement does not apply to government offices or agencies. (735 ILCS 5/11-103.)

ATTACHMENT: 735 ILCS 5/4-101 TO 5/4-145

For a valid attachment, the party seeking attachment must provide a bond and sufficient security (735 ILCS 5/4-107). The bond must be for twice the claim amount unless the plaintiff chooses to attach specific property that does not oversecure the claim, in which case the bond may be for twice the amount of the value of the specific property (735 ILCS 5/4-107 and 5/4-108).

REPLEVIN: 735 ILCS 5/19-101 TO 5/19-129

A plaintiff must provide a bond that is double the value of the property (735 ILCS 5/19-112; *Mattingly*, 217 Ill.App.3d at 133).

NOTICE OF PENDENCY (*LIS PENDENS* NOTICE): 735 ILCS 5/2-1901 TO 5/2-1903

A bond is not required to file a notice of pendency.

POSSESSION DURING FORECLOSURE, INCLUDING RECEIVERSHIP: 735 ILCS 5/15-1701 TO 5/15-1706

Courts may require that a mortgagee in possession give a bond to the other parties. The court determines the amount and form of the bond. In addition, when a receiver is appointed, a bond may be required as specified in 735 ILCS 5/2-415. (735 ILCS 5/15-1705.)

A corporation is not required to give a bond, other than an appeal bond, if it is both:

- Qualified to administer trusts in Illinois.
- Acting as a mortgagee in possession or receiver.

(735 ILCS 5/15-1705(c).)

QUASI-PROVISIONAL REMEDIES

10. Are there any additional remedies available in your jurisdiction (such as *lis pendens* or seizure of chattel) that are not technically considered provisional remedies but function similarly?

Illinois recognizes some additional provisional remedies, for example:

- Confession of judgment.
- Distress for rent.
- Appointment of receivers for businesses, other entities, and property.

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