

Forcible Entry and Detainer: A View From the Bench

By Hon. Roberta A. Coates

It is a relief when a lawyer appears in an action forcible entry and detainer because it usually means the clients have done everything they need to do before coming to court and have realistic expectations about what the court can do for them.

When is a lawyer important?

Our court does not believe an individual may bring an action for a corporation, including a limited liability company. Only attorneys may represent such entities. Some property managers think they can bring an action if they have a power of attorney. Our court does not agree. The owner must bring the action, either as an individual or through an attorney.

When a forcible entry and detainer action should be brought

Under Wyoming Statute §1-21-1002 an action is appropriate if:

- Tenants are holding over past their terms (be careful if the lease has a holdover provision to give notice that provision is not in place)
- Rent is not paid for three days after it is due
- When a purchaser demands possession after a legal sale
- In cases where the defendant is a settler or occupier of lands or tenements, without color of title
- In all other instances listed in Wyoming Statute §1-21-1002.

It is important to note that an action should not be brought to enforce a **contract for deed**. *Steffens v. Smith*, 477 P.2d 119, 1970 Wyo. LEXIS 207 (Wyo. 1970). If a tenant violates a term of the lease (such as loud parties, violations of the law at the premises or pets on the premises that are not allowed), notice of the violation and notice to terminate the lease should first be given and then the procedures for a forcible entry and detainer may be put in place.

Procedures for an action for Forcible Entry and Detainer are complicated and fast:

- A Notice to quit must be served. Pursuant to Wyoming Statute §1-21-1003, the defendants must be notified to leave the premises. This notice must be “served” at least three days prior to filing the complaint for forcible entry. “Served” in this

instance has not been defined, and it is not clear the definition contained in the Wyoming Rules of Civil Procedure applies. It is probably a safe practice to have a neutral process server serve the notice directly upon the adverse party. This statute allows for posting the Notice to Quit upon the door of the defendant's abode or business if the defendant cannot be found. A common misconception of property managers is that they can just post the notice and they do not have to try to locate the defendant. However, there should be a good faith attempt to personally serve the tenant prior to posting.

- A summons in an action for forcible entry and detainer is different from the form of the summons that is normally served. A form summons for forcible entry and detainer is available from the clerk for circuit courts. The summons must give a time and place for trial. The trial has to occur not less than three days after service and not more than 12 days. It is clear under Wyoming Statute §1-21-1004 the service as defined by the Wyoming Rules of Civil Procedure is required. A complaint for the relief requested must be served with the summons.
- Even if the Defendant does not appear, the Owner must prove its case to the court before judgment can be entered. Wyoming Statute § 1-21-1005.
- Wyoming Statute §1-21-1006 provides that the defendant must file an answer to present his case. If the defendant does not answer, he may only cross-examine the plaintiff's witnesses. As a courtesy, some courts allow pro-se defendants to argue even though a formal answer has not been filed.
- Defendants are not to receive a continuance for more than two days **unless** a sufficient surety bond is posted. Wyoming Statute §1-21-1007.
- There is a right to a jury trial in these cases.
- A judgment may be entered for restitution and costs. If rent is due, then the court may also enter a judgment for the **rent**. The court will also enter judgments for late fees if the lease is clear those sums are part of the **rent**. Courts will not enter a judgment for damages, damage deposit or the anticipated sums to remove the defendant's property. Legislation passed in the 2008 legislature allows an award of rent due at the time of the hearing and as award of attorney's fees as provided by the lease.

What happens after the Order and Judgment is entered?

- A writ of restitution is issued after a judgment is entered and after it is requested by the plaintiff. Frequently, the writ may issue days after the judgment is entered thereby giving time for the defendant to vacate the premises. The cost for the writ to be served may be included in the costs awarded in the judgment.
- The officer receiving the writ must execute within two days of its receipt.

Common attempted defenses

- Many defendants think if there were problems with the dwelling they have a defense to a complaint for forcible entry and detainer. I will never forget the time a defendant said, "The water was so bad, it was a dirty orange—just like the color of your hair,

Judge.” This defense only works if the defendants have followed the procedures as outlined in Wyoming Statutes 1-21-1201, et.seq. The Court usually asks for the certified mailing to determine if the defendant actually followed the statutory procedure to address issues of uninhabitable conditions. If the statutory procedure has not been followed, the condition of the premises is not a defense.

- The “I fell on hard times” defense is too late when the defendant tries it to the Court. This is a better argument for the defendant to attempt with the plaintiff and negotiate directly.
- “The landlord came into my apartment,” is usually ineffective because most leases allow entry at reasonable times. The entry may be stalking or other activities better addressed in a separate action. I had one landlord looking in bedroom windows at 6:00 a.m.

Damages are a separate cause of action

- Other than rent and costs, damages should be addressed in a **separate** cause of action.
- Damages for rent amounts for the remainder of the lease or until the premises are re-rented are tricky. The Court will look to see if the plaintiff has attempted to mitigate damages by using reasonable attempts to rent the premises.
- Wyoming Statute §1-21-1208 provides a procedure that the owner must follow if the damage deposit or utility deposit is not going to be returned. If the damage deposit is non-refundable it must be in the rental agreement and that agreement presented to the court. It is important to remember when suing for damages, that “normal wear and tear” is accepted.

Remaining Property in a Residential Premises

If the renter does not vacate in accordance with the judgment, the Sheriff may remove the personal property and prevent the renter from re-entry. Property left in the premises is presumed abandoned and valueless and can be disposed by the Owner. However, any valuable property may be removed and disposed only if the owner has provided written notice in accordance with Wyoming Statute §1-21-1210.

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