

## What Every Wyoming Lawyer Should Know About Forcible Entry and Detainer (Eviction)

By Monique J. Ojeda

### Why It Is Useful

Eviction in Wyoming is called "Forcible Entry and Detainer ("FED"). Most FED cases involve landlords or real estate owners trying to evict a "tenant" from real property for failure to pay rent or failure to follow the lease. When the term "tenant" is used it generally means any person residing upon real estate whether by an oral or written lease, a sales contract, or by any other means. In Wyoming these actions are useful, efficient and generally inexpensive for landowners because the court limits its scrutiny to who is entitled to possession of the property. However, because FED actions are a purely statutory remedy pursuant to Wyo. Stat. § 1-21-1001 *et seq.*, the statute must be substantially complied with, or jurisdiction will fail to attach and the proceeding will be "*corum non judice* and void." *White v. Veitch*, 401 P.983 (Wyo. 1921).

In contrast, actions in ejectment are a much more lengthy and expensive process. Additionally, other legal causes of action such as breach of contract, violations of the Wyoming Residential Rental Property Act, Wyo. Stat. §1-21-1201 *et seq.*, or other problems concerning the condition of the property are irrelevant to an FED action. Additionally, the manner whereby the tenant entered upon land is immaterial in an FED action.

Fortunately, in Laramie County, the Circuit Court has developed its own policies and procedures for dealing with these actions and provides forms and instructional information that is available for the public. These procedures have streamlined the process for all parties.

### When Is It Used?

FED proceedings are appropriate in the following cases listed in Wyo. Stat. §1-21-1002(a):

- (i) **Against tenants holding over their terms or after a failure to pay rent for three (3) days after it is due;**
- (ii) In sales of real estate on execution, orders or other judicial process, including proceedings for the foreclosure of a mortgage by court action, when the judgment debtor was in possession at the time of rendition of the judgment or decree by virtue of which the sale was made;

- (iii) When real estate has been sold under a power of sale contained in any mortgage or trust deed and the purchaser or his assignee has demanded possession;
- (iv) Any sale by executors, administrators, guardians or on partition where any of the parties to the petition were in possession at the commencement of the suit, after the sale has been examined by the proper court and adjudged legal;
- (v) **In cases where the defendant is a settler or occupier of lands or tenements, without color of title, to which the complainant has the right of possession;**
- (vi) Against renters in violation of any terms imposed under Wyo. Stat. §§ [1-21-1204](#) or [1-21-1205](#).

### **How It Works In Practice**

In my experience, over the last three years, most FED actions in which I have been involved dealt with sections (a)(i) and (a)(v) above. When applying section (a)(i) the facts of a case are usually clear that the tenant has not paid rent for three (3) days. If a credible property manager tracks all rental receivables, this evidence will be easily presented to the Court and will fulfill the requirements of the statute.

If analyzing a breach of any other term of the lease with the appropriate notice, application of section (a)(v) is usually appropriate. ***One of the most important things for property owners to remember when drafting a lease agreement is to include a termination clause which allows the landowner to terminate the agreement at any time for any reason.*** Having done so, all aspects of the lease become bases for eviction. If the tenant does not comply with the terms of the lease and receives the appropriate notice, he becomes “a settler or occupier of lands or tenements, without color of title, to which the compliant has the right of possession.”

### **Notice to Quit**

As mentioned above, the FED statute must be strictly complied with and the first statutory requirement involves the providing of a "Notice to Quit." The Notice to Quit provides for the following:

- Written notice to leave. The Notice must give the tenant at least three (3) days to move out.
- This Notice can be given to the tenant in person, left at his home or office or taped (posted) to his front door.
- The Notice can be utilized in the Court hearing for a couple of months and does not generally expire, but it is a good practice to prepare a new Notice if a significant time passes before a FED action is filed.
- The Sheriff does not have to serve the Notice. If the tenant pays the rent before three (3) days (or whatever time he has been given) has passed, he will be able to stay.
- It is best for the landowner to have a disinterested individual either serve or post the Notice. Civil process servers are a good alternative to the Sheriff.

- The Notice must be served or posted at least three (3) days because the complainant can commence the FED action.

### **Summons**

If the tenant has not left within three days (or the time given in the Notice), and has not paid the rent in this time, the landlord can request the Court evict the tenant. The FED filing fee is usually \$10.00. Once the action is filed a summons is issued to appear and answer the Complaint. The summons states the cause of the complaint, gives a date and time of trial, and shall be served as in other cases. Such service shall not be less than three (3) days nor more than twelve (12) days before the day of trial set by the Court.

Sometimes service is difficult in these cases because the trial is set within two (2) weeks of filing. Particularly when one is dealing with a crafty tenant who may try to avoid process, he can postpone the proceedings considerably if he cannot be served the Notice. A private civil process server sometimes can assist in the process and help locate the Defendant to be served. Keep in mind, if you miss the time frame to serve, the Court can issue an Alias Summons and assign a new court hearing. Also, if the tenant cannot be served in person, a member of the tenant's family above the age of 14 years old who lives with the tenant may be served. If this cannot be done and service appears to be impossible, with the Court's permission, service may be done by "posting" on some conspicuous place on the premises. Generally, as an issue of due process Courts are reluctant to allow posting and only if service is very difficult or impossible will they provide such permission. If service is made by posting and the Defendant tenant fails to appear at the hearing, the only remedy provided to the Complainant is a Writ of Restitution; i.e. return of the right of possession of the property. A money judgment for any rents due, costs of the lawsuit and reasonable attorneys' fees *will not* be ordered in a Notice posting case.

### **Trial**

If the Defendant tenant, having been properly served, fails to appear at the hearing, the Circuit Court shall try the action as though he were present and the Plaintiff landowner must present the Court with evidence of the contract and the amount due and owing for rent, fees and costs pursuant to Wyo. Stat. §1-21-1006. If the Defendant tenant appears but hasn't filed an Answer to the Complaint, he may not be allowed to present evidence, but shall only be allowed to cross-examine the plaintiff's witnesses.

In Laramie County, the trial is like other trials in that the Plaintiff provides an opening statement, calls witnesses, and presents a closing statement. However, the trial is brief and typically the only witnesses called are the property owner or manager and possibly the Defendant tenant. Many times the Defendant tenant does not appear for the trial, and hardly ever does a tenant retain legal representation. However, often in Laramie County for purposes of fairness, and so the tenant feels he received his "day in court," the Court will allow the Defendant to present his evidence and to make statements.

Defendant tenants often mistakenly believe that actions by the property owner somehow offset or excuse the tenant from paying rent. Also, the Defendant tenant may want to address the deposit or other contractual items, and these items are simply not within this court's jurisdiction in an FED action.

If the Court finds that the Complaint is true, it shall render a general judgment in favor of the Plaintiff for restitution of the premises and costs. If the FED action is one based on failure to pay rent, the court shall further find the amount of rent due and payable at the time of commencement of the action, along with the terms and conditions of the agreement between the parties in relation to the amount and time of payment of rent. The Court, upon these findings, in addition to entering a judgment for the Plaintiff for restitution, shall render judgment in accordance with the findings for the amount of rent found due, together with costs, and shall issue execution separate from the writ of restitution for the rent found due and costs as in other actions. See Wyo. Stat. §1-21-1008.

### **Writ of Restitution**

When a judgment of restitution is entered by the Circuit Court, the court shall, at the request of the Plaintiff, issue a Writ of Restitution. Once the Court has determined to issue a Writ of Restitution, which will be executed, and has determined that a Judgment will be filed, there still remains one important matter: when will the tenant be required to vacate the premises? The Court does have discretion to decide when the Writ of Restitution will be entered. It can be anytime from the hearing date at 5:00 p.m. to 30 days from the date of hearing. It generally depends on the circumstances, but the Defendant tenant has a much better chance of getting additional time to vacate if he attends the trial. In addition to the discussion of the issuance of the Writ, the Judge verbally discusses when the Defendant must vacate the premises.

Unless the Tenant files an appeal, the Sheriff shall execute the Writ of Restitution within two (2) days after receiving it, by restoring the plaintiff to possession of the premises. After the Writ is served, the Sheriff can meet the property owner and locksmith at the premises and they will allow 15 minutes to remove all possessions before the locks are changed. The property owner may allow the tenant back into the premises to remove the rest of his possessions, however, that action is discretionary.

### **Disposal of Personal Property**

If the tenant vacates the property and leaves behind his personal possessions, the property owner must refer to Wyo. Stat. § 1-21-1210, whereby the requirements and designation of abandoned and valueless property is made, and several other requirements for disposal of the tenant's property must be reviewed. For instance, the owner shall provide written notice to the renter in accordance with Wyo. Stat. §1-21-1210(i), and must describe the property claimed to be abandoned and state that the property shall be disposed of after seven (7) days from the date of service. Notice may be served in accordance with Rule 4 of the Wyoming Rules of Civil Procedure. If the

renter responds in writing to the owner on or before seven (7) days after service of notice under paragraph (i) that he intends to take possession of the property, the property shall be held for an additional period of seven (7) days after the written response is received. If the renter fails to take possession of the property within the additional fifteen (15) day period, the property shall be conclusively deemed abandoned and the owner may retain or dispose of the property. On a practical note, even though resorting to this process may seem daunting for the property owner, he is entitled to payment of storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage.

### **Mobile Homes**

Mobile home park owners who charge lot rent to tenants utilize FED proceedings regularly. However, there is one additional consideration that makes this process more difficult under these circumstances. Most mobile home owners have mortgages with finance companies. To actually lock a lot tenant out of his/her mobile home, the park owner must receive permission from the mortgagee finance company. In practice, typically when the tenant is in breach of his lot rental agreement, he likewise is in breach of his mortgage. Additionally, if the finance company fails to give permission to the park owner, he can force the finance company to remove the mobile home from the park. The removal process can cost as much as \$5,000.00 and additional storage fees may be imposed by the park owner for the period before removal.

In conclusion, the FED process is efficient and inexpensive and saves property owners thousand of dollars in fees and costs compared to an action for ejectment or civil breach of contract. It is a powerful tool for the landlord that, unfortunately, most tenants fail to understand. The emotion involved in an eviction can be heartbreaking to witness; however, the clear lesson to be learned is to pay your rent in full every month and to not ignore the property owner in hopes that the debt will go away. The situation only becomes worse if ignored. In my experience, most property owners want to keep good tenants and if healthy communication is established between them in the beginning of the relationship, when financial problems arise the parties can attempt to resolve the situation without eviction. Obviously, both parties need to remember to read the lease agreement/contract and to abide by its terms. If the tenant fails to abide by the lease terms, the landlord can evict him-period. This means that one should not sign a lease without reading it and understanding its terms completely. In short, **NEVER** sign a lease with which you can't live, or you may find yourself back on the street following an FED eviction.

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