

IC 32-31-6

Chapter 6. Emergency Possessory Orders

IC 32-31-6-1

Applicability of definitions

Sec. 1. The definitions in IC 32-31-3 and IC 32-31-5 apply throughout this chapter.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-2

Small claims jurisdiction

Sec. 2. The small claims docket of a court has jurisdiction to grant an emergency possessory order under this chapter.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-3

Eligibility to file petition

Sec. 3. The following may file a petition for an emergency possessory order under this chapter:

- (1) A tenant, if the landlord has violated IC 32-31-5-6.
- (2) A landlord, if the tenant has committed or threatens to commit waste to the rental unit.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-4

Petition requirements

Sec. 4. A petition for an order under this chapter must:

- (1) include an allegation specifying:
 - (A) the violation, act, or omission caused or threatened by a landlord or tenant; and
 - (B) The nature of the specific immediate and serious:
 - (i) injury;
 - (ii) loss; or
 - (iii) damage;that the landlord or tenant has suffered or will suffer if the violation, act, or omission is not enjoined; and
- (2) be sworn to by the petitioner.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-5

Court review; emergency hearing

Sec. 5. If a tenant or a landlord petitions the court to issue an order under this chapter, the court shall immediately do the following:

- (1) Review the petition.
- (2) Schedule an emergency hearing for not later than three (3) business days after the petition is filed.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-6

Emergency order

Sec. 6. (a) At the emergency hearing, if the court finds:

- (1) probable cause to believe that the landlord has violated or threatened to violate IC 32-31-5-6; and
- (2) that the tenant will suffer immediate and serious injury, loss, or damage;

the court shall issue an emergency order under subsection (b).

(b) If the court makes a finding under subsection (a), the court shall order the landlord to do either or both of the following:

- (1) Return possession of the dwelling unit to the tenant if the tenant has been deprived of possession of the dwelling unit.
- (2) Refrain from violating IC 32-31-5-6.

(c) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-7

Waste

Sec. 7. (a) As used in this section, "waste" does not include failure to pay rent.

(b) At the emergency hearing, if the court finds:

- (1) probable cause to believe that the tenant has committed or threatens to commit waste to the rental unit; and
- (2) that the landlord has suffered or will suffer immediate and serious:
 - (A) injury;
 - (B) loss; or
 - (C) damage;

the court shall issue an order under subsection (c).

(c) If the court makes a finding under subsection (b), the court shall order the tenant to do either or both of the following:

- (1) Return possession of the dwelling unit to the landlord.
- (2) Refrain from committing waste to the dwelling unit.

(d) The court may make other orders that the court considers just under the circumstances, including setting a subsequent hearing at the request of a party to adjudicate related claims between the parties.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-8

Summons; court procedure

Sec. 8. (a) If a petition is filed under this chapter, the clerk shall issue to the respondent a summons to appear at a hearing. The summons must:

- (1) give notice of the date, time, and place of the hearing; and
- (2) inform the respondent that the respondent must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with the summons to

appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) The court shall not grant a continuance of the emergency hearing except upon clear and convincing evidence that manifest injustice would result if a continuance were not granted.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-9

Subsequent hearing

Sec. 9. If the court sets a subsequent hearing under section 6(c) or 7(d) of this chapter, the court may do the following at the subsequent hearing:

- (1) Determine damages.
- (2) Order return of a tenant's withheld property.
- (3) Make other orders the court considers just under the circumstances.

As added by P.L.2-2002, SEC.16.

IC 32-31-6-10

Other claims

Sec. 10. The adjudication of an emergency possessory claim under section 6(b) or 7(c) of this chapter does not bar a subsequent claim a party may have against the other party arising out of the landlord and tenant relationship unless that claim has been adjudicated under section 9 of this chapter.

As added by P.L.2-2002, SEC.16.