

HOW TO FILE A HARDSHIP MOTION

NOTE: If there are any words or terms used in these instructions that you do not understand, please visit Illinois Legal Aid Online at illinoislegalaid.org/lexicon/glossary.

What is a Hardship Motion?

A *Hardship Motion* is a request to get your vehicle back temporarily after it has been taken by law enforcement. You must show that you have a “substantial hardship.” For example, you are unable to get to work, childcare, or the doctor without your vehicle.

Who can file a Hardship Motion?

- A person whose vehicle was taken by the government during an arrest. This is called “forfeiture.”
- Any owner of the vehicle that has been taken can file a *Hardship Motion*. Usually this is the name of the person on the title of the vehicle.

Is there a deadline for filing a Hardship Motion?

- Yes. A *Hardship Motion* must be filed within 28 days after the preliminary review hearing in the forfeiture case. If you file after the deadline, fill out Section 5 of the *Hardship Motion* explaining why the *Motion* was filed late.

Can I file a Hardship Motion before the State's Attorney has filed a Notice of Forfeiture Petition?

Yes. Until the Notice of Forfeiture Petition has been filed, contact the State's Attorney's Office to find the case number for the property that was taken and file the *Hardship Motion* using that case number.

Are there any costs to file a Hardship Motion?

No, there are no costs to file a *Hardship Motion*. However, there is a fee to file an *Appearance*.

- If you cannot afford to pay the filing fee for the *Appearance*, you can ask the court to file for free or at a reduced cost. Fill out the *Application for Waiver of Court Fees* to ask the court for a fee waiver.
- You can find the *Appearance* and *Application for Waiver of Court Fees* forms at: illinoiscourts.gov/Forms/approved/

What forms do I need to fill out to file a Hardship Motion?

- **Appearance:** Use this form to tell the court and other parties that you are participating in the court case. You should file it at the same time you file your *Hardship Motion*. The email address (if you have one) and mailing address you put on the *Appearance* or *Hardship Motion* is where important legal documents will be sent to you. You should use an email account that you do not share with anyone

else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

- **Hardship Motion:** Use this form to explain what you want the judge to do. Include any reasons why the judge should grant your request.
- **Additional Information for Hardship Motion:** Only use this form if you need more space to write your *Hardship Motion*.
- **Notice of Court Date for Hardship Motion:** Use this form to schedule the court date when you will see the judge. This form also:
 - Lists the date, time, and place where you will see the judge;
 - Lists the names and addresses of the other parties (including the State's Attorney) or the names and addresses of their lawyers; AND
 - Lets the other parties in the case know about the court date.
- **Order on Hardship Motion:** Is used by the judge to say whether your *Hardship Motion* is granted or denied.
- **Proof of Delivery:** Only use this form if you need to send a copy of the Order to other parties.
- **Additional Proof of Delivery (Civil Asset Forfeiture):** Only use this form if you need to send the *Appearance (Civil Asset Forfeiture)*, *Hardship Motion*, *Notice of Court Date for Hardship Motion*, or *Order on Hardship Motion* to additional parties.

Where can I find the forms I need?

You can find the forms at: illinoiscourts.gov/Forms/approved/.

How do I get my Hardship Motion notarized?

- To get your forms notarized, you must sign them in front of an Illinois notary public.
- You can often find a notary public at your local bank, county courthouse, or town/city hall.
- Some currency exchanges, real estate offices, and law firms offer this service. You can also find an independent notary public by searching online or the phone book yellow pages.
- Call ahead to find out if the location has a notary public and if you need an appointment.
- There may be a small fee for getting your form notarized.
- You must bring your photo I.D. to the notary public. Your I.D. cannot be expired and must show your current address.

What do I do after I fill out my forms?

Step 1: File your *Appearance and Hardship Motion* with the Circuit Clerk in the county where the court case is filed.

- You must file the forms with the trial court by the filing deadline that applies to your case.
- You must electronically file (e-file) court documents unless (1) you are an inmate in a prison or jail and you do not have a lawyer, (2) you have a disability that keeps you from e-filing, or (3) you qualify for an exemption from e-filing.
 - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer; (2) you have trouble reading or speaking in English, or (3) you tried to e-file your documents, but you were unable to complete the process because the equipment or assistance you need is not available
 - If you qualify for an exemption, fill out a *Certification for Exemption from E-Filing* found here: illinoiscourts.gov/Forms/approved/default.asp.
 - File the original and 1 copy of your *Motion*, and the *Certification*, with the clerk's office in person or by mail.
- To e-file, create an account with an e-filing service provider.
 - Visit efile.illinoiscourts.gov/service-providers.htm to select a service provider. Some service providers are free while others charge a processing fee. For instructions on how to e-file for free with Odyssey eFileIL, see the self-help user guides here: http://illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/E-filing_Information.asp.
- If you do not have access to a computer or if you need help e-filing, take your form to the Circuit Clerk's office where you can use a public computer terminal to e-file your forms.
 - You can bring your form on paper or saved on a flash drive.
 - The terminal will have a scanner and computer that you can use to e-file your form.

Step 2: Ask for a court date.

- Ask the Circuit Clerk if you have to schedule a court date or if one will be scheduled.
- If you need to schedule the court date, ask the Circuit Clerk how to do so. The Circuit Clerk may schedule the court date or you may have to speak with other court staff.

- When you get your court date, ask if the court will send notice of the court date to the other parties, or if you need to.
- If you need to send notice, complete the *Notice of Court Date for Hardship Motion* found at: illinoiscourts.gov/Forms/approved/.

Step 3: Send your *Appearance and Hardship Motion* to all other parties.

- You must send your *Appearance and Hardship Motion* to the other parties in the case. This includes the State's Attorney, the lien holder and any other person who may have a claim to the vehicle.
- If a party has a lawyer, send the *Appearance and Hardship Motion* to the lawyer.
- If you and the person you're sending the *Appearance and Hardship Motion* to have an email address, you must send them by email or by notification through the e-filing system. If you or the person you're sending the *Appearance and Hardship Motion* to does not have an email address, you may give them to the other parties by personal hand delivery, mail, or third-party commercial carrier (for example, FedEx or UPS).
- You must complete the *Proof of Delivery* section on the *Notice of Court Date for Hardship Motion* with information to show how you sent the forms to each party. The form has room for 3 parties. If you are sending the *Notice of Hardship Motion* to more than 3 parties, fill out and add one or more *Additional Proof of Delivery* forms to the *Notice of Court Date for Hardship Motion* form.
- Keep one copy of the file stamped forms for your own records.

NOTE: There may be local court rules about how many days before the court date you have to give notice to the other party. Ask the Circuit Clerk where to find these rules. Look for rules about motions and notice of hearing.

Step 4: Get ready for your court date.

Gather and make copies of pictures and documents you want the judge to see. You will need the original for the judge and one copy for you and each of the people in the case.

- If you want the judge to hear from other people, those people will have to come to court and testify (in most cases, you cannot bring in written statements of witnesses). Tell these people about the court date and find out if they can make it. Then write down what questions you want to ask them in front of the judge.
- Prepare a set of questions to ask your witnesses and the other parties' witnesses.
- Decide and write down:
 - What you want to ask the judge to do for you; AND
 - What you will say to the judge if asked why you need your vehicle back.

- Question witnesses.
 - Tell the judge the name of your witnesses.

Step 5: Go to your court date.

- If your court date is by phone or video:
 - Make sure you have the call-in or login information for your court date and make sure your technology is working.
 - Follow the instructions on the court notice you received. Call the Circuit Clerk or Circuit Court or visit their websites for specific technology instructions.
 - Follow these recommendations to appear by phone or video: courts.illinois.gov/CivilJustice/Training_Education/Remote_Hearing_FAQ_for_SRLs.pdf.
- Bring these items with you to court:
 - Photo I.D.;
 - Copies of all the documents you filed with the Circuit Clerk;
 - Your driver's license and proof of insurance;
 - Proof of state and city (if required by your city) registration;
 - Copy of the blank *Order Granting or Denying Hardship Motion*; AND
 - Other papers or proof related to your *Hardship Motion*, including proof of ownership of the vehicle.
- Get to the courthouse at least 30 minutes early. Go to the courtroom number listed on your court form. If your forms do not have a courtroom number, look for a list of cases at the courthouse or ask the Circuit Clerk.
- Check in with the courtroom staff and wait for your name and case number to be called.
- When your case is called, walk to the judge and introduce yourself.

Make sure you know how you are to attend your court date.

Your court date could be in person, by phone or by video. If it is by phone or video it is called a "Remote Appearance." Call the Circuit Clerk or visit their website for more information. To find the phone number for your Circuit Clerk, visit illinoiscourts.gov/court/CircuitCourt/CircuitCourtJudges/CCC_County.asp.

- Ask the witnesses questions you prepared in advance.
- The judge and the other party can ask questions of your witnesses when you are done.
 - The judge decides whether the documents, photos, or witness testimony can be considered in making a decision about your case.

Step 7: The other parties present their case.

- The other parties will also get to present their case by testifying, giving the judge evidence, and questioning witnesses.
- You will get to see any documents and photos the other parties bring to court. If you do not think the judge should consider them in making a decision about your case, tell the judge why.

Step 8: The judge makes a decision after the parties present their case.

- The judge has to make a decision. The decision is called a court order.
- If the judge has enough information, they will fill out the *Order Granting or Denying Hardship Motion*.
- If your *Hardship Motion* is granted, the judge may limit the use of the vehicle during its temporary return to you.
 - Get a copy of the *Order* that has the court stamp on it.
 - If the other party was not in court to get a copy, you must send them a copy by 5:00 p.m. on the date you get the order. Fill out and file a *Proof of Delivery* court form with the Circuit Clerk to show that you sent the copy.
- If the judge needs more information to make a decision, the judge may set up another court date. Make sure you understand what information is needed and get it before the new court date.
- If the judge needs to think about it more, the judge may let you know the decision later by mailing a court order. The judge might also decide at another court date.

Step 6: Tell the judge your side of the case and answer questions.

- Show evidence including documents and photos.
 - Give a copy to the judge and a copy to the other party. Be prepared to explain why the document or photo is important.
 - You may be asked questions about what you say and the documents that you bring.