

HOW TO PREPARE AND SEND AN ANSWER TO COMPLAINT FOR FORFEITURE (NOT INVOLVING DRUGS OR MONEY LAUNDERING)

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 an *Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)*?

- It is your written response to the claims in the Plaintiff's Complaint. The Plaintiff is the State of Illinois and is named first in the court papers.
- The Complaint is the document that the State filed and served upon you with the *Summons*. The Complaint explains the reasons the State is seeking forfeiture of your property.
- Your *Answer* tells the court whether you agree or disagree with the State's reasons for seeking forfeiture of your property.

Is there a deadline for filing an *Answer*?

Yes. The *Summons* you received will tell you the deadline for filing your *Answer*. You must also file an *Appearance (Civil Asset Forfeiture)*. For instructions on how to file your *Appearance* see *How to File an Appearance in a Civil Asset Forfeiture Case* at illinoiscourts.gov/Forms/approved/.

- Your *Answer* is usually due at the same time as your *Appearance*.
- The *Summons* might give you a specific time frame for filing your *Answer*. For example, within 7 or 30 days of when you received the Plaintiff's Complaint.
- The *Summons* and Complaint will also tell you to appear in court at a specific date and time.

NOTE: If you have a legal reason to challenge the way you received the *Summons* and Complaint (service of process), or a legal reason to have the Complaint dismissed, you need to file a *Motion* with these reasons before you file your *Answer*. [735 ILCS 5/2-301](#); [735 ILCS 5/2-615](#). You should talk to a lawyer about this. The blank *Motion* form can be found at: illinoiscourts.gov/Forms/approved/.

Does everyone who receives a *Summons* and Complaint have to file an *Answer* to the Complaint?

No, but if you want to try to get the property back, you must file an *Answer*.

What forms do I need to fill out to file an *Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)*?

- ***Appearance (Civil Asset Forfeiture)*:** 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 *Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)*. The email address (if you have one) and mailing address you put on the *Appearance* or *Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)* 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.
- ***Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)*:** Use this form to explain what you want the judge to do. Include any reasons why the judge should grant your request.
- ***Additional Proof of Delivery (Civil Asset Forfeiture)*:** Only use this form if you need to send the *Appearance (Civil Asset Forfeiture)* and *Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)* to additional parties.

Where can I find the forms I need?

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

Are there any costs to file an *Answer*?

- No. However, in order to file an *Answer*, you must also file an *Appearance*. 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 happens if I do not file an *Answer*?

The judge may rule in favor of the State automatically.

What if I think I may have affirmative defenses or counterclaims?

An affirmative defense is a legal reason why your property should not be forfeited. If you have affirmative defenses, you have to include them in your *Answer*.

Examples of affirmative defenses include:

- That the State waited longer than the law allows to file the Complaint; OR
- That the claim was already decided in an earlier court order [735 ILCS 5/2-613](#).

There may be other affirmative defenses.

Counterclaims are legal claims that you have against the State regarding the issues in this case. The counterclaim must be filed at the same time as your *Answer*.

NOTE: You should talk to a lawyer about whether you have any affirmative defenses or counterclaims.

What do I do after I fill out the *Answer*?

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

- You must file the *Appearance* and *Answer to Complaint for Forfeiture (Not Involving Drugs or Money Laundering)* 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/.
 - File the original and 1 copy of your *Appearance* and *Answer*, 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 form.
 - 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: Send your *Appearance* and *Answer* to all other parties.

- You must send your *Appearance* and *Answer* to the other parties in the case. This includes the State's Attorney, any lien holder, and any other person who has a claim to the property. If a party has a lawyer, send the *Appearance* and *Answer* to the lawyer.
- If you and the person you're sending the *Appearance* and *Answer* 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 *Answer* 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* at the end of the *Appearance* and *Answer* with information to show how you sent the forms to each party. The form has room for 3 parties. If you are sending the *Answer* to more than 3 parties, fill out and add 1 or more *Additional Proof of Delivery* forms.

Step 3: 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 parties 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 want your property back.

Step 4: 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, state and city (if required by your city) registration and proof of insurance (only if a vehicle is involved); AND
 - Other papers or proof related to your *Answer*, including proof of ownership of the property.
- 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.

Step 6: 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 7: The judge makes a decision after the parties present their cases.

- The judge has to make a decision. The decision is called a court order.
- If the judge has enough information, they will fill out an order.
 - 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 5: 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.
- Question witnesses.
 - Tell the judge the name of your witnesses.
 - 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.