

## INTRODUCTION

This book provides answers to commonly-asked questions about the law. It was written and updated by the Young Lawyers Section (YLS) of the Chicago Bar Association for the purpose of increasing Chicagoans' knowledge of the legal rules that affect all of us.

The legal system touches our lives in many ways and at many times. Unfortunately, many people find the legal system to be confusing, frustrating, and intimidating. This book is designed to make the system a bit easier to understand.

The information in this book is specifically intended for Chicagoans. Although most of the chapters involve state laws that apply to all Illinois residents, some, such as the landlord-tenant chapter, focus on laws and regulations of the City of Chicago. If you do not live in the City, remember that some of the answers contained in the book may not state the law that applies in your community.

**THIS BOOK IS NOT INTENDED TO PROVIDE LEGAL ADVICE. IT ONLY IS INTENDED TO PROVIDE GENERAL INFORMATION THAT MIGHT HELP AN INDIVIDUAL OR FAMILY IDENTIFY THE LAWS THAT APPLY TO A CERTAIN SITUATION. THE LEGAL REFERRAL SECTION AT THE BACK OF THE BOOK PROVIDES VARIOUS PLACES WHERE THE ADVICE OF AN ATTORNEY CAN BE OBTAINED FOR SPECIFIC SITUATIONS.**

The Chicago Bar Association hopes that you find this book to be a valuable resource. **The 2004 version of this guide was funded in part by the American Bar Association Young Lawyers Division through a grant from the American Bar Association Fund for Justice and Education and by an additional grant from the Chicago Bar Foundation/Young Professionals Board.** The legal system aspires to be equally accessible to all people -- this book is intended to help achieve that goal.

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**TABLE OF CONTENTS**

|                                       |    |
|---------------------------------------|----|
| Introduction .....                    | 1  |
| Bankruptcy .....                      | 3  |
| Buying a Home .....                   | 9  |
| Changing One's Name .....             | 16 |
| Criminal Charges and Arrest.....      | 20 |
| Divorce .....                         | 24 |
| Domestic Violence.....                | 32 |
| Employment .....                      | 36 |
| Guardianship .....                    | 41 |
| Jury Duty .....                       | 47 |
| Landlord and Tenant .....             | 51 |
| Marriage .....                        | 61 |
| Probate and Estate Planning .....     | 65 |
| Sales, Credit, and Collections .....  | 69 |
| Small Claims - The Pro Se Court ..... | 75 |
| Traffic Violations .....              | 84 |
| Victims Compensation.....             | 90 |
| Wills .....                           | 93 |
| Guide to Legal Resources .....        | 97 |

## **BANKRUPTCY**

### **What is bankruptcy?**

Bankruptcy is the process by which the federal court system takes temporary control of a business or a person's finances in order to protect the business or person from the pressures of creditors. Once a person or business files for bankruptcy, the creditors may not continue to attempt to collect the money owed to them. The purpose of a bankruptcy proceeding is to enable the "debtor" (the person or business who owes money) to develop a plan for paying the money he or she owes and to get a financial "fresh start."

Bankruptcy proceedings can be both "voluntary" and "involuntary." A voluntary bankruptcy is one that is commenced by the debtor himself, while an involuntary bankruptcy is one that is commenced without the consent of the debtor by one of the debtor's "creditors" (a person or business that is owed money by the debtor).

Bankruptcy proceedings occur in the federal Bankruptcy Court. There are no state bankruptcy laws, so state courts cannot hear bankruptcy matters.

### **What kinds of bankruptcy are there?**

The types of bankruptcy that are most relevant to individuals are known as "Chapter 7," "Chapter 11," and "Chapter 13" bankruptcies. The "chapters" refer to sections of the United States Bankruptcy Code.

### **What is a Chapter 7 bankruptcy?**

A Chapter 7 bankruptcy is known as a "liquidation" proceeding, because it "liquidates" (sells or otherwise disposes of) a person's assets to pay off the person's creditors. This is the most drastic sort of bankruptcy proceeding, because it allows the debtor to keep only a small amount of property. Liquidation of the debtor's property, and distribution to the debtor's creditors of the money received for the

property, "discharges" or eliminates the debts. This provides the debtor with the opportunity for a financial fresh start.

**Must all the debtor's property be liquidated in a Chapter 7 bankruptcy?**

No. Certain types of property do not have to be sold and can be kept by the debtor, regardless of the amount of money owed by the debtor. Examples of the types of property that the debtor can keep are:

- a motor vehicle, up to a value of \$1,200
- necessary clothing
- health aids
- social security, unemployment compensation or public assistance benefits
- veteran's and disability benefits
- workers' compensation and most pension benefits
- maintenance and child support payments that are necessary for the support of the debtor and the debtor's dependents

**Will a Chapter 7 bankruptcy discharge all debts of the debtor?**

No. Certain debts cannot be discharged, and they will continue to be obligations of the debtor after the Chapter 7 proceeding is concluded. Examples of these types of debts are most taxes, most educational loans, maintenance or child support, and debts that arose out of illegal conduct by the debtor.

**May a creditor continue to try to collect a discharged debt?**

No. Attempting to collect a discharged debt violates the discharge order of the Bankruptcy Court, meaning that the creditor can be held in contempt of court and fined. The creditor in such a situation also may be liable to the debtor for damages.

### **What is a Chapter 11 bankruptcy?**

A Chapter 11 bankruptcy is known as a "reorganization" bankruptcy. This type of bankruptcy usually is used where the debtor is a business rather than a person. In a Chapter 11 proceeding the debtor proposes a plan to the Bankruptcy Court which provides for payments to creditors over a period of time. Depending on the reorganization plan, the creditors may receive either the entire amounts owed to them or just some of the amounts. The purpose of a Chapter 11 reorganization is to permit the debtor to pay off its debts while continuing its business and without having to liquidate its property. Both the creditors and the Bankruptcy Court must approve the reorganization plan; if they do not, the Chapter 11 proceeding may be converted into a Chapter 7 liquidation proceeding.

### **What is a Chapter 13 bankruptcy?**

A Chapter 13 bankruptcy is known as a "wage-earner" bankruptcy, and, like Chapter 11, a Chapter 13 proceeding involves the reorganization of a debtor's finances rather than a liquidation. Not everyone can file a Chapter 13 bankruptcy; the debtor must have a regular source of income from which payments can be made and there can only be a limited amount of existing debt. As in a Chapter 11, the debtor proposes a plan to repay creditors either all or a part of the money owed to them, and the creditors and the Bankruptcy Court must approve the plan. Repayment generally occurs within two or three years of the beginning of the plan, but it may be extended to five years.

The plan will place the debtor on a strict budget, allowing him or her to keep only the amount needed for living expenses. Unlike in a Chapter 11 proceeding, a trustee will be appointed by the Bankruptcy Court to oversee the reorganization plan, and all money earned by the debtor above basic living expenses must be turned over to the trustee, who in turn will distribute the funds to the creditors. Payments often are made through a wage deduction plan that requires the debtor's employer to pay a portion of the debtor's wages directly to the trustee.

Although a Chapter 13 debtor may be discharged from having to pay all or some of certain debts, certain debts will not be discharged, such as alimony, child support, and taxes.

## **How is a bankruptcy proceeding begun?**

The basic procedures for filing a bankruptcy are the same for Chapter 7, Chapter 11, and Chapter 13 proceedings. The debtor must go to the federal Bankruptcy Court for the area where the debtor resides (in Chicago, at the Federal Courthouse, 219 South Dearborn Street), pay a filing fee (\$200 for Chapter 7 and 13, \$800 plus a \$30 administrative fee for Chapter 11), and complete certain forms. These forms require the debtor to set out the debts that are owed and to identify the debtor's assets and sources of income. The clerks at the court will provide whatever assistance the debtor may need in filing the required documents.

As mentioned above, once a bankruptcy case is filed the debtor's creditors are not allowed to take further action to collect the money owed to them. Also, most lawsuits against the debtor are automatically "stayed," meaning they are stopped until the bankruptcy is resolved. However, criminal proceedings against the debtor and actions for child support or alimony are not stopped by the filing.

In a Chapter 7 proceeding, a court official called the "trustee in bankruptcy" will then inquire into the debtor's financial situation, asking the debtor about the debts and the debtor's ability to pay them. The trustee in bankruptcy will determine whether the debtor has property that does not have to be liquidated. The debtor's creditors are permitted to attend the meeting where the trustee in bankruptcy asks the debtor these questions, and they also may ask the debtor questions about his or her situation. Once the trustee in bankruptcy is satisfied that he or she has identified the property of the debtor that can be sold, liquidation occurs and the debts are discharged.

In Chapter 11 and 13 proceedings, the debtor has a certain amount of time in which to propose a reorganization plan for payment of the debts. If the debtor fails to do so, the creditors may propose their own reorganization plan. Once the reorganization plan has been approved by the creditors and the Bankruptcy Court, the plan will be put into effect.

Regardless of whether the bankruptcy proceeding is under Chapter 7, 11, or 13, once the bankruptcy case is filed the debtor is not permitted to pay any debts that existed before the case was filed. In other words, it is illegal for a debtor to prefer one creditor over another.

**What if the debtor in a Chapter 7 proceeding has no assets?**

If the trustee concludes that the debtor truly has no property that can be liquidated for payment, a notice will be sent to the creditors informing them that no payments will be made.

**Should both spouses file for bankruptcy?**

Yes, if the debts are owed by husband and wife together. If both spouses are liable for debts and only one files for bankruptcy, creditors may seek payment from the spouse that did not file. There is only one filing fee for two spouses filing for bankruptcy together.

**Are the names of persons who file for bankruptcy public knowledge?**

Yes. Bankruptcy filings are part of the public record at the federal courts.

**How often can a person file for bankruptcy?**

Once a debtor files a Chapter 7 case, he or she cannot file another Chapter 7 proceeding for at least six years from the date the first case was filed. The Chapter 7 debtor is permitted, however, to file a Chapter 11 or 13 proceeding during the six years. A Chapter 13 debtor can file another bankruptcy proceeding without waiting six years, unless the Bankruptcy Order states otherwise, or unless the debtor paid less than 70% of his or her debt.

**May employers or government agencies discriminate against people who file for bankruptcy?**

No. It is illegal to discriminate against bankruptcy debtors.

**What effect does a bankruptcy have on the debtor's credit rating?**

The major credit reporting agencies that provide stores and credit card companies with information about potential customers generally will keep a bankruptcy filing on a person's credit report for seven to ten years. Clearly this will make it more difficult for the person to obtain credit. Some stores may be willing to extend credit to a person who

has gone through bankruptcy, but the terms of the person's credit purchases, such as the amount of down payment required, may be stricter than for other people. These stores recognize that a person who has emerged from a bankruptcy does not have any debts, and cannot file for a Chapter 7 bankruptcy again for six years, but they may be cautious because of the person's past history.

## **BUYING A HOME**

Buying a home is a complicated transaction. Especially where the buyer is obtaining a mortgage loan, the purchase involves a number of legal matters that must be resolved to the satisfaction of the lender, the buyer, and the seller. These matters include title to the property, insurance, and taxes.

Because of the complexity of most home purchases, prospective buyers should consider using an attorney. The following questions and answers are intended simply to identify the major issues that are likely to arise during the purchase of a home.

### **Does a buyer need to use a real estate broker when looking for a home to buy?**

No. However, a real estate broker who is knowledgeable about the location where you want to look can provide valuable guidance that saves you time and frustration. In almost all cases, if the sale occurs the buyer's broker is paid a commission from the amount paid to the seller.

Likewise, a seller does not have to use a broker to sell his or her home. The benefit of using a broker to sell a home is that the broker can use publication and communication channels to spread word of the sale to a broader audience of potential buyers. The broker's commission is deducted from the sale proceeds received by the seller. Of course, the benefit of not using a broker in the sale of a home is that the seller does not have to pay the commission.

### **What is the broker's fee?**

Although the amount may vary, brokers' commissions (including both the commissions paid to the buyer's and the seller's brokers) generally are about 6% of the sale price of the home. You may try to negotiate a lesser percentage.

### **What is a listing agreement with a broker?**

A listing agreement between a seller and a broker gives the broker an exclusive right to sell the home for the period of time stated in the

agreement. You can try to negotiate a non-exclusive listing agreement, which means that you can enlist the services of more than one broker or find your own seller without paying a broker's commission. Even if the seller is able to sell the home without the help of the broker, the listing agreement commits the seller to pay the broker his or her commission anyway. In return for the exclusive right to sell the home, the broker promises in the listing agreement to do his or her best to sell the home. The benefit to the seller of a listing agreement therefore is the commitment made by the broker to use his or her resources (which includes the resources of his or her real estate office) to sell the home.

### **What happens if the buyer has a broker but the seller does not?**

From a legal point of view a real estate broker represents the seller, even if the broker actually is working with the buyer to find a home. Therefore, the broker is paid from the amount received by the seller for the home (where the buyer and seller have different brokers the commission is split between the two). If a seller desires to sell his or her home without a broker, and is not willing to pay a commission to the broker who has been working with the buyer, the broker is not entitled to a fee.

### **How do the buyer and seller reach agreement on the price for the home?**

Generally the buyer, either personally or through his or her broker, makes an offer. Unless the buyer has met the seller's asking price, the seller then decides whether to make a counter-offer. This back-and-forth negotiation continues until either the buyer and seller agree on a price or break off their discussions.

### **What happens if the buyer and seller reach an agreement?**

The two parties sign a contract of sale for the home. This contract usually includes:

- a description of the property being sold;
- the price;
- the earnest money deposit paid by the buyer;

- a description of the mortgage loan to be obtained by the buyer;
- the seller's obligations to convey good title to the home;
- the closing date (the date the sale is completed);
- responsibility for real estate taxes; and
- penalties for failure to perform the contract.

Nowadays most sales contracts for homes in Chicago are forms provided by the seller's broker. These forms have blank spaces where the parties insert specific provisions, such as a list of the appliances or any personal property that will remain in the home and particular commitments of either the buyer or seller.

A sales contract may contain "contingencies." A contingency is a condition that must occur if the sale is to occur. For example, the parties might agree that the buyer is not required to go through with the purchase if he or she is unable to obtain a mortgage within a certain period of time, or if the buyer is unable to sell his or her current home.

Usually a contract for the sale of a home includes a provision giving both the buyer and seller a short time, usually five (5) days, to have their attorneys review the agreement. If either attorney objects to a legal provision, the client, whether buyer or seller, has the right to withdraw from the sale without liability and the earnest money will be returned to the buyer.

### **Does the Seller have to disclose material defects of the property to the Buyer?**

In 1994, a new Illinois law was passed that requires where an agreement is made between a buyer and seller for the sale of residential property, a disclosure statement must be completed by the seller and given to the buyer prior to the real estate contract. If a seller is represented by a real estate agent, the agent should provide the disclosure statement to the seller to complete. If a seller is not represented by a real estate agent, it is still necessary to complete the disclosure statement and present it to the buyer. The material defects

that must be disclosed are conditions that would decrease the value of the property or would be a health or safety hazard to the occupants of the property.

In addition, sellers must now disclose whether they have knowledge of any lead-based paint at the property and a pamphlet relating to lead-based paint health risks for properties built before 1978.

### **What is an earnest money deposit?**

“Earnest money” is the name given to the deposit placed by the buyer on the home. Payment of a deposit indicates the buyer's seriousness in entering into the transaction and assures the seller that the home can be taken off the market. The percentage will differ from sale to sale, but generally an earnest money deposit is 10% of the purchase price. The money usually is held by the seller's broker in an interest-bearing account, with the interest paid to the buyer. Most sale contracts provide that the earnest money is returned to the buyer if the agreement falls through because of the fault of the seller but is kept by the seller if the agreement falls through because of the buyer.

### **What does "convey good title" mean?**

"Good title" means ownership of the home. The buyer must be sure that the seller has the legal right to sell the home and that no other person or entity, such as a bank, has a right to the home.

The sale contract may state the requirements placed on the seller to prove that he or she has good title. Usually, the seller must obtain a title insurance policy. By issuing such a policy the title insurance company certifies the seller's title to the property and promises to insure the buyer against claims that arise in the future challenging the buyer's right to the property. For example, a title search by the insurance company might turn up unpaid real estate taxes or claims on the property by workers, called mechanic's liens who were not paid. If such problems are found, the seller must resolve them before the sale can proceed.

Usually the seller is responsible for paying the costs of the title search and the title insurance for the buyer. The buyer is responsible for paying the costs of title insurance to the buyer's mortgage lender.

### **What is a mortgage?**

A mortgage is a loan where the money loaned is "secured" by the property itself. This means that if the loan is not repaid the lender has the right to foreclose on the property and take ownership of it.

Buyers should shop for the most favorable mortgage loan they can obtain. They should compare the interest rates offered by different banks and other lending institutions as well as the fees charged for processing the loan (generally referred to as "points" - a point is 1% of the loan amount). In evaluating the various options, buyers should look at the effect on loan payments of the length of the loan (for example, 15 or 30 years) and the size of the down payment made by the buyer. Also, buyers nowadays often can choose between fixed rate loans, where the same amount is paid each month during the term of the loan, and variable rate loans, where the amount will vary according to the interest rates in the national economy.

A number of government programs exist to make it easier for certain groups of people to get a mortgage. For example, armed services veterans may qualify for loans guaranteed by the Veterans Administration or for Federal Housing Administration assistance. If a lender is willing to make VA and FHA loans, the loans usually will have lower interest rates and smaller down payments than conventional loans.

### **Who is responsible for property taxes on the home and utility bills?**

Usually the seller is responsible for all real estate taxes up to the date the property is transferred to the buyer. Because real estate taxes in Cook County are billed a year behind (for example, taxes owed for 1994 are not billed until 1995), the seller will not be living in the home when the bills arrive for the period when the seller was still there and the parties do not know at the time of the sale exactly what those future taxes will be. Therefore, the parties agree to estimate the future taxes and the buyer receives a credit against the purchase price in the amount that the parties estimate that the seller would have owed. This figure is typically around 110% of the previous tax bill. The buyer then pays the actual tax when it is billed.

The City of Chicago requires a certification that the water bill is paid-up before a sale can be completed. In the case of other utilities, such as electricity and telephone, bill payment is a matter between the seller and the company, and an unpaid bill will not prevent the sale.

### **How is the sale completed?**

When both the seller and buyer have met all the obligations placed on them by the real estate contract the sale can be "closed." The closing is where all the final documents are signed (including the mortgage loan documents) and the remainder of the purchase price is paid. Closings usually take place at the title company that is providing the title insurance.

At the closing, the buyer, after paying the seller, receives a bill of sale for the personal property sold with the real estate, an affidavit of title, and a deed to the property that conveys title for the property to the buyer. After closing, the title company or one of the attorneys will record the deed, meaning that the buyer's ownership of the property will be recorded in the county records.

### **What are closing costs?**

Closing costs are the fees that are due at the time of closing. These fees may include various charges by the mortgage company for processing the loan (such as fees for obtaining a credit report on the buyer and an appraisal of the property's value), transfer taxes imposed by the city, county or state where the property is located, brokers' commissions, and attorneys' fees.

### **Can the same attorney be used by both the buyer and seller?**

It is not illegal to have the same attorney represent both sides of a sale, but it is not a good idea. As the above questions and answers indicate, the sale of a home is a relatively complex transaction, and one that often involves a substantial part of the buyer's and seller's assets. In addition, selling or buying a home can become quite emotional for the people involved. Problems can arise at any stage of the process, leading to serious disputes.

Because high stakes are involved for both buyer and seller, and because there are a large number of items that must be successfully

resolved for the sale to go through, each party would be wise to hire his or her own attorney. An attorney representing both parties cannot meet his or her professional obligations to both if a dispute occurs. Hiring your own attorney will be more expensive than sharing a single attorney, but the additional money is a worthwhile investment in avoiding serious problems.

## CHANGING ONE'S NAME

**1.** Go to Room 802, Daley Center at Dearborn and Randolph Streets, and obtain the following forms, which you will have to complete:

- (a) Notice of Filing of Petition For Name Change-three (3) copies
- (b) Petition for Change of Name - three (3) copies
- (b) Judgment for Change of Name - three (3) copies
- (c) Application to Sue As A Poor Person (if applicable three (3) copies)
- (d) Motion to Waive Publication Coats and an Order Waiving Publication Costs (if applicable three (3) copies).

You will need three (3) copies of each document-one for the file, one for you, and one that you will give to the newspaper.

You may be eligible to file an Application to Sue as a Poor Person, which is your request to the court waive the fees. Typically, only persons of low income will receive a fee waiver, but there is no statutory definition as to what level of income is required for a person to receive a waiver. Consequently, if you think you may be eligible, you should apply. Denial of a fee waiver will not impact your case except that you will have to pay a fee to file documents with the Clerk.

**2.** Publish your intention to change your name or the name of your children in the CHICAGO LAW BULLETIN. Publication for three successive weeks is required by law.

- (a) See a representative of the CHICAGO LAW BULLETIN in room 802 of the Daley Center to arrange for publication. Be prepared to pay the cost of publication, which will be approximately eighty (\$80.00) dollars. If you are unable to pay these costs, and you have already filed an Application to Sue As A Poor Person you can file a Motion with the court to have the county pay the costs of your notice. If you want to apply for a waiver of the publication costs, you will need to complete a Motion to Waive Publication Coats and an Order Waiving Publication Costs. You will need to give the Motion and the Order to the Circuit Clerk and ask him/her to present it to a Judge for approval. If your Application

to Sue As A Poor Person was denied, you will not be able to file for a waiver.

You will need to wait to see if your Motion to Waive Publication Costs is approved. You will know if your Motion is approved if the Order you gave the Clerk is returned with a Judge signature. If it is approved, you can proceed without having to pay the cost of printing the Notice of Filing of Petition for Change of Name in the newspaper. If your motion is not approved, you can still publish your Notice but you will have to pay the eighty (\$80.00) dollar fee.

(b) Get a date on which you **MUST** return to file your Petition for Change of Name from the CHICAGO LAW BULLETIN representative. This will be six weeks after the first publication appears in the BULLETIN.

(c) After publication is completed the CHICAGO LAW BULLETIN will mail to you a Certificate of Publication. Keep this with your Petition and Judgment and bring it with you on the date you were instructed to return.

**3.** On the date given to you by the LAW BULLETIN representative you **MUST RETURN** to Room 802 at 9:00 a.m. and file your Petition for Change of Name with the Clerk. The filing fee which must be paid that day is Two-Hundred Fifteen (\$215.00) Dollars. The Clerk keeps two (2) copies of your Petition and the Certificate of Publication and returns all other papers to you after stamping the case number on them.

**NOTE:** YOU **MUST FILE YOUR PETITION** with the Clerk on the date given to you by the CHICAGO LAW BULLETIN representative or you may have to republish, which will cost you eighty (\$80.00) dollars.

**4.** The Clerk will then tell you to go to a certain courtroom in the same building to appear before the Judge that same day.

(a) Go directly to the courtroom - see the Clerk in the courtroom and he or she will arrange to call your case.

(b) When your case is called, step up before the Judge and tell him or her you want to change your name or that of your child or children and give him or her the Judgment.

(c) After the Judge signs the Judgment, walk over to the Clerk and he or she will stamp and initial the two carbon copies of the Judgment.

(d) Take the two copies back to Room 802, to that portion of the counter marked "Certified Copies" and order two certified copies of the Judgment. One is for your records and the other can be used to get your birth record corrected. These will cost you Twelve (\$12.00) Dollars - Six (\$6.00) Dollars for each copy.

**5. To change your birth certificate to your new name:**

(a) If you were born in the State of Illinois, mail a certified copy of the Judgment and a money order in the amount of Fifteen (\$15.00) Dollars payable to Vital Records - Springfield. Because it is not listed on the Judgment, also include Date and Place of Birth of Applicant.

**MAIL TO:** Bureau of Vital Records  
State of Illinois - Department of Health  
605 West Jefferson  
Springfield, Illinois 62702-5097  
Telephone Number: (217) 782-6553  
(Call Mondays, Wednesdays or Fridays)

(b) If you were born in a State other than Illinois, mail a certified copy of the Judgment and a money order for the cost of a new birth certificate to the office that keeps birth records in the State in which you were born.

**Who can file for a name change?**

Any person who is a resident of the State of Illinois and has resided in the State for 6 months can file a petition with the court to change his/her name.

**What does the court consider when deciding whether to grant a name change?**

The presumption is that the applicant's request for name change will be granted. While the law does not specifically require a reason for you to change your name, the law gives the court power to decline a person's request for a name change if there is a reason to decline the request. So, unless there is a reason why it should not be granted, the court will grant a name change petition.

**What are some reasons a name change may be denied?**

Persons convicted of a felony or certain sex/solicitation crimes may not be able to change their name, unless 10 years have passed since completion and discharge from your sentence or you have been pardoned. Any person required to register as a sex offender under the Sex Offender Registration Act may not file a petition for a name change until the person is no longer under a duty to register under the Act.

**What if my request is denied?**

If your request was denied because you did not have enough evidence to support your request, then you will have to wait until the circumstances surrounding your request for support change before you can file another Petition. If your request for a name change was denied because of some procedural error in your part (for example, you did not to the publication correctly), then you should correct the error and request another hearing.

## **CRIMINAL CHARGES AND ARREST**

### **If arrested, is the arresting police officer allowed to search me?**

Yes. It is legal for an arresting officer to search you and the area immediately around you. However, if you are arrested for a traffic, regulatory or misdemeanor offense you cannot be strip searched unless the incident involved weapons or a controlled substance and the arresting officer has a reasonable belief that you are concealing a weapon or controlled substance. You, your vehicle, its contents, or its passengers may not be searched for a failure to have all passengers properly restrained by seatbelts or child safety seats.

You should not resist arrest or a search accompanying that arrest, even if you are innocent. If you resist a legal arrest or search, your resistance will be a separate criminal offense.

### **Does the arresting officer have to tell me my legal rights?**

Yes. The arresting officer is required to tell you why you are being arrested. Also, the officer must give you your "Miranda" warnings prior to interrogating you. This means that the officer must tell you that you have the right to an attorney, you have the right to remain silent, and that anything you say can be used as evidence against you. Additionally, an officer must assist you in placing children under the age of 18 who may be neglected because of your arrest with a relative or other responsible person of your choosing.

### **What are my legal rights when I am taken into custody?**

You have the right to make a reasonable number of phone calls to an attorney of your choice and a member of your family within a reasonable time of arriving at the first place where you are being kept in custody. You are not limited to just one call. Also, your calls can be made before you are booked. If you are transferred to another location, you have the right to make additional calls.

You also are entitled to an itemized receipt for all money and property that is taken from you after your arrest. You must be provided with food, shelter, and medical treatment, if required.

While in custody, you continue to have the right to remain silent, to say nothing to the police or prosecutors about the alleged crime. The police are not permitted to force you to answer questions. In addition, if you choose not to answer questions, that fact cannot be used against you later in any way. However, if you voluntarily choose to answer questions or sign a confession or other papers, any information that you give to the police can later be used against you at trial. If you do wish to talk with the police, remember that the police are not authorized to promise you leniency in return for your statements.

You have a right to privately consult a lawyer during any questioning, even before you have been charged. You should contact a lawyer as soon as possible after you have been arrested. If you cannot afford to hire an attorney, and do not wish to talk with the police, you should remain silent until you appear before a judge and an attorney is appointed to represent you.

### **What happens after I am taken into custody?**

You must be taken before a judge without any unnecessary delay. This means that you usually will see a judge within several hours of your arrest. The judge must:

- inform you of the charges against you and give you a copy of the charges;
- advise you of your right to legal representation and, if you request an attorney but cannot afford to hire one, appoint a public defender or other attorney to defend you;
- schedule a preliminary hearing (in certain cases); and
- offer you the opportunity to post bail and get out of jail (unless the alleged crime does not permit bail).

### **What is bail?**

Bail is security, usually in the form of cash, stocks, bonds or real estate that is deposited with the clerk of the court in order to ensure that you appear at your court dates. Once you pay the amount set by the judge as your bail, you are released from custody until your trial.

If you fail to appear at your trial or other required court appearances, the amount you paid as bail is forfeited. If you appear for your court dates, however, the amount you paid as bail is returned to you. A violation of bail bond is a separate offense constituting at least a Class C misdemeanor.

Usually, only 10% of the amount set as bail must be paid in order for you to be released from custody. For example, although the judge may set bail at \$10,000, only \$1,000 is required to be paid to the clerk's office. For certain serious drug-related offenses, however, the payment required by the court may be as high as 100% of the bail amount, and the bail itself may be set high enough to represent the estimated street value of the drugs seized.

If the judge believes that you will appear voluntarily for your court dates and do not pose a danger to anyone, both before and after a conviction, you may be released on your own "recognizance" (on your own responsibility) without the payment of bail. This is called an I-bond.

Bail is available for most offenses in Illinois. Bail is not available, however, where the proof is evident or the presumption great that the accused committed a capital offense (an offense punishable by death), a crime is punishable by life imprisonment, or certain other serious offenses.

Illinois law requires that as soon as possible after arrest you must be brought before a judge who can set bail. There are a number of locations for setting bail in the Circuit Court of Cook County, so you should ask the arresting officer where and when your bail hearing will occur. You should then give this information to a family member, friend or lawyer who can help you post bail.

If you are unable to post bail immediately, your family and friends can pay it later at the courthouse located at 2600 South California Avenue, Chicago. Once your bail is paid, you will be released from jail.

**What do I do if I cannot afford to hire an attorney to represent me?**

You have the legal right to be represented by an attorney. Therefore,

if you cannot afford to hire a lawyer, the judge will appoint either an attorney from the Public Defender's office or an attorney from a list furnished by The Chicago Bar Association.

**Can I represent myself in a criminal matter?**

Yes. Even though you have a constitutional right to have a lawyer represent you, the court cannot require you to use an attorney. Before you decide to represent yourself, however, pay close attention to what the judge tells you about the nature of the charges against you and the possible sentence that you could receive if convicted. The judge may let you represent yourself with the assistance of an attorney, but you do not have a legal right to this. Obtaining an attorney's representation soon after arrest may help you protect your rights to reasonable bail, a speedy trial, exclusion of improperly obtained evidence, and confrontation of witnesses, as well as your continuing right against self-incrimination. If you choose to have an attorney represent you, your communications with your attorney will be confidential and cannot be used against you.

**What is the difference between a misdemeanor and a felony?**

Misdemeanors and felonies are both criminal offenses. A misdemeanor is any offense that is punishable by a sentence of less than one year. If you are found guilty of a misdemeanor you may be imprisoned but you will not be sent to a state penitentiary.

Felonies are crimes that the state considers more serious, such as murder, criminal sexual assault, kidnapping, and arson. Sentences for felonies range from a one year term in a state penitentiary to the death penalty.

## **DIVORCE**

### **What are the grounds for divorce in Illinois?**

There are a number of grounds for divorce:

- the Respondent (the spouse who is being sued for divorce by the other spouse) is impotent;
- when the husband and wife got married, one of them was still married to someone else (this is called "bigamy");
- the Respondent committed adultery during the marriage;
- the Respondent deserted the home for at least one year;
- the Respondent has been habitually drunk for at least two years;
- the Respondent has been a drug addict for at least two years;
- the Respondent has attempted to murder his or her spouse;
- the Respondent has been guilty of physical cruelty to his or her spouse;
- the Respondent has been guilty of mental cruelty to his or her spouse;
- the Respondent has been convicted of a serious crime; and
- the Respondent has given his or her spouse venereal disease.

### **Can a person obtain a divorce in Illinois without having to claim that his or her spouse did one of the things just listed?**

Yes. Illinois also allows "no fault" divorce, where neither spouse has to be accused of bad conduct. There are three requirements for a no fault divorce:

- the husband and wife must not have lived together for a continuous time of more than two years;

- there must be an "irretrievable breakdown" of the marriage – this means that the marriage must be beyond the point where the spouses can save it; and
- attempts by the husband and wife to save the marriage have failed and would fail in the future.

If one of the spouses can prove that these things are true, the divorce will be granted, whether or not the other spouse wants the marriage to continue. If the husband and wife have agreed that they want a divorce, the requirement that they live apart for two years may not be necessary -- if they have not lived together for at least six months the judge does not have to require the full two year separation period.

**Can a husband and wife become separated in Illinois without becoming divorced?**

Yes, a husband and wife can become legally separated without a divorce. The only requirement for getting a legal separation is that the two spouses not live together.

**What is an annulment?**

An “annulment” is a declaration by a judge that the marriage never legally existed. There are only a small number of circumstances that will permit an annulment:

- one of the spouses was not mentally capable of being married at the time of the marriage, because of drinking or drugs or because of mental incapacity;
- a spouse was forced into the marriage or was persuaded to become married by fraud;
- a spouse is unable to have sexual intercourse; or
- the husband or wife is too young to become married without the consent of his or her parents and the parents did not provide the consent.

As this list shows, annulments are very rare. Therefore, most people who want to end their marriages must obtain a divorce, because an annulment will not be available to them.

**Does a person have to be an Illinois resident to obtain a divorce here?**

Yes. In order to sue for divorce in Illinois, the spouse filing the suit (known as the “Petitioner”) must be a resident of the state when the suit is filed. In addition, the Petitioner must have lived in Illinois for at least 90 days at the time the judge grants the divorce.

The spouse being sued, the Respondent, does not have to be living in Illinois for a divorce to proceed against him or her in this state.

**Who receives custody of the children of the marriage?**

If the spouses are able to agree on which of them will have custody of their children, the judge usually will honor the decision. If the husband and wife are not able to agree on custody, however, the judge will make the decision based on the best interests of each child. The judge will consider all relevant factors in making this decision. For example, the judge may consider:

- the wishes of the child;
- the child’s relationship with his or her parents, his or her brothers and sisters, and other people who are likely to influence the child's development;
- the child’s adjustment to his or her school and community;
- the health, both physical and mental, of all people involved; and
- the threat of physical violence against the child or anyone else by the spouse that seeks custody.

Although the rule used to be that the mother usually received custody of children when they were young, this rule no longer exists. Custody determinations are now made without regard to the sex of the parent seeking custody. However, mothers still tend to receive custody more often, because of other factors such as continued residence in the

family home, and the willingness to be a homemaker until the children are grown.

**Can two parents obtain joint custody of their children?**

Yes. If the parents want to share custody of their children, and if the judge believes that the parents will be able to cooperate together in the best interests of the children, the judge may permit joint custody. Joint custody only will be permitted, however, when the parents have reached a formal agreement that sets out each parent's rights and responsibilities in connection with care of the children and major decisions such as education, health care, and religious training. A parent can be a joint parent, but not be the residential custodial parent.

**If a parent does not have custody, is he or she entitled to see the children?**

Yes. A parent who does not have custody is entitled under Illinois law to see his or her children. This is called "visitation." If the parents are not able to agree on a visitation schedule, the law provides that a parent has "reasonable" visitation rights -- this means that the parent is permitted to see the children for a reasonable amount of time on a reasonable number of occasions.

Visitation will NOT be granted, however, where the judge believes that visitation will threaten a child's physical or emotional health. If the judge believes, for example, that the parent may harm the child, or that the relationship of the divorced parents makes visitation unwise, the judge may deny or restrict visitation.

**What happens if the parent with custody refuses to allow the other parent's visitation with the children?**

Visitation rights are set forth in the divorce order signed by the judge. Therefore, a parent's refusal to allow visitation is a violation of a court order, placing the parent in contempt of court. The parent seeking visitation can go into court and have a judge both grant visitation and punish the other parent for being in contempt of court.

### **What happens if a parent kidnaps his or her children during visitation?**

A parent who fails to return a child after visitation, or who violates any restrictions on visitation (such as a requirement that the child remain in Illinois during visitation), may be guilty of child abduction under Illinois law. This is a form of kidnapping, and if convicted the parent may be imprisoned. By violating the divorce court's order regarding visitation, the parent also will be in contempt of court, and may be fined or jailed by a judge of the divorce court.

### **How is property divided between the husband and wife?**

Property is divided into two basic categories: marital property and non-marital property. Marital property is property acquired by either spouse during the marriage, and non-marital property is property acquired by either spouse before the marriage. Certain types of property acquired during the marriage also are considered to be non-marital property, such as property received by inheritance and property received in exchange for other property that was received before the marriage. Classification of property as marital property is not affected by how title to the property is held; for example, a house in the name of one spouse will be considered to be marital property (unless it was acquired before the marriage or through inheritance, etc.).

In a divorce the judge gives each spouse his or her non-marital property. Marital property is then divided between the spouses in a way that the judge believes to be fair, taking into account a number of factors, including:

- the contribution of each spouse to acquisition of the property, including the contribution of a spouse as a homemaker;
- the length of the marriage;
- the financial need of each spouse after the divorce, including the need of the spouse who will have custody of the children to live in the family home;
- any pre-marriage (or "antenuptial") agreement of the spouses that provided for division of marital property;

- the financial needs associated with having custody of the children; and
- the opportunities of each spouse to earn money and acquire property in the future.

The judge has the authority to order the sale of marital property if he or she believes that dividing the proceeds of such a sale is the fairest way to handle the particular property.

### **Under what conditions will one spouse receive alimony from the other?**

A husband or wife will receive alimony (called "maintenance" under Illinois law) from his or her spouse only if the divorce judge decides that the person seeking maintenance does not have enough money or other property to take care of himself or herself and is not able to have a job that will provide enough money. The inability of the spouse seeking maintenance to have such a job could be based on a number of factors, such as the spouse's need to stay at home to take care of the couple's children, the spouse's lack of training or education, or the spouse's physical or mental health.

A judge can order maintenance to be paid for a limited amount of time, or for an indefinite period. Maintenance sometimes is paid as a single, lump sum payment, rather than as regular payments over time. Unless the recipient is unable to go to school or work, maintenance payments usually are "rehabilitative," meaning that the recipient is required to use the money to improve his/her education or employment skills. Certain occurrences will end a spouse's obligation to make maintenance payments, including remarriage of the other spouse or that spouse's cohabitation with another person. Your remarriage will not end your right to receive such payments, however, if you and your former spouse agreed at the time of your divorce that your alimony would continue even after you remarried.

### **What is child support and who has to pay it?**

Child support is money paid by a parent who does not have custody of a child for the needs of the child. Child support generally is paid to

the parent who has custody of the child, and it is that parent's responsibility to use the money for the benefit of the child.

Illinois divorce courts use the following guidelines in setting the amount of child support to be paid:

| <b>Number of Children</b> | <b>Percent of Net Income<br/>of the Parent Paying Support</b> |
|---------------------------|---|
| 1                         | 20%   |
| 2                         | 28%   |
| 3                         | 32%   |
| 4                         | 40%   |
| 5                         | 45%   |
| 6 or more                 | 50%   |

For the purposes of child support, "net income" means all income minus income taxes, social security taxes, mandatory retirement contributions, union dues, health insurance premiums, support and maintenance obligations from earlier marriages, certain business expenses, and expenditures made for the benefit of the child and other parent. An Illinois divorce judge may use numbers different than those set forth above only if he or she believes that the special circumstances of a case require a different formula. Such special circumstances could include, for example, the financial resources of the parent who has custody, the physical or emotional condition of the child, or the child's educational needs.

Child support generally ends when the child reaches the age of 18. However, a parent's obligation to pay child support may continue for a longer time if the child is mentally or physically disabled or if the child desires to continue his or her education and the parent is able to pay for it.

**Can the amount of maintenance and child support be changed over time?**

Yes. Either the spouse receiving or the spouse paying maintenance or child support can ask the divorce court to increase or reduce the amount. The judge will do so only when he or she believes that the

financial or other circumstances of the parties have changed substantially enough to justify a different amount.

**What happens if a spouse does not pay maintenance or child support on time, or does not pay it at all?**

Failure to pay maintenance or child support is a violation of a court order, and a person who violates a court order may be fined or jailed. In addition, a spouse who fails to obey an order to pay maintenance or child support might have to pay the fees of the attorney used by the other spouse to bring the matter in front of the judge.

Also, if a spouse does not pay maintenance or child support, the spouse's employer can be ordered to withhold the amount owed and pay it to the person who is owed the money.

In fact, in order to prevent nonpayment situations from occurring, nowadays Illinois divorce orders often require that child support obligations be withheld from the paying spouse's paycheck from the start. In addition, a court can order that refunds of federal and state taxes be intercepted and used to satisfy back child support obligations.

Families who are receiving public aid in Cook County can receive the assistance of the State's Attorney in collecting child support. Working with the court, the State's Attorney will enforce the child support obligations of spouses whose families are receiving public aid.

**Can visitation be denied to a parent who has not paid child support?**

No. Even if a parent has not paid the child support that he or she owes, the other parent may not deny visitation. Likewise, if a parent has not been permitted visitation he or she may not use this as an excuse to stop paying child support.

The way to obtain visitation or unpaid child support is to go into court and ask the judge to grant an order that fixes the situation and properly penalizes the person who has caused the problem.

## **DOMESTIC VIOLENCE**

### **What is "domestic violence?"**

Under the Illinois Domestic Violence Act, domestic violence includes physical abuse of one family member by another and threats to a family or household member and other kinds of harassment or intimidation. The law that deals with domestic violence broadly defines the term "family" to include spouses, parents, step-parents, children, persons who live together, and people in a dating relationship or formerly in a dating relationship.

### **What is an Order of Protection?**

The Illinois Domestic Violence act creates an Order of Protection as a legal remedy. An Order of Protection is a court order signed by a judge, designed to help protect victims of domestic violence. The Order will require the abusive household or family member to do or not to do certain harmful things. It may forbid further abuse, order the abuser to stay away from the shared home for a period of time, award temporary child custody, prohibit child abduction, require counseling for the abuser, etc. The police will enforce a court order, and a person who violates an order may be fined or jailed by the court.

### **How does someone get an Order of Protection?**

An Order of Protection is available in both civil and criminal court. In criminal court, the victim can get an emergency Order of Protection along with filing in criminal charge. To maintain the Order of Protection, the victim must follow through with the criminal case. The victim can file a criminal complaint that charges the abuser with assault or battery if the domestic violence included striking of the victim or threat of physical violence. To file a criminal complaint in Cook County, call the police and get a police report or records division number. The police should instruct you how to proceed; however, if you have any questions, call the Domestic Violence Court Advocacy Project at (312) 341-2883.

You do not need a private lawyer in criminal court; the State's Attorney's Office will prosecute the charges for you.

In civil court, an order can be obtained through an independent proceeding. If you want and need legal protection from an abuser, but do not wish to press criminal charges, you can request an Order of Protection in civil court. An Order of Protection in conjunction with other proceedings, such as a divorce proceeding. In many cases, however, to file for an order in civil court you will need to consult a private attorney.

### **How do I find a lawyer?**

If you are receiving public aid or have very little money, you may be eligible for free legal assistance. If you do not qualify for free legal assistance, you'll need to find a private lawyer. When searching for your own lawyer, it is advisable to ask a lot of questions about services and fees. There are many lawyers to choose from. Find one you trust and respect.

### **What do I do after I have obtained an Order of Protection?**

If the judge in either criminal or civil court grants you an Order of Protection, make several copies and keep one with you at all times. Violations of the Order of Protection can result in arrest. If the abuser violates the terms of the order, call the police. Explain to them that you have an Order of Protection, show it to them and, if proof exists that the order has been violated, the abuser can be arrested. For example, if your order contained the remedy of exclusive possession (an order requiring the abuser to vacate and stay away from the shared home for a period of time) and the abuser re-enters the premises, the abuser has committed a crime and can be arrested.

### **Can a domestic violence victim sue the offending person to receive payment for the victim's injuries?**

Yes. There are no restrictions in Illinois law that would prevent one spouse or family member from filing a lawsuit against the other spouse or another family member to recover for injuries caused by domestic violence.

### **Are there places I can go to be safe?**

If your physical safety is in immediate danger, call 911. If you are looking for a safe place, there are many places you can go if you are afraid to remain in your home. Information about Cook County area domestic violence shelters is available by calling Friends at (800) 603-HELP [(800) 603-4357], which will provide you with immediate support and referrals. Some other crisis lines of Chicago area domestic violence programs and shelters are:

|   |  |   |
|---|--|---|
| Mujeres Latinas En Accion<br>24-hr: (312) 738-5358<br>M-F: (312) 226-1544                               | Chicago Abused Women Coalition<br>24-hr: (773) 278-4566  | Crisis Line<br>24-hr:<br>(773) 762-6611                                 |
| Sara's Inn<br>counseling; referrals to domestic violence and homeless shelters<br>24-hr: (708) 386-4225 | Women's Counseling Center<br>Uptown Hull House<br>24-hr & toll free: (877) 863-6338<br>M-F: (773) 561-3500 | Constance Morris House<br>shelter & counseling<br>24-hr: (708) 485-5254 |
| Shalva<br>24-hr: (773) 583-HOPE<br>(773) 583-4673   | Metropolitan Family Services Family Violence Project<br>M-F: (773) 884-2235                                |   |
| On Our Own, Inc.<br>Answering service<br>(312) 435-1007   | Heartland Women's Program<br>Answering service<br>(773) 847-4417   |   |

### **Can an abused person take his or her children to a shelter?**

Yes, unless a court has given legal custody to the abuser. However, if you wish to leave the state, you probably should see a private lawyer first. Leaving the state could harm your chances of getting legal custody of your children.

**If an abused person has to leave home without his or her children, could he or she lose custody?**

Not necessarily. The fact that you had to flee for your safety does not mean that you don't care about your children. See a lawyer immediately if this is the case. Be sure to stay in contact with them and try to remove them from the situation as soon as legally possible with the help of a court order.

If you believe your children are not safe in the home, you should call 911 or 1-800-25-ABUSE and report the situation. You will need to provide some specifics, including how the children are at risk and where the children may be found.

## **EMPLOYMENT**

### **What are the types of employment?**

There are two basic types of employment relationships -- those that are based on a contract and those that are not.

Most employment is not based on a contract. Where the relationship between the employee and his or her employer is not based on a contract, the employee is called an "at-will" employee.

Employment relationships based on a contract generally fall into one of three categories: (1) a union agreement, (2) a written agreement between the employee and his or her employer (this usually is found when the employee is a high-level executive or is paid on a commission basis), and (3) promises and statements made by the employer to its employees that are considered to amount to a contract of employment. Where an employment contract exists, it establishes the rights of the employee and employer.

### **What is "at-will" employment?**

In at-will employment both the employee and the employer are free to terminate the employment relationship at any time, with or without a reason and with or without notice. The employee can leave the job at any time, and the employer can terminate its employees at any time. Most employment relationships are at-will.

### **Are there any limits on an employer's right to terminate its at-will employees?**

Yes. A number of laws limit an employer's freedom to terminate its at-will workers. For example, federal and state anti-discrimination laws prohibit an employer from firing an employee because of the employee's race, sex, age, religion, national origin, disability, and other protected characteristics. Also, at-will employees may not be fired in retaliation for reporting unlawful conduct by their employer, for refusing to engage in unlawful conduct or for exercising their legal rights (such as filing a workers' compensation claim).

Even in situations where the employer is free to terminate an employee, there are limits on the ways in which the employer may do

so. For example, an employer may not make false and malicious statements about employees to future employers, credit agencies or others who ask about the reason for the employee's discharge.

There also may be situations where an at-will employee has certain contract rights against his or her employer. For instance, if the employer has adopted a manual that sets forth disciplinary procedures, this manual may, under certain very limited circumstances, be deemed to be an implied contract between the employer and employee that the employee will not be discharged for disciplinary reasons unless he or she violates the manual. In this example, the employee is no longer an at-will employee with regard to discipline, though he or she may still be treated as an at-will employee if the termination is not for disciplinary reasons.

### **What protections do written employment contracts provide?**

Generally, employment contracts between employer and employee lay out the circumstances under which the employee may be terminated or otherwise disciplined. For example, most union contracts state that an employer may fire a worker only if the worker has failed to perform his or her work satisfactorily or has violated disciplinary rules. In addition, union contracts establish a grievance procedure in order to provide each employee with the chance to challenge the employer's action.

In non-union situations, employment contracts are used to provide specific protections for both the employer and employee. For instance, a senior executive might want assurances of continued compensation if a merger between his or her employer and another company results in the elimination of his or her position. The employer, meanwhile, may want a promise from its executives that they will not work for a competitor if they leave the employer.

### **Under what circumstances will an unwritten employment contract be found to exist?**

If an employer sets forth policies and procedures, such as disciplinary procedures, in a manual or handbook, the employer may, under limited circumstances, be obligated to act in accordance with these procedures. Because employees are entitled to base their conduct on the written procedures, an implied contract is considered to exist

between the employer and its employees. This contractual relationship prevents an employer from taking action against an employee who has not violated the employer's procedures. An employer may, however, include certain disclaimers in its handbook or manual to inform employees that the policies in the handbook or manual do not constitute an employment contract and that the employee's employment is at-will.

### **What is employment discrimination?**

Employment discrimination occurs when an employer's treatment of an employee or applicant is based on the individual's race, national origin, sex, age, religion, disability, or another protected characteristic under local, state and/or federal law. Employment discrimination can occur where a qualified applicant has not been hired or when an employee has been fired, has not been promoted, or has suffered some other materially adverse employment action.

However, an employer does not have to hire a new employee or keep an existing employee on the payroll just because the person happens to be of a certain race, gender, and/or age, for example. An employer is free to hire or promote the most qualified individual, so long as all individuals are evaluated fairly and equally. Likewise, it is not discriminatory for an employer to refuse to hire a disabled person if the job requires activities that the disabled applicant is unable to perform with or without reasonable accommodations.

While employers are not obligated to hire or promote unqualified individuals, they cannot use the excuse of a person's lack of qualifications to accomplish a discriminatory objective. A company cannot demand job qualifications that are not related to a person's ability to actually do the job, if this has the result of discriminating against certain groups of people. For example, an employer cannot require that all employees be a certain height, unless the height is required to do the job, because establishing a height requirement may discriminate against women. Another example of discrimination would occur where an employer refused to hire physically disabled workers because of a requirement that applicants for a job be able to lift heavy objects, yet the job itself actually did not involve any such lifting. In short, an employer's insistence on specific job qualifications cannot be a sham designed to exclude certain groups of protected individuals.

**What rights are available to a person who believes he or she has been the victim of employment discrimination?**

First, an employee or applicant who believes he or she has been discriminated against should inform the employer. Many employers have internal procedures for investigating such claims in order to make sure that all departments within the company are following the law. All employers should be given the opportunity to remedy the problem, if one exists, before the employee or applicant begins the legal process for investigating job discrimination claims.

If the employer does not provide satisfaction, a victim of discrimination can bring legal action under the federal, state and/or local laws that apply. For most employment discrimination claims, the employee or applicant is required to begin by filing a complaint with either the Federal Equal Employment Opportunity Commission or the Illinois Department of Human Rights. The locations and telephone numbers of these organizations are set forth at the end of this handbook.

**What is sexual harassment?**

Sexual harassment occurs when an employee, either male or female, is subjected to sexual advances or requests for sexual favors by a supervisor, and the employee's continued employment or performance rating depends on his or her response to the supervisor's sexual conduct. Sexual harassment also occurs when sexual conduct by an employee's co-workers interferes with the employee's performance of his or her job.

Both federal and state law prohibit sexual harassment on the job. Since an employer may not be aware of the conduct of its supervisors or a victim's co-workers, the first step of a victim of sexual harassment should be to inform his or her employer. The employee may want to file a written complaint with the employer so that his or her personnel file includes a record of the problem. Such a record might be helpful to explain a bad job review prepared by the supervisor who the employee is complaining about.

If the employer fails to take the action sought by the employee, the employee may bring legal action under federal or state law. As with

employment discrimination, such legal action begins with the filing of a claim with either the Federal Equal Employment Opportunity Commission or the Illinois Department of Human Rights. In addition to the legal assistance provided under federal and state sexual harassment laws, a victim of such conduct also can seek relief under other laws. For example, an employee can file a criminal charge of assault, battery or sexual assault against the person who committed the sexual harassment. Also, an employee who suffers physical or emotional harm from sexual harassment on the job or who quits a job because of such harassment may be eligible for workers' compensation and unemployment insurance benefits.

**Are there other types of illegal harassment?**

In addition to harassment on the basis of one's sex, employees can be harassed on the basis of other protected characteristics, such as their race or age. Behavior that unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment and that is directed towards the employee because of their protected characteristic is unlawful harassment.

## **GUARDIANSHIP**

### **What is a guardian?**

A guardian is a person or institution that is appointed by a judge to be responsible for either a child or a disabled adult. The person being cared for is called a "ward."

### **When is a guardianship of a minor appropriate?**

A guardian is appointed for a minor (a child under the age of 18) when the child needs to be cared for or has financial matters that require supervision. Although a guardian rarely is necessary when one or both of a child's parents are alive and taking care of the child, a relative or other person can seek to become the child's guardian if the potential guardian believes that the parents are not taking proper care of their child. A more typical situation occurs where a child's parents have died or moved away and the child's grandparents or other relatives desire the legal authority to assume responsibility for the child's affairs. However, a judge will not approve a guardianship, other than the stand-by guardianship described below, where a child is continuing to live with his or her natural parent.

### **When is a guardianship of an adult appropriate?**

A guardian is appointed for a disabled adult where the guardianship is necessary to protect the disabled person from neglect, exploitation or abuse, to help the person develop self-reliance and independence, or to ensure proper medical treatment or hospitalization. Guardianship of an adult may be limited in a way that reflects the person's capabilities. Guardianship of an adult who is only partially disabled is called a "limited guardianship."

### **How is a guardianship different from adoption?**

As mentioned above, there are times when relatives or other concerned individuals may want to establish a guardianship even when a child's parents are alive. The difference between guardianship and adoption of the child is that adoption irrevocably terminates parental rights. This means that once a child is adopted, under the law the adopting person becomes the child's legal parent and the

biological parents no longer have any legal rights over the child. In contrast, a guardianship can be ended when circumstances change, permitting the parents to reassume responsibility for their child. Also, biological parents retain a few rights over their children even when someone is appointed guardian, for example, the right to visit the child.

Because guardianship can be established more quickly than an adoption, guardianship also can be used as a temporary step while the guardian proceeds with the legal steps required to adopt the child.

### **What is a "disability" for the purposes of guardianship?**

Under Illinois law, a "disabled person" means a person 18 years or older who:

- because of mental deterioration or physical incapacity is not fully able to manage himself/herself or his/her property, or
- is mentally ill or developmentally disabled and as a result is not fully able to manage himself/herself or his/her property, or
- because of gambling or excessive use of alcohol or drugs is wasting his/her property and exposing his/her family to economic harm.

A "developmental disability" is a disability that begins before the age of 18, is expected to continue indefinitely, amounts to a substantial handicap, and is caused by mental retardation, cerebral palsy, epilepsy, autism or any condition that causes impairment similar to mental retardation and requires services like those needed by a mentally retarded person.

The definition of "disability" under Illinois law thus includes both younger people with long-term and serious illnesses and older adults who have become increasingly disabled as they have aged.

### **Who can be a guardian?**

In order to be appointed a guardian a person must be at least 18 years old, a resident of the United States, and of sound mind. In addition, a guardian must not have been convicted of a felony or adjudged a

disabled person. Where the guardianship is of a disabled person, the person seeking to be appointed guardian must also satisfy the judge that he or she is capable of providing an active and suitable program of guardianship that reflects the nature of the disability. If the individual seeking to become a guardian wants to assume responsibility for the ward's financial affairs as well as his or her personal activities, the guardian must also be a resident of the state of Illinois. The court will not appoint as a guardian anyone the court has determined has either caused or substantially contributed to the child at issue becoming a neglected or abused minor.

In certain circumstances a public agency or not-for-profit corporation may be appointed a guardian. In the case of a disabled person, however, the guardian may not be an agency that is providing the person with residential services.

Where the ward is a child over 14 years old, the child has the right to nominate his or her guardian. However, if the child does not nominate anyone, the child resides outside the state of Illinois, or if the judge does not approve of the person nominated, a guardian will be appointed by the court.

### **What are the responsibilities of a guardian?**

The guardian of a minor is responsible for the child's overall care and education. If the guardian also has been given responsibility for the minor's financial affairs he or she must use the child's assets and income for the benefit of the child. All decisions must be made in the best interests of the ward.

A guardian of a disabled person has similar obligations. The guardian must provide for the support, comfort, care, and education of the ward, and is responsible for obtaining appropriate professional services. In addition, the guardian has a duty to help the disabled person develop self-reliance and independence. If the guardian has been given responsibility for the ward's financial affairs, because of the disabled person's inability to manage his or her financial affairs, the guardian must manage the ward's assets carefully and use them for the support and education of the ward. The guardian must get approval from the court for any change in the Ward's residence, complete an annual report and submit it to the court, advise the court

of the Ward's death, and advise the court if the Guardian is unwilling or unable to act.

Guardians of the financial affairs of minors and disabled persons must post surety bonds to guarantee protection of the ward's assets. Also, an initial inventory of the ward's assets and periodic reports on the condition of the assets may be required.

### **What are the different types of guardianship?**

There are several types of guardianship. The first is a guardianship of the person. A person appointed guardian of the person has the custody of the minor and is responsible to properly feed, house and clothe the minor. This type of guardianship is used when the minor owns no property and has no income.

A guardian of the estate has the responsibility of the care, management and investment of the property owned by the minor. This guardianship is usually necessary if the minor owns property such as bank accounts and/or insurance proceeds (exceeding the value of \$5,000.00) or real estate (exceeding the value of \$2,500.00).

A stand-by guardianship permits a parent to designate a person to become guardian of their child upon occurrence of a certain condition (e.g. incapacity or death). This means that the stand-by has immediate power, upon the parent's incapacity, to act, but only for 60 days. The stand-by guardian may then petition the court to be appointed a regular guardian when the parent can no longer take care of the minor.

The final type of guardianship is a short-term guardianship. It allows a parent to appoint, for a period of 60 days or less, a person to become guardian of their child (person only). This procedure gives parents a mechanism to convey to another adult, the necessary authority to care for a minor during periods of parental absence or incapacity.

### **What if Department of Children and Family Services (DCFS) currently has an open file or is investigating the minor's care?**

Where DCFS is involved or has an open file on an "abused" or "neglected" child, the judge will not ordinarily grant guardianship. These children are then processed under the jurisdiction of the Juvenile Court by a DCFS caseworker.

Juvenile Court jurisdiction will pre-empt the jurisdiction of all other courts in issues pertaining to a minor who is DCFS involved.

**How does a person file a guardianship case?**

The person filing for guardianship is the petitioner. In Cook County, you may use forms available from the clerk in room 1202 in the Daley Center. Each child is considered a separate case, so, separate documents must be filed on each child. If you need assistance, please visit the Guardianship Assistance Desk for Minors of Cook County, located at 69 West Washington, Suite 1020 Chicago, IL 60602. Their telephone number is (312) 603-0135. Please call to make an appointment and receive an information packet.

As of February, 2004, the filing fee is \$71.00 per guardianship of the person case. Occasionally, publication service will be required for one/both of the parent(s), in which case you will need to bring \$170.00 for publication in the Chicago Daily Law Bulletin. The Chicago Daily Law Bulletin help desk is located in Room 1202 of the Daley Center.

Certain people may be eligible to not have to pay these fees if the household income falls beneath certain guidelines.

Once the case has been filed in Room 1202, you will need to go to the court room assigned and tell the clerk the court date on which you would like the case to be heard. (NOTE: pick a date at least 30 days away if you have to serve the parent by mail; 6 weeks away if you must serve by publication.)

Once the judge has heard your case and has signed the order, ask the court to stamp all the copies and then take the order and the copies to Room 1202 to get a certified copy of the order. This costs \$4.00. Be sure to keep this copy in a safe place because this is your proof of guardianship until the Letters of Office, legal proof of the guardianship, are mailed to you (in about one week).

### **Can a disabled person challenge an effort to have a guardian appointed?**

Yes. Illinois law gives disabled persons substantial rights in connection with their ability to contest appointment of a guardian against their will. If the disabled person cannot afford an attorney, he or she will have one appointed. The disabled person is entitled to appear at the guardianship proceedings in court, and may demand a complete trial by jury to determine whether the disability justifies the type of guardianship being sought. In addition, the person is entitled to have the hearing be closed to the public, to avoid potential embarrassment from the testimony about his or her ability to care for himself or herself.

### **How is a guardianship ended?**

Guardianship of a minor automatically ends when the child turns 18. Guardianship of a disabled person ends upon a judge's determination that the person is able to take care of himself or herself. If the judge does not believe the guardianship should be entirely terminated, he or she may modify the guardianship to reflect the changed circumstances of the disability.

### **Can a guardian withdraw or be replaced?**

Yes. A guardian usually can voluntarily withdraw from his or her guardianship of a minor or disabled person, but withdrawal will be much more difficult if a suitable substitute is not willing to assume the guardianship. Although withdrawal from guardianship will be strongly discouraged if a substitute guardian does not exist, if absolutely necessary the judge will make the minor or disabled person a ward of the state.

A guardianship may be terminated against the guardian's will if an interested party or the state persuades the judge that the guardian has failed to meet his or her obligations to the ward, either through inadequate personal care or through financial mismanagement.

## **JURY DUTY**

### **For State Courts:**

#### **Who can serve on a jury?**

To be eligible for jury duty:

- you must be a United States citizen;
- you must live in the county where you are expected to serve;
- you must be at least 18 years old; and
- you must be able to understand English.

#### **How are people selected for jury duty?**

The list of potential jurors is made up from lists of Cook County residents from the Illinois Secretary of State, the Cook County Board of Elections and the Chicago Board of Elections. The lists are then combined into one master list and names are randomly selected.

For purposes of jury duty, Cook County is divided into three parts -- the entire county, the northern half of the county, and the southern of the county. Prospective jurors are drawn by zip code and generally summoned to jury service at a courthouse within the part of the county from which their names were drawn.

#### **If I am called for jury duty, does this mean I will be on a jury?**

Not necessarily. The pool of people called for jury duty usually is larger than the number of people who will be needed to actually participate as jurors at trials. This is because many lawsuits are settled at the last minute, eliminating the need for trials, and because judges are permitted to excuse potential jurors who appear unlikely to be completely fair and impartial.

#### **How long does jury duty last?**

This depends on the county where you live. In Cook County, the rule is "one day or one trial." This means that if you are not selected to serve on a jury and hear a case, you are excused after a single day. Of course, if you are selected to serve on a jury, your jury duty continues

for the entire trial. The average trial is two to three days, but the actual trial length will vary based on the facts of the case.

**How often can I be selected for jury duty?**

Once you complete jury service, you should not be called to serve again for a period of twelve (12) months. If you are summoned again within the twelve (12) month period, call the Office of Jury Administration at (312) 603-JURY to be excused. Save your check receipt as proof of your previous jury service.

**Will I be paid for jury duty?**

At the present time, jurors are paid \$17.20 per day for serving on a jury. If you report for jury duty but are not chosen to sit on a jury, you will be paid for the day on which you reported for duty.

**Can I be fired for missing work while I am on jury duty?**

No. Your employer may not fire you for taking time off for jury duty so long as you tell your employer ahead of time that you have been called for jury duty. However, your employer is not required to pay you for time taken off for jury duty.

**Can I be excused from jury duty?**

You can be excused from jury duty if you show that jury service would impose substantial personal hardship. This hardship might be in connection with your job, business affairs, physical health, family situation, or other personal reasons. You also may be excused if you have served as a juror on a trial within the previous year or if you are a party to a lawsuit that is awaiting trial.

If you need to be excused from jury duty at the time you have been called to serve, you should contact the clerk's office of the court that has called you and ask for the procedures to be followed. You can also contact the Office of Jury Administration at (312) 603-JURY.

Remember that the jury system is the key to justice in our courts, so the court system discourages people from avoiding their duty to serve as jurors. Although you may be excused from jury service because of

personal hardship on one occasion, your name will remain on the potential juror list for future service.

**What happens if I fail to appear when I am called for jury duty?**

If you fail to appear, you may be found in contempt of court and fined up to \$100. It is in your best interest and in the best interest of the jury system to appear.

**For Federal Courts:**

**How is a federal jury selected?**

For the federal court in Chicago, all juror names are drawn at random by computer from the voter registration lists covering Lake, Cook, DuPage, Will, Kane, Kendall, Grundy, and LaSalle counties.

**Where do I go if I am chosen to be a federal juror?**

The courthouse for the United States District Court in Chicago, which is located at 219 S. Dearborn Street, Chicago, Illinois 60604, Jury Assembly Room No. 250.

**How long will I have to serve?**

The service period is about two weeks. The schedule may vary due to holidays. If you are selected for a trial that exceeds the service period, you will be required to serve until the completion of the trial. In most instances you will serve 5 to 7 days.

**Will I be paid for my service?**

For each day you serve on the jury, you will be paid \$40.00. (NOTE: Employees of the federal government, except Postal Service and FAA employees, are not paid juror fees but will be paid mileage.) In addition, each juror will be reimbursed \$.375 per mile for travel from home to the courthouse. Mileage is determined by zip code. No matter what mode of transportation is selected by the juror, this fee will be automatically paid. (NOTE: Parking is not reimbursed.)

Normally, the checks for payment will be mailed within three to five business days after the end of the term. Each check will contain both the juror and mileage fee.

**What if I cannot serve when I receive my summons?**

Occasionally circumstances exist when you cannot serve. If you believe serving on jury duty will create an extreme hardship or you otherwise believe you are not able to serve, it will be necessary for you to write a letter immediately and send it in with the required Information Form. Include the following information in your letter: (a) the nature of the hardship; (b) whether the request is for a permanent or a temporary excuse; and, (c) the earliest date you will be able to serve if excused. NOTE that postponements are limited to a maximum of six (6) months. If the excuse is for medical reasons, a note from your doctor must be included. Send the request to the courthouse at the above-mentioned address before the date on your summons. You should contact the Automated Jury Information System at (800) 572-4210 to verify that your request has been granted.

**What if I intended to serve but an emergency or illness made it impossible?**

If you are unable to come to the courthouse because of an emergency or illness, notify the jury department at the number listed below as soon as possible. When you are serving on a jury and unable to attend, contact the emergency contact number you will be provided or the Judge or the clerk. If this is not possible, call the jury department. Failure to appear as scheduled may result in a bench warrant.

**What if I have further questions?**

If you have questions, the jury department for the federal court in Chicago can be reached at (312) 435-5684 between the hours of 8:30 am and 4:30 pm on business days.

## **LANDLORD AND TENANT**

### **Does a lease have to be in writing?**

No. A lease, which is the name of the agreement where a tenant rents space from a landlord, can be either verbal or written. Even though the agreement between the landlord and tenant does not have to be in writing, however, it is better to put it in writing. Both the landlord and the tenant have substantial money at stake in a lease relationship, and the lease usually involves the tenant's residence, so both parties should have the protection provided by a written agreement.

### **Are there any limitations on what can be included in a written lease?**

Yes. The Chicago Landlord and Tenant Ordinance, recognizing that landlords usually have the advantage in negotiating written leases with tenants, prohibits certain types of provisions in leases. For example, leases may not include clauses that:

- take away the tenant's rights under the Chicago Landlord and Tenant Ordinance;
- allow either the landlord or the tenant to terminate the lease agreement within a shorter period than the other party; and
- require the tenant to pay a late charge more than \$10 per month for the first \$500 in monthly rent for the late payment of rent.

If a landlord, after a written request from the tenant, refuses to remove from a rental agreement provisions that are prohibited by the Chicago ordinance, the tenant may terminate the lease and recover from the landlord two months' rent and reasonable attorneys' fees.

### **What is the Chicago Landlord and Tenant Ordinance?**

This ordinance regulates the rental of residential units in the city of Chicago. Landlords are required to attach a summary of the Ordinance to each written lease to make tenants aware of the law. If a tenant and landlord have a verbal agreement, the landlord is still required to provide a summary of the ordinance to the tenant.

**Does the Chicago Landlord and Tenant Ordinance apply to every rental unit?**

No. Although the law covers most rental units in the city of Chicago, it does not cover all rental situations. For example, small buildings (less than six units) in which the landlord lives are not covered by the law, nor are most rooming and boarding houses.

**Does a lease require the payment of a security deposit?**

A landlord has the right to require a tenant to pay a security deposit before moving in. A security deposit is a sum of money that is designed to protect the landlord in case the tenant damages the property. A security deposit may also be applied to past due rent after a tenant moves out. A security deposit is typically equal to one month's rent.

The Chicago Landlord and Tenant Ordinance establishes a number of requirements in connection with security deposits:

- The landlord must give the tenant a receipt for the security deposit to show that the tenant has paid the amount;
- The landlord must place the security deposit in an interest-bearing account in a bank or other financial institution, and may not mix the security deposit with the landlord's other assets; and
- If a security deposit is held by the landlord for more than six months, the landlord must pay his or her tenant interest on the amount. Within 30 days following the end of each 12-month rental period, or within 45 days after the tenant moves out, the landlord must pay the tenant interest on the security deposit at a rate determined by the City of Chicago Comptroller. This payment may be either in cash or as a credit against rent. However, the landlord may deduct from the interest any unpaid rent that has not lawfully been withheld.

The security deposit must be returned to the tenant within 45 days after the tenant leaves the rental unit. The landlord may deduct from the security deposit all unpaid rent and a reasonable amount necessary to repair damage caused by the tenant. If the landlord deducts money to repair damage, however, he or she must provide the tenant with a detailed list of the repair costs and the related receipts. Reasonable wear and tear

that occurred during the tenancy is not "damage," and therefore does not provide a landlord with a basis for not returning the security deposit.

**What happens if the landlord does not meet these security deposit requirements?**

A landlord who violates the security deposit provisions of the Chicago Landlord and Tenant Ordinance must pay the tenant an amount equal to two times the security deposit plus interest. The landlord also will be required to pay the tenant's court costs and attorneys' fees in taking the landlord to court to obtain the security deposit.

**Does a rental unit have to be in good condition when the tenant moves in?**

Yes. In the City of Chicago, the unit must meet housing code requirements. The landlord is required to disclose to the tenant before the tenant moves into the property: (a) all code violations in the past 12 months, (b) all existing legal proceedings involving the condition of the unit, and (c) any notice of intent by either the city or a utility company to cut off water, gas, electricity or other utility service.

**What are the landlord's obligations regarding the condition of the rental unit after the tenant has moved in?**

A landlord has to maintain the rental unit and the common areas of the building (the hallways, stair, elevators, etc.) are in proper condition. Generally, this means that the unit and the building as a whole must meet the Chicago building and health codes. For example, the landlord must:

- make sure the elevators operate properly;
- make sure the plumbing works and there is hot and cold running water;
- make sure the walls are in good condition;
- provide smoke detectors and other fire warning and prevention devices required by the City of Chicago;
- prevent the accumulation of garbage; and

- provide adequate heat from September 15<sup>th</sup> to June 1<sup>st</sup> of a minimum temperature of 68 degrees during the day and 63 degrees at night.

These are only examples -- the Chicago Landlord and Tenant Ordinance includes a much larger and more specific list of requirements that must be met by landlords. The lease agreement between the landlord and the tenant may also require the landlord to fix other problems as well.

In addition, a landlord is required to inform his or her tenants of any utility termination notices that are received during the tenancy.

**If a landlord does not keep a building in proper condition, what can a tenant do?**

A tenant has two choices if a landlord fails to meet the requirements of the Landlord and Tenant Ordinance or fails to meet his or her obligations under the lease. First, the tenant may give the landlord written notice of the problems, and if the landlord has not fixed the problems within 30 days of receiving the notice the tenant may terminate the lease. The tenant is entitled to receive legal relief for the landlord's failure to maintain the unit or building in proper condition. This relief can be in the form of a court order requiring the landlord to perform the necessary work or an order awarding the tenant money from the landlord as compensation for having to live in a building that was not in proper condition.

Second, if the tenant does not want to move out, he or she has the choice of withholding a portion of the rent until the landlord makes the necessary repairs. The tenant first must inform his or her landlord in writing that the tenant will withhold some of the rent if repairs are not made, and the landlord then has 14 days in which to make the repairs. If the landlord does not do so, the tenant may then withhold a portion of the rent that reasonably reflects the reduced value of the unit until the repairs are made.

In addition, if the landlord fails to provide heat, running water, hot water, electricity, gas or plumbing, the tenant has the remedy of ordering and paying for the needed service and then deducting the cost from the rent.

**What if the problems with the rental unit are not really that serious?**

If a problem can be fixed for \$200 or 1/4 of the monthly rent, whichever is more, the tenant does not have the option of terminating the lease agreement. However, the tenant does have the right to make the needed repairs at the landlord's expense if the landlord does not do so. If the landlord fails to make the repairs within 14 days of written notice of the problem from the tenant, the tenant should order and pay for the repair work and then deduct from his or her rent the amount of the work.

**Do landlords have to put locks on apartments?**

Yes. In the City of Chicago landlords are required by ordinance to place deadbolt locks on front and rear apartment doors, peepholes on apartment front doors, and locks on certain windows. A tenant is permitted to install these security devices if the landlord fails to do so, and may then deduct the cost of the devices (up to \$200) from the next month's rent.

Note that a landlord is not permitted to change the locks with the intention of keeping a lawful tenant from entering the apartment.

**What are the tenant's duties in connection with a rental unit?**

In general, a tenant must conduct himself or herself reasonably, with regard to both taking care of the rental unit and being considerate of the neighbors. For example, a tenant must not permit garbage to accumulate in the rental unit, misuse the plumbing or deface the property. Also, a tenant may not disturb the neighbors' use of their units, such as by making excessive noise or threatening physical harm.

**Can a landlord enter a tenant's unit at any time?**

Except in the case of emergency, the Chicago Landlord and Tenant Ordinance requires a landlord to provide at least two days notice before entering a unit, and the access must occur in a reasonable way. Generally, a landlord's entry into a rental unit should take place during the daytime, unless the tenant requests otherwise. The tenant may not unreasonably prevent the landlord from entering the unit to undertake the normal activities associated with leasing property, such as repairs, inspection of the unit to make sure the tenant is taking care of it, and display of the unit to prospective tenants. If an emergency occurs, the landlord has the right to enter a unit immediately.

A landlord may not abuse the right of access to a rental unit or use the right of access to harass a tenant. On the other hand, a landlord may terminate a lease if the tenant unreasonably denies the landlord access to the unit.

### **How does a lease end?**

The way in which a lease ends depends on the type of tenancy. If the landlord and tenant have a written lease agreement with a specific termination date, the rental period expires on that date. The landlord is not required to give the tenant prior notice that the lease term is about to end; the lease expires automatically on the termination date.

If the lease agreement does not contain a specific termination date, the landlord is required to notify the tenant ahead of time that the landlord wants to terminate the lease:

- if the tenancy is week-to-week, the landlord must give the tenant at least seven days written notice before the landlord can terminate the rental;
- if the tenancy is month-to-month, the landlord must give the tenant at least 30 days written notice before the lease terminates; and
- if the tenancy is year-to-year, a 60-day written notice is required.

### **What happens when a tenant moves out before the end of the lease?**

Until the landlord is unable to find another tenant, or until the tenant subleases the unit to someone else, the tenant is required to pay rent for the entire rental period, plus the advertising expenses paid by the landlord in trying to find a substitute tenant.

However, the Landlord and Tenant Ordinance requires a landlord to accept a reasonable sublease (a "sublease" means that the tenant finds someone to take over the lease from the tenant, a substitution of one tenant for another) without charging the original tenant a sublease fee. A "reasonable" sublease is one where the new tenant appears to be able to meet the obligations of the lease. If there is no sublease of the unit, the Ordinance requires the landlord to make a good faith effort to lease the unit to a new tenant. If such a new lease occurs, but the landlord is unable to obtain the same rent from the new tenant as was paid by the

tenant that moved out, the first tenant is responsible for the difference between the rent due under the first lease and the rent to be paid under the new lease.

**What happens when two tenants are sharing the rent and one moves, leaving the other behind?**

If more than one tenant signed the lease, such as in the case of roommates, usually the lease places full responsibility on each person that signed if a problem arises. So, if one tenant leaves the unit without paying his or her share of the rent, and the other tenant stays, the remaining tenant will be responsible to the landlord for the entire amount.

**When can a landlord terminate a lease?**

A landlord has legal grounds to terminate a lease in a number of situations:

- the tenant fails to pay rent;
- the tenant breaches his or her other duties as a tenant; for example, by damaging the rental unit or otherwise failing to keep it in good condition; or
- the tenant disturbs other residents.

If a lease is terminated, but the tenant refuses to leave, the landlord may proceed to evict the tenant through legal process.

**Can a tenant prevent being evicted by paying the late rent?**

Yes. The landlord is required to give the tenant a written “5-Day Notice” that tells the tenant the landlord intends to begin eviction proceedings if all rent owed is not paid within five days. If the tenant pays the rent within the five days, the landlord cannot evict the tenant.

Regardless of how late rent is paid, if the landlord accepts it he or she cannot then evict the tenant for failure to pay that rent earlier. However, if the tenant does not pay the entire amount that is owed, the landlord can accept the amount offered and still continue with his or her efforts to end the tenancy.

**If the lease termination is for something other than nonpayment of rent, does the tenant have the right to fix the problem before being evicted?**

Yes. If the reason for the termination of the lease is tenant misconduct other than nonpayment of rent, the landlord must give the tenant a written "10 Day Notice." If the tenant does not fix the problem within the ten days, the landlord may end the lease and, if the tenant does not move out, proceed with eviction.

If the problem is that the tenant is disturbing the neighbors, the landlord must give the tenant a written notice to stop the problem. If the tenant creates another disturbance within 60 days after receiving the landlord's notice, the landlord may terminate the lease on ten days' written notice to the tenant.

**Can the lease eliminate the landlord's obligation to provide these notice periods to the tenant?**

No. If the lease includes a "waiver of notice" provision, the provision will be held invalid under the Chicago Landlord and Tenant Ordinance.

**If the tenant has damaged the rental unit, or if the landlord is unable to rent the unit at the same rate after the tenant has left because of the damage, can the landlord recover money from the tenant?**

Yes. In addition to the right to evict the tenant, the landlord also may be entitled to compensation for losses caused by the tenant's actions, such as unpaid rent and the cost of fixing the rental unit.

**Do these same rules for terminating a tenancy apply to public housing?**

Not necessarily. Government regulations may require different procedures to be followed for the termination of a lease in public housing (including subsidized housing).

**How does a landlord evict a tenant who refuses to leave?**

If a tenant refuses to leave a rental unit after the lease term has expired or after receiving the proper notice from the landlord, the landlord may bring a legal action to evict the tenant. The lawsuit is called "Forcible

Entry and Detainer." If the landlord obtains a judgment against the tenant, and the tenant still refuses to leave, the landlord can have the county sheriff physically evict the tenant from the rental unit.

The landlord cannot receive an eviction judgment against the tenant unless the landlord notifies the tenant of the legal action. This notice permits the tenant to come to court to defend against the landlord's claim if the tenant wants to do so.

The notice of the eviction is called a "summons" and, usually, it must be personally delivered to the tenant or a member of the tenant's household by the sheriff's office. This is called "service" of the summons. If the landlord is suing only to evict the tenant and not for unpaid rent, notice by mail to the tenant at the last known address and posting the notice at the sheriff's office is permitted if the sheriff's office is unable to personally serve the tenant.

The tenant can demand that the eviction action be tried by a jury, rather than just a judge.

By appearing in court, the tenant may raise arguments -- called "defenses" -- against the landlord. For example, if the landlord has violated the Landlord and Tenant Ordinance, breached the lease agreement or discriminated against the tenant because of the tenant's race, sex, religion or national origin, or because the tenant is handicapped, the tenant may be able to keep the landlord from receiving permission to evict the tenant.

**May a landlord evict a tenant without an eviction order from a judge?**

No. A landlord may not take matters into his or her own hands and ignore the law. If a landlord forces a tenant out of a rental unit -- for example by changing the locks, cutting off essential services, removing the tenant's property or threatening the tenant -- the landlord may be fined a substantial amount. In addition to being fined, the landlord will have to pay the tenant compensation in the amount of at least two months' rent, plus the tenant's attorneys' fees.

**If a tenant is evicted or abandons a rental unit and leaves his or her property behind, what can the landlord do with the property?**

Under the Landlord and Tenant Ordinance, the landlord is required to either leave the property in the rental unit or store it for seven days. After that, the landlord may dispose of the property. However, if the landlord reasonably believes that the property is worth so little that the cost of storing the property would be more than its sale value, the landlord may dispose of it immediately.

**If a tenant exercises his or her rights under the lease agreement or under the law, is the landlord permitted to retaliate against the tenant?**

No. A landlord may not take action against a tenant who has exercised his or her lawful rights. The landlord may not terminate the tenancy, increase rent, stop providing services, refuse to renew a lease or take other action based on a tenant's:

- complaining of violations of the Landlord and Tenant Ordinance;
- complaining of a building or health code violation;
- requesting the landlord to make repairs required by the lease agreement or law;
- participating in a tenants' union or community organization; or
- exercising of any other rights provided to the tenant under the law.

## **MARRIAGE**

### **Who can get married in Illinois?**

You can marry in Illinois if you are at least 18 years old. You may be able to marry at age 16 if you have the consent of both parents or your legal guardian, or the approval of a judge. If one of the parents cannot be located, the consenting parent must sign an affidavit stating the name of the absent parent, that he or she cannot be located, and that diligent efforts have been made to locate the parent.

Also, in order to get married in Illinois you must be unmarried. If you are remarrying after a divorce, the divorce must be complete before the subsequent marriage can occur.

Marriages are prohibited between close family members, including adopted or half-brothers and sisters. First cousins can marry if both are over 50 and one of them files a physician's certificate showing that he or she is permanently sterile.

If your marriage would be prohibited in Illinois, you cannot go to another state to marry and then return to Illinois. The marriage will be void under Illinois law.

### **What is common law marriage and is it recognized in Illinois?**

A common law marriage is a marriage in which the man and woman agree to be married and live together without complying with the legal requirements for marriage (such as the marriage license, etc.). Common law marriages are not valid in Illinois.

### **What is the procedure for getting married in Illinois?**

You must fill out an application for a marriage license that includes the following information:

- each spouse's name, sex, occupation, address, social security number, and date and place of birth;
- if either spouse was previously married, the date, place, and court

in which the marriage was dissolved or the date and place of death of the former spouse;

- name and address of the parents or guardian of each spouse; and
- whether the husband and wife are related to each other and, if so, their relationship.

You must have satisfactory proof that the marriage is not prohibited (for example, you must have proof of your age). When these requirements have been met, a marriage license will be issued. The license is effective in the county where it was issued one day after it is issued and it expires 60 days after it becomes effective.

**Are blood or medical tests required before a couple can get married?**

No.

**Is a marriage ceremony required?**

In order for you to have a legal marriage, it must be "solemnized." This means that a person authorized to conduct marriage ceremonies must formally marry you and your spouse. However, you have a wide choice in deciding what type of marriage ceremony you desire.

If you do not desire a religious wedding ceremony, the marriage can be performed by a judge, a retired judge, a county clerk (in Cook County), or certain other public officials who by law are permitted to perform marriages.

Marriage also can be performed according to the requirements of any religious denomination, so long as the person performing the marriage is in good standing in the denomination. Likewise, marriage can be performed under the traditions of an Indian Nation, Tribe or Native Group, so long as the person performing the ceremony is in good standing in the nation, tribe or group.

### **Do you need to be a citizen to get married?**

No. However, if you intend to obtain immigration benefits (such as a visa) as a result of the marriage, you must prove that the marriage was not solely for the purpose of obtaining immigration benefits.

If the U.S. Citizenship and Immigration Services determines that your marriage was entered into solely to obtain immigration benefits, the INS may (1) deny or revoke your or your spouse's visa petition or visa, (2) rescind a grant of permanent residency, or (3) deport the alien spouse and bar him or her from obtaining immigration benefits through a later visa petition. Criminal charges also may be filed against aliens who enter into sham marriages.

### **What is an antenuptial agreement and are they valid in Illinois?**

An antenuptial agreement is a contract entered into between a husband and wife before they marry. The contract is intended to resolve issues of financial support, distribution of wealth, and division of property upon the death of either spouse or upon divorce or separation. Such an agreement frequently is used in connection with second marriages, where the husband and wife are entering into the relationship with assets and family responsibilities from their first marriages. An antenuptial agreement must be in writing.

Antenuptial agreements are often found to be valid and binding as long as the husband and wife enter into the agreement freely, with no fraud, duress or coercion, and provided there is full disclosure of each person's financial means before the contract is signed. Each spouse should be represented by his or her own attorney before entering into an antenuptial agreement. Note that these are often litigated, and found to be invalid at times.

### **Can I be held responsible for expenses incurred by my spouse?**

Yes. Illinois law protects creditors from situations where one spouse claims that he or she is not responsible for purchases made by the other spouse, where the purchases were made for the benefit of the family. Therefore, a husband and wife are jointly responsible for family expenses, including housing, medical, and children's educational expenses. This is true even if one of the spouses did not consent to the purchase.

In addition, parents may be responsible for debts incurred by their minor children (under the age of 18). Parents generally are not held responsible for expenses incurred by children over 18, even if the child is still financially supported by his or her parents.

**Does remarriage affect a spouse's child support or alimony obligations?**

Remarriage generally will not affect a spouse's child support obligations. If you have child support obligations from a previous marriage, those obligations will not change simply because you remarry, even if you have additional support obligations because of the remarriage.

Likewise, if you are making alimony payments to your former spouse, your remarriage probably will not reduce those payments.

## **PROBATE AND ESTATE PLANNING**

### **What is probate?**

Probate is the name for the legal process by which a deceased person's property (called the person's "estate") passes to the deceased's inheritors. Probate is administered by the probate division of the circuit court for the county where the deceased person resided upon death.

The probate process is designed to make sure that the decedent's property is inventoried, appraised, and family members/relatives and creditors are given notice of the estate administration. All debts of the deceased person's estate are properly paid before the amount remaining is distributed to the people or organizations entitled to receive it. Debts of an estate include loans and bills unpaid at the time of the decedent's death, as well as taxes. By assuring that debts are paid before distribution of the decedent's property, probate protects the people or entities that receive money or other property from later claims against the property they received.

The probate court is the means by which disputes involving the decedent's estate are resolved. For example, challenges to the Will and claims by creditors of the estate are handled through the probate process.

### **Does probate occur if the decedent did not have a Will?**

A probate estate should be opened if the decedent owned real estate upon death in his/her individual name or held assets in excess of \$50,000 in his/her individual name (or in tenancy in common). However, the probate process applies different rules for the distribution of the estate depending on whether there is a Will. If the decedent had a valid Will upon death, the probate process assures that the estate is distributed consistent with the provisions of the Will. If the decedent did not have a valid Will upon death, the decedent's property is distributed according to Illinois law for the distribution of estates where there is no Will. If you die with a Will, you are said to have died "testate". If you die without a Will, you are said to have died "intestate."

### **How does the probate process work?**

Anyone in possession of Will and Codicil should file the Will and Codicil with the circuit court for the county where the decedent last resided. The Executor/Administrator usually hires an attorney to provide advice, assist with the court documents that should be filed, appear in court and administer the estate. The probate court must be petitioned so that a probate estate is opened, the Will (if any) is admitted to probate and letters of office are issued to the Executor/Administrator so that they have the courts authority to act.

### **Does probate occur for every death?**

Probate can be avoided in Illinois for estates that have a value less than \$50,000. Instead of having a probate proceeding in court, the people entitled to receive the decedent's property use a small estates affidavit to distribute the estate.

### **Who handles probate on behalf of the decedent's estate?**

The Executor is the individual named under a decedent's Will to administer the estate. The Administrator is the individual appointed by the probate court when the decedent did not have a Will upon death. The person chosen, whether there is a Will or not, is known as the estate "representative."

The main duties of the estate representative are to:

- identify and gather the property of the decedent;
- manage the property during the probate process;
- pay the claims of creditors;
- pay taxes; and
- distribute the remaining property to those people and entities entitled to it.

### **How long does probate take?**

The length of time for probate depends on the size and complexity of the estate. In Illinois distribution of an estate usually cannot occur before six months after the decedent's death. This time is to allow creditors of the estate the chance to file claims for payment. Creditors

of the estate are entitled to be paid before any money or other property is distributed to the decedent's inheritors.

If the value of an estate does not exceed \$50,000 and the decedent did not have any creditors then the administration can usually occur earlier than six months after the decedent's death.

**Do you need an attorney to probate an estate?**

Because the probate process becomes complex for many estates, legal representation often is valuable.

**What taxes must be paid out of an estate?**

The decedent's estate must pay the income tax liabilities of the decedent as of his/her death and the income tax liabilities of the estate after the decedent's death. The estate also may have to pay federal and state estate taxes based upon the size of the estate at the time of death.

Many rules apply to the determination of estate taxes that may be due. For example, with proper planning you may be able to avoid estate taxes on property left to a surviving spouse. In addition, current federal tax law excludes the first \$1,500,000 of an estate from the federal estate tax, so only relatively large estates will be subject to this tax.

If there is not enough money in an estate to pay all the claims on the estate, taxes are paid first, then debts, and then, if there is property left over, the decedent's inheritors receive their shares of the estate.

**Is all property of a decedent distributed through probate?**

Not necessarily. Property can be owned in ways that allow it to be distributed after death outside the probate process. For example, property that is owned by the deceased in joint tenancy (meaning it is shared with someone else) will automatically go to the survivor without passing through probate. Other examples include property passing in accordance with beneficiary designations, such as life insurance policies, IRA's, annuities, and other retirement plans.

**Can I determine what property does and does not go through probate after my death?**

You can affect how much of your property must be probated. For example, placing property in joint tenancy will permit that property to pass to your co-owner without going through probate (although there may be gift tax issues). In addition, you can reduce the amount of taxes that might have to be paid on your estate by making certain permitted gifts during your lifetime. Under current federal gift tax law, an individual may give up to \$11,000 (\$22,000 for a married couple) to an unlimited number of people each year. Various types of trusts also will enable you to pass on your property without subjecting it to probate. Assets that are payable on death and that have beneficiary designations (such as life insurance policies and retirement accounts) avoid probate if the "Estate" is not named as the beneficiary.

The process of shaping your estate so that it is distributed in the way that you want upon your death is known as "estate planning." The tax and other legal rules that affect estate planning are complicated, so you are well advised to consult with an attorney who is knowledgeable in this area.

## **SALES, CREDIT, AND COLLECTIONS**

### **What are a debtor and a creditor?**

A “debtor” is a person who owes money to a company or another person. A “creditor” is the person or company to whom money is owed.

### **If I apply for credit, for what reasons can my application be rejected?**

A company or store has the right to turn down your application for credit if it does not believe that you will be able to make payments. However, the company or store must apply the same guidelines to all credit applicants -- it is not permitted to discriminate on the basis of race, sex, age, religion, or marital status. In other words, you cannot be denied credit just because you are a woman, or black, or elderly. If your credit application is denied, you have a legal right to receive an explanation from the company or store of the reason your application was turned down.

### **If I have made a down payment while applying for credit, can the seller keep my money if my credit application is rejected?**

No. If your purchase depends on your receiving credit, and the seller is aware of this fact, your money must be returned to you if your credit application is denied. The seller may not retain any of the down payment as a fee or penalty.

### **What are credit reporting agencies?**

Credit reporting agencies are companies that provide companies and stores with financial information about credit applicants. For example, if you apply to a store for credit the store might contact a credit reporting agency for information about your other credit cards, your payment history on those credit cards, any loans that you owe, and other facts that might affect your ability to make credit payments.

Federal law regulates the types of information that can be reported by a credit reporting agency. For example, credit reports generally cannot include information that is over seven years old.

You have the right to see your credit report by requesting it from the credit reporting agency. If you have been turned down for credit, you can learn the name of the credit reporting agency used by the store that denied your application. If you have not been turned down for credit, but just want to see your credit history, you can contact any credit reporting agency.

**How can I obtain my credit report?**

You may obtain your credit report from a credit bureau, such as Equifax, Experian, or Trans Union. To contact a credit bureau: Equifax (800) 685-1111; Experian (888) 397-3742; Trans Union (800) 916-8800.

**What can I do if I believe there is an error in my credit report?**

If you believe that the information in the files of the credit reporting agency is incorrect, you have the right to notify the credit reporting agency that you dispute the information, and request an investigation. The credit reporting agency has 30 days to investigate and, if an error is found, they must correct the error. If the credit reporting agency concludes that the original information is correct, you have the right to have your explanation of the dispute included in the report that the agency provides to companies and stores.

**What can I do if I dispute a credit card bill?**

If you believe that an item on your credit card bill is incorrect, you must promptly notify the credit card company in writing of the disputed item, including your reason for believing the item is not correct. The credit card company then must investigate the dispute, and during its investigation it cannot close or limit your account (although the disputed item can be applied against your total credit limit). If the dispute is resolved in your favor, the credit card company must remove the item from your bill and cannot receive finance charges for the amount.

**Can I refuse to pay a credit card bill because I have a dispute with the store where I made the purchase?**

Under certain circumstances, you can legally refuse to pay an item on a credit card because of your dispute with the actual seller. For example, if you buy a television and charge it on your credit card, but the TV then fails to operate, you may be able to refuse to pay the credit card bill for it. In order to refuse credit card payment (1) you must have tried to resolve the matter with the seller, (2) the sale must have been for over \$50.00, and (3) the sale must have occurred within the state where you live or within 100 miles of your residence. However, these last two requirements do not apply in some cases, such as where the seller is also the company that issued the credit card.

**What is my liability if my credit card is lost or stolen?**

Under federal law, your liability for unauthorized use of your credit card is limited to \$50.00, provided that you have notified the credit card company that your credit card has been lost or stolen.

**If I buy something from a door-to-door salesman, can I then change my mind and cancel the purchase?**

Yes, if you meet certain requirements. The sale must be for more than \$25.00, and the salesman must have appeared at your door without your requesting the sales call. If the sale meets these requirements, you can cancel it within three days of the purchase by notifying the seller and returning the product. Upon cancellation you must receive a refund of all the money you paid. Federal law requires that door-to-door salesmen must give you written notice of your right to cancel the purchase, and if more than three days have passed since the purchase but you were not informed of your right to cancel then you may still cancel the transaction.

**If I want to cancel a check that I have written, can I stop the check?**

Under Illinois law, you can order your bank to stop payment on a check, but the order must be received in time to give the bank a reasonable time to act on it. An oral stop payment order is valid for 14 days. If you direct the bank in writing to stop payment the order is

valid for six months, and can be renewed for another six months. Your bank may charge you a fee for stopping payment.

**Does the law limit the methods that can be used by a collection agency to collect a debt?**

Yes. Both federal and Illinois law limit the ways in which a collection agency can collect a debt. Collection agencies cannot threaten or harass a debtor, and cannot use deception to collect a debt. For example, an agency cannot threaten to harm the debtor, or threaten to sell the property unless a court has already approved such action, or disclose the debt to the debtor's employer or any other person, or harass the debtor by contacting him at all hours of the night and day. The collection agency must inform the debtor of the nature of the debt, the creditor to whom the debt is owed, and the ability of the debtor to dispute the debt.

If you believe that a collection agency has engaged in improper conduct, contact the Illinois Department of Professional Regulation.

**If I make payments on a debt, can the creditor continue to use collection methods for the rest of the amount owed?**

Yes. The creditor does not have to stop its efforts to collect the entire amount due just because you have paid part of the amount. However, if you are only able to make partial payments, you and the creditor might be able to reach an agreement on a payment schedule, and the creditor will suspend collection efforts so long as you do not fall behind on your payments.

**If a creditor goes to court against me, will I have the chance to tell the judge my side of the story?**

As a general rule, a creditor will not be able to receive a judgment that orders you to pay a debt unless you have received notice of the court proceeding and an opportunity to appear before the judge to defend against the creditor's claim.

If a creditor presents you with a court order requiring you to pay a debt, and you did not receive any notice that the creditor was going to court, you may be able to have the court set aside the judgment and

give you a chance to appear before the judge. Contact the clerk of the court where the creditor received the judgment for assistance.

**What happens if a creditor goes to court and receives a court order requiring me to pay a debt?**

If a creditor is able to obtain a judgment that orders you to pay a debt, the amount can be collected in several ways. First, of course, you can pay the judgment. If you do not pay it, the creditor can take legal action to have the amount paid by deductions from your pay or sale of your property. A "garnishment" is a procedure by which the creditor has money that is owed to you paid to it instead. For example, a wage garnishment orders your employer to withhold part of your pay and pay it to your creditor, and a non-wage garnishment orders someone who owes you money or is holding your money (such as your bank) to pay your money to the creditor.

The creditor also can use the legal proceeding known as a "levy." If you do not have wages or other money available to be paid to a creditor through garnishment, the creditor can have the local sheriff's office levy on your property by selling it and paying the proceeds to the creditor to pay the judgment against you. For example, if the value of your furniture is enough to satisfy the amount of the creditor's judgment against you, the sheriff will sell your furniture and pay the proceeds (minus the costs of the sale, which go to the sheriff's office) to the creditor. If the sale price for your property exceeds the amount of the judgment, you are permitted to keep the extra amount.

**Can a creditor garnish my money or have a levy conducted before it gets a court judgment?**

No. Garnishment and levy are not available until a court has listened to the creditor -- and you, if you appear in court to argue against the creditor's claim that you owe money -- and decided that the creditor is entitled to a legal judgment for the amount of the debt.

However, in limited circumstances a creditor can take legal action against your property even before receiving a judgment. If the creditor convinces the judge that you are hiding your property or are moving it out of the state in order to avoid having to pay a future judgment, the court can order the sheriff's office to "attach" your

property or money. This attachment order requires the sheriff's office to seize and hold your money and property until the court proceeding where the creditor has the chance to prove to the judge that a judgment against you should be entered.

**Can I keep any of my money or property from being taken by a creditor who has a judgment against me?**

Yes. Illinois law permits debtors to keep a limited amount of wages, benefit payments, and property, regardless of how much money is owed.

**Can my employer fire me for having my wages garnished?**

You cannot be fired or suspended for a single garnishment.

**How long does a judgment remain in effect?**

A judgment remains in effect for 20 years, so a creditor does not have to attempt to collect a debt at the same time that it receives the judgment. While the judgment is in effect it can be entered in your credit file.

**If I am divorced, can I have to pay a debt even if my spouse was ordered by the divorce court to pay marital debts?**

Yes. A creditor has the right to attempt to collect the debt from either spouse, regardless of which spouse the court decided should be responsible. If a creditor attempts to collect a debt from you that your spouse was ordered to pay, you can return to the divorce court for an order requiring your spouse to either pay the creditor or, if you have already paid the debt, pay you.

## **SMALL CLAIMS - THE PRO SE COURT**

### **What is the Pro Se Court?**

“Pro Se” (pronounced pro-say) is a Latin term that means “for oneself” or “in one’s own behalf.” The Court is designed for people who have a claim against a company or a person, but the claim is not large enough to justify hiring an attorney. The Pro Se Court receives its name because it is the place where people bring claims on their own, without an attorney. The Pro Se Court was established to provide justice in a prompt and inexpensive manner.

The person who has a claim is called the Plaintiff and they file a “complaint” to begin the lawsuit. The person or entity being sued may defend against the claim with or without a lawyer and is called the Defendant.

The Pro Se Court is a branch of the Cook County Small Claims Court section of the Civil Division and it is located in Room 1308 of the Richard J. Daley Center, in downtown Chicago. The Pro Se Court staff is located in Room 602 of the Daley Center. Its phone number is 312-603-5626.

If you have access to the Internet you can visit the website of the Clerk of the Circuit Court to find more information and view forms that may be useful. (The Pro Se Court staff will also have all required forms.) The website address is [www.cookcountyclerkofcourt.org](http://www.cookcountyclerkofcourt.org).

### **Is there a limit on the size of claims that are heard in the Pro Se Court?**

Yes. The Pro Se Court can only be used for claims of \$1,500 or less.

### **Who can use the Pro Se Court?**

Any person 18 years or older can bring a lawsuit in the Pro Se Court (a parent can sue for an injury or loss suffered by a child who is under 18). Corporations, partnerships, and associations, however, are not permitted to bring claims in the Pro Se Court. Also, a claim cannot be

brought by an assignee, which is someone to whom the claim has been given or sold.

### **What if I do not speak English?**

Interpreters are available to help people who have difficulty speaking or understanding English. Please see the Pro Se Court staff for assistance.

### **When can I sue?**

If someone owes you money or has damaged you in some way, you can bring a lawsuit — subject to the \$1,500 limit on claims — in the Pro Se Court. Here are examples of the types of claims for which you can sue:

- Someone damages your car, your house, or other property which you own;
- The laundry or cleaners loses or damages your clothes and refuses to pay you for the loss or damage;
- Your landlord won't return your security deposit;
- Your tenant owes you rent;
- Someone owes you money on a loan, or for work you have done and refuses to pay you;
- Someone sold you bad merchandise.

You cannot use the Pro Se Court if you want someone to be ordered to take a certain action or stop certain conduct — for example, if you want your neighbor to be ordered to stop making noise or to cut down a tree. The Pro Se Court can only hear claims for the payment of money.

***IMPORTANT: If you claim that someone owes you money, that person is free to respond by claiming that you owe money to him or her. If the person that you sue makes such a “counterclaim,” the judge will hear both claims together, and may decide that you owe money to the defendant.***

### **Can an attorney participate in a Pro Se Court lawsuit?**

The person bringing the lawsuit, the Plaintiff, is not permitted to have an attorney in Pro Se Court. However, the person or company that has been sued, the Defendant, may have an attorney.

If the defendant uses an attorney, then the plaintiff may use one too, but if both sides are represented by lawyers the case will be transferred out of the Pro Se Court.

### **How is a Pro Se Court lawsuit begun?**

You begin a lawsuit by filing a Complaint against the Defendant. The Complaint tells the Defendant, and the judge, the facts of your claim. Basically, the Complaint tells the story of what events led you to file your lawsuit.

To begin your lawsuit, go to Room 602 of the Daley Center and tell the staff member at the counter that you want to file a Complaint in the Pro Se Court. The Pro Se Court staff will help you by explaining the procedures and helping you fill out the necessary forms.

When you see the Pro Se Court staff, you should be prepared with certain information that is needed for your Complaint:

- Who are you going to sue? If you are suing a business instead of a person, you should know the correct name of the business. Remember that if your claim was caused by a person who was employed by a business, you may be able to bring your claim against the business as well as the employee.
- What is the address of the Defendant?
- What occurred that led to your Complaint? Include the date and facts to show why the defendant owes you money. The Complaint will be fairly short, so you must state your claim briefly and clearly. Also, bring with you all the documents, such as letters, receipts, canceled checks, and contracts, that relate to your claim.

- How much are you suing for? For example, if you are seeking money for repairs that the Defendant forced you to make, you should have the paid bill or three estimates for the cost of the repairs.

### **What does it cost to file a Pro Se Complaint?**

The fee to file a Complaint in the Pro Se Court depends on the amount of your claim. The fee is \$45 for claims up to \$250, \$70 for claims up to \$1,000, and \$80 for claims up to \$1,500. In addition, you will have to pay a fee in connection with notifying the Defendant of the lawsuit. This additional fee is explained in the next section.

If you win your lawsuit, however, it is likely that the judge will order the defendant to pay these fees to you, in addition to the rest of your claim. If you are a welfare recipient, or for some other reason you cannot afford to pay the costs of filing a Complaint, ask the Pro Se Court staff how to file your lawsuit without charge.

### **After the Complaint is prepared, what happens next?**

Once the Complaint has been prepared, it must be sent to the Defendant. Informing the Defendant of your lawsuit is called “Service.” The Pro Se Court judge will not listen to your claim unless you have properly “served” the Defendant, meaning that you notified or properly attempted to notify the Defendant of your lawsuit. The Defendant must be given the chance to appear before the judge to respond to your claim.

The Complaint form includes a section called the “summons.” The summons informs the defendant of when and where it must respond to your Complaint. The Pro Se Court provides a plaintiff with two ways of notifying a Defendant of the Complaint:

- Certified Mail — the staff of the Pro Se Court will send the Complaint and summons to the defendant by Certified Mail, Return Receipt Requested, for a fee of \$6.79.
- Personal Service by the Sheriff — Instead of using Certified Mail, you can have a Cook County Deputy Sheriff attempt to personally serve the Defendant with notice of your complaint. The fee is \$23.00 plus 40 cents per mile from the Daley Center

to the Defendant's address. This figure will be given to you upon receipt of your summons by the Sheriff's Office. The Cook County Sheriff's Office is located at the Daley Center Room 701.

One of these two forms of notice must be used, because they each provide the Pro Se Court judge with reliable evidence that you have informed the Defendant of your lawsuit.

**Once the Complaint is sent to the Defendant, when do I return to the court?**

You return to the court for your trial 14 days after the "Return Date" that is shown as the "Trial Date" near the top of your Complaint. The Return Date is the date by which the Defendant must file an Appearance. An "Appearance" is a brief form that tells the Pro Se Court that the Defendant received notice of your Complaint and intends to contest the lawsuit. You do not have to go to court on the Return Date.

The Return Date generally is about 30 days after the date you filed your Complaint. If you want to find out whether the Defendant filed an Appearance you can ask the Pro Se Court staff three or four days after the Return Date. Be sure to have your case name and number with you — this makes it much easier for the staff to provide you with the information that you want.

If the Defendant did not file an Appearance, you can check to see if he or she was served. A member of the Pro Se Court staff can show you the book where this information is kept, and by your case number or name you will find a notation about service. The notation will indicate either that the Defendant was served or that the Defendant was not served because he or she could not be found.

You must appear in court on the Trial Date. If you do not appear on the trial date, the case will be dismissed unless you or someone on your behalf appears to ask the court for a continuance and the judge grants the request. If the case is dismissed, you have 30 days to file a motion to reinstate the case. The Pro Se Court staff will help you prepare the motion and notice.

At your trial, the judge will check to see if the Defendant was properly served with notice of your lawsuit. If service did not occur (for example, the Defendant was not at the address you thought), the judge can issue another summons (called an “Alias Summons”) that will permit you to try and serve the Defendant again. Your Trial Date will be 14 days after the new Return Date.

If the defendant was served, but did not file an Appearance, and also then does not appear in court on the Trial Date, the judge will let you proceed with your case and probably will grant your claim against the defendant by giving you what is called a “default judgment” (sometimes also called an “ex-parte” — meaning one sided — judgment). A default judgment means that you have won the lawsuit because the Defendant did not show up to defend against your claim.

No trial will occur until the Defendant has been served. It can be difficult to serve a defendant, however the plaintiff is not entitled to refund of fees and costs paid in attempting to serve a Defendant.

### **Once I know the Trial Date, what should I do to prepare?**

There are three things you should do to prepare for your trial. First, you should gather all written materials and physical objects that will help you prove your claim. For example, if you are suing a cleaner for damage to your clothes, you should make sure you have the damaged clothing and any laundry receipts pertaining to that clothing. If you are suing a builder for failure to do the work you had requested, you should make sure you have the written contract or estimate, if there is one, which described what the builder had agreed to do. If you are suing someone for damage to your property, you should take photographs of the damage.

Second, you should arrange to bring to court with you any witnesses who have knowledge about the facts of your claim. It is no excuse if your witness cannot appear because of work or any other reason.

Third, you should make sure that you can present your claim to the judge clearly, including all facts that are important and why the defendant owes you money. Do not argue with the defendant and do not speak out of turn.

**What if the Plaintiff or Defendant cannot be at court on the scheduled trial date?**

If you cannot go to court on the Trial Date because of illness, etc., you may file a written request (called a “motion”) asking for a new Trial Date. The Pro Se staff will help you prepare your motion. Be sure to inform the other party that you will be asking for a different Trial Date. Even though you will be seeking a new Trial Date, you or someone else must go to court for you on the scheduled Trial Date to present the motion to the judge. The Defendant has the same right to request a postponement of the Trial Date, following the same procedures.

**Is the defendant allowed to contact me before the trial?**

Yes. Often a Defendant will contact the Plaintiff in order to reach a settlement that will eliminate the need for a trial. The Defendant may offer to pay you an amount that is less than the full amount of your claim, in exchange for your agreement to drop the lawsuit. It is your decision whether to accept such a settlement or to negotiate further. In deciding whether to accept a certain amount, you will have to compare the amount of the proposed settlement against the risk that you will lose your trial and receive nothing.

If you settle your lawsuit before trial, but you have not yet received payment from the Defendant, you should come into the court on your Trial Date and inform the judge that you have settled your case but are still waiting for your money. The judge can postpone and re-schedule your trial so that you can still go forward if the Defendant has failed to pay you. If you do not appear in court on your Trial Date to request such a postponement, your case will be dismissed, and if the Defendant then refuses to honor the settlement you may be unable to recover.

**What do I do on the Trial Date?**

On your Trial Date, come to Room 1308 of the Daley Center no later than 9:30 a.m. Try to be early — the judge will not wait for you if you are late, and if you are early you will be able to watch other trials and learn what will happen when your case is called. The courtroom opens at 8:45, and you should be “signed in” by 9:30. Locate the “line

number” of your case outside the courtroom. Give your line number to the clerk when you check in.

The clerk will call the names and numbers of the cases as they come before the judge. When your case is called, walk up in front of the judge. The Defendant, if he or she is present, will walk up at the same time. The judge will ask you to explain your claim. You should introduce yourself and clearly and concisely describe your claim, and offer to provide the judge with the materials that you have brought with you that support your claim. In addition to documents, these materials may include photographs and the damaged items themselves. You also should inform the judge of any witnesses that have come with you to the Court. If the judge believes that he or she needs to examine your materials or to question your witnesses, he or she will do so.

After hearing your case, the judge will then ask the Defendant to explain why he or she believes that you are not owed the money. Of course, the Defendant also will have the opportunity to present any materials and witnesses that support his or her claim that you are not owed any money.

After hearing both sides and carefully weighing the testimony, the judge will make a decision. If you win, and the Defendant has enough money with him or her, you may collect right then. If the Defendant does not have enough money to pay you, the judge usually will allow the Defendant a certain amount of time within which to pay.

As mentioned above, if the Defendant was served with the Complaint but then fails to appear at the trial, the judge probably will rule in favor of your Complaint by giving you a default judgment.

#### **What happens if I receive a “default” or “ex-parte” judgment?**

If you receive an ex-parte judgment (because the Defendant did not appear in court), the Defendant has 30 days to file a motion to set aside the judgment. If the Defendant files a motion to vacate (or dismiss) the ex-parte judgment within 30 days it will usually be granted. Consult the Pro Se Court staff for additional information.

**If the defendant refuses to pay me after the trial, how can I collect my money?**

It is the responsibility of the Plaintiff to collect the judgment. The court and clerks do not collect money. There are several ways to collect money from a Defendant, and the Pro Se Court staff will help you use them. For example, you could require the Defendant to return to the Pro Se Court to tell the judge where he or she keeps money and has property, and you can use the Sheriff's office to seize the money or sell the property and pay you from the proceeds. You could also have the court order the Defendant's employer to withhold a portion of the Defendant's paycheck and pay it to you. If the Defendant has a bank account, you could also obtain a court order that requires the bank to pay you from the Defendant's funds. The judge may also allow a Defendant to pay the money in installments.

The procedures that will let you collect your money from the Defendant may seem complicated when you first learn about them, but the Pro Se Court staff will give you assistance that you need to collect your money.

**Will I be able to recover the money I paid to bring the lawsuit and serve the defendant?**

As mentioned above, the judge usually will require the losing party to reimburse the other party's court costs.

## TRAFFIC VIOLATIONS

### **What is a "moving violation?"**

A moving violation is a traffic offense that usually involves a moving vehicle, rather than a parked one.

### **What happens if I am stopped by a police officer for a moving violation?**

The procedures for a traffic offense depend on whether the offense is considered "major" or "minor." An offense is considered "major" if a person found guilty of it can be sentenced to jail. Major violations are:

- driving under the influence of alcohol or drugs;
- driving on a suspended or revoked license;
- reckless driving;
- drag racing;
- attempting to elude the police; and
- leaving the scene of an accident where an injury or property damage has occurred.

All other moving violations are considered "minor," because the only punishment is a fine.

If you are stopped for a major offense you must go with the police officer to the police station and post a cash bond. This payment is designed to guarantee that you appear for your court date.

### **What happens when I receive a ticket for a minor traffic offense?**

For most minor offenses the officer will probably require you to give him or her either your driver's license or a bond card. If you do not want to turn over your driver's license and do not have a bond card, you will probably have to go to the police station and post a cash bond, usually in the amount of the potential fine. You then have three choices, which are clearly described on the envelope you receive with the ticket:

- You may plead guilty by mailing a fine to the clerk of the court. Your conviction will then be reported to the Illinois Secretary of State and will go on your driving record;

- You may plead guilty by mailing a slightly higher fine to the court, but avoid having the conviction go on your driving record by attending Traffic Safety School (this is commonly known as "supervision"); or
- You may plead not guilty and appear in court for a trial upon the charge. If you are found not guilty, the charge will be dismissed. If you are found guilty, the judge may either convict you or may place you on Supervision. If you are convicted, the Secretary of State will be notified of the conviction. If the judge places you on Supervision, you may be required to attend traffic school or to pay a fine.

If you elect either the second or third choice, the clerk of the court will inform you of the date and time when you must either attend Traffic Safety School or appear for your hearing. Once you pay the fine imposed for the offense your driver's license, bond card or cash will be returned to you. If you do not pay the fine and fail to appear in court, the court may either enter an order of failure to appear which will result in suspension of driving privileges or enter a conviction and assess fines, penalties and costs.

If you commit a second offense within 12 months after an offense for which you are given supervision, it is possible that the court will not grant you a second supervision, and, if you are found guilty, you will be convicted of the offense.

**If I am charged with a major traffic offense, can I pay a fine instead of appearing in court?**

No. People accused of such offenses must appear in court to personally answer the charges.

**Do I have a right to an attorney in a traffic case?**

Yes. You have the right to be represented by an attorney. In addition, if the charge provides for the possibility of a jail sentence, you have the right to a trial by jury.

**What if I cannot afford a lawyer?**

If the penalty for the offense provides only for a fine, you are not entitled to a court appointed attorney. However, if there is a possibility of a jail sentence, you are entitled to the appointment of a lawyer at the government's expense, if the court finds that you are indigent and cannot afford a lawyer.

**What happens if I have a number of convictions?**

If you have three or more convictions for moving violations during any 12 month period, the Secretary of State may suspend your driver's license.

**What should I do at the scene of an accident?**

If you are involved in an accident where any injury or property damage occurs you must provide your name, address, registration number, and name of the owner of the vehicle to either the police or the people in the other vehicle. You must also show your driver's license if you are asked to do so. Also, if the accident resulted in an injury or death, or property damage in excess of \$500, you must immediately notify the local police department and within 10 days forward a written report to the state.

If a person has been injured in the accident, you are required to give reasonable assistance to the person, including taking him or her to a hospital if necessary.

If you are involved in an accident with an unattended vehicle, and the other driver does not appear at the scene, you must leave a notice on the damaged vehicle giving your name and address. You are then required to report the accident to the nearest police station.

If you leave the scene of an accident or fail to cooperate as required by law where death or injury has occurred or where the property damage exceeds \$1,000, you may be imprisoned for up to one year, may be fined up to \$1,000, and may have your driver's license suspended or revoked.

## **What happens if I am stopped for driving under the influence of alcohol or drugs?**

Under Illinois' summary suspension laws, a person arrested for driving while intoxicated who submits to a breath test or other test that shows a blood alcohol concentration of .10% or more, or the presence of illegal drugs, will have his or her driver's license suspended for three months for the first offense. If the driver is **under 21 years of age**, NO AMOUNT of drugs or alcohol is allowed in this driver's system.

The police are authorized by state law to administer breath, blood, and urine tests to determine the level of alcohol or drugs in the driver's blood system. If the person refuses to submit to a breath or other test, his or her driver's license may be suspended for six months. Longer periods of suspension are imposed for a second offender.

A first offender may request that the court grant a Judicial Driving Permit (JDP) to relieve certain hardships after the first 30 days of license suspension but only if the need to drive relates to employment, attendance at an accredited school, medical care or to travel.

A second offender for driving under the influence (DUI) will have his or her driver's license suspended for 12 months upon failure to pass an intoxication test. If the person refuses to be tested, his or her license will be suspended for two years. Work-related hardship relief for a second offender may be granted only by the Secretary of State, after reviewing an application by the individual.

In addition to suspension of his or her driver's license, an individual convicted of the criminal charge of driving under the influence of alcohol or drugs will face punishment ranging from court supervision to a fine up to \$1,000 and imprisonment for up to one year. Upon such a conviction, the person's driver's license will be revoked and will not be restored until approved by the Secretary of State. The minimum period of such a revocation is one year.

If a person is convicted of DUI, credit will be given for the time that the individual's driver's license already was suspended.

If the DUI offense occurred while the person was driving a school bus with children on board or if it resulted in an accident that caused

serious injury to another person, a conviction is punishable by imprisonment for 1 to 3 years.

A person convicted a second or later time for driving under the influence of alcohol faces greater penalties than those for a first offender.

**If the person stopped for driving under the influence of alcohol or drugs is driving my car, can I be charged with an offense?**

Yes. If you knew that the person was intoxicated but you let him or her drive anyway, you can be charged with a misdemeanor offense and, if convicted, pay a fine up to \$1,000 and spend up to one year in jail.

**Is it illegal to have an open bottle or can of alcohol in my car?**

Yes, and this applies to both the driver and passengers.

**When can my driver's license be revoked?**

The Secretary of State has the power to revoke or suspend a person's driver's license when the person has been convicted of certain serious offenses, such as driving under the influence of alcohol or leaving the scene of an accident. The Secretary of State also has the authority to suspend someone's driver's license for failure to pay fines for ten or more parking tickets.

**What happens if I drive while my license is suspended or revoked?**

The penalty for driving with a suspended or revoked license is up to one year in jail and a fine of up to \$1,000. In addition, if the reason the license was revoked in the first place was a conviction for driving under the influence of alcohol, the court must sentence the offender to at least seven days in jail or 30 days of community service. If an individual convicted of DUI already has been convicted at least once of driving on a revoked license, a second offense of driving on a revoked license could mean 1 to 3 years in prison.

Upon learning of a conviction for driving on a suspended or revoked license, the Secretary of State has the authority to extend the

suspension for a period of time equal to the original suspension period and to extend the revocation for one year.

**How long will a traffic violation stay on my record?**

A traffic offense conviction remains on a person's driving record for four years from the date of the conviction. However, if the violation resulted in a license suspension or revocation, the suspension or revocation will stay on the person's record for a period of seven years from the date the suspension/revocation ended.

**Do I have to carry automobile insurance?**

Yes. Illinois law requires that your vehicle must be covered by an insurance policy with at least \$20,000 in coverage for injury or death of one person in an accident and at least \$40,000 for injury or death of two or more persons in an accident. Your policy also must have coverage of at least \$15,000 for damage to property of others in an accident. Also, you must carry an insurance card or other form of proof of insurance within your vehicle. If you do not have insurance, your automobile registration will be suspended by the Secretary of State. If you drive the car while its registration is suspended, you can be fined up to \$2,000, with a minimum fine of \$1,000.

**What happens if I drive without insurance?**

Any person who fails to produce proof of adequate insurance to an officer of law when it is requested is "deemed to be operating an uninsured vehicle". If you have insurance and can produce proof in court that at the time of the stop the vehicle was insured, no conviction shall result. If you do not have insurance, a conviction may result in a fine of \$500 to \$1000.

## VICTIMS COMPENSATION

### **Can a victim of violent crime in Illinois be compensated for his or her injuries?**

Yes. The Illinois Crime Victims Compensation Act provides a secondary source of payments for people who have been victims of violent crime. A "violent" crime is one in which the victim has been injured through the criminal actions of another, such as murder, assault, sexual assault, arson, and driving while under the influence of alcohol or drugs.

### **Can compensation be provided to someone other than the person who was attacked?**

Yes. Under the law, compensation is not limited to the person who was injured -- payments may also be made to a relative who depended on the victim for support, such as a spouse or child, to a parent of a child victim, and to a person who paid some or all of the victim's medical, hospital, or funeral expenses.

A convicted felon isn't entitled to compensation until discharged from probation or released from a correctional institution and discharged from parole or mandatory supervised release. However, a convicted felon may file for compensation at any time, but the application will not be considered until the felon's discharge or release.

### **What kinds of expenses are covered under the law?**

The law provides for payment of, among other things, medical and hospital expenses, psychiatric care expenses, certain counseling expenses, loss of earnings (up to \$1,000 per month), loss of the support that had been provided by the injured or killed victim (up to \$1,000 per month), funeral and burial expenses (up to \$5,000), temporary lodging costs, crime scene clean-up expenses, and replacement costs for locks or windows damaged during the crime.

There is no payment for damage to property, except for locks or windows damaged during the crime, or for pain and suffering sustained by the victim or claimant.

Payment under the Victims Compensation Act is reduced to the extent that payments are received from other sources, such as insurance, Workers' Compensation, a lawsuit award, or government benefits. Certain types of payments will not limit the amount paid under the law, however -- annuities, pension plans, Social Security benefits payable to dependents of the victim, and the first \$25,000 of life insurance. Payment may also be reduced or compensation denied based on the extent to which the victim's acts or conduct provoked or contributed to the injury.

**Is there a maximum amount that can be paid under the law?**

Yes. The most that will be paid under the law is \$27,000. If more than one person has filed an approved claim in connection with the same crime, this amount will be divided in a way that reflects the comparative loss sustained by each claimant.

**Are there certain people who are not eligible to receive compensation?**

Yes. A victim will not be permitted to received compensation if he or she caused the attack. Also, a victim who was living with the attacker at the time of the crime is not eligible to receive payment under the law.

**How does a person qualify for compensation?**

First, the crime must be reported to the police within 72 hours of its occurrence. If the crime is not reported within 72 hours, the person seeking compensation will have to show that there was a good reason for not reporting it earlier; for example, a young child who was not able to report the crime when it happened might be allowed to report it when he or she is older.

Within two years of the crime the person must file an application for payment, under oath, with the Illinois Court of Claims on a form that is provided by the Attorney General's Office. The application must include such information as the name and address of the victim, the date and nature of the crime and injuries for which compensation is sought, the date and place where law enforcement officials were notified of the crime, and the loss claimed. The application is available online at <http://www.ag.state.il.us/crimevictims/crime.htm>.

A claimant must provide documents to support the application for payment. For example, a claim for medical expenses may be denied if the claimant does not provide hospital and doctors' bills, and a claim for lost earnings may be denied if proof of wages is not provided.

**Does a person who seeks compensation have to testify in connection with the crime?**

The Crime Victims Compensation Act requires each person who applies for payment under the law to cooperate fully with the police in their efforts to locate and prosecute the attacker. If the attacker is arrested and brought to trial, this cooperation is likely to include appearing as a witness.

**Does a person have to be a United States citizen to be eligible for payment under the law?**

No. There is no requirement that the person seeking compensation be a resident of Illinois, a U.S. citizen or a legal alien. The Attorney General's Office cannot require a claimant to prove citizenship or legal alien status.

**Does receipt of compensation prevent a civil suit for damages?**

No, unless the court's award is conditioned on subrogation to the Attorney General of the recipient's rights to collect damages from the offender. However, the state may charge the amount of compensation paid against any award received by the recipient. If the recipient receives an award for civil damages, the recipient must reimburse the state for compensation paid. Any civil damages awarded in excess of that amount belong to the recipient.

**Is there any fee for seeking compensation?**

No. Additionally, an attorney may not charge a victim any fee for preparing or presenting the application to the court. However, the attorney may charge a fee for representing a victim in a hearing on the application.

## **ESTATE PLANNING: WILLS**

### **What is a Will?**

A Will is a written document that directs how your property will be distributed after your death, who will be responsible for settling your estate, who should care for any minor children, and who should manage property distributed to minor children.

### **Why should I have a Will?**

A Will allows you to retain control of your assets after death. Your Will governs the individuals or organizations that will receive your property after your death. If you do not have a Will, the laws of “intestate succession” of the state in which you reside at the time of your death determines how the assets held in your individual name will be divided among your family members and relatives.

### **If I do not have a Will, how will my property be distributed?**

If you don't have a Will upon death or hold your assets in some other form of ownership that will transfer your property when you die (i.e., joint tenancy with rights of survivorship, beneficiary designation, trust), Illinois law governs what will happen to your property. In general, your property will be distributed to the family members and relative that survive you as follows:

- If you are survived by your spouse but no children, your spouse will receive all your property.
- If you are survived by your spouse and also have children, ½ of your property will go to your spouse and the other ½ will be divided equally among your children.
- If your spouse has died, but you have surviving children, your property will be divided equally among your children. If a child fails to survive you, his/her share will be distributed to the children of your deceased child.
- If you do not have a surviving spouse or children, your property will be divided among your living grandchildren.

- If you do not have any living descendants, your property will be divided among your living parents, brothers, and sisters.

As you would expect, the rules can be very complicated, because there are so many possible different family circumstances for people who die.

The important thing for you to remember is that a Will lets you change the distribution of your property from the formula that will be applied if there is no Will.

### **What is required to have a legal Will?**

The person making the Will must be at least 18 years old and must be of sound mind and memory. A Will must be in writing (handwritten or typed), and must be signed by the maker and attested by two or more witnesses. It is recommended that three witnesses sign the Will and notary public notarize the Will. The maker of the Will, all the witnesses, and the notary public (if one is used) all must sign the Will at the same time. A spouse and inheritors (people who will receive property under the Will) should not be witnesses to signing of the Will or act as a notary public. The person whom you have chosen to oversee the distribution of your property, the "executor" of your Will, also should not be a witness or notary public to the Will.

### **Can having a Will save money?**

A basic Will does not reduce your estate tax liabilities. Through the use of a lawyer and tax planning you can reduce estate and inheritance taxes and other expenses that may arise in connection with distribution of your property.

### **Can anyone challenge my Will after I have died?**

Someone challenging your Will must prove to the Probate Court either that you were pressured into signing the Will against your wishes, that you were not mentally competent to make the Will or the Will was not validly executed. Will contests arise many times because family members are not happy with the way that the Way distributes your property.

Your executor has the duty to defend your Will against such a challenge.

The chapter of this book entitled “Probate and Estate Planning” will provide further guidance on the involvement of the court system and your Will.

**Can I keep my spouse or children from inheriting anything under my Will?**

Your Will may leave your property to whomever or whatever organization you desire. However under Illinois law, a surviving spouse is entitled to his/her elective share. The spouse must go to the probate court and claim the share. Under Illinois law, a surviving spouse is granted  $\frac{1}{2}$  of your property if there are no children and  $\frac{1}{3}$  of the property if there is a child or children. If you are interested in disinheriting your spouse, you should seek legal advice from a lawyer. Although the probate court may decide to provide money to minor children, your children also be excluded from inheriting your Will.

**Does a Will cover all my property?**

The following identifies types of property that will not be covered by your Will:

**Joint Tenancy:** Upon your death, the surviving joint tenant(s) are automatically by operation of law entitled to the joint tenancy assets.

**Beneficiary Designation:** Assets that use beneficiary designations, such as life insurance policies or retirement accounts (pension plan, IRA, 401(k) plan) are payable upon your death to the beneficiary.

**Living Trust:** Property held in a living trust (also known as a revocable trust or declaration of trust) is governed by the trust document.

For example, if all your property is owned in joint tenancy and your only other property is your life insurance policy (which does not name your “Estate” as the beneficiary), you might decide that you do not need a Will. Remember, though, that a Will may serve other purposes, and that the joint owner of your property or the beneficiary of your life insurance policy may die before you or at the same time.

### **Where should I keep my Will?**

Your Will should be kept in a safe location where it is protected against loss, fire, and theft. Many people place their Will in a safe deposit box at a local bank. Some lawyers that prepared your Will may store your Will in their office vault. You should tell a small number of relatives or friends of the location of your Will, so that it can be found upon your death.

### **If I prepared my Will in another state, is it legal in Illinois?**

A Will prepared in another state is legal in Illinois as long as it met the laws of Illinois for a valid Will at the time that it was signed, the laws of the place where it was signed, or the laws of the place where you lived at the time the Will was signed. However, states have different laws regarding the execution and witnessing of Wills. A validly executed Will in Illinois may not be valid in another state. If you execute a Will in Illinois and move to another state, you should review the state laws for Wills in your new state of residence.

### **How can I change my Will?**

You can change your Will either by signing a new Will or by modifying your existing Will. A modification is called a “Codicil.” A Codicil to a Will must be signed and witnessed just like the Will.

### **What is a “Living Will?”**

A living will is used by a person to state his or her wishes concerning termination of life support. If the person, because of injury or illness, falls into an irreversible coma that causes a persistent vegetative state, the living will tells the hospital or physician to remove life sustaining equipment.

An alternative to a living will is the “Durable Power of Attorney for Health Care.” This document permits an individual to appoint another person to act as the individual’s agent for the purpose of making necessary medical decisions, including the withholding of treatment.

## **GUIDE TO LEGAL RESOURCES**

This book has attempted to provide general answers to commonly-asked questions in a number of legal areas. Although the book may provide the framework that helps you recognize legal problems and begin to deal with them, it is not intended to substitute for legal advice. If you encounter problems that require more detailed information and legal advice, the resources provided in this section offer a number of places for you to call. Web sites have also been included should you need additional information. If you do not have access to the internet at home, try your local library.

### **FOR PUBLICATIONS ON SPECIFIC AREAS**

**Illinoislawhelp.org** is a Web site with information about your legal rights and responsibilities, instructions on how to handle common legal problems, court forms and more.

**The Chicago Bar Association** -- The Chicago Bar Association has prepared short booklets on the following legal subjects:

- Adoption Law
- Finding the Right Lawyer
- Freedom of Information Act
- Mortgage Foreclosure
- Resource Guide for Persons with Disabilities
- Resources for Seniors
- So, You Want to be a Lawyer?
- Where to go for Legal Assistance in Chicago

These booklets can be obtained at no charge by calling 312-554-2000. Information can also be at [www.chicagobar.org/public/general.asp](http://www.chicagobar.org/public/general.asp).

**Child Support** -- Illinois Task Force on Child Support, 312-786-0291. The Task Force has written a book entitled "Child Support in Illinois: How it Works and What to do When It Doesn't/ A Handbook for Custodial Parents."

**Consumer Credit and Bankruptcy** -- The American Bar Association has written a book entitled "Your Legal Guide to Consumer Credit," with a special section on bankruptcy. The book is available from the A.B.A. Public Education Division, 312-988-5000.

**Guardianship** -- Guardianship and Advocacy Commission, 312-793-5900 or their Web site is [www.gac.state.il.us](http://www.gac.state.il.us). The Commission has written "A Guide to Adult Guardianship in Illinois."

**Landlord-Tenant** -- The Legal Assistance Foundation of Chicago and the Chicago Council of Lawyers have written the "Tenant-Landlord Handbook." To order, call 312-341-1070.

**Services for the Elderly** -- The Illinois Department on Aging, 312-744-4016 or 800-252-8966 or [www.state.il.us/aging/default.htm](http://www.state.il.us/aging/default.htm). The Department has prepared a "Directory of Services for the Elderly in Illinois."

**Services for the Handicapped** -- The Coordinating Council for Handicapped Children, 312-939-3513. The Council has prepared a "Directory of Services for Handicapped Children and Adults."

**Social Security** -- The U.S. Social Security Administration has written a "Social Security Handbook" that covers retirement insurance, survivors insurance, disability insurance, health insurance, supplemental security income, black lung benefits, and public assistance. To receive this book and for further information, call the Social Security Administration at 312-353-7065 or view its web page at [www.ssa.gov](http://www.ssa.gov).

## **FOR GOVERNMENT SERVICES**

The following government agencies offer assistance in a variety of legal areas. Some examples of the types of legal assistance provided are listed.

### **Cook County State's Attorney's Office**

Richard J. Daley Center, Room 500

Chicago, Illinois 60602

312/603-5440 or [www.statesattorney.org](http://www.statesattorney.org)

Represents the interests of the residents of Cook County in a variety of areas, including consumer fraud, victim/witness assistance, child support enforcement, nursing home complaints and criminal matters.

**Illinois Attorney General's Office**  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601  
312-814-3374 or [www.ag.state.il.us](http://www.ag.state.il.us)

Acts as an advocate for the residents of Illinois, including the areas of consumer protection, environmental protection, charitable solicitations and crime victim assistance.

**Mayor's Office**  
121 North LaSalle Street  
Chicago, Illinois 60602  
312-744-6900 or [egov.cityofchicago.org](http://egov.cityofchicago.org)

Provides information about and resolves problems concerning city services.

### **FOR OTHER TYPES OF SERVICES**

The agencies and programs listed below provide general information services.

**"Dial Law"**

Free, general taped information is available on over 60 different legal subjects. Call 312-747-4304.

**Center for Conflict Resolution**  
11 E. Adams St., Suite 500  
Chicago, IL 60603 or [www.ccrcchicago.org](http://www.ccrcchicago.org)

Provides dispute resolution services to residents of Chicago and surrounding communities.

**Attorney Registration and Disciplinary Commission of  
The Supreme Court of Illinois**  
130 E. Randolph Dr., Suite 1500  
Chicago, IL 60601  
312-565-2600 or 1-800-826-8625 or [www.iardc.org](http://www.iardc.org)

Investigates complaints about lawyers.

## **FOR ADVICE FROM A LAWYER**

### **Free or low-cost legal services:**

Free or low-cost legal services are available to low and middle income clients from the following agencies. These agencies provides services including help with adoption, bankruptcy, criminal matters, divorce and related family matters, employment, immigration, landlord-tenant problems, probate and social security. Since some of the agencies listed do not handle all types of legal matters, you should call the agency for specific information.

#### **AIDS Legal Council of Chicago**

(for HIV positive people and their families)

188 W. Randolph St., Suite 2400

Chicago, IL 60601

312-427-8990 or [www.aidslegal.com](http://www.aidslegal.com)

#### **Access Living** (for people with disabilities)

614 W. Roosevelt Rd.

Chicago, IL 60607

312-253-7000 or

[www.state.il.us/dhr/housenet/disab/access/access/html](http://www.state.il.us/dhr/housenet/disab/access/access/html)

#### **American Jewish Congress Legal Clinic**

3003 West Touhy

Chicago, IL 60626

847-679-8289 or [www.ajcongress.org/regions/clinic.htm](http://www.ajcongress.org/regions/clinic.htm)

#### **The Ark**

6450 N. California

Chicago, IL 60645

312-973-1000 or [www.arkchicago.org](http://www.arkchicago.org)

#### **Asian Legal Services**

(primarily for low-income Asian immigrants and refugees and their families)

4753 North Broadway, Suite 700

Chicago, IL 60640

773-728-2235 or [www.asianhumanservices.org/legal.htm](http://www.asianhumanservices.org/legal.htm)

**Bluhm Legal Clinic**

Northwestern University School of Law  
357 E. Chicago Ave.  
Chicago, IL 60611  
312-503-8574 or [www.law.northwestern.edu/clinic](http://www.law.northwestern.edu/clinic)

**Cabrini-Green Legal Aid Clinic**

206 W. Division  
Chicago, IL 60610  
312-266-1345 or [www.cgla.net](http://www.cgla.net)

**CARPLS**

Coordinated Advice & Referral Program for Legal Services  
17 N. State, Suite 1850  
Chicago, IL 60602  
312-738-9200 or [www.carpls.org](http://www.carpls.org)

**Center for Disability and Elder Law**

(for people with disabilities and the elderly)  
710 N. Lake Shore Drive, 3rd Floor  
Chicago, IL 60611  
312-908-4463

**Centro Romero**

6216 N. Clark St.  
Chicago, IL 60660  
773-508-5300 or  
[www.charityadvantage.com/centroromero/homepage.asp](http://www.charityadvantage.com/centroromero/homepage.asp)

**Chicago-Kent College of Law Advice Desk for Unrepresented  
Tenants and Small Claims Defendants**

50 W. Washington, 6th Floor  
Chicago, IL 60602  
312-906-5050 or [www.kentlaw.edu/academics/clinic/advisedesk.html](http://www.kentlaw.edu/academics/clinic/advisedesk.html)

**Chicago-Kent College of Law Low Income Tax Clinic**

565 W. Adams St., Suite 600  
Chicago, IL 60661  
312-906-5050 or [www.kentlaw.edu/academics/clinic/tax](http://www.kentlaw.edu/academics/clinic/tax)

**Chicago Lawyer's Committee for Civil Rights Under Law**  
100 N. LaSalle St., Suite 600  
Chicago, IL 60602  
312-630-9744 or [www.clccrul.org](http://www.clccrul.org)

**Chicago Legal Advocacy for Incarcerated Mothers (CLAIM)**  
220 S. State St., Suite 830  
Chicago, IL 60604  
312-332-5537 or [www.c-l-a-i-m.org](http://www.c-l-a-i-m.org)

**Chicago Legal Clinic – Downtown**  
205 West Monroe Street, 4th Floor  
Chicago, IL 60606  
312-726-2938 or [www.clclaw.org](http://www.clclaw.org)  
(CLC also has offices in Austin, Pilsen and South Chicago. Call for specific locations.)

**Chicago Volunteer Legal Services Foundation**  
100 North LaSalle, Suite 900  
Chicago, IL 60601  
312-332-1624 or [www.cvl.org](http://www.cvl.org) (C.V.L.S. has many legal clinics throughout Chicago. Call for specific locations.)

**Community Economic Development Law Project**  
188 W. Randolph, Suite 2103  
Chicago, IL 60601  
312-939-3638 or [www.cedlp.org](http://www.cedlp.org)

**DePaul Legal Clinic**  
23 East Jackson Boulevard, Rm. 1050  
Chicago, IL 60604  
312-362-8294

**Edwin F. Mandel Legal Aid Clinic**  
620 South University Avenue  
Chicago, IL 60637  
312-702-9611 or [www.law.uchicago.edu/mandel](http://www.law.uchicago.edu/mandel)

**Equip for Equality**  
20 N. Michigan Ave., Suite 300  
Chicago, IL 60602  
312-341-0022 or 800-537-2632 or [www.equipforequality.org](http://www.equipforequality.org)

**Farmworker Advocacy Project**

220 S. State St., Suite 1700  
Chicago, IL 60604  
312-347-7600

**First Defense Legal Aid**

(for people under criminal investigation at Chicago police stations)  
3645 W. Chicago Ave., #240  
Chicago, IL 60651  
1-800-529-7374

**Health and Disability Advocates**

205 West Monroe St.  
Chicago, IL 60606  
312-223-9600 or [www.hdadvocates.org](http://www.hdadvocates.org)

**John Marshall Law School Fair Housing Legal Clinic**

28 E. Jackson Blvd., Suite 500  
Chicago, IL 60604  
312-786-2267 or [www.jmls.edu](http://www.jmls.edu)

**Lambda Legal Defense and Education Fund**

11 E. Adams St., Suite 1008  
Chicago, IL 60603  
312-663-4413 or [www.lambdalegal.org](http://www.lambdalegal.org)

**Law Project of the Chicago Coalition for the Homeless**

1325 S. Wabash, Suite 205  
Chicago, IL 60605  
800-940-1119 or [www.chicagohomeless.org](http://www.chicagohomeless.org)

**Lawyers' Committee for Better Housing, Inc.**

220 S. State St., Suite 1700  
Chicago, IL 60604  
312-347-7600 or [www.lcbh.org](http://www.lcbh.org)

**Lawyers for the Creative Arts**

213 W. Institute Place, Suite 401  
Chicago, IL 60610  
312-649-4111 or [www.law-arts.org](http://www.law-arts.org)

**Legal Assistance Foundation of Chicago**

General Intake Office  
111 W. Jackson Blvd. 3<sup>rd</sup> floor  
Chicago, IL 60604  
312-341-1070 or [www.lafchicago.org](http://www.lafchicago.org)

West Office  
333 West Arthington  
Chicago, IL 60624  
312-321-7900

South Office  
10 West 35th Street  
Chicago, IL 60616  
312-949-5390

Northwest Office  
1279 N. Milwaukee, #407  
Chicago, IL 60622  
773-572-3200

North Suburban Office  
828 Davis Street, Ste 201  
Evanston, IL 60201  
847-475-3703

South Suburban Office  
900 East 162nd Street, Suite 101  
South Holland, IL 60473  
708-271-4950

**Life Span, Inc.**

(for victims of domestic violence)  
20 East Jackson Blvd., Suite 500  
Chicago, IL 60604  
312-408-1210 or [www.life-span.org](http://www.life-span.org)

**Legal Clinic for the Disabled**

448 E. Ontario  
Chicago, IL 60611  
312-908-8705

**Loyola University Business Law Center Clinic**

One E. Pearson St.  
Chicago, IL 60611  
312-915-7837 or  
[www.luc.edu/law/academics/special/clinic/business.html](http://www.luc.edu/law/academics/special/clinic/business.html)

**Loyola University ChildLaw Clinic**

16 East Pearson  
Chicago, IL 60611  
312-915-7940 or [www.luc.edu/law/academics/special/child\\_family.shtml](http://www.luc.edu/law/academics/special/child_family.shtml)

**Loyola University Community Law Center**

One East Pearson, Lower Level  
Chicago, IL 60611  
312-915-7830 or  
[www.luc.edu/law/academics/special/clinic/community.shtml](http://www.luc.edu/law/academics/special/clinic/community.shtml)

**Loyola University Tax Clinic**

One East Pearson St.  
Chicago, IL 60611  
312-915-7176 or  
[www.luc.edu/law/academics/special/clinic/federal\\_tax.shtml](http://www.luc.edu/law/academics/special/clinic/federal_tax.shtml)

**Legal Aid Bureau of Metropolitan Family Services**

14 E. Jackson Blvd, 15th Floor  
Chicago, IL 60604  
312-986-4015 or [www.metrofamily.org/services/lab.asp](http://www.metrofamily.org/services/lab.asp)

**Midwest Immigrant & Human Rights Center**

208 S. LaSalle St., Suite 1818  
Chicago, IL 60604  
312-660-1370 or [www.heartland-alliance.org/services.asp](http://www.heartland-alliance.org/services.asp)

**Midwest Tax Clinic Center for Economic Progress**

29 E. Madison, Suite 910  
Chicago, IL 60602  
312-252-0280 or [www.centerforprogress.org](http://www.centerforprogress.org)

**Pro Bono Advocates**

(assists victims of domestic violence)  
28 N. Clark St, Suite 630  
Chicago, Illinois 60602  
312-827-2420 or [www.probonoadvocates.org](http://www.probonoadvocates.org)

**Uptown People's Law Center**

4404 N. Broadway  
Chicago, IL 60640  
312-769-1411

**World Relief Immigration Legal Services**

3507 W. Lawrence, Suite 208

Chicago, IL 60625

773-583-3010

**REFERRAL SERVICES**

The following organizations will refer you to an attorney if you can afford to pay for legal services:

**American Civil Liberties Union**

180 N. Michigan Ave., Ste. 2300

Chicago, Illinois 60601

312-201-9740 or [www.aclu-il.org](http://www.aclu-il.org)

**Chicago Bar Association Lawyer Referral Service**

321 S. Plymouth Court

Chicago, IL 60604

312-554-2001 or [www.chicagobar.org/public/referral/referral.asp](http://www.chicagobar.org/public/referral/referral.asp)

**Cook County Bar Association**

120 West Madison St., Ste. 450

Chicago, IL 6060

312-630-1157 or [www.cookcountybar.org](http://www.cookcountybar.org)

**Illinois State Bar Association**

424 South Second Street

Chicago, IL 62701

217-525-5297 or [www.illinoislawyerfinder.com](http://www.illinoislawyerfinder.com)

**IIT-Chicago-Kent College of Law - Law Offices**

77 S. Wacker Drive

Chicago, IL 60606

312-567-5050

**Hispanic Lawyers Association of Illinois**

321 S. Plymouth Court, Suite 600

Chicago, IL 60604

312-554-2045 or [www.hlai.org](http://www.hlai.org)

**Lesbian & Gay Bar Association of Chicago**

3712 N. Broadway, Suite 415  
Chicago, Illinois 60613  
773-404-9574 or [chilagbac.org/lawyers.html](http://chilagbac.org/lawyers.html)

**Mujeres Latinas in Accion**

1823 W. 17th Street  
Chicago, IL 60605  
312-226-1544

**North Suburban Bar Association**

1441 Shermer Road, Suite 110  
Northbrook, Illinois 60062  
847-564-4800

**Northwest Suburban Bar Association**

121. S. Wilke Rd., Suite 204  
Arlington Heights, IL 60005  
847-259-7962 or [www.nwsba.org](http://www.nwsba.org)

**South Suburban Bar Association Lawyer Referral Service**

3612 West 21st Street, Ste. 16  
Olympia Fields, IL 60461  
708-633-9700

**Southwest Bar Association**

P.O. Box 140  
Oak Lawn, IL 60454  
708-636-7415

**West Suburban Bar Association**

320 Circle Avenue  
Forest Park, IL 60130  
708-366-1122

**Women's Bar Association of Illinois Referral Service**

321 S. Plymouth Court  
Chicago, IL 60604  
312-341-8530 or [www.wbaiillinois.org](http://www.wbaiillinois.org)

**FOR QUESTIONS ABOUT UTILITIES**

The following numbers can be called for questions about your public utility service, including billing, disconnection, energy conservation, and financial assistance programs.

**Illinois Commerce Commission**

Consumer Services Division  
800-524-0795 or [www.icc.state.il.us](http://www.icc.state.il.us)

**Illinois Home Energy and Weatherization Programs**

312-456-4111 or [www.illinoisbiz.biz/com/lowincome/ihwap.htm](http://www.illinoisbiz.biz/com/lowincome/ihwap.htm)

**Commonwealth Edison**

800-334-7661

**People's Energy** (People's Gas and North Shore Gas)

866-556-6002

**NICOR Gas**

888-642-6748