

Other Helpful Information for Self-Represented Litigants (Evictions & Trial Preparation)

EVICCTIONS:

How to file an Eviction case? <https://www.leeclerk.org/services/self-help-center/how-to-videos/how-to-series-landlord-and-tenant-evictions>

How to Defend against an eviction?

https://apps.flevictionhelp.org/interview?i=docassemble.playground4:FloridaEvictions_1.yml#page1

Landlord / Tenant Forms can be found at:

<https://www.floridabar.org/public/consumer/consumer004/>

Applicable Law:

- o Residential Tenancies, Florida Statute (“F.S.”) 83.40
- o Service of Process, F.S. 83.22 and 48.183
- o Security Deposits or Other Advanced Rents, F.S. 83.49
- o Residential Tenancies (Mobile Homes and RVs), F.S. Chapter 723 & 513
- o Unlawful Detainer & Forcible Entry, F.S. Chapter 82

TRIAL PREPARATION:

Between now and the time of the trial, you and the other party to the lawsuit must engage in discovery procedures. These include exchanging names and addresses of witnesses, exchanging copies of documents, exhibits or other things that will be offered as evidence at the trial. Failure to do this as directed by the Judge will require the Judge to rule your evidence inadmissible or to tax costs against you. The purpose of discovery procedures is to assist both parties in becoming fully informed concerning the testimony and evidence which will be presented by the other side at the trial.

The discovery rule regarding Small Claims cases is Florida Small Claims Rule 7.020. Otherwise, the Florida Rules of Civil Procedure govern your cases. Discovery rules can be found in the Florida Rules of Civil Procedure Rules 1.280 through 1.390.

If you intend to present any evidence or documents to the Court, then you must **pre-mark all items for identification and send a copy to the clerk and all parties no less than ten (10) days prior to the trial.** If possible, **please send all documents in a single submission.** All documentation needs to be exchanged and filed with the clerk, so the Judge will be able to review the documents in the Court file during the trial. For more information regarding filing and submitting evidence please refer to the Lee County Clerk of Courts web page.¹ All trials will be conducted in-person absent good cause.

PROCEDURES TO BE FOLLOWED AT TRIAL:

At the trial the plaintiff has the burden of proving their claim by a preponderance of the evidence. The plaintiff will introduce documents into evidence; call to the witness stand any witnesses, including the plaintiff(s) to testify. The defendant will have an opportunity to question any witnesses, including the plaintiff(s), who testifies. On the day of the trial be sure to have all your witnesses and all of your documents or other evidence at the trial. There is only one trial. When the plaintiff has completed presenting their evidence, the defendant will have an opportunity to present their evidence and testimony. After all of the evidence has been received both sides will have a brief opportunity to present argument to the Court.

EVIDENCE NOTES

Just because you have filed something in the Court File does NOT mean it is in evidence, OR that it is even admissible (meaning, able to be considered by the Judge for your case). Evidence in Florida is governed by the Florida Evidence Code, which can be found at Chapter 90, Florida Statutes. The Florida Evidence Code applies in **all** court proceedings, including Small Claims.

- **Hearsay:** Hearsay is generally defined as: any out-of-court statement, made by a person, that is offered in court for the purpose of proving the truth of the matter asserted. A common example would be: the car mechanic estimated that it would cost \$700.00 to fix the damaged car. When offered for the purposes of getting \$700.00 awarded in a lawsuit against the other party in the car accident, this would NOT be admissible. Instead, the mechanic would have to appear at the hearing, and offer live testimony and be subject to questioning (called cross-examination) by the other party. There are several exceptions to this rule, and they are all set forth in the Evidence Code. Again, this applies equally in Small Claims Court.
- o Evidence in Zoom Hearings:
 - If you or your witness plan to testify, you will need to appear by video and not just call in by phone via Zoom. The Judge has to be able to see you in order to swear you in so that you can testify. IF YOU APPEAR MERELY BY PHONE, YOU MAY NOT BE ABLE TO TESTIFY.

¹ <https://www.myflcourtaccess.com/>

GETTING YOUR WITNESSES TO COURT:

If any party desires to call as a witness a person who will not voluntarily come to court, the clerk will guide the party in issuing a subpoena to compel the witness's presence in court. Subpoenas may be obtained from the Clerk's Office located on the first floor of the Justice Center. The subpoena issued by the clerk must be served by a deputy sheriff or another person authorized to serve subpoenas. Please be aware that service of a subpoena will generally take at least ten (10) working days, therefore, do not wait until the last moment to have the subpoena issued. **The attorney or party requesting that third parties attend the hearing will be responsible for sharing the Zoom hearing information with that third party and for making arrangements for their appearance. This includes witnesses, court reporters, etc. The Court will not be able to call parties to include them in the hearing.**

A WORD OF CAUTION TO THE PLAINTIFFS:

(If you initiated the lawsuit, you are referred to as the Plaintiff)

As plaintiff you must prove your case by the greater weight of evidence. The greater weight of the evidence means the more persuasive and convincing force and effect of the entire evidence in the case.

BRING TO COURT ALL DOCUMENTS AND EVIDENCE RELATING TO YOUR CLAIM. MAKE SURE ALL WITNESSES WHO HAVE KNOWLEDGE OF THE FACTS CONCERNING YOUR CASE ARE SUBPOENAED. IT IS YOUR RESPONSIBILITY TO MAKE SURE ALL WITNESSES AND DOCUMENTS ARE IN COURT ON THE TRIAL DAY.

A WORD OF CAUTION TO THE DEFENDANTS:

(If you are the person being sued, you are referred to as the Defendant)

Rule 7.100 of the Small Claims Rules provides that any claim of the defendant against the plaintiff arising out of the same transaction or occurrence which is the subject matter of the plaintiff's claim shall be filed, not less than five (5) days prior to the pretrial date or within such time the court designates or it is deemed appropriate. If you have a claim against the plaintiff in the form of a counter-claim, or you believe the money you owe should be reduced or set off, it is essential that you file your counter-claim or set off in writing. The court will not consider such claim if it has not been timely filed.

CONTINUANCES:

All requests for continuances will require a written stipulation between the parties or a hearing before the court. The hearing to determine if a continuance will be granted by the Court must be scheduled prior to the trial date. **All requests must be filed in writing with copies sent to the other party.** There is a time factor involved when scheduling a hearing. A motion form is available in the Small Claims office. **Once you have obtained the motion form, you should contact the judicial assistant for the Judge assigned to your case to schedule a hearing.**

SETTLEMENT:

If all parties agree to a settlement of each and every claim prior to the trial date, the parties must file a written notice and file it with the Clerk. If the time is short each party should notify the judge by telephone so the allotted trial time may be reassigned. (239-533-2913)

ADDRESS CHANGES:

You must furnish every party in the lawsuit and the Clerk's Office with your proper address. If you change your address you must immediately notify the Clerk's Office and all other parties.