

CHAPTER [21-16](#)
FORCIBLE ENTRY AND DETAINER

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[21-16-1](#). Grounds for maintenance of action.

An action of forcible entry and detainer, or of detainer only, is maintainable:

- (1) If a party has by force, intimidation, fraud, or stealth, entered upon the prior actual possession of real property or the occupied structure of another, and detains the same;
- (2) If a party, after entering peaceably upon real property or an occupied structure, turns out by force, threats, or menacing conduct, the party in possession;
- (3) If a party by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property, or occupied structure, whether the same was acquired peaceably or otherwise;
- (4) If a lessee in person or by subtenants holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due;
- (5) If a party continues in possession after a sale of the real property or occupied structure under mortgage, execution, order, or any judicial process, after the expiration of the time fixed by law for redemption, and after the execution and delivery of a deed or instrument of ownership;
- (6) If a party continues in possession after a judgment in partition, or after a sale under an order or decree of a circuit court;
- (7) If a lessee commits waste upon the leased premises, or does or fails to perform any act which, under the terms of the lease operates to terminate the same.

The term, occupied structure, used in this chapter is defined in subdivision 22-1-2(28).

Source: SDC 1939 & Supp 1960, § 37.3902; SL 1992, ch 156, § 1.

[21-16-2](#). Notice to quit required before commencement of proceedings--Service and return.

In all cases arising under subdivisions 21-16-1(4), (5), and (6), three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. On the second service attempt, at least six hours after the previous service attempt, the notice to quit may be posted in a conspicuous place on the property, and also delivered to a person there residing, if such person can be found; and also sent by first class mail addressed to the tenant at the place where the property is situated.

Source: JustC 1877, § 35; CL 1887, § 6074; RJustC 1903, § 45; RC 1919, § 2172; SDC 1939 & Supp 1960, § 37.3903; SL 1986, ch 173.

[21-16-3](#). Jurisdiction of courts.

Any circuit court or magistrate court presided over by a magistrate judge has jurisdiction in any case of forcible entry and detainer, or of detainer only, of real property or an occupied structure within its county.

Source: SDC 1939 & Supp 1960, § 37.3901; SL 1974, ch 153, § 38; SL 1992, ch 156, § 2.

21-16-4. Joinder of actions.

An action under the provisions of this chapter cannot be brought in connection with any other except for rents and profits or damages but the plaintiff may bring separate actions for the same if he so desire.

Source: SL 1881, ch 87, § 2; CL 1887, § 6080; RJustC 1903, § 51; RC 1919, § 2178; Supreme Court Rule 596, 1939; SDC 1939 & Supp 1960, § 37.3906.

21-16-5. Survival of cause despite death of plaintiff.

The legal representative of a person who might have been plaintiff, if alive, may bring an action under this chapter after his death.

Source: JustC 1877, § 36; CL 1887, § 6075; RJustC 1903, § 46; RC 1919, § 2173; SDC 1939 & Supp 1960, § 37.3904.

21-16-6. Verified Complaint--Service with Summons--Procedure.

The complaint shall be in writing and verified by the plaintiff or the plaintiff's agent or signed by the plaintiff's attorney, and served with a summons. A sheriff, any person legally authorized to effect service under § [15-6-4\(c\)](#), or constable of the county shall attempt to serve a lessee, subtenant, or party in possession with a minimum of two service attempts. Each attempt shall be at least one week apart and both attempts shall be within thirty days.

On the second service attempt, the summons may be posted in a conspicuous place on the property and delivered to a person there residing, if such person can be found, and also sent by first class mail addressed to the tenant at the place where the property is situated.

Source: JustC 1877, § 37; CL 1887, § 6076; RJustC 1903, § 47; RC 1919, § 2174; SDC 1939 & Supp 1960, § 37.3905; SL 2020, ch 74, § 1.

21-16-6.1. Service by publication--Exemption.

On the same day as the first attempted service under § 21-16-6, the plaintiff bringing an action of forcible entry and detainer, or of detainer only, under § [21-16-1](#) may cause the summons to be published in a legal newspaper printed in the county where the subject property is located or in an adjacent county in accordance with § [17-2-10](#). A plaintiff who causes a summons to be published under this section must cause the publication only once. Section [15-9-17](#) does not apply to any publication required under this section.

Source: SL 2020, ch 74, § 2.

21-16-7. Time for appearance by defendant.

The time for appearance and pleading shall be four days from the time of service on the defendant or thirty days after the publication of service under § [21-16-6.1](#), whichever occurs sooner. No adjournment or continuance shall be made for more than fourteen days, unless the defendant applying therefor shall give an

undertaking to the plaintiff with good and sufficient surety to be approved by the court, conditioned for the payment of the rent that may accrue, together with costs if judgment be rendered against the defendant.

Source: JustC 1877, § 38; CL 1887, § 6077; RJustC 1903, § 48; RC 1919, § 2175; Supreme Court Rule 597, 1939; SDC 1939, § 37.3907; Court Rule adopted September 29, 1945; SL 2020, ch 74, § 3.

21-16-8. Time action brought on for trial--Special venire in jury cases.

An action under this chapter may be brought on for trial upon two days' notice after issue is joined. If a jury trial be demanded and no jury is in attendance on the day the action is noticed for trial, the court shall cause a special venire to issue as in cases where extra jurors are required, and proceed to impanel a jury and try the action as in other civil cases.

Source: SL 1907, ch 191, § 20; SL 1909, ch 176, § 7; SL 1911, ch 196, § 6; SL 1913, ch 278, § 4; RC 1919, § 2246; Supreme Court Rule 597, 1939; SDC 1939, § 37.3907; Court Rule Adopted September 29, 1945.

21-16-9. Certification to circuit court of title and boundary questions raised in magistrate court.

If the title to or boundary of the real property or the title to an occupied structure in any wise comes in question, in magistrate court, the case shall be certified to the circuit court as provided by rule of the Supreme Court.

Source: 1939 & Supp 1960, § 37.3905; SL 1974, ch 153, § 39; SL 1992, ch 156, § 3.

21-16-10. Judgment for plaintiff.

If the finding of the court or the verdict of the jury be in favor of the plaintiff, the judgment shall be for the delivery of possession to the plaintiff, and for rents and profits or damages, including those authorized by § [21-3-8](#), where the same are claimed in the complaint, and for costs.

Source: SL 1881, ch 87, § 1; CL 1887, § 6078; RJustC 1903, § 49; RC 1919, § 2176; SDC 1939 & Supp 1960, § 37.3908; SL 2020, ch 74, § 4.

21-16-11. Attorney fees taxed as costs.

In any case of forcible entry and detainer, or detainer only, the court may tax as a part of the costs in the case, to the prevailing party, reasonable attorney fees, whether a trial is had or not, if prevailing party is represented by a licensed attorney.

Source: SL 1883, ch 51, § 1; CL 1887, § 6079; RJustC 1903, § 50; RC 1919, § 2177; SDC 1939 & Supp 1960, § 37.3909; SL 2000, ch 95, § 1.

21-16-12. Time of serving execution.

No execution for possession can be served except in the daytime.

Source: SL 1881, ch 87, § 2; CL 1887, § 6080; RJustC 1903, § 51; RC 1919, § 2178; SDC 1939 & Supp 1960, § 37.3908.