

Sealing Old Eviction Files

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*Because equal access to
justice is everyone's fight*

Why Seal an Old Eviction File?

- Many landlords use tenant screening companies, which offer background checks of prospective tenants.
- Landlords often reject any tenant with an eviction filing in their background, regardless of the context of the case or how it ended.
- Regular rejection of decent apartments forces tenants with less than pristine backgrounds into worse, more expensive housing.

The Old Standard: 735 ILCS 5/9-121(b)

- Eviction Act provided two different types of sealing:
 - 121(b) Discretionary
 - 121(c) Mandatory (foreclosure-related)
- Discretionary sealing required the movant to meet three cumulative factors:
 1. The plaintiff's action is sufficiently without a basis in fact or law, which may include a lack of jurisdiction,
 2. That placing the court file under seal is clearly in the interests of justice, AND
 3. That those interests are not outweighed by the public's interest in knowing about the record.

Habitat Co. v. Peeples

Cite: *Habitat Co., LLC v. Peeples*, 2018 IL App (1st) 171420

Facts:

- Landlord tried to evict the tenant for alleged threatening behavior.
- The parties settled and the case was dismissed with leave to reinstate over a two-year period if tenant breached her lease.
- No motion to reinstate was filed during that two-year period.
- After two-year period passed, tenant filed a motion to seal the court file.

Arguments:

- Tenant: Factors in 121(b) should be read in the disjunctive.
- Landlord: Court lost subject matter jurisdiction over the case 30 days after the file order was entered.

Habitat Co. v. Peeples

Holdings:

- No 30-day limit on bringing a motion to seal
 - Motions to seal are not a direct attack on the judgment; they are a collateral motion.
 - Legislature did not limit the time for bringing a motion to seal.
- The three factors from 5/9-121(b) are cumulative. You must meet them all.

What it doesn't tell us...

- What is the mechanism for serving a motion to seal after the case is over?

The New Standard!

- May 17, 2021, Gov. signs the “Emergency Rental Assistance Program Act.” It took effect immediately.
- The Act set guidelines for disbursement of COVID-19 rental assistance grants. It also set new standards for sealing.
- Eviction files now fall into two groups:
 - Cases filed during the pandemic (3-9-20 through 3-31-22): Sealed automatically (122)
 - All other cases: Mandatory sealing (no discretionary sealing anymore!) if new, *alternative* factors are met (121.5). The older standard is repealed (for now).
- New standard in effect until Aug. 1, 2022. Time is short!

Section 121.5(b)'s Four *Alternative* Factors

The court *shall* order the sealing of any court file in a residential eviction action if:

- (1) the interests of justice in sealing the court file outweigh the public interest in maintaining a public record;
- (2) the parties to the eviction action agree to seal the court file;
- (3) there was no material violation of the terms of the tenancy by the tenant; or
- (4) the case was dismissed with or without prejudice.

Take Note...

Whether the case has a sufficient basis in fact / law is no longer a factor

Habitat v. Peeples reasoning still applies. A motion to seal can be brought at any time.

Nothing limits 5/9-121.5 to prospective application only. The structure of the section requires 121.5 be applied retroactively.

The Easy Factors

“The parties to the eviction action agree to seal the court file.”

- Obvious what that means. We recommend a proposed order, signed by both parties, to seal the case.

“There was no material violation of the terms of the tenancy by the tenant.”

- Non-renewal evictions. Other lease termination notices (non-payment of rent (5-day) or other lease violations (10-day)) require the landlord to cite some violation of the lease.

“The case was dismissed with or without prejudice.”

- This could be voluntary or involuntary.
- Any dismissal → case must be sealed.

The Tricky Factor: 121.5(b)(1)

Two components:

- “The *interests of justice* in sealing the court file outweigh the *public interest in maintaining a public record.*”

“The interests of justice”

- CVLS views this prong as being more about cosmic justice than the technical merits of the original case.
- For example: Ten years ago, Client had a baby unexpectedly. She could not afford childcare and got fired from her job for bringing her baby to work. Having lost the income, she got evicted. Since then, she’s been gainfully employed and always paid her rent on time. Is it fair to still hold that eviction against her?

“The public’s interest in maintaining a public record.”

- There is a First Amendment and Common Law right to access court records. Review *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214 (2000).
- The right to review court records is not absolute and can be overridden by a compelling interest.
- The legislature has identified a compelling public interest, favoring sealing eviction files.

What the Motion Looks Like

- Not a 1401 Petition!
 - *Habitat v. Peeples* says this is not an attack on the judgment, and the court still has jurisdiction to entertain the motion. Section 1401's two-year limit only applies to attacks on the judgment.
- A regular motion. Should have...
 - Facts
 - Law and argument
 - Evidence to support (affidavits, documents, old court records, etc.)
- CVLS has a template motion to use.

How Is the Motion Served and Who Gets It?

- This gets a little weird. Usually, there are two modes of service:
 - If appearance filed: Rule 104 (regular service)
 - If no appearance filed and new relief is requested or post-judgment petitions: Rule 105 and 106 (certified mail on the party only)
- A motion to seal is not a post-judgment attack on the judgment. However, it's also a "freestanding, collateral action" (*Habitat v. Peeples*). Under Rule 11, any former attorney of record in the old case is no longer of record for the sealing motion.
- We recommend: Certified mail on the party, not their former lawyer.
- If you're nervous, can talk to and send motion to old lawyer too.

Step-by-Step

1

Get Client and
File from CVLS

2

Talk with Your
Client

3

Contact the Old
Landlord

4

Draft and File
Your Motion

5

Argument

6

Make Sure the
File Gets Sealed

7

Report Back to
CVLS

Step 1: Get Client and File from CVLS

- CVLS will have already reviewed the client's case.
 - Client's case has some merit.
 - Client is financially eligible for our services.
- The file will include:
 - Client's name and contact info.
 - A memo with:
 - Case and lawyer info.
 - Background information.
 - Suggested arguments.
 - Documents already collected.

Step 2: Talk with Your Client

- Introduce yourself and let them know what you'll be helping them with.
- Work on retainer and appearances.
- Confirm information in memo and gather more.
- Talk through strategy and legal arguments.
- Big question: Is the old landlord going to work with us or fight?

Step 3: Contact the Old Landlord

- CVLS will gather as much info as we can find about the location of the old landlord.
- First question: “I represent (name) to help her seal the old eviction file. I understand you were her landlord when that case was filed. Are you represented by counsel?”
 - No: Great! Let’s talk.
 - Yes: Who? Get all the contact info and reach out to the lawyer.
- Can we work something out?
 - Depends on the basis for sealing. If it’s easy, no need to give much. If it’s harder, maybe need to be ready to offer something.

Step 4: Draft and File the Motion

- CVLS has a template motion to seal for you.
- Lay out the material facts clearly. If arguing “the interests of justice,” lay it on thick!
- Support your motion with an affidavit and any other documents.
- E-file your motion in the old eviction case.
 - CVLS cannot do e-filing for you, but we can help.
 - Select a presentment date on the e-filing website.
- Send notice to the landlord only. An attorney only gets notice if they file an appearance. But again...this is up to you.
- Send in courtesy copies per the judge’s standing order.

Step 5: Argument

- Be ready to argue the motion that day. The court could enter a briefing schedule.
- Possible arguments to be ready for:
 - Court doesn't have jurisdiction over this anymore.
 - The new standard is not retroactive.
 - The actual merits of your motion.

Step 6: Make sure the file gets sealed

- Assuming a sealing order is entered, get a copy of the order as soon as possible.
- check the clerk's docket every week for a month. Should be sealed in that time.
- If there is any issue, either getting the order or getting it under seal, follow up aggressively until it's sealed.

Step 7: Report Back to CVLS

- Let us know how the case turned out, whether sealed or not.
- If it's a good story, please share it! We might include it in our newsletter.
- Aaaaaand then you immediately take another case!

Questions?



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