

INSTRUCTIONS FOR FILING COMPLAINT

SUMMARY POSSESSION ACTION

Before initiating a case, you should obtain a copy of the booklet entitled *How to File and Defend a Civil Case in the Justice of the Peace Court of the State of Delaware*. This booklet will explain the process involved and will help you to determine which type of action you should file. In order to initiate a case, you must fill out the Complaint and submit it, along with the filing fee, to the Court. If you determine that your case is a **SUMMARY POSSESSION** action, you may use the attached form as an example and follow the directions below for filling out the Complaint.

(This information is not legal advice and is not a substitute for seeking legal advice from an attorney. This information is not binding on the Court if incorrect or misunderstood. The sample form and instructions are illustrative only and may or may not apply to the specific facts of your case.)

The sections of the sample complaint will be identified by capital letters in parentheses, i.e., (A), (B). These do not appear on the actual complaint but are used to help you follow the instructions to the sample form.

(A) Fill in the County, Court No. and Court address. You should leave blank the space for "Civil Action No." (not on the sample).

(B) In the section marked PLAINTIFF(S), you must fill in your name, address and telephone number. If you are not the only plaintiff, you must include the same information for all other plaintiffs in the case. If you are filing with your spouse and have the same address, you may include both spouses in the same section. However, you must list the first and last names of each spouse.

(C) In the section marked DEFENDANT(S) you must fill in the name, address and phone number of each defendant. It is extremely important that the addresses given the Court are complete and correct. If the party you are suing has a post office box, you must include their street address as well as their post office box. If you are suing a husband and wife, you must list the name of each spouse.

(D) If you plan to use an attorney, you should include the name of the attorney. The attorney's address and phone number should be included if known. If you list an attorney under your name on the complaint form, the Court will send all mail directly to the attorney and not to you. Therefore, before you put an attorney's name on the complaint form, you should be certain that the attorney is willing to represent you in your case.

(E) You should also fill in the name of the defendant's attorney, if any. You may leave this blank or write unknown if you do not know if the defendant has an attorney.

(F) You must indicate whether you are an individual or are an organization such as a corporation or partnership. If you are not suing as an individual, you must obtain a Form 50 from the Court and file this, along with the required filing fee with the Chief Magistrate. Filing the Form 50 permits a person who is not an attorney to represent an organization in the Justice of the Peace Court.

(G) You must also indicate whether the party you are suing is an individual or an organization. (The defendant will also be required to file a Form 50 if it is an organization and does not wish to be represented by an attorney).

(H) Type of Service. If you wish to hire a special process server to serve the complaint, you should so indicate. A special process server is an individual approved by the Court to serve documents in lieu of the Court.

(I) Rental Unit Address. Fill in the address of the rental unit for which you are seeking summary possession.

(J) Type of Action. Check Summary Possession.

(K) Concise Statement of Facts. Although only a very short statement of the facts is required, it is important that you include essential information, you may attach additional pages if necessary. The following must be included in a complaint for Summary Possession:

- 1) The relationship of the plaintiff and defendant with regard to the rental unit (e.g., landlord and tenant).
- 2) The address of the rental unit, including the unit number.
- 3) A statement of the facts upon which the claim is based. **A copy of any written notice of the basis of the claim must be attached.** For example, if you are seeking possession of a residential unit for failure to pay rent, the 5 day notice required by 25 *Del.C.* § 5502 should be attached.
- 4) A statement of what you seek in the action.

In addition, for a landlord seeking possession because the tenant has violated a rule relating to the tenant's use of the rental unit, the following information must also be included:

- 1) The rule or provision of the rental agreement allegedly broken, the date the tenant was told of the rule, and the way in which the tenant was told about the rule (e.g., handed to tenant, mailed). **A copy of the rule, as originally provided to the tenant must be attached.**
- 2) Facts showing that the rule was broken and that notice as required by law was given to the tenant.
- 3) Facts showing a continued or recurring violation of the rule.
- 4) A statement of the purpose served by the rule.
- 5) If the rule did not exist when the tenant entered into the rental agreement, a statement that it does not work a substantial modification of the tenant's bargain, or if it does, that the tenant consented knowingly in writing to the rule.

(L) Relief Sought. This section asks you to indicate what you want to obtain as a result of your suit. In the sample complaint, the relief sought is possession plus back rent and late fees.

- * The amount of money which is being claimed should be put on the first line and should not include interest. Any claim for late fees should be included in this amount.
- * Be sure to complete all other relief which you are seeking.
- * Be sure to check the box indicating that you want possession.
- * Be sure to indicate whether you wish to have a jury trial or not.

(M) Finally, be sure to date and sign your complaint. Then, you should submit it, along with the filing fee, to the Court.

