

HOW TO FILE AND DEFEND A CIVIL CLAIM IN THE JUSTICE OF THE PEACE COURT

(This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood.)

WHAT IS A JUSTICE OF THE PEACE CIVIL COURT?

The Justice of the Peace Civil Court is a court that you can use to sue to recover monetary damages for up to \$15,000, generally with or without an attorney. While they are official court cases, the Justice of the Peace Court system is designed to provide people an inexpensive and speedy method of settling claims.

WHEN SHOULD YOU USE THE JUSTICE OF THE PEACE CIVIL COURT?

Justice of the Peace Civil Court is available to resolve disputes concerning money debts, property damages and return of personal property when the amount involved does not exceed \$15,000.00. In addition, landlord/tenant disputes are tried in the Justice of the Peace Court. If your claim exceeds \$15,000.00, you may still use the Justice of the Peace Civil Court, but your relief will be limited to \$15,000.00 and you will lose the right to the amount of the claim over \$15,000.00.

Some examples of when you may sue in a Justice of the Peace Civil Court are:

1. When your landlord refuses to return your security deposit;
2. When a business loses or damages your personal property (such as a laundry damaging your clothing);
3. When someone has damaged your automobile and won't pay the repairs;
4. When someone owes you money for services rendered or goods sold and delivered; or
5. When someone has breached a contract with you.
6. A repossessed auto is sold for less than outstanding balance (Deficiency Judgment 6 Del. C. §9-601

Make sure you know the full name and correct address of the party being sued and whether the party is an individual, corporation, partnership, limited liability company, association, estate or trust. An improper name could result in a dismissal of the case. You must use both first and last names for individuals (including for a husband and wife).

IS AN ATTORNEY REQUIRED?

An individual may appear in Justice of the Peace Court without an attorney. However, if you are unfamiliar with the legal issues and procedures in your case, you may want to consider consulting with an attorney. Copies of the Delaware Code (including all Delaware statutes) are available at the county law libraries (in the Superior Court Courthouse in each county) and public libraries in the State. The Delaware Code may also be located online at www.Delaware.gov (click Delaware Agencies, then General Assembly, then online publications, then Delaware Code Online.) In addition, you may obtain Justice of the Peace Court Rules, forms, and additional information from the Justice of the Peace Court website at <http://courts.delaware.gov/jpcourt>.

If you are a **corporation or other artificial entity**, you may only appear in Justice of the Peace Courts in civil cases without an attorney if you file a Certificate of Representation with the court (along with the complaint or other pleading) and with the Chief Magistrate, and comply with the other provisions of Supreme Court Rule 57. The Certificate of Representation must be renewed annually and a \$20.00 annual registration fee paid. If you are a corporation or other artificial entity and want to appear in court without an attorney, you should ask the court for Civil Form No. 50 and you must complete that form prior to filing the complaint or answer.

THE COURT CLERKS WILL TRY TO HELP IN ANSWERING QUESTIONS, BUT THEY MAY NOT GIVE LEGAL ADVICE OR RECOMMENDATIONS ON YOUR SPECIFIC DISPUTE OR CLAIM. AS MEMBERS OF THE JUDICIAL BRANCH OF GOVERNMENT, JUSTICES OF THE PEACE ARE ALSO PROHIBITED FROM GIVING LEGAL ADVICE. YOU SHOULD CONSULT AN ATTORNEY IF YOU NEED ASSISTANCE IN PREPARING AND PRESENTING YOUR CLAIM IN JUSTICE OF THE PEACE COURT.

WHAT ARE THE FILING FEES?

You must pay a filing fee to start a Justice of the Peace Court Civil case. This fee must be paid to the court clerk before your claim or other request can be processed. Current court fees are listed below.

Filing Fee for Landlord/Tenant	\$40
Filing Fee for Debt and Trespass Claims where the amount in controversy exceeds \$5,000	\$40
Filing Fee for Debt and Trespass Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$35
Filing Fee for Debt and Trespass Claims where the amount in controversy is less than \$1,000	\$30
Filing Fee for Replevin Action	\$50
Alias (Second Attempt at Service)	\$15
Attachment in Lieu of Summons	\$50
Execution	\$25
Sale Fee	\$20
Subpoena	\$5
Lienholder Without Hearing	\$10
Lienholder with Hearing	\$15
Motion to Vacate a Default/Nonsuit Judgment	\$10
Landlord/Tenant Appeal	\$50
Constable Sale (Vendition Exponas)	\$20
Transcript	\$10
Service of Writ of Summary Possession	\$35
Revival of Judgment (Scire Facias)	\$10
Third Party Action for Landlord/Tenant Claims	\$40
Third Party Action for Debt and Trespass Claims where the amount in controversy exceeds \$5,000	\$40
Third Party Action for Debt and Trespass Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$35
Third Party Action for Debt and Trespass Claims where the amount in controversy is less than \$1,000	\$30
Filing Fee for an Abandoned Property Suit	\$40

If the Plaintiff (person who the files the case) wins the case, the court may award the court costs (in addition to the principal claim, interest, and other relief requested as a part of the judgment). If the Plaintiff files the case outside of the county where the Defendant (person who the claim is against) resides, court costs will not be awarded. If you cannot afford the filing fee, you may file an application (called an "*in forma pauperis*" application) asking the Court to waive these fees if it determines that you are unable to pay. The clerk can provide the necessary forms.

NOTE: PLEASE CONTACT THE APPROPRIATE COURT IF SPECIAL ACCOMMODATIONS ARE NEEDED.

WHERE ARE THE JUSTICE OF THE PEACE CIVIL COURTS?

	<u>Voice #:</u>	<u>TDD #</u> [HEARING IMPAIRED <u>ONLY:</u>
Court No. 9 (Townsend)	378-5221	378-5206
Court No. 13 (Wilmington)	577-2550	577-8124
Court No. 16 (Dover)	739-4316	739-7588
Court No. 17 (Georgetown)	856-1447	856-5938

WHAT TYPES OF CASES CAN BE FILED IN A JUSTICE OF THE PEACE COURT?

I. DEBT ACTIONS - \$30.00-\$35.00- \$40.00

A debt action is a claim for a sum of money. Examples of debt actions include money claimed on a loan, money claimed for purchases made, money claimed because work for which payment has been made was not completed or properly done, money claimed for unpaid rent, security deposits not returned, etc.

II. TRESPASS ACTIONS - \$30.00- \$35.00 - \$40.00

A Trespass action involves the wrongful, intentional, or negligent actions of a person that resulted in damage to another's property. For example, an improper act of another person involving an automobile as a result of a traffic accident may cause damages to a home, lawn, bicycle, or to any other personal property. Information describing the incident, the type and amount of damage, how the amount of damages was calculated, and how the Defendant's conduct

was improper must be stated in the complaint filed with the Court or in a letter attached to the complaint.

PERSONAL INJURIES: The Justice of the Peace Court does not have jurisdiction to hear actions involving personal injuries, mental anguish, etc.

III. LANDLORD/TENANT (SUMMARY POSSESSION) ACTIONS - \$40.00

(A) This action may be filed by the landlord for possession of a rented property because of unpaid rent or abuse or misuse of the rented property. Tenants may file if the landlord has violated the Landlord/Tenant Code, including wrongfully keeping them out of the rented property.

(B) Before the action may be filed by a landlord, notice in writing must be given or sent to the tenant by the landlord. This notice must state that the tenant has at least five days to pay the rent or at least seven days to correct the abuse or misuse and that if the tenant does not do as instructed a suit for possession may be filed with the Court. Once the time period has passed without tenant action, the landlord may then file a complaint for rent due, damages and/or possession, if appropriate.

(C) Either party to the action may request a jury trial. The Plaintiff must request a jury trial when the action is filed and the Defendant must request a jury trial within ten days after being served with the notice of the suit. These requests must be in writing. Further information on Landlord/Tenant (Summary Possession actions may be obtained from the Court's website at <http://courts.delaware.gov/help/LandlordTenant/>.

IV. REPLEVIN ACTIONS - \$50.00

A replevin action may be filed by a person to get back an article or item of personal property that is being withheld from them by another person. A detailed description, serial number and value of the personal property must be included with the complaint.

PROCEDURES FOR DEBT AND TRESPASS CIVIL ACTIONS:

FILING OF THE ACTION: Complaint (Civil Form No. 1), **Please file at least 3 copies of all paperwork submitted for filing.** General Summons (Civil Form No. 3) and Defendant's Answer to Complaint

(Civil Form No. 7), will be served on the Defendant by the Court once the complaint is filed (unless the Plaintiff chooses to pay for a special process server). If the Defendant in the suit is the State or any part of the State Government, or any State employee being sued in connection with his or her job, the Plaintiff should indicate (on a separate piece of paper attached to the complaint) that process should be served on the Attorney General as well as upon the Defendant, and provide the address. A Plaintiff which is a corporation, partnership, limited liability company, association, trust or estate, must file the notarized original of Civil Form No. 50 with the Chief Magistrate, along with the \$20.00 registration fee, annually if it wishes to appear without an attorney in Justice of the Peace Court. A Form 50 may be obtained from the Court or from the Court's website at <http://courts.delaware.gov/jpcourt>.

RECEIPT OF ANSWER: Upon receipt of the completed "Defendant's Answer to Complaint" (Civil Form No. 7) by the Court within 15 days from the date of service on the Defendant, the Court will schedule a trial and send "Notice to Plaintiff and Defendant of Time of Hearing" to the parties if the Defendant requests a trial; OR notify Plaintiff that Defendant has demanded a Bill of Particulars and schedule a trial by sending "Notice for Demand for a Bill of Particulars" and "Statutory Excerpt on Bill of Particulars" to the parties if Defendant requests a trial and a Bill of Particulars; OR order judgment if the Defendant admits owing the debt or claim. Defendants who are a corporation, partnership, limited liability company, association, trust or estate, must file a notarized Civil Form No. 50 with the Chief Magistrate, along with the \$20.00 registration fee, if they wish to appear in the Justice of the Peace Court without an attorney. Defendants should forward the original Civil Form No. 50, along with the \$20.00 annual registration fee to the Chief Magistrate.

DEFAULT JUDGMENTS: If no answer is received by the Court from the Defendant within the proper time period, the Court will send out "Statement of Plaintiff in Support of Default Judgment" (Civil Form No. 13) to the Plaintiff. Plaintiff should note that this form must be **NOTARIZED**, that the amount of money claimed may not exceed the amount claimed in "Complaint", that pre-judgment interest, attorney's fees or other claims may not be included in the judgment unless requested in the complaint. Pre-judgment interest must be calculated by the Plaintiff in order to be included in the judgment. If pre-judgment or post-judgment interest is demanded at a contractual rate above the current legal rate, a copy of the contract on which the claim is based must be submitted with this form.

Attorney's fees are recoverable only on notes, invoices, or other written documents where payment of attorney's fees is expressly provided for in the document. 10 *Del.C.* § 3912. However, no provision in a residential rental agreement providing for the recovery of attorney's fees by either party in any proceeding arising from the tenancy is enforceable. 25 *Del.C.* § 5111. Where fees may be obtained, they can not be more than 20% of the judgment.

In most cases, a party seeking to vacate a default judgment must file a motion to vacate within 15 days of the entry of the default judgment, or if service was made by certified mail, within 30 days. In seeking to vacate a default judgment, a party should explain why he or she failed to answer the summons (let the judgment go to a default). Plaintiff will not usually need to appear at the Court to obtain a default judgment. If the Court has questions concerning the information provided by the Plaintiff, the Court may schedule a hearing prior to entering judgment.

PROCEDURES FOR LANDLORD/TENANT SUMMARY

PROCEEDINGS: Once the complaint is filed with the court, the case will be scheduled for trial. The Landlord/Tenant summons (Form No. 4) and complaint, with notice of the trial date, will be served on the Defendant and mailed or provided to the Plaintiff. For default judgment (upon Defendant's failure to appear at a scheduled court hearing), the Plaintiff will appear at court at the trial date and time to obtain the judgment. In most cases, a motion to vacate a default judgment must be made within 10 days of its entry.

PROCEDURES FOR REPLEVIN PROCEEDINGS: Once the complaint is filed with the court, the case will be scheduled for trial. The summons (J.P. Civ. Form No. 2) and complaint, with notice of the trial date, will be served on the Defendant and mailed or provided to the Plaintiff. For default judgment (upon Defendant's failure to appear at a scheduled court hearing), the Plaintiff will appear at court at the trial date and time to obtain the judgment. A detailed description, serial number and value of the personal property must be included with the complaint.

NON-SUIT JUDGMENTS: A non-suit judgment occurs when a Plaintiff, after proper notice, fails to appear at the designated trial date and time. In summary possession actions, a motion to vacate a non-suit judgment may be made within 10 days of the entry of the non-suit judgment. In all other actions, the Plaintiff may seek to vacate a non-suit judgment within 15 days of its entry, or if service was made by certified mail, within 30 days. In seeking to vacate a non-suit judgment, a party should explain why he or she failed to appear at the time

scheduled.

NON EST RETURN OF SERVICE: The term "non est" means the Court was unable to serve the summons or other court documents that you requested service on. If service is returned "non est", you will receive J.P. Civ. Form No. 9 which will state the reason the Court was unable to serve the papers. Once you have additional information as to the location where the parties may be served, you will need to file an "alias" request for service ("Alias" is the second attempt of service after the first attempt was unsuccessful.), a \$15.00 fee, and new "alias" forms to begin the action. (For debt and trespass, you will need to file J.P. Civ. Forms No. 1, 3 and 7; for replevin, J.P. Civ. Forms No. 1 and 2; for landlord/tenant possession, J.P. Civ. Forms No. 1 and 4.)

NULLA BONA EXECUTION RETURN: If an execution is returned "nulla bona", the Court was unable to find any goods or chattels to attach. If you wish to attempt an execution at a later time, you will need to file an "alias" execution form and the alias filing fee of \$15.00.

DISMISSAL FOR WANT OF PROSECUTION: If a summons has not been served and no Alias Complaint is filed OR if after service and when entitled to a default judgment, the Plaintiff fails to file "Statement of Plaintiff in Support of Default Judgment," the case will be dismissed by the Court, on its own motion and without prior notice to the parties, one year after the last docket entry.

SOME ISSUES TO CONSIDER PRIOR TO TRIAL

BILL OF PARTICULARS

(A) If you are the Defendant in a debt action, you may request a Bill of Particulars from the Plaintiff. A Bill of Particulars is a statement prepared by the Plaintiff stating with particularity the basis for the Plaintiff's claim and how the amount claimed was determined. The Plaintiff must include an affidavit notarized by a Notary Public with the Bill of Particulars. (For Plaintiffs that are artificial entities, the affidavit must be signed by an officer of the corporation, or by a partner for a partnership, or by any representative of the artificial entity certified pursuant to Delaware Supreme Court Rule 57.)

(B) It may be requested by the Defendant in **DEBT** actions only.

(C) When a Bill of Particulars is requested, the court forwards notice stating the required information which must be supplied by the Plaintiff and the procedure for the Plaintiff to follow.

(D) Within 15 days from the date the notice of the demand

for a Bill of Particulars (J.P. Civ. Form No. 10A) is mailed to the plaintiff (counting the date the Court mailed the demand for a Bill of Particulars as the first day), the Plaintiff must either: (1) file a Bill of Particulars; or (2) file a motion opposing the demand for a Bill of Particulars on the ground that the complaint stated the claim with particularity. The original copy of either the Bill of Particulars or the opposing motion must be filed with the court and a copy sent to the Defendant. The Plaintiff shall explain in the original Bill of Particulars or in the motion filed with the court how the copy was served upon the Defendant and if said copy was sent by mail, the date of the mailing and the address to which it was sent.

(E) If the Plaintiff fails to comply with the demand for a Bill of Particulars, the Defendant may file a motion for an order compelling compliance. The motion should be filed with the Court within five days after the time for serving the Bill of Particulars has passed, unless otherwise ordered by the Court.

COUNTERCLAIM

(A) If you are the Defendant you may file a counterclaim if you claim that the Plaintiff owes you money.

(B) In most instances a counterclaim must be filed 5 days prior to trial, excluding holidays and weekends.

(C) The Defendant must state in writing and in detail why you are countersuing the Plaintiff. There is no specific form for this. The written statement must be filed with the court and a copy should be delivered or mailed to the Plaintiff. With the court's copy, you must file a notarized affidavit stating how and when you served the Plaintiff's copy. You must include the total amount of the counterclaim and how you arrived at this figure.

(D) Under certain circumstances, if the Plaintiff has not had enough time to prepare his or her defense to a counterclaim, the Court, upon the request of the Plaintiff, may grant a 15-day continuance of the trial.

THIRD PARTY COMPLAINT

A third party action is filed by the Defendant against a party (not the Plaintiff) who may be liable for all or part of the damages that the Plaintiff may win from the Defendant. A third party action must be filed 5 working days prior to trial along with a filing fee.

SERVICE ON NON-RESIDENTS INSTRUCTIONS

It is the Plaintiff's responsibility to ensure all Defendants are properly served. While the Justice of the Peace Court undertakes most service responsibilities for litigants, the Court does **NOT** perform service on out of state Defendants. Pursuant to Title 10 of the Delaware Code, Section 3104, process filed against an out-of-state (non-resident) Defendant, regardless of whether the Defendant is an individual, a corporation, or any other type of entity, may take the form of a mailing requiring a signed receipt, such as certified or registered mail. While there are other available forms of service of process available to Plaintiffs, this is the form of service preferred by the Court. If you wish to use some other method, you must inform the Court. You will have to undertake that method of service without additional guidance from the Court; prior to doing so you should seek legal advice.

(A) Service of Process Via Return Receipt Mail

If you choose to use return receipt mail as service of your court papers, you should file your case with the Court, where it will be accepted and certified for service of process. The Court will return the paperwork to you and you must complete service as follows:

(1) You must send copies of all papers to the Defendant by **mail (certified or registered), return receipt requested**, within 7 calendar days of the Court returning the documents to you. The papers to be sent to the defendant are:

(a) Summons (Civil Form No. 2, 3 or 4),

(b) Complaint (Civil Form No. 1),

(c) A blank copy of Defendant's Answer to the Complaint (Civil Form No.7)

(not applicable in Landlord/Tenant cases),

(d) Any other documents initially filed with the Court by the Plaintiff,

The receipt for the return receipt mailing described above will be returned to the

Plaintiff by the Post Office marked to show delivery (or lack of delivery) of the envelope. If

the receipt is returned "received" or "refused", the Plaintiff must take the action described in section (2) below. If the receipt is returned "unclaimed", the Plaintiff must take the action described in section (3) below. If the receipt or

envelope is returned marked "Defendant moved, no forwarding address" or other language indicating an incorrect address was used, usually Plaintiff must obtain Defendant's correct address and file an alias or pluries writ with the Court.

(2) If the receipt is returned "received" or "refused ", **within 10 calendar days of the return**, the Plaintiff must file with the Court the return receipt of the registered letter (received from the Post Office) and a notarized affidavit containing the following:

- (a) date the notice was mailed,
- (b) date the receipt was returned to Plaintiff,
- (c) statement that the required notice was contained in the envelope when it was mailed,
- (d) statement that the receipt filed with the affidavit is the receipt obtained at the time of mailing the notice to the Defendant.

The Plaintiff may use Civil Form No. 31A for this purpose.

(3) If the receipt or envelope is returned "unclaimed ", **within 10 calendar days of the return**, the Plaintiff must send a second mailing of the materials indicated above to the non-resident defendant via first class mail with a certificate of mailing. Within that same 10 day period, the Plaintiff must file with the Court the return receipt received from the Post Office, the envelope in which the original notice was sent, and the certificate of mailing for the second mailing, together with a notarized affidavit which must contain the following:

- (a) date the original notice was mailed,
- (b) date the unclaimed mail and attached receipt was returned to Plaintiff,
- (c) statement that the required notice was contained in the envelope when it was mailed,
- (d) statement that the receipt filed with the affidavit is the receipt obtained at the time of mailing the notice to the Defendant,
- (e) date the second mailing (first class with certificate of mailing) was mailed, and
- (f) statement that the certificate of mailing filed with the affidavit is the certificate obtained at the time of mailing the second notice to the Defendant.

Additional information can be found at the Justice of the Peace Court where the case was filed or <http://courts.delaware.gov/JPCourt>.

(B) Artificial Entity Defendants Not Able to be Served by Mail

For a \$50.00 service fee, pursuant to Title 8 (for corporate defendants) or Title 6 (for limited Partnerships) of the Delaware Code, process may be served on the Secretary of State when:

- (1) The Corporation or Limited Partnership is inactive according to the records of the Secretary of State.
- (2) The Defendants Registered Agent or the Defendant itself cannot be served, or
- (3) The Defendant is an Unqualified Foreign Corporation or an Unregistered Foreign Limited Partnership.

The Plaintiff is required to supply two copies of the process to the Secretary of State's office (one to be sent to the Defendant by the Secretary of State's office by certified mail as notice of the case). In the case of an Unqualified Foreign Corporation or an Unregistered Foreign Limited Partnership, the Plaintiff must also supply the address of the Defendant. Questions should be directed to the Secretary of State's office at (302) 739-3077; ask for service of process assistance.

INSURANCE COMMISSIONER

There is a \$25.00 fee to serve the Insurance Commissioner when suing an Insurance Company.

PREPARING FOR TRIAL

[How you prepare and what you do to prepare for a trial will vary and depend on the specific facts and circumstances of your case. The following information is provided as a guideline and is not intended to be all-inclusive. As a reminder, the court clerks may not provide legal advice or recommendations.] One of the most important things to do in getting ready for trial is to know the exact date and time of your trial and

be there on time. **IF YOU SETTLE YOUR CASE BEFORE THE DATE SET FOR TRIAL, NOTIFY THE COURT IN WRITING, SO THAT THE COURT MAY PLAN FOR OTHER CASES TO BE HEARD.**

YOU SHOULD BRING WITH YOU TO TRIAL ALL PAPERS, DOCUMENTS, MATERIALS OR PICTURES WHICH HAVE ANYTHING TO DO WITH YOUR CASE. Bring all written materials, including, but not limited to receipts, bills and estimates to show to the judge to help prove your claim or counterclaim. You must be able to prove your claim or counterclaim - both that you were injured or lost money and the actual damages (monetary amount) that you have suffered. If your claim is for automobile or other property damage, you may bring a qualified witness to testify to the damages caused by the other party and the cost to repair the damages, or you may bring repair estimates, receipts or canceled checks.

YOU SHOULD ALSO BRING ANY OTHER WITNESSES WHO CAN HELP YOU EXPLAIN YOUR CASE.

(A written statement from witnesses who cannot appear in court for you cannot be considered by the Judge because of evidentiary rules and the inability of the other party to cross-examine the witness as to the written statement.) The court clerk will generally issue a subpoena to require a witness to attend and to bring specified documents to court. (The fee for a subpoena is \$5.00 and must be filed at least five days prior to the trial date.) Make sure your witness knows the exact date, time and place of the trial and then make sure the witness appears for the trial.

REMEMBER, WHETHER YOU ARE THE Plaintiff OR THE Defendant, YOU MUST APPEAR AT THE TRIAL, OR YOU WILL LOSE THE CASE. If there is a valid reason why you can't be in court on the day of the trial, write the court if possible, or call, if not, to request a continuance to another date. In your continuance request please state why you need a continuance and whether the other party or attorney agrees with the continuance request (if it is possible for you to ask their position on your request). PLEASE TAKE NOTE THAT ANY CONTINUANCE REQUEST RECEIVED LESS THAN 48 HOURS PRIOR TO TRIAL, OR REPETITIVE REQUESTS FOR CONTINUANCES, WILL MOST LIKELY BE DENIED.

WHAT TO EXPECT AT THE TRIAL

You may wish to arrive early to Court so that you will have time

to get your thoughts together before your scheduled trial. However, it is important to remember there may be a number of cases to be heard before your case so you may have to wait beyond the scheduled time before your case can be heard.

The Plaintiff will speak first and give a brief opening statement, telling the court what the Plaintiff intends to prove through their testimony, evidence and witnesses. After the Plaintiff finishes, the Defendant may give their opening statement setting forth what the Defendant intends to prove during the trial.

After both parties have made their opening statements, the Plaintiff will be asked to call the first witness to testify. (All witnesses who testify will be sworn-in by the court prior to their giving testimony.) After this witness finishes the witnesses' direct testimony and introduces any evidence the witness may have, the Defendant may cross-examine the witness. Cross-examination means asking the witness questions regarding anything about which the witness testified. The Defendant should not start telling their side of the story at this time. (The Defendant will be given an opportunity to explain the Defendant's defense after the Plaintiff and the witnesses for the Plaintiff have all testified.) When the Plaintiff has presented all of the Plaintiff's witnesses and evidence, the Plaintiff rests their case and the Defendant then presents their case, calling any witnesses and presenting any evidence the Defendant may have. The Plaintiff may cross-examine the Defendant's witnesses after they complete their direct testimony. The Judge may ask questions of any witness and these questions should be answered clearly and directly.

When both sides have presented all their evidence and testimony, the Plaintiff may summarize his or her side of the case by telling the Court what they think the Plaintiff proved and why the Court should grant judgment in the Plaintiff's favor. The Defendant is then given the opportunity to summarize his or her side of the case telling the Court why judgment should not be granted for the Plaintiff. (And, where a counterclaim has been filed, why the counterclaim should be allowed.) The Plaintiff, if necessary, is given a chance to rebut anything the Defendant brings up in his or her summation.

A JUDGMENT IS SIMPLY A DETERMINATION BY THE COURT OF WHO OWES WHO AND IN WHAT AMOUNT. IT IS NOT AN ORDER

FOR PAYMENT. THE COURT CANNOT GUARANTEE THAT THE WINNING PARTY WILL EVER COLLECT THE JUDGMENT. THE COURT IS NOT A COLLECTION AGENCY. WHEN A PARTY HAS HAD A JUDGMENT ENTERED IN THEIR FAVOR AND THE LOSING PARTY HAS NOT PAID OR APPEALED, THE COURT DOES NOT TAKE ANY FURTHER ACTION UNTIL REQUESTED TO DO SO BY THE WINNING PARTY WHO MUST PAY AN ADDITIONAL FEE.

HOW DO YOU ATTEMPT TO COLLECT YOUR MONEY?

The procedures for collecting a judgment are complicated. **The court clerk will attempt to answer your questions. But, remember the clerk cannot give you legal advice.** You may want to talk to a lawyer. The following suggestions will not guarantee that you will collect your judgment, but they may be of help.

(1) You may enter into any agreement with the other party regarding collecting the judgment you wish, although the court does not become involved in this. The court only determines the amount of money owed and to whom but not how the debt is paid.

(2) Execution (Attachment or Garnishment of property to enforce payment). Once again, the court will not take any action until you request that the other party's wages be garnished or personal property attached. If you desire a wage garnishment (withholding funds from pay), the employer's name and address must be provided. If attachment of property, such as a motor vehicle or furniture, is requested, the location of the property must be given to the court. While the specific property to be levied upon will be selected by the constable, the constable cannot levy upon a motor vehicle (including a mobile home) unless the certificate of lien from Motor Vehicle is included with the request for attachment (levy). To get a certificate of lien send \$15.00 to: Department of Public Safety, Division of Motor Vehicles, P.O. Box 698, Dover, DE. 19901, ATTN: Correspondence Department, Telephone No. (302) 744-2511 and ask for a certificate of lien.

WITH REGARD TO EXECUTION PROCESS, BOTH CREDITOR AND DEBTOR SHOULD KNOW THAT UNDER BOTH FEDERAL AND DELAWARE LAW, A PORTION OF A DEBTOR'S WAGES AND SPECIFIC ITEMS OF A DEBTOR'S PERSONAL PROPERTY ARE EXEMPT FROM EXECUTION PROCESS.

(3) Constable Sale: Once the levy has been completed, you may request in writing that the constable sell the Defendant's goods, and pay a fee, and comply with other requirements. You must also tell the court what the Defendant continues to owe when requesting a constable sale.

(4) Lien on Real Property: To create a lien on real property owned by the defendant, you may file a certified transcript of the docket entries of the judgment with the Prothonotary of the Superior Court in any county in which property may be located. A judgment so transferred becomes a lien from the date transferred on all the real estate of the losing party which is located within the county in which the Prothonotary's office was located.

Although you can file to begin collecting on your judgment before that time, no court action will be taken for enforcement of a judgment for 10 days after entry of the judgment in debt and trespass actions. In summary possession cases, writ of possession will not issue for 10 days after entry of the judgment, unless an appeal has been filed.

SATISFACTION OF JUDGMENT: It is the Plaintiff's responsibility to notify the court in writing when the judgment has been paid in full or satisfied. If Plaintiff does not, after 90 days of payment in full, the Defendant may sue the Plaintiff for an amount not to exceed half the judgment.

CAN YOU APPEAL A CASE IF YOU LOSE?

If judgment is rendered against you after trial and you wish to appeal, you may do so; but you must file your appeal **within fifteen days** (starting the day after the judgment was signed by the judge) for all cases except landlord/tenant summary possession cases. The appeal is taken to the Court of Common Pleas where you may prefer to have a lawyer because of the technicalities involved in preparing, filing, perfecting and presenting the appeal. (If you are a corporation or other artificial entity you must have an attorney represent you in the appeal to the Court of Common Pleas.) To complete the appeal, you must request a transcript from Justice of the Peace Court, pay the fee for the transcript, and pay a \$125.00 filing fee to the Court of Common Pleas and file other forms required by that Court. **Failure to timely file an appeal usually results in the loss of your right to appeal the case.**

NOTE: For landlord/tenant summary possession cases, either party has five business days, starting the day after the judgment was signed by the judge, to appeal the judgment at the Justice of

the Peace Court where the judgment was ordered. The fee for a landlord/tenant appeal is \$50.00. A cash bond may be required to prevent eviction from taking place. If you file for a motion to reopen the judgment in a landlord/tenant case, this does not stop the issuance of a writ of possession.

ADDITIONAL RESOURCES

Please visit the Justice of the Peace Court web site at <http://courts.state.de.us/jpcourt> for further information. The following brochures relating to civil actions are available either online or from any Justice of the Peace Civil Court: *Sample Complaints* (individual sample complaints available on the web site); *Questions and Answers About the Rules of Evidence*; *How to File and Defend a Summary Possession Action in the Justice of the Peace Court*.