

INSTRUCTIONS FOR FILING COMPLAINT FOR DEBT ACTION – GENERAL CONTRACT

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 (J.P. Civil Form No. 1) and submit it, along with the filing fee, to the Court. If you determine that your case is a **DEBT** action and it is based on an oral or written agreement between you and the defendant, the attached form may be used as an example to help fill out the Complaint.

(The following 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 will 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, and the attorney’s address and phone number, if known.. You may leave this blank or write unknown if you do not know if the defendant has an attorney.

(F) You must state 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 if you will not have an attorney represent you. A copy of the Form 50 must be attached to the Complaint. 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, if you know. (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. The Court will attempt to serve (deliver to) the defendant unless you tell the Court that you wish to hire a special process server. A special process server is an individual approved by the Court to serve documents in lieu of the Court constable.

(I) Rental Unit Address. This should be left blank.

(J) Type of Action. Check Debt.

(K) Concise Statement of Facts. Although only a very short statement of the facts is required, it is important that you include sufficient information. If your complaint does not fully explain what you are asking for, the defendant may request a bill of particulars from you. **Information in this section should show:**

1. What the agreement was between the parties. The relevant terms of the agreement should be explained *For example, in the attached sample, the complaint states that the plaintiff and defendant contracted on June 1, 1997 for the defendant to build a deck in the plaintiff's back yard. The terms were that the plaintiff would put \$500 down and work would be completed within 30 days. Final payment of \$500 was to be paid upon completion of the work.*

2. That the plaintiff has met the requirements of the agreement. *For example, the sample form states that work was completed on June 19, 1997 (within the 30 day period specified in the contract) and invoices were given to the defendant requesting the amount due.*

3. That the defendant has not paid the money owed and how much money is owed. If the defendant has paid some, but not all of the money owed, the complaint should state how much was paid. *For example, the sample form states that the defendant paid the initial \$500 but has not yet paid the balance of \$500 due.*

(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 the \$500 balance due, prejudgment and post judgment interest at the legal rate and court costs. In filling out this section:

* The amount of money being claimed should be put on the first line and should **not** include interest.

* Be sure to complete all other relief which is being sought.

* **If interest is sought at a contractual rate which is higher than the legal rate, a copy of the contract must be attached to the complaint. Interest cannot be compounded.**

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