

INSTRUCTIONS FOR FILING COMPLAINT FOR REPLEVIN 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 **REPLEVIN** action, you may use the attached form as an example and follow the directions below for filling 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 both spouses.

(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 names of both spouses.

(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, 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 indicate whether you are an individual or are an organization such as a corporation. 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. This should be left blank in a Replevin action.

(J) Type of Action. Check Replevin.

(K) Complaint. Although only a very short statement is required, it is important that you include the essential facts. These facts are included on the sample form and are:

1. **a detailed description of the property** (a Sony XTG-1000 camcorder, Serial No. 12345)– If there is more than one item, state the total value and give a general description of the property. A more detailed description must be included, along with the value of each item, on a separate piece of paper as described in the last section, Relief Sought instead of in the complaint)
2. **who is keeping it** (Ms. Doe),
3. **how the person who has it came to have it** (loaned),
4. **when the person who has it gained possession of it** (June of this year),
5. **the plaintiff has more of a right to the item** than the defendant (the plaintiff purchased it and only loaned it to the defendant), and that
6. **it has not been returned.**

(L) Relief Sought. This section asks you to indicate what you want to obtain as a result of your suit.

- * Be sure to check all of those items of relief which you are seeking.
- * The last line must be checked and the value of the item you wish returned should be filled in. **The value of the item is needed so that damages can be awarded if the property cannot be returned to you.** If you are seeking replevin of more than one item, you must include a detailed list of the items and their values on a separate piece of paper, if needed.

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