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. Each Defendant must be served separately, and an affidavit of service must be completed for each Defendant.

(A) **Service of Process Via Return Receipt Mail**

If you choose to use return receipt mail for 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 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); and
(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 notice 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 from the Post Office, the envelope in which the original 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 the 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.

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

For a $100.00 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)739-3073: press "5" for service of process assistance.

(C) **If Form 31A (Affidavit of Service) is not returned to the Court within 365 days (1 year), the case may be dismissed by the Court.**