

Commencing an Action: Delaware

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A Q&A guide to commencing an action in Delaware. This Q&A addresses the requirements for drafting and filing initiating papers, serving process, and amending the complaint. Answers to questions can be compared across a number of jurisdictions (see Commencing an Action: State Q&A Tool).

OVERVIEW OF COMMENCING AN ACTION

1. What are the applicable rules for commencing an action?

DELAWARE RULES OF COURT

Each of the trial courts in Delaware have their own set of rules regarding civil procedure in that court, which are:

- The Delaware Court of Chancery Rules (Del. Ct. Ch. R. 3, 4, and 5).
- The Delaware Superior Court Civil Rules of Civil Procedure (Super. Ct. Civ. R. 3, 4, and 5).
- The Delaware Family Court Civil Rules (Del. Fam. Ct. Civ. R. 3, 4, and 5).
- The Delaware Court of Common Pleas Civil Rules (Del. Ct. Com. Pl. Civ. R. 3, 4, and 5).
- The Delaware Justice of the Peace Courts' Civil Rules (Del. J.P. Ct. Civ. R. 3, 4, and 5).

DELAWARE CODE

The Delaware Code contains provisions regarding the organization, jurisdiction, and procedure for the following courts:

- The Delaware Court of Chancery (Del. Code Ann. tit. 10, §§ 301 - 375).
- The Delaware Superior Court (Del. Code Ann. tit. 10, §§ 501 - 568).
- The Delaware Family Court (Del. Code Ann. tit. 10, §§ 901 - 1077).

- The Delaware Court of Common Pleas (Del. Code Ann. tit. 10, §§ 1301 - 1330).
- The Delaware Justice of the Peace Court (Del. Code Ann. tit. 10, §§ 9201 - 9803).

The Delaware Code contains other provisions relating to commencing an action, including:

- Titles 6, 8, and 10 (service of process).
- Title 10 (jurisdiction of the courts).

OTHER SOURCES

Other sources of applicable procedural law include:

- The Constitution of the State of Delaware.
- Administrative orders and directives.
- Electronic filing rules.
- For the Delaware Superior Court:
 - civil case management plans; and
 - judicial officers' preferences.

2. Generally, in which trial level court must an action be commenced? Please address:

- Monetary thresholds for trial level courts.
- Territorial limits for trial level courts.

A party may commence an action, if the jurisdictional requirements are satisfied, in:

- The Court of Chancery (see Court of Chancery).
- The Superior Court (see Superior Court).
- The Family Court (see Family Court).
- The Court of Common Pleas (see Court of Common Pleas).
- The Justice of the Peace Court (see Justice of the Peace Court).

COURT OF CHANCERY

Monetary Thresholds

The Delaware Court of Chancery is a court of equity. There is no monetary threshold for civil actions. (Del. Code Ann. tit. 10, § 341.)

Territorial Limits

The Court of Chancery has statewide jurisdiction.

SUPERIOR COURT**Monetary Thresholds**

As the court of general jurisdiction, there is generally no monetary threshold for commencing an action in the Superior Court.

Territorial Limits

The Superior Court has statewide jurisdiction.

FAMILY COURT**Monetary Thresholds**

The Family Court has exclusive jurisdiction over virtually all family and juvenile matters. There is no monetary threshold. (Del. Code Ann. tit. 10, §§ 921 - 929; Del. Code Ann. tit. 16, § 4795; Del. Code Ann. tit. 21, § 704.)

Territorial Limits

The Family Court has statewide jurisdiction (Del. Code Ann. tit. 10, §§ 921 - 929).

COURT OF COMMON PLEAS**Monetary Thresholds**

The Court of Common Pleas has jurisdiction of all civil actions where the amount in controversy does not exceed \$50,000, excluding interest. However, the court does not have jurisdiction over matters in equity and certain matters relating to children and domestic relations. The Court of Common Pleas has concurrent jurisdiction with the Superior Court. (Del. Const. art. IV, § 7; Del. Code Ann. tit. 10, § 1322.)

Territorial Limits

The Court of Common Pleas has statewide jurisdiction. Process may be issued out of each county and into each county. (Del. Code Ann. tit. 10, § 1321.)

JUSTICE OF THE PEACE COURT**Monetary Thresholds**

The Justice of the Peace Court has concurrent civil jurisdiction with the Court of Common Pleas and the Superior Court over the following civil cases where the demand, damage claimed, or value of property does not exceed \$15,000:

- Common law contract actions.
- Common law tort actions for damage, destruction or taking of personal property (including replevin), injury to real property, and trespass on land.
- Actions for penalty or forfeiture incurred under the provisions of any statute, bylaw, or ordinance.

(Del. Const. art. IV, § 7; Del. Code Ann. tit. 10, §§ 1322 and 9301.)

The Justice of the Peace Court does not specify a monetary threshold over the following claims:

- Certain landlord/tenant actions, including:
 - summary possession actions;

- tenant receivership petitions; and
- distress for rent actions.

- (Del. Code Ann. tit. 10, § 9301; Del. Code Ann. tit. 25, §§ 5701, 5901, and 6301.)
- Truancy actions (Del. Code Ann. tit. 10, § 9301; Del. Code Ann. tit. 14, § 2733).

Territorial Limits

The Justice of the Peace Court has statewide jurisdiction (Del. Code Ann. tit. 10, § 9206).

3. What documents must be prepared to commence an action? Are there official forms for the initiating papers?

DOCUMENTS**Court of Chancery**

In the Court of Chancery, a party commences an action by preparing and filing:

- A verified complaint (Del. Ct. Ch. R. 3).
- A notarized verification from each plaintiff (Del. Ct. Ch. R. 3(aa)).
- A supplemental information sheet (Del. Ct. Ch. R. 3(a)(2)).

Superior Court

In the Superior Court, a party commences an action by preparing and filing:

- A complaint or a petition or statement of claim.
- An order requesting a writ or other legal document (*a praecipe*).
- A case information statement.

(Super. Ct. Civ. R. 3(a).)

Family Court

In the Family Court, a party commences an action by preparing and filing a verified petition or a complaint or statement of claim (Del. Fam. Ct. Civ. R. 3(a)). The petition or complaint or statement must be notarized (Del. Fam. Ct. Civ. R. 3(b)).

Certain types of proceedings have more specific rules as to the pleadings required, including:

- Child dependency, neglect, or abuse proceedings (De. Fam. Ct. Civ. R. 224).
- Child support proceedings (Del. Fam. Ct. Civ. R. 301).

Court of Common Pleas

In the Court of Common Pleas, a party commences an action by preparing and filing:

- A complaint or a petition or statement of claim. For an amicable action, the parties may file an agreement specifying the matters agreed on. (Del. Ct. Com. Pl. Civ. R. 3(a).)
- A *praecipe* (Del. Ct. Com. Pl. Civ. R. 3(a)).
- A case information statement (Del. Admin. Dir. No. 2009-6 (Del. Ct. Com. Pl. Oct. 1, 2009)).
- A certificate of value (Del. Admin. Dir. No. 2009-6 (Del. Ct. Com. Pl. Oct. 1, 2009)).

Justice of the Peace Court

In the Justice of the Peace Court, a party commences an action by preparing and filing:

- A complaint (Del. J.P. Ct. Civ. R. 3(a)).
- A *praecipe* (Del. J.P. Ct. Civ. R. 3(a)).
- A notarized certificate of representation if the plaintiff is a corporation, partnership, or other entity that is not represented by an attorney (Civil Form 50).

OFFICIAL FORMS

Official forms can be found on the Delaware Judiciary's website, including:

- A Court of Chancery supplemental information form.
- A sample Superior Court *praecipe*.
- A Superior Court civil case information statement.
- A court of Common Pleas case information statement.
- A Justice of the Peace Court:
 - complaint (Civil Form 1); and
 - notarized certificate of representation (Civil Form 50).

4. Is an action commenced by serving or filing the initiating papers? If an action is commenced by service, by when must the complaint or other pleadings be filed?

A party commences an action by filing the initiating papers with the court (Del. Ct. Ch. R. 3(a)(1); Super. Ct. Civ. R. 3(a); Del. Fam. Ct. Civ. R. 3(a); Del. Ct. Com. Pl. Civ. R. 3(a); Del. J.P. Ct. Civ. R. 3(a)).

5. How are the initiating papers filed? Please address:

- Whether the papers are filed electronically or by hard copy.
- Any fees for filing the initiating papers, and in what form those fees must be paid.

FILING INITIATING PAPERS

Court of Chancery

A party must file initiating papers:

- Electronically through File and ServeXpress, the company that administers the court's e-filing program.
- With the Register in Chancery, in paper, to facilitate service.

(Del. Ct. Ch. R. 79.1; Del. Admin. Dir. No. 2003-1 (Del. Ch. Mar. 15, 2007).)

Superior Court

A party must file all initiating papers:

- Electronically through File and ServeXpress, the company that administers the court's e-filing program.
- With the prothonotary, in paper, to facilitate service.

(Super. Ct. Civ. R. 79.1, Del. Admin. Dir. No. 2011-4 (Del. Super. Ct. May 4, 2011); Del. Admin. Dir. No. 2007-6 (Del. Super. Ct. Dec. 13, 2007); Del. Admin. Dir. No. 2007-4 (Del. Super. Ct. Nov. 29, 2007).)

Family Court

Unless the court orders otherwise or exempted, a party must file all initiating papers electronically through e-Flex, the state's e-filing system (Del. Fam. Ct. Civ. R. 79.1(a), (b)).

Initiating papers that are not required to be filed electronically must be filed with the clerk of court. The judge may allow a party to file papers with the judge, who notes the filing date on the papers and transmits the papers to the office of the clerk of court (Del. Fam. Ct. Civ. R. 5(e)). The judge may also allow parties to file initiating papers by fax or electronically.

Court of Common Pleas

Unless the court orders otherwise or an exemption applies, a party must file all initiating papers electronically through e-Flex, the state's e-filing system (Del. Ct. Com. Pl. Civ. R. 79; Del. Admin. Dir. No. 2009-6 (Del. Ct. Com. Pl. Oct. 1, 2009).)

Initiating papers that are not required to be filed electronically must be filed with the clerk of court. The judge may allow a party to file papers with the judge, who notes the filing date on the papers and transmits the papers to the office of the clerk of court. The judge may also allow parties to file initiating papers by fax or electronically. (Del. Ct. Com. Pl. Civ. R. 5(e).)

Justice of the Peace Court

A party filing initiating papers in the Justice of the Peace Court must file them electronically through e-Flex if the party:

- Is represented by an attorney.
- Is an artificial entity represented by an officer, employee, or other authorized agent and has filed five or more civil actions in the Justice of the Peace Court in the preceding 12 months.
- Has filed more than ten other civil actions in the Justice of the Peace Court in the preceding 12 months.
- Is a state agency represented by an authorized agent.

(Policy Dir. of the Chief Magistrate, No. 08-232, E-Filing (Sept. 15, 2008).)

Other parties may, but are not required to, file documents electronically.

For more information on electronic filing in Delaware, see the Delaware Judiciary's website.

FILING FEES

Generally, the fee to initiate a civil action in Delaware is:

- \$100 in the Court of Chancery (Del. Ct. Ch. R. 3(b)).
- \$190 in the Superior Court (Super. Ct. Civ. R. 3(e) and 77(h)).
- \$85 in the Family Court (Del. Fam. Ct. Civ. R. 3(c); Delaware Family Court: Schedule of Assessed Costs).
- \$75 in the Court of Common Pleas (Del. Ct. Com. Pl. Civ. R. 3(e) and 109).
- \$35 in the Justice of the Peace Court (Del. J.P. Ct. Civ. R. 3(a) and 77(h)(3)).

The court may charge different or additional fees depending on the type of action filed. Best practice is for counsel to consult the relevant court's fee schedule and direct questions about fees to the clerk's office.

INITIATING PAPERS

6. What are the contents that must be included in the summons?

The summons must be addressed to each defendant served and contain:

- The name of the court.
- The names of the parties.
- The name and address of the plaintiff's attorney or the unrepresented plaintiff.
- The time within which the court's rules require the defendant to appear and defend.
- The time required by the court's rules to respond to the complaint.
- A statement informing the defendant that failure to appear and respond will result in the entry of default judgment against the defendant.

The summons must also include the date it was issued and bear the court's seal. (Del. Ct. Ch. R. 4(b); Super. Ct. Civ. R. 4(c); Del. Fam. Ct. Civ. R. 4(b); Del. Ct. Com. Pl. Civ. R. 4(c); Del. J.P. Ct. Civ. R. 4(c).)

7. What are the contents that must be included in the complaint?

COURT OF CHANCERY

A complaint in the Court of Chancery must contain:

- A caption that includes:
 - the name of the court;
 - the title of the action;
 - a blank space for the file number to be assigned by the Register in Chancery; and
 - the title of the pleading.
- (Del. Ct. Ch. R. 10(a).)
- A short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief (Del. Ct. Ch. R. 8(a)).
- Sections describing:
 - The nature of the action, including a short introduction and summary of the relief the plaintiff is seeking;
 - the parties;
 - the factual background of the case;
 - the plaintiff's causes of action; and
 - the prayer for relief.
- (Del. Ct. Ch. R. 10(b), (c).)
- Exhibits, if any.
- An attorney signature block that includes:
 - the firm's name, address, and phone number;
 - the attorneys' names;

- the attorneys' bar identification numbers; and
 - the attorneys' signatures (electronic or by hand).
- (Del. Ct. Ch. R. 11(a) and 79.1.)

SUPERIOR COURT

A complaint filed in the Superior Court must contain:

- A caption that includes:
 - the court's name;
 - the title of the action;
 - a blank space for the file number to be assigned by the Prothonotary; and
 - the title of the pleading.
- (Super. Ct. Civ. R. 10(a).)
- A short and plain statement of the claim showing that the pleader is entitled to relief and a demand of judgment for the relief (Super. Ct. Civ. R. 8(a).)
- Factual allegations in numbered paragraphs (Super. Ct. Civ. R. 10(b), (c)).
- An attorney signature block that includes:
 - the firm's name, address, and phone number;
 - the attorneys' names;
 - the attorneys' bar identification numbers; and
 - the attorneys' signatures (electronic or by hand).
- (Super. Ct. Civ. R. 11(a) and 79.1.)

FAMILY COURT

A complaint filed in the Family Court must contain:

- A caption that includes:
 - the name of the court;
 - the title of the action;
 - a blank space for the file number to be assigned by the Prothonotary; and
 - the title of the pleading.
- (Del. Fam. Ct. Civ. R. 10(a).)
- A short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for that relief (Del. Fam. Ct. Civ. R. 8(a)).
- Factual allegations in numbered paragraphs (Del. Fam. Ct. Civ. R. 10(b), (c)).
- An attorney signature block that includes:
 - the firm's name, address, and phone number;
 - the attorneys' names;
 - the attorneys' bar identification numbers; and
 - the attorneys' signatures (electronic or by hand).
- (Del. Fam. Ct. Civ. R. 11(a) and 79.1.)

COURT OF COMMON PLEAS

A complaint filed in the Court of Common Pleas must contain:

- A caption that includes:
 - the name of the court;

- the title of the action;
 - a blank space for the file number to be assigned by the clerk of the court; and
 - the title of the pleading.
- (Del. Ct. Com.Pl. Civ. R. 10(a).)
 - A short and plain statement of the claim showing that the pleader is entitled to relief and a demand for that relief (Del. Ct. Com.Pl. Civ. R. 8(a)).
 - Factual allegations in numbered paragraphs (Del. Ct. Com.Pl. Civ. R. 10(b), (c)).
 - At least one attorney of record's or the unrepresented plaintiff's:
 - name;
 - signature (electronic or by hand);
 - address and telephone number; and
 - email address, if filed electronically (Del. Ct. Com.Pl. Civ. R. 79.1(d)(3)).
 - (Del. Ct. Com.Pl. Civ. R. 11(a).)

JUSTICE OF THE PEACE COURT

Parties who file complaints in the Justice of the Peace Court must use the form provided by the court (Del. J.P. Ct. Civ. R. 7(a)). The form requires:

- A caption.
- The name, address, bar identification number, and phone number of each party's attorney.
- Whether service was effected by:
 - court service; or
 - special process server.
- A specification of whether the action is for:
 - debt;
 - replevin;
 - trespass;
 - summary possession; or
 - a deficiency judgment.
- A short and plain statement of the claim and the relief sought (Del. J.P. Ct. Civ. R. 8(a)).
- The attorney's or unrepresented plaintiff's signature (Del. J.P. Ct. Civ. R. 11(a) and 79.1(h)).

8. Must the plaintiff certify or swear to the complaint?

The following Delaware courts do not require a plaintiff to verify or swear to the complaint:

- The Superior Court (Super. Ct. Civ. R. 11(a)).
- The Court of Common Pleas (Del. Ct. Com. Pl. Civ. R. 11(a)).
- The Justice of the Peace Court (Del. J.P. Ct. Civ. R. 11(a)).

However, both the Court of Chancery and the Family Court require the complaint to be accompanied by a notarized verification statement prepared by each plaintiff or petitioning party (Del. Ct. Ch. R. 3(aa); Del. Fam. Ct. Civ. R. 3(b)).

9. What is the applicable pleading standard? Please address any:

- Key distinctions from Federal Rules of Civil Procedure 8.
- Different pleadings requirements for particular claims (for example, fraud).

STATE PLEADING STANDARD

Delaware is a notice pleading jurisdiction. Under Delaware law, a complaint must contain:

- A short and plain statement of the claim showing that the pleader is entitled to relief.
- A demand for relief.

(Del. Ct. Ch. R. 8(a); Super. Ct. Civ. R. 8(a); Del. Fam. Ct. Civ. R. 8(a); Del. Ct. Com.Pl. Civ. R. 8(a); Del. J.P. Ct. Civ. R. 8(a).)

KEY FEDERAL DISTINCTIONS

Under federal law, a complaint must contain sufficient facts to give rise to a claim that is plausible on its face (*Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Under Delaware law, a complaint must meet a conceivability standard. Under the conceivability standard, the trial court should:

- Accept all well-pleaded factual allegations as true, even vague allegations, if the allegations provide the defendant notice of the claim. However, the plaintiff must support all allegations with specific facts (*Central Mortgage Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 2012 WL 3201139, at *13 (Del. Ch. Aug. 7, 2012)).
- Draw all reasonable inferences in the plaintiff's favor.
- Deny a motion to dismiss unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.

(*Central Mortgage Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011).)

PLEADING REQUIREMENTS FOR PARTICULAR CLAIMS

Capacity

Except in the Justice of the Peace Court, to raise the issue of another party's capacity to sue or be sued, another party's authority to sue or be sued in a representative capacity, or the legal existence of an organized association of persons, the pleader must do so by specific negative averment. The averment must include any supporting facts within the pleader's knowledge. (Del. R. Civ. Ct. Ch. R. 9(a); Super. Ct. Civ. R. 9(a); Del. Fam. Ct. Civ. R. 9(a); Del. Ct. Com. Pl. Civ. R. 9(a).)

Fraud, Mistake, Condition of Mind, or Negligence

Except for the Justice of the Peace Court, in alleging fraud, mistake, or negligence, the facts constituting the fraud, mistake or negligence must be stated with particularity. Malice, intent, knowledge and other conditions of the mind may be stated generally, without particularity. (Del. Ct. Ch. R. 9(b); Super. Ct. Civ. R. 9(b); Del. Fam. Ct. Civ. R. 9(b); Del. Ct. Com. Pl. Civ. R. 9(b).)

Conditions Precedent

Except for the Justice of the Peace Court, allegations that conditions precedent occurred or were performed may be made generally but a denial of the performance or occurrence of a condition precedent must be made specifically and with particularity (Del. Ct. Ch. R. 9(c); Super. Ct. Civ. R. 9(c); Del. Fam. Ct. Civ. R. 9(c); Del. Ct. Com. Pl. Civ. R. 9(c)).

Derivative Actions

Futility of demand in shareholder derivative actions must be pled with particularity (Del. Ct. Ch. R. 23.1).

Special Damages

In the Court of Common Pleas, special damages must be specifically stated and demanded (Del. Ct. Com.Pl. Civ. R. 9(g)).

In the Justice of the Peace Court, there are specific pleading requirements for actions claiming:

- Summary possession (Del. Code Ann. tit. 25, § 5707).
- Breach of a rental agreement (Del. Code Ann. tit. 25, § 5708).

10. Please address the circumstances, if any, where a complaint is not part of the initiating papers, including what papers are filed instead of a complaint.

A statute may require a party to file a petition, statement of claim, agreement, or form instead of a complaint, including:

- Certain petitions in the Court of Chancery, including a petition:
 - for an appraisal of stock (Del. Ct. Ch. R. 3(a)(1); Del. Code Ann. tit. 8, § 262(e));
 - to modify trusts by consent (Del. Ct. Ch. R. 100); and
 - to appoint a guardian for the person or property of an adult with a disability (Del. Ct. Ch. R. 175).
- A petition for the return of forfeited assets and property in the Superior Court (Del. Code Ann. tit. 16, § 4784(a)(7)(c); Super. Ct. Civ. R. 71.3(c)).
- A petition to change a minor's name (Del. Ct. Com. Pl. Civ. R. 81).
- A petition for title to abandoned property (Del. Code Ann. tit. 25, § 4003; Del. J.P. Ct. Civ. R. 70)).

Counsel must check the court's local rules and any applicable statutes to determine the documents that must be filed in a particular case.

11. Please discuss any prerequisites for filing certain claims (for example, filing a complaint against a government entity).

CLAIMS AGAINST GOVERNMENT ENTITIES

There are no prerequisites for filing a claim against a government agency.

SPECIFIC CAUSES OF ACTION REQUIRING PRE-LAWSUIT DEMAND OR NOTICE

Derivative Claims

In a derivative action on behalf of a corporation or unincorporated association, the plaintiff must make a demand on the board of

directors or comparable authority, or show that making the demand would have been futile (Del. Ct. Ch. R. 23.1(a)).

Appraisal Claims

A shareholder seeking to exercise its appraisal rights must deliver a written demand for appraisal on the corporation before the vote (Del. Code Ann. tit. 8, § 262).

SUMMARY POSSESSION CLAIMS

The landlord of a residential unit, mobile home, or mobile home lot must give the tenant written notice of termination and cannot file a complaint until:

- The time allowed in the notice has passed.
- The tenant has either **not**:
 - paid the amount due; or
 - stopped the violation.

(Del. Code Ann. tit. 25, § 5313).

SERVICE OF PROCESS

12. When must the defendant be served with process? Can the time to serve the defendant be lengthened?

SERVING THE DEFENDANT WITH PROCESS

The plaintiff must serve the complaint:

- Within 120 days of when the plaintiff filed the complaint in Superior Court (Super. Ct. Civ. R. 4(j)).
- Within 120 days of when the plaintiff filed the complaint in the Court of Common Pleas (Del. Ct. Com. Pl. Civ. R. 4(j)).
- At least four days before the day of appearance in the Justice of the Peace Court (Del. J.P. Ct. Civ. R. 4(f)(1)(i)).
- At least five days and not more than 30 days before the time when the complaint in a summary possession action is to be heard (Del. Code Ann. tit. 25, § 5705(a)).

The Court of Chancery does not specify when the plaintiff must serve the complaint. However, the court has indicated that a plaintiff will not get the benefit of filing a complaint if the plaintiff intentionally withholds service from a defendant (*Personnel Decisions, Inc. v. Business Planning Systems, Inc.*, 2008 WL 1932404, at *10 n.58 (Del. Ch. May 5, 2008)).

ADDITIONAL TIME FOR SERVICE

The court may give the plaintiff additional time to serve process if the plaintiff shows good cause for the failure to effect service within the required time period (Del. Ct. Ch. R. 6(b); Super. Ct. Civ. R. 6(b); Del. Ct. Com. Pl. Civ. R. 6(b); Del. J.P. Ct. Civ. R. 6(b)).

13. What documents must be served?

The plaintiff must serve the following documents on each defendant:

- In the Court of Chancery:
 - the complaint, with exhibits and verification (Del. Ct. Ch. R. 4(d)); and
 - the summons, signed by the register in chancery (Del. Ct. Ch. R. 4(a), (b), and (d)).

- In the Superior Court:
 - the complaint;
 - any exhibits;
 - the *praecipe*; and
 - the summons.
- (Sup. Ct. Civ. R. 4(e).)
- In the Court of Common Pleas:
 - the complaint;
 - any affidavits;
 - the *praecipe*; and
 - the summons.
- (Del. Ct. Com. Pl. Civ. R. 4(e).)
- In the Justice of the Peace Court:
 - the complaint;
 - the *praecipe*;
 - the summons;
 - the statement of injury, if any;
 - the affidavit, if any; and
 - the notice of hearing in landlord-tenant actions (Del. Code Ann. tit. 25, §§ 5704 - 5705).
- (Del. J.P. Ct. Civ. R. 4(e), (f).)

14. Who may serve process? Is a license or other certification required?

COURT OF CHANCERY

In the Court of Chancery, process may be served by any person who is:

- Not a party to the action.
- At least 18 years old.

The plaintiff may request that process be served by the sheriff, the sheriff's deputy, or any other person appointed by the court. (Del. Ct. Ch. R. 4(c).)

SUPERIOR COURT

In the Superior Court, process may be served by either:

- The sheriff of the county or counties specified in the *praecipe*.
- Any other person appointed by the court.

(Sup. Ct. Civ. R. 4(a).)

FAMILY COURT

In the Family Court, process may be served by either:

- The sheriff or the sheriff's deputy.
- A deputy designated and sworn by the Chief Judge.
- Any other person appointed by the court.

(Del. Fam. Ct. Civ. R. 4(c).)

COURT OF COMMON PLEAS

In the Court of Common Pleas, process may be served by either:

- The sheriff to whom the writ is directed or the sheriff's deputy.

- Any other person appointed by the court.

(Del. Ct. Com. Pl. Civ. R. 4(d).)

JUSTICE OF THE PEACE COURT

In the Justice of the Peace Court, process may be served by either:

- Any constable, sheriff, or deputy sheriff.
- A special process server.
- Any other person authorized by statute or rule to serve process.

(Del. J.P. Ct. Civ. R. 4(d).)

15. What are the methods for service within the state?

The available methods of service vary depending on the defendant, court, and type of action.

SERVICE ON INDIVIDUALS

A person may serve an individual by:

- Personally delivering a copy of the initiating papers to the individual.
- Leaving a copy of the papers at the individual's dwelling house or usual place of abode with a person of suitable age and discretion residing there.
- Personally delivering a copy of the papers to any agent authorized by appointment or law to receive service of process on the individual's behalf.

(Del. Ct. Ch. R. 4(d)(1); Super. Ct. Civ. R. 4(f)(1)(I); Del. Fam. Ct. Civ. R. 4(d)(1); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(I); Del. J.P. Ct. Civ. R. 4(f)(1)(I).)

In the Justice of the Peace Court, a party may also serve an individual by sending a copy of the papers to the individual by either:

- Certified mail, return receipt requested.
- First class mail, with certificate of mailing.

(Del. J.P. Ct. Civ. R. 4(f)(1)(I).)

In summary possession actions in the Justice of the Peace Court, the Landlord-Tenant Code and the Justice of the Peace Court rules provide alternative means of service if a party cannot effect service after a reasonable effort by personal service or by leaving a copy with a person of suitable age and discretion who resides or is employed in the rental unit (Del. Code Ann. tit. 25, § 5706; Del. J.P. Ct. Civ. R. 4(f)(1)(V)).

SERVICE ON AN INFANT OR INCOMPETENT PERSON

A party may serve an infant either over or under 18 years old or an incompetent person by serving:

- The infant or incompetent person's parent (if an infant), guardian, or trustee (if an incompetent person) in Delaware.
- An adult with whom the infant or incompetent person resides, if there is no parent, guardian, or trustee.

Service on the parent, guardian, trustee, or adult must be in the same manner as that of an individual or a corporation (if the parent, guardian, or trustee is a corporation). (Super. Ct. Civ. R. 4(f)(1)(II); Del. Fam. Ct. Civ. R. 4(d); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(II); Del. J.P. Ct. Civ. R. 4(f)(1)(II); Del. Ct. Ch. R. 4(d).)

SERVICE ON A CORPORATIONS AND OTHER ENTITIES

A party may serve a corporation, partnership, or unincorporated association by delivering copies of the initiating papers to an officer, a managing or general agent, or another agent authorized to receive service of process in Delaware. If the initiating papers are delivered to an agent authorized by statute to receive service, the papers must also be mailed to the defendant if the statute requires. (Super. Ct. Civ. R. 4(f)(1)(III); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(III); Del. J.P. Ct. Civ. R. 4(f)(1)(III).)

However, in the Court of Chancery, a party may serve a corporation, limited partnership, or domestic limited liability company by:

- Personally delivering a copy of the initiating papers to the corporation or entity's officer, director, manager or registered agent at either:
 - the person's home or usual place of abode in Delaware; or
 - the registered office or other place of business in Delaware.
- (Del. Code Ann. tit. 8, § 321; Del. Code Ann. tit. 6, §§ 17-105 and 18-105; Del. Ct. Ch. R. 4(d)(4);)
- A different or additional method of service, as directed by the court in "a special case" (Del. Ct. Ch. R. 4(d)(7)).

In the Family Court, a party may serve a corporation by:

- Personally delivering a copy of the initiating papers to an officer, director, or registered agent in Delaware.
- Leaving the initiating papers at an offer's director's or registered agent's home or usual place of abode in Delaware at least six days before the return date in an adult's presence.
- Leaving the initiating papers at the registered office or other place of business at least six days before the return date in an adult's presence.
- If the registered agent is a corporation, serving a copy of the initiating papers on the president, vice president, secretary, assistant secretary, or a director of the corporate agent.

If none of the options are available, a party may serve a corporation through the Delaware Secretary of State. (Del. Code Ann. tit. 8, 321(a), (b).)

SERVICE ON THE STATE

A party may serve the State of Delaware or any agency or other entity of the State of Delaware may be served by serving the summons on either the Delaware:

- Attorney General.
- State Solicitor.
- Chief Deputy Attorney General.

(Del. Code Ann. tit. 10, § 3103(c).)

SERVICE ON LOCAL GOVERNMENTS AND OTHER GOVERNMENTAL ENTITIES

A party may serve a municipal corporation or other governmental organization by delivering a copy of the initiating papers to the chief executive officer of the governmental entity (Sup. Ct. Civ. R. 4(f)(1)(IV); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(IV); Del. J.P. Ct. Civ. R. 4(f)(1)(IV)).

16. What are the methods for service outside the state?

SERVICE OUTSIDE THE STATE

Whenever Delaware law authorizes service outside the state, the service, when reasonably calculated to give actual notice, may be made under the Delaware long-arm statute by:

- Personal delivery in the same manner as service within Delaware.
- Any manner authorized by the law of the place where service is made.
- Any form of mail addressed to the person to be served that requires a signed receipt.
- Any means directed by the court.

(Del. Code Ann. tit. 10, § 3104(d).)

Of these methods, the Justice of the Peace Court prefers service by a form of mail that requires a signed receipt (see *How to File and Defend a Civil Claim in the Justice of the Peace Court*).

Service on Nonresidents Doing Business in Delaware

A party may serve nonresident current or former directors, trustees, officers or members of the governing body of a Delaware corporation by serving the corporation's registered agent or the Delaware Secretary of State if there is no registered agent in Delaware (Del. Code Ann. tit. 10, § 3114).

A party may serve nonresident managers of a Delaware limited partnership or nonresident general partners of a Delaware limited partnership by serving the entity's registered agent in Delaware (Del. Code Ann. tit. 6, §§ 17-109 and 18-109).

Service by Publication or Seizure

The court may order service by publication or seizure of property located in Delaware if the nonresident defendant's address is unknown or if there is "just ground" to believe that the defendant is intentionally avoiding service (Del. Code Ann. tit. 10, §§ 365 and 366).

DEFENDANT IN A FOREIGN COUNTRY

A party may serve a defendant in a foreign country by the methods used for a defendant in another state as specified under Title 10, Section 3104 of the Delaware Code.

When service is made in a foreign country that is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Convention), however, the procedures in the Convention are mandatory and supersede Delaware law (*Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988); *Wright v. American Home Products Corp.*, 768 A.2d 518 (Del. Super. Ct. 2000)).

17. Are there any days on which service of process is restricted (for examples, Sundays or holidays)?

There are no days on which service of process is restricted.

18. What are the consequences for ineffective service of process?

The court may dismiss the complaint if a party fails to effectively serve process (Del. Ct. Ch. R. 12(b); Super. Ct. Civ. R. 12(b); Del. Fam. Ct. Civ. R. 12(b); Del. Ct. Com. Pl. Civ. R. 12(b); Del. J.P. Ct. Civ. R. 12(b)).

In the Superior Court and the Court of Common Pleas, the court must dismiss the complaint without prejudice either on its own initiative or on motion if a defendant is not served with the summons and complaint within 120 days after the complaint is filed without good cause (Super. Ct. Civ. R. 4(j); Del. Ct. Com. Pl. Civ. R. 4(j)).

In the Justice of the Peace Court, a defendant may move for a continuance if it was served less than four days before the date of appearance (Del. J.P. Ct. Civ. R. 4(f)(1)(l)).

19. How are any defects in serving process cured?

The court, in its discretion, may allow a party to amend any process or return of service on terms it deems just, unless it would clearly prejudice the rights of the party against whom the summons is issued (see Del. Ct. Ch. R. 4(h); Super. Ct. Civ. R. 4(i); Del. Fam. Ct. Civ. R. 4(f); Del. Ct. Com. Pl. Civ. R. 4(i); Del. J.P. Ct. Civ. R. 4(i)).

20. Must proof of service of process be filed? Please address:

- Any required form of proof of service (for example, affidavit, affirmation, or declaration).
- Any information required in the proof of service.
- When the proof of service must be filed.

In Delaware, a party must file a return or proof of service. However, failure to make a return of service does not affect the validity of service (Del. Ct. Ch. R. 4(g); Super. Ct. Civ. R. 4(g); Del. Fam. Ct. Civ. R. 4(e); Del. Ct. Com. Pl. Civ. R. 4(e); Del. J.P. Ct. Civ. R. 4(g)).

REQUIRED FORM

Delaware law requires the officer serving the summons to state in the return only the time and manner of service. The return of service must be verified if service was made by a person other than an officer or the officer's deputy. (Del. Ct. Ch. R. 4(g); Super. Ct. Civ. R. 4(g); Del. Fam. Ct. Civ. R. 4(e); Del. Ct. Com. Pl. Civ. R. 4(e); Del. J.P. Ct. Civ. R. 4(g)).

REQUIRED INFORMATION

Personal Delivery

In the Court of Chancery, the parties identified on the return of service as having been served by personal delivery must match the names of the parties identified on the back of the summons (see Delaware Courts: Best Practices for E-filing in the Court of Chancery).

Mail

For service by mail, a return of service must include the return receipt or other official proof of delivery as an exhibit. The return of service is presumptive evidence that the defendant or the defendant's agent received the notice. The notation of refusal is presumptive evidence that the refusal was by the defendant or the defendant's agent. (Del. Code Ann. tit. 10, § 3104(g), (h).)

WHEN PROOF MUST BE FILED

The plaintiff must file the return of service promptly after service is made, but no later than the return day of the summons (20 days after

the return of service is issued, unless ordered otherwise) (see Del. Ct. Ch. R. 4(g); Super. Ct. Civ. R. 4(g); Del. Fam. Ct. Civ. R. 4(e); Del. Ct. Com. Pl. Civ. R. 4(g)).

In a Justice of the Peace Court:

- The plaintiff must file a return of service promptly after service is made. If a writ of summons has not been serviced, the plaintiff must file a return of service no later than the fourth day before the date of appearance as specified in the summons specifying the reason why service could not be made. (Del. J.P. Ct. Civ. R. 4(g).)
- There are two types of process require a return to be filed on an earlier date. If the court has issued:
 - a writ of attachment in lieu of summons, the plaintiff must file a return of service promptly after service is made, but no later than within three days after it is issued; or
 - a forthwith summons, the plaintiff must file a return of service immediately after service is made, and service must be completed within 15 days after the date of issuance.
- (Del. J.P. Ct. Civ. R. 4(g).)
- For actions in which the service of process is secured under Title 10, Sections 3104 (the long-arm statute), 3112 (nonresident operators of motor vehicles), or 3113 (resident owner and operator of motor vehicles who leave Delaware) of the Delaware Code, the plaintiff must file the following with the court within ten days after the plaintiff or plaintiff's attorney receives the defendant's return receipt:
 - the defendant's return receipt;
 - the affidavit of the plaintiff or plaintiff's attorney of the defendant's non-residence and the sending of a copy of the complaint with the required notice.
 (Del. J.P. Ct. Civ. R. 4(h).)

AMENDING THE COMPLAINT

21. Can the complaint be amended after it has been filed, but before it has been served?

A party may amend a complaint once at any time before the defendant serves a responsive pleading (Del. Ct. Ch. R. 15(a); Super Ct. Civ. R. 15(a); Del. Fam. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a)).

However, a party may amend a complaint in the Justice of the Peace Court only with either:

- Leave of court.
- The adverse party's written consent.

Leave must be freely given when justice requires. (Del. J.P. Ct. Civ. R. 15(a).)

22. Can the complaint be amended after it has been filed and served? If so:

- When can this be done as of right?
- When must a plaintiff seek a court order to amend the complaint?

AMENDMENT AS OF RIGHT

Generally, a party may amend the party's pleading once as a matter of course at any time before the defendant serves a responsive pleading. If the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may amend it at any time within 20 days after it is served. (Del. Ct. Ch. R. 15(a); Super. Ct. Civ. R. 15(a); Del. Fam. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a).)

However, in the Justice of the Peace Court, a party may amend a complaint only with either:

- Leave of the court.
- The adverse party's written consent.

Leave must be given when justice requires. (Del. J.P. Ct. Civ. R. 15(a).)

COURT ORDER FOR AMENDING THE COMPLAINT

If the defendant has served a responsive pleading, the plaintiff may amend the complaint by leave of the court or the adverse party's written consent. Leave must be freely given when justice requires. (Del. Ct. Ch. R. 15(a); Super Ct. Civ. R. 15(a); Del. Fam. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a).)

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