

## 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).

**As of January 4, 2021, the Delaware Judiciary has extended until February 3, 2021, the Judicial Emergency in response to the ongoing COVID-19 outbreak and continues to issue orders affecting court operations and procedures. As this may change, please refer to the Delaware Judiciary Response to COVID-19 [website](#) for the most recent orders and information.**

### Overview of Commencing an Action

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

#### Delaware Rules of Court

Each Delaware trial court has its own rules regarding civil procedure in that court, which are:

- The Delaware Court of Chancery Rules (Del. Ct. Ch. R. 3, Del. Ct. Ch. R. 4, and Del. Ct. Ch. R. 5).
- The Delaware Superior Court Civil Rules of Civil Procedure (Del. Super. Ct. Civ. R. 3, 4, and 5).
- The Delaware Family Court Civil Rules (Fam. Ct. Civ. R. 3, 4, and 5).
- The Delaware Court of Common Pleas Civil Rules (Del. Ct. Com. Pl. Civ. R. 3, Del. Ct. Com. Pl. Civ. R. 4, and Del. Ct. Com. Pl. Civ. R. 5).
- The Delaware Justice of the Peace Court Civil Rules (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 (10 Del. C. §§ 301 to 375).
- The Delaware Superior Court (10 Del. C. §§ 501 to 568).
- The Delaware Family Court (10 Del. C. §§ 901 to 1077).
- The Delaware Court of Common Pleas (10 Del. C. §§ 1301 to 1330).
- The Delaware Justice of the Peace Court (10 Del. C. §§ 9201 to 9803).

The Delaware Code contains other provisions relating to commencing an action, including service of process on:

- Partnerships and limited partnerships (6 Del. C. §§ 15-112, 15-113, and 17-105).
- Partners (6 Del. C. §§ 15-114, 17-109).
- Limited liability companies and their managers (6 Del. C. §§ 18-105, 18-109).
- Non-profit associations (6 Del. C. § 1913).
- Corporations (8 Del. C. § 321).
- Entities remaining after corporations have merged (8 Del. C. §§ 252, 256, 263, and 264).

The Delaware Code title 10, Chapter 31 contains provisions for service of process and the commencement of actions.



### Other Sources

Other sources of applicable procedural law include:

- The Delaware State Constitution.
- 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.

In Delaware, if the jurisdictional requirements are satisfied, a party may commence an action 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 Court of Chancery is a court of equity. There is no monetary threshold for civil actions. (10 Del. C. § 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. (10 Del. C. §§ 921 to 931; 16 Del. C. § 4795(d); 21 Del. C. § 704(a).)

#### Territorial Limits

The Family Court has statewide jurisdiction (10 Del. C. §§ 921 to 931).

### 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 \$75,000, 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; 10 Del. C. § 1322.)

#### Territorial Limits

The Court of Common Pleas has statewide jurisdiction. Process may be issued out of each county and into each county. (10 Del. C. § 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 \$25,000:

- 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 any statute, bylaw, or ordinance.

(Del. Const. art. IV, § 7; 10 Del. C. §§ 1322 and 9301.)

The \$25,000 limit does not apply to monetary claims, counter-claims, and cross-claims in an action:

- For summary possession (25 Del. C. §§ 5701-5719).
- Arising from or relating to a commercial lease (25 Del. C. §§ 6101-6310).

(10 Del. C. § 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.(10 Del. C. § 9301; 25 Del. C. §§ 5701, 5901, and 6301.)
- Truancy actions (10 Del. C. § 9301(5); 14 Del. C. § 2733).

### Territorial Limits

The Justice of the Peace Court has statewide jurisdiction (10 Del. C. § 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 Delaware 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, petition, or statement of claim.
- An order requesting a writ or other legal document (a *praecipe*).
- A case information statement.

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

### Family Court

In the Family Court, a party commences an action by preparing and filing a verified petition, complaint, or statement of claim (Fam. Ct. Civ. R. 3(a)). The petition, complaint, or statement must be notarized (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 (Fam. Ct. Civ. R. 224).
- Child support proceedings (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, 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 (J.P. Ct. Civ. R. 3(a)).
- A *praecipe* (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 in Delaware by filing the initiating papers with the court (Del. Ct. Ch. R. 3(a)(1); Del. Super. Ct. Civ. R. 3(a); Fam. Ct. Civ. R. 3(a); Del. Ct. Com. Pl. Civ. R. 3(a); 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 in Delaware:

- Electronically through [File and ServeXpress](#), the company that administers the court's e-filing program.
- With the Register in Chancery, in paper, to help service.

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

#### 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 help service.

(Del. 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 (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. (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(a), (b); [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 clerk of court's office. 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:

- \$300 in the Court of Chancery (Del. Ct. Ch. R. 3(bb); see [Delaware Court of Chancery Court Fees](#)).

- \$200 in the Superior Court (Del. Super. Ct. Civ. R. 3(e) and 77(h)); see [Delaware Superior Court Civil & Criminal Fees](#)).
- \$90 in the Family Court (Fam. Ct. Civ. R. 3(c); see [Delaware Family Court: Schedule of Assessed Costs](#)).
- \$75 in the Court of Common Pleas (Del. Ct. Com. Pl. Civ. R. 3(e) and Del. Ct. Com. Pl. R. 109(B)(1); see [Delaware Court of Common Pleas Court Fees](#)).
- \$35 in the Justice of the Peace Court (J.P. Ct. Civ. R. 3(a) and 77(h)(3); see [Delaware Justice of the Peace Court Civil Filing Fees](#)).

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?

In Delaware, the summons must be addressed to each defendant served and contain:

- The court's name.
- The parties' names.
- 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); Del. Super. Ct. Civ. R. 4(c); Fam Ct. Civ. R. 4(b); Del. Ct. Com. Pl. Civ. R. 4(c); 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 Delaware Court of Chancery 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 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 (Del. Ct. Ch. R. 10(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. Ct. Ch. R. 11(a) and Del. Ct. Ch. R. 79.1(h).)

### 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.(Del. 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 (Del. Super. Ct. Civ. R. 8(a)).

- Factual allegations in numbered paragraphs (Del. Super. Ct. Civ. R. 10(b), (c)).
- Exhibits, if any (Del. Super. Ct. Civ. R. 10(b)).
- 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. Super. Ct. Civ. R. 11(a) and 79.1.)
- 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)).
- Exhibits, if any (Del. Ct. Com. Pl. Civ. R. 10(c)).
- At least one attorney of record’s or the unrepresented plaintiff’s:

### Family Court

A complaint filed in the Family 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.(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 (Fam. Ct. Civ. R. 8(a)).
- Factual allegations in numbered paragraphs (Fam. Ct. Civ. R. 10(b), (c)).
- Exhibits, if any (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).(Fam. Ct. Civ. R. 11(a) and 79.1.)
- 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 (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 (J.P. Ct. Civ. R. 8(a)).
- The attorney’s or unrepresented plaintiff’s signature (J.P. Ct. Civ. R. 11(a) and 79.1(h)).

### Court of Common Pleas

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

- A caption that includes:
  - the court’s name;
  - the title of the action;

### 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 (Del. 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 (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); 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); Del. Super. Ct. Civ. R. 8(a); Fam. Ct. Civ. R. 8(a); Del. Ct. Com. Pl. Civ. R. 8(a); 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 Atl. 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 (*Cent. Mortg. 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.

(*Cent. Mortg. 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. Ct. Ch. R. 9(a); Del. Super. Ct. Civ. R. 9(a); 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); Del. Super. Ct. Civ. R. 9(b); 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. A denial of the performance or occurrence of a condition precedent must be made specifically and with particularity (Del. Ct. Ch. R. 9(c); Del. Super. Ct. Civ. R. 9(c); 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(a)).

#### 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 (25 Del. C. § 5707).
- Breach of a rental agreement (25 Del. C. § 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 in Delaware, including:

- Certain petitions in the Court of Chancery, including a petition:
  - for an appraisal of stock (8 Del. C. § 262(e); Del. Ct. Ch. R. 3(a)(1));
  - 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 (16 Del. C. § 4784(a)(7)(c); Del. 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 (25 Del. C. § 4003(a); J.P. Ct. Civ. R. 70(a)).

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

In Delaware, 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 (8 Del. C. § 262(d)(1)).

#### 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
  - not stopped the violation.

(25 Del. C. § 5513.)

### 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

In Delaware, the plaintiff must serve the complaint:

- Within 120 days of when the plaintiff filed the complaint in Superior Court (Del. 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 (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 (25 Del. C. § 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 (*Pers. Decisions, Inc. v. Bus. Planning Sys., 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); Del. Super. Ct. Civ. R. 6(b); Del. Ct. Com. Pl. Civ. R. 6(b); J.P. Ct. Civ. R. 6(b)).

### 13. What documents must be served?

The plaintiff in Delaware must serve the following documents on each defendant:

- In the Court of Chancery:
  - the complaint, with exhibits and verification (Del. Ct. Ch. R. 3(a) and 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.(Del. Super. 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 (25 Del. C. §§ 5704 and 5705).(J.P. Ct. Civ. R. 4(e).)

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

### Court of Chancery

In the Delaware 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 court-appointed person. (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 court-appointed person.

(Del. Super. 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 court-appointed person.

(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 court-appointed person.

(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.

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

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

The available methods of service in Delaware 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); Del. Super. Ct. Civ. R. 4(f)(1)(I); Fam. Ct. Civ. R. 4(d)(1); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(I); 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.

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

#### Service on Corporations and Other Entities

Generally, 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. (Del. Super. Ct. Civ. R. 4(f)(1)(III); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(III); J.P. Ct. Civ. R. 4(f)(1)(III).)

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.

(8 Del. C. § 321; 6 Del. C. §§ 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. (8 Del. C. § 321(a), (b).)

### Service on the State

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

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

(10 Del. C. § 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 governmental entity's chief executive officer (Del. Super. Ct. Civ. R. 4(f)(1)(IV); Del. Ct. Com. Pl. Civ. R. 4(f)(1)(IV); 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 court-directed means.

(10 Del. C. § 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 a Delaware corporation's governing body by serving the corporation's registered agent or the Delaware Secretary of State if there is no registered agent in Delaware (10 Del. C. § 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 (6 Del. C. §§ 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 (10 Del. C. §§ 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 10 Del. C. § 3104.

However, 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), the procedures in the Convention are mandatory and supersede Delaware law (*Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988); *Wright v. Am. Home Prods. Corp.*, 768 A.2d 518, 523-26 (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?

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

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

### 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 (Del. Ct. Ch. R. 4(h); Del. Super. Ct. Civ. R. 4(i); Fam. Ct. Civ. R. 4(f); Del. Ct. Com. Pl. Civ. R. 4(i); 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); Del. Super. Ct. Civ. R. 4(g); Fam. Ct. Civ. R. 4(e); Del. Ct. Com. Pl. Civ. R. 4(g); 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); Del. Super. Ct. Civ. R. 4(g); Fam. Ct. Civ. R. 4(e); Del. Ct. Com. Pl. Civ. R. 4(g); 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 Efiling 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. (10 Del. C. § 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. Unless ordered otherwise, the return day is 20 days after the return of service is issued. (Del. Ct. Ch. R. 4(g); Del. Super. Ct. Civ. R. 4(g); 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, explaining why service could not be made. (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. (J.P. Ct. Civ. R. 4(g).)
- For actions in which the service of process is secured under the long arm statute, 10 Del. C. § 3104, or the resident owner and operator of motor vehicles who leave Delaware statute, 10 Del. C. § 3113, 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; and
  - 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. (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?

Generally, in Delaware, a party may amend a complaint once at any time before the defendant serves a responsive pleading (Del. Ct. Ch. R. 15(a); Del. Super. Ct. Civ. R. 15(a); 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 court.
- The adverse party's written consent.

Leave must be freely given when justice requires. (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

In Delaware, 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); Del. Super. Ct. Civ. R. 15(a); 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. (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); Del. Super. Ct. Civ. R. 15(a); Fam. Ct. Civ. R. 15(a); Del. Ct. Com. Pl. Civ. R. 15(a).)

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