

CIVIL DEFENDANT INFORMATION

Some or all of the following forms may be required as part of the Complaint process. These forms can be found on the Gallatin County Justice Court website.

- Answer
- Counterclaim
- Notice of Appeal

Step 1

Answer

- Complete all entries on the Answer.
- Date and sign the Answer.
- Make copies (one for yourself and one for the Plaintiff).

Step 2

Counterclaim

- A Defendant may file a Counterclaim against the Plaintiff if the Counterclaim arises out of the same transaction as alleged in the Complaint. Failure to file a Counterclaim arising out of the same transaction may be deemed a waiver.
- If your Counterclaim arises out of a different transaction you may file a separate action in the Civil Division or the Small Claims Division of the Justice Court. The Clerk of Justice Court will provide you with the forms.
- The Counterclaim cannot exceed \$12,000.00.
- Date and sign the Counterclaim.
- Make copies (one for yourself and one for the Plaintiff).

Step 3

Filing

- File the Answer and the Counterclaim with the Clerk of Justice Court.
 - Give the Clerk the following
 - Appearance fee (\$30.00).
 - Original Answer.
 - Send a copy of the Answer and Counterclaim to the Plaintiff.
 - Sign the certificate of mailing on the Original Answer and Counterclaim.
- If an Answer has not been filed by the Defendant within 20 days of service (10 days of service for landlord/tenant actions) of the Complaint and Summons the Plaintiff may ask the Clerk to enter Default against the Defendant.

- If an Answer to the Counterclaim has not been filed by the Plaintiff within 20 days of service (10 days of service for landlord/tenant actions) of the Complaint and Summons the Defendant may ask the Clerk to enter Default against the Plaintiff.
- A Default Judgment cannot be for more than what was asked for in the Complaint or Counterclaim.
- If the amount asked for is for a sum that cannot be made certain the Court may conduct a Hearing to determine the amount of damages or determine the truth of the Complaint or Counterclaim allegations.

Step 4

Mediation

- If an Answer has been filed by the Defendant within the 20 days after service has been made then it will be up to the Plaintiff to move the case along to Mediation. Once the Plaintiff has asked for the case to be set for Mediation the Clerk will set a Mediation date and set notice to both the Plaintiff and Defendant(s).

Step 5

Trial

- If the case did not settle at Mediation it will be up to the Plaintiff to ask the Court to set the case for a Trial.
- Read the Guidelines for Courtroom Conduct.
- At Trial you will need to introduce any written agreements or documents that pertain to your case. You will need to mark each document to be introduced with an Exhibit letter or number on the bottom of the first page of each Exhibit. (Plaintiffs use numbers for their Exhibits and Defendants use letters.) The first document would be marked as "Exhibit A," the second as "Exhibit B," etc. You will need to have the original for the Court, a copy for yourself and a copy for the Defendant.

Step 6

Entry of Default Counterclaim

- If an Answer to the Counterclaim has not been filed by the Plaintiff within 20 days of service of the Counterclaim (10 days of service for landlord/tenant actions) you may request that a Default be entered against the Plaintiff by the Clerk.
- The Clerk will not enter the Default automatically. You must file a Motion to Enter a Default.
- If you have not already filed the Affidavit of Service and the original Summons with the Clerk you will need to as Default will not be entered without them.

Step 7

Entry of Judgment

- At the conclusion of the Trial the Judge may enter Judgment at once or within 30 days. The Judgment will be reduced to writing.
- A Judgment by Default is entered by the Judge or Clerk. Prepare the Judgment by Default and present it to the Clerk. A Judgment by Default cannot exceed the amount asked for in the Complaint or Counterclaim.
- The prevailing party must pay a \$20 Judgment Fee to the Clerk. If a Judgment by Default is entered no Judgment Fee is required.
- Prepare a Notice of Entry of Judgment, attach a copy of the Judgment to the notice and file the original along with two copies with the Clerk. Also, bring with the filing a self-addressed, stamped envelope for yourself and one for the Defendant. Once the paperwork has been entered by the Clerk a copy will be sent to both parties.
- Upon Entry of Judgment the prevailing party may request the Clerk to issue a Writ of Execution. You will need three copies of the Writ of Execution, a Praecipe to Clerk of Court for Executions and a Praecipe Instructions for Service for Executions.
- If you are not the prevailing party go to Step 14.

Step 8

- Appeals from a Court of record are limited only to questions of law and not for a new Trial. [§3-10-115, MCA]
- Appeals of Civil Judgments to the District Court on questions of law are limited to those that exceed \$1,000.00. [Rule 1(b)(1), MCRA]
- There is not appeal from a Judgment by Default. [Rule 4(f), MCRA]
- Prepare a Notice of Appeal and certificate of mailing. File the original with the Clerk within 30 days of the rendition of the Judgment. Send a copy to each party in the action.
- File with the Clerk, within 10 days of filing the Notice of Appeal, the undertaking required under Rules 5 and 6, MCRA. If the undertaking is not filed within 10 days the Appeal shall be dismissed.

PLAINTIFF COMPLAINT PROCESS FLOWCHART

