

All Legal Entities Need to File Through an Attorney

INSTRUCTIONS FOR FILING A CIVIL COMPLAINT FOR POSSESSION

You have received a packet that contains the following documents:

1. Flathead County Justice Court Civil Case Filing and Trial Procedure
2. Complaint for Possession and Money Judgment
3. Summons
4. Praeipce for Service
5. List of Process Servers

Please follow the directions for completing the above-referenced forms in order to properly file your Complaint

Complaint

1. You are the Plaintiff, print your name or the name of your business
2. The person or business you are suing is the Defendant, print the name of the person or the correct business name
You must state the correct business name as it is registered with the Secretary of State. You may call 406-444-3665 for business name information and to find out who the serving agent is to insure proper service of the Complaint
3. Fill out the body of the Complaint for Possession and Money Judgment
4. Print the date you are filing the Complaint
5. Sign your name as it appears in #1 (Plaintiff(s) Signature)
6. Print your mailing address and phone number
7. Print the Defendants address and phone number

Summons

1. You are the Plaintiff, print your name or the name of your business (should be same as is on the Complaint)
2. Print the name or business name of the person or business you are suing business (should be same as is on the Complaint)

Praeipce for Service

1. You are the Plaintiff, print your name or the name of your business (should be same as is on the Complaint)
2. Print the name or business name of the person or business you are suing business (should be same as is on the Complaint)
3. Print the name of the process server or Law Enforcement Agency you want to hire (list is attached)
4. Select Summons and Complaint
5. Print all the defendant's addresses
6. Date and sign
7. Print your address and phone number

You must file the Original Complaint with the Court with a \$50.00 filing fee

FLATHEAD COUNTY JUSTICES' COURT CIVIL CASE FILING AND TRIAL PROCEDURE

*Carefully read this entire pamphlet before preparing your Complaint for filing, or before preparing your Answer if you have been sued. **It contains important information which may determine the outcome of your case.***

This guide is intended to assist all parties in the preparation, filing, answering and presentation of a lawsuit in court. It is not intended to provide legal advice. **THE JUDGES AND CLERKS OF COURT CANNOT GIVE EITHER SIDE LEGAL ADVICE!** The clerk can provide you with procedural information and certain forms. However, court staff cannot advise how the law may apply to your case, or tell you how to prepare forms based upon the circumstances of your case. If you have legal questions about your case you should seek the advice of an attorney or other qualified person. The following outlines the suggested procedure to be followed in preparing a case for filing, filing the Complaint, serving the Complaint, filing an Answer or a Counterclaim, preparing for trial, and presenting your case or defense at trial.

Filing A Complaint - You may file a lawsuit by preparing a written Complaint. The value of the damages or other relief you are seeking cannot exceed \$15,000.00. The person filing the lawsuit is the *plaintiff* and the person responding to the lawsuit is the *defendant*. You must include in your lawsuit anyone who may owe you the money or property you are seeking to recover. If your lawsuit involves, in any way, the legal title or ownership to real estate you must file your lawsuit in the District Court. Your Complaint must state the facts upon which your claim is based. Those facts must be stated with enough detail so that the other side is made aware of the nature and legal basis for the claim. If needed, the clerk will assist in the preparation of the Complaint based on the information you provide. **IT IS YOUR RESPONSIBILITY TO PROVIDE THE NECESSARY INFORMATION OR YOU WILL NOT BE ABLE TO PRESENT IT AT THE TRIAL.** The fee for filing a Complaint is \$50.00 and must be paid at the time of filing. Once the case is filed, you will be given the Complaint so that you can have it served on the defendant(s). You must have the Sheriff, a process server, or some other adult serve the papers and provide proof of service when they return the original Summons to the Court. Each person sued must be personally served a copy of the Complaint! You cannot leave the papers with someone else or post at their home. You must pay the cost of service. In the event you win, the amount of the filing fee and cost of service will be included in the Judgment.

Filing An Answer- Once the defendant has been served a copy of the Complaint, he or she must file a **written Answer** with the Court. The filing fee is \$30.00. The Answer must admit or deny the allegations in the Complaint and must set forth detailed facts upon which any denial is based. When the Answer is filed you must provide the clerk with a Certificate of Service indicating the Answer will be served on the plaintiff. An Answer can be personally served or mailed to the address given to the clerk by the plaintiff. A civil complaint must be answered within twenty (20) days from the day served. A civil complaint for possession must be answered within ten (10) business days.

Filing A Counterclaim- If you believe the plaintiff owes you money then you must file a Counterclaim with your Answer. Your Counterclaim must involve the same facts or circumstances as those in the plaintiff's case against you. A Counterclaim is filed by appearing at the Justice Court and submitting a written statement containing the Counterclaim. The Counterclaim must be served on the plaintiff, either by mail or in person. If a Counterclaim is filed and served the plaintiff must respond to the claim by filing with the court a **Reply to Counterclaim within twenty (20) days** after the day it was served. The Reply must also be sent to the plaintiff and a Certificate of Service must be filed at the time the Reply is filed.

Other Pleadings- The Justices' Court is a court of limited jurisdiction with its own procedural rules. No other pleadings can be filed in the Justices' Court without receiving an order from the court in advance.

Discovery: Under the American civil justice system, and in Montana, neither party is allowed to surprise or "ambush" the other side at trial. Justice can only be done if everyone knows what the relevant evidence is and that evidence is presented to the judge or jury so that the controlling law can be applied to that evidence. In the Justices' court you cannot engage in "formal" discovery without authorization from the judge. You can request from the other side copies of the evidence they are relying on as well as the names and contact information for any witnesses that are going to testify. If the other side will not provide you with the information you have requested, you file a written request with the court to be allowed to conduct formal discovery so that you receive requested information prior to the trial and can better prepare.

Mediation- Flathead County Justice Court may require that your case be submitted to mediation prior to being scheduled for trial. When the defendant files an Answer and/or Counterclaim, the file will be reviewed to determine whether mediation would be beneficial. Mediation is an informal process in which the parties meet with a mediator in an effort to resolve the dispute without the need to go through a trial. Mediation is a service provided by the court and there is no fee. However, if mediation is ordered by the judge, it is mandatory. If your case is scheduled for mediation you will receive an Order to attend mediation at the Justice Center which is located at 920 South Main Street in Kalispell. You will meet with a mediator who will facilitate discussion in order to see if the dispute can be resolved without submitting it to a judge or jury. If mediation is not successful, the case will be scheduled for trial. If the case is complicated, the judge may order a pretrial conference before the date of the trial.

The Trial: You must be prepared at the time of trial to present all of your case, or Counterclaim, and any defense to a case filed against you. This means you must have all your witnesses present and ready to testify. You must also have two complete sets of copies of any documents or exhibits you intend to show to the Judge. Prior to start of the trial, give one full set to the other party so they are familiar with them prior to trial. It is helpful to have the documents numbered. At the beginning of the trial the Plaintiff will present his or her case. You will be expected to present all of your evidence, including documents. **The Judge cannot hear or consider evidence which is not reliable and relevant to the subject of the case. You cannot rely on written statements or sworn affidavits to support your case. If you want the Judge to consider the testimony of someone other than yourself, that person must be in the courtroom to testify.** Once the plaintiff's case has been presented the defendant will have an opportunity to present evidence in support of the Answer, as well as any Counterclaim. The plaintiff will then be given an opportunity to respond to this evidence before the Judge decides the case. **Remember, it is your case and you are expected to be prepared.**

Evidence: Your case will be decided based upon the relevant evidence offered to the judge at the time of trial. The judge will not call people for you, or set another court date so that you can bring someone to court you should have brought to the trial. Only **relevant evidence** will be considered. Relevant evidence is documents or testimony that proves, or disproves, a fact that is legally important to the issues in the case. You must have all of your evidence with you at the time of the trial- this includes all of your witnesses. If you need a Subpoena to ensure the appearance of a witness, let the clerk know well in advance of the trial date. You cannot use **hearsay evidence** to prove your case or establish a defense. Hearsay evidence is generally evidence that has been generated out of the court room. For example, someone's statement made in the past and now offered in court as the truth. Unless the statement is the other party's it will not be allowed. While there are exceptions to this general rule, you should plan on having live testimony for every fact you intend to establish. Documents are statements of the person who prepared the document. If you did not prepare the document yourself you need to have the person who did in court to testify

about their document. The records of a business can be introduced into evidence by someone from the business who maintains those records.

Appeals: Either party may appeal a Justices' Court decision to the District Court by filing a written Notice of Appeal with the Justice Court Clerk. The fee is \$20.00 which must be paid at the time the Notice of Appeal is filed. A check for \$10.00, made out to the District Court, must also be filed with the appeal. The Notice of Appeal must also be served on the other party. In most cases a bond must also be filed to complete the appeal process.

Judgments: A judgment issued by the Justices' Court is valid for ten (10) years and bears simple interest at the rate of Prime + 3%, (as of January 1st each year), per year. The judgment may be enforced anywhere in the State of Montana. Judgments may also be transcribed to the District Court at which time they have the same effect as a District Court judgment. The judgment fee is \$20.00, to be paid by the prevailing party; excluding default judgments.

Collection of Judgments: The fact that you have obtained a Judgment does not guarantee that you will be paid. The Court cannot make the losing party pay the prevailing party. If the Judgment is not voluntarily paid by the losing party, it can be enforced through the collection process. This includes the garnishment of wages and the seizure of personal property for sale. All collections must be done by a levy officer licensed by the State of Montana. A list of levy officers may be obtained from the Clerk. If you know where the name of the losing person's employer, or the name of their bank, you may request a Writ of Execution which will allow the levy officer to levy on the wages or bank account.

LEGAL RESOURCES

Self Help Law Center
Basement Level of Justice Center

- provides basic forms and procedural guidance
- provides access to on-line research and form preparation

Montana Law Help
www.MontanaLawHelp.org

- a project of the Montana Legal Services Association providing extensive on-line access to legal information and legal forms

State Law Library of Montana
1-406-444-3660
www.courts.mt.gov/library

- extensive collection of on-line legal resources including Montana Code Annotated, Administrative Rules, Court Rules
- On-line access to decisions of the Montana Supreme Court

Montana Legal Services Association
1-800-666-6899, www.mtlsa.org

- provides legal services to qualified low income people
- coordinates volunteer lawyer program with local bar

State Bar of Montana
Lawyer Referral Service
1-406-442-7660 www.montanabar.org

- provides lawyer referral service based on case type
- provides information and on-line links to other legal resources including self-help material

Montana Fair Housing
1-800-929-2611
www.montanafairhousing.org

- provides anti-discrimination housing information to owners and renters
- provides information on Montana law and links to other resources

**IN THE JUSTICE COURT
FLATHEAD COUNTY, MONTANA**

_____,
_____,
Plaintiff(s)
V.
_____,
_____,
Defendant(s)

**COMPLAINT FOR POSSESSION AND
MONEY JUDGMENT**

Docket No. _____

You must complete this form by providing the information requested. This is a generic form. If it does not meet your needs, you must prepare your own Complaint. You must allege all reasons for your lawsuit. You will not be allowed to rely on reasons, which are not set forth below. The Justice Court cannot provide you with legal advice and is not responsible for any omissions should you choose to use this form Complaint. If you are unsure of your legal rights, you should consult an attorney.

Plaintiff(s) for a cause of action against defendant(s) states and alleges:

1. On _____, plaintiff(s) and defendant(s) entered into a written /oral agreement under which
(Insert date) (Circle one)
defendant(s) rented from plaintiff(s) the following described property which defendant(s) now holds
unlawfully: _____
(Insert complete address of property)
2. Defendant(s) agreed to pay rent at the rate of \$_____ per month beginning _____.
(Date)
3. The defendant(s) has failed to pay rent and there is now due and owing \$_____, together with
rent which will accrue until possession is regained.
4. A _____ day Notice to pay or vacate was served upon the defendant(s) on _____.
Defendant(s) failed to pay and continues to occupy the property. (Date)
5. Additionally, a _____ day termination Notice was served on the defendant(s) on _____
in which notice was given of the plaintiff(s) intent to terminate the parties agreement due to the following
violations of our agreement: _____

6. Notwithstanding the termination of the agreement, the defendant(s) refuses to surrender possession of the property and unlawfully remains in possession.
7. As a result of the intentional and/or negligent acts of the defendant(s) the property has been damaged and the cost to repair those damages is \$_____ or is unknown at this time and will be proven at the time of the trial.

Wherefore, plaintiff(s) demands judgment against defendant(s) as follows:

1. Possession of the Property, and if defendant(s) does not voluntarily remove himself from the premises, that the Court issue an Order directing the Sheriff of Flathead County to forcibly evict said defendant(s) from the premises described herein;
2. Money judgment for past due rent and fees together with accrued rent;
3. Money judgment for damages to the property less any credits due defendant(s);
4. Termination of the parties' agreement;
5. Pursuant to MCA § 70-24-422, damages equal to three times the amount of rent due and owing in the event the Court finds the defendant(s) has remained unlawfully and purposely following service of any notice to pay rent or vacate, or any termination notice.
6. An award of costs incurred in bringing this lawsuit;
7. The following relief _____

Dated this ____ day of _____, 20 ____.

Plaintiff(s) Signature

Plaintiff(s) Address

City, State, Zip Code

Plaintiff(s) E Mail Address

Plaintiff(s) Telephone Number

Defendant(s) Address

City, State, Zip Code

Defendant(s) E Mail Address

Defendant(s) Telephone Number

**IN THE JUSTICE COURT
FLATHEAD COUNTY, MONTANA**

_____,
_____,
Plaintiff(s)
V.
_____,
_____,
Defendant(s)

SUMMONS

Docket No. _____

The State of Montana to the above named defendant(s),

A complaint has been filed in this Court stating a claim or cause of action against you. **YOU ARE HEREBY SUMMONED** to answer the complaint in this action, which is filed with Flathead County Justice Court, a copy of which is served upon you, and to file your written answer with the above entitled Court and serve a copy thereof upon the Plaintiff(s), or Plaintiff(s) attorney within ten (10) business days after service of this summons. Your answer must be in writing. **Your answer must be accompanied by the mandatory fee of \$30.00.**

If you fail to appear or answer, judgment will be taken against you by default, for the relief demanded in the Complaint.

Dated this ____ day of _____, 20 ____

Judge/Clerk of Court

STATE OF MONTANA

RETURN OF SUMMONS

ss
County of Flathead

I HEREBY CERTIFY that I received the within Summons and Complaint by delivering to _____

the above named defendant(s) _____ personally in the County of Flathead on _____

ATTEMPT TO SERVE

After due and diligent search, we are unable to locate defendant(s) _____
in the State of Montana.

Date of Return

Agency

Agent

COSTS: Service _____ Mileage _____ Total _____

**IN THE JUSTICE COURT
FLATHEAD COUNTY, MONTANA**

_____,
_____,
Plaintiff(s)
V.
_____,
_____,
Defendant(s)

PRAECIPE FOR SERVICE

Docket No. _____

TO:

(Name of Process Server or Law Enforcement Agency)

Attached or enclosed for service are the following documents. Please serve a copy of the attached documents on the defendant(s). Upon service, return any original Order or Summons, along with your Affidavit or Certificate of Service, to the undersigned at the address provided.

The following are attached for service: **(Indicate which documents are attached)**

- ☐ Summons and Complaint
- ☐ Summons and Complaint for Possession
- ☐ Writ of Execution

- ☐ Writ of Possession
- ☐ Order for Debtor's Examination
- ☐ Other: _____

(Defendant(s) Physical Address and Phone Number)

(Defendant(s) Work Address and Phone Number)

(Other Places where Defendant(s) may be located for service)

Dated this ____ day of _____, 20 ____.

Plaintiff(s) Signature

Plaintiff(s) Address

City, State, Zip Code

Plaintiff(s) E Mail Address

Plaintiff(s) Telephone Number

Business Name	Phone Number	Process Server	Levy Officer	Fee
ALERT SECURITY & INVESTIGATIONS PO Box 2562, Kalispell, MT 59903	406-756-1390 406-755-1480	X	X	Contact for fees
BROCK WILSON 726 Karrow Ave, Whitefish, MT 59937	406-261-0875	X		\$70 + \$0.60/mile
COGBURN ENTERPRISES, LLC - Kathy Wilson 445 S. Main, Suite 202, Kalispell, MT 59901	406-471-3341	X		\$45 + \$0.56/mile
EQUITY MANAGEMENT, INC PO Box 4906, Missoula, MT 59806 serve@equityprocess.com	406-721-3337	X	X	Contact for fees
FLATHEAD COUNTY SHERIFF 920 S. Main St., Kalispell, MT 59901	406-758-5585	X	X	\$90/Person
LARC ENTERPRISES, LLC PO BOX 336, Somers, MT 59932	406-257-5272	X	X	Flat Rate - Flathead County \$65 - Unlimited - No mileage
NORDIC INVESTIGATIONS - Joe Schussler PO BOX 786, Kalispell, MT 59903	406-249-0010	X	X	Local: \$70 (3 attempts) Call for details
SCOTT DAVIS 448 5th Ave W, Kalispell, MT 59901	406-212-8439	X		\$45 per case +\$0.55 per mile
SPEEDY SERVICES - Dave Kauffman PO Box 91, Whitefish, MT 59937	406-250-5779	X		Contact for fees
WILLIAMS INVESTIGATIONS PO Box 5273, Kalispell, MT 59903 (Statewide) clint@servingmt.com	406-442-2621 406-407-5100	X	X	Contact for fees

**Please call the above business for up-to-date information as fees are subject to change.*