



## INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

**THE CLERK OR MAGISTRATE CANNOT ADVISE YOU ABOUT YOUR CASE OR ASSIST YOU IN COMPLETING THIS FORM.  
IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT AN ATTORNEY.**

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.
2. The PLAINTIFF cannot sue in small claims court for more than \$10,000.00 excluding interest and costs unless further restricted by court order.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. In filling out number 2 of the complaint in subsidized housing (e.g., Section 8, voucher, housing authority), the landlord should include in the "Rate Of Rent" box only that portion of the rent that the tenant pays directly to the landlord.
6. In filling out number 3 in the complaint, if the landlord is seeking to remove the tenant for failure to pay rent when there is no written lease, the first block should be checked. (Defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the ten (10) day grace period before filing the complaint.) If the landlord is seeking to remove the tenant for failure to pay rent when there is a written lease with an automatic forfeiture clause, the third block should be checked. (The defendant breached the condition of the lease described below for which re-entry is specified.) And "failure to pay rent" should be placed in the space for description of the breach. If the landlord is seeking to evict tenant for violating some other condition in the lease, the third block should also be checked. If the landlord is claiming that the term of the lease has ended and the tenant refuses to leave, the second block should be checked. If the landlord is claiming that criminal activity occurred, the fourth block should be checked and the conduct must be described in space provided.
7. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.
8. The PLAINTIFF must appear before the magistrate to prove his/her claim.
9. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
10. Requests for continuances of cases before the magistrate may be granted for good cause shown and for no more than five (5) days per continuance unless the parties agree otherwise.
11. The magistrate will render judgment on the date of hearing unless the parties agree otherwise, or the case is complex as defined in G.S. 7A-222, in which case the decision is required within five (5) days.
12. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within ten (10) days after the judgment is entered. If the appealing party applies to appeal as an indigent, and that request is denied, that party has an additional five (5) days to pay the court costs for the appeal.
13. If the defendant appeals and wishes to remain on the premises the defendant must also post a stay of execution bond within ten (10) days after the judgment is entered. In the event of an appeal by the tenant to district court, the landlord may file a motion to dismiss that appeal under G.S. 7A-228(d). The court may decide the motion without a hearing if the tenant fails to file a response within ten (10) days of receipt of the motion.
14. Upon request of the tenant within seven (7) days of the landlord being placed in lawful possession, the landlord shall release any personal property of the tenant. If, after being placed in lawful possession by execution of a writ, the landlord has offered to release the tenant's property and the tenant fails to retrieve such property during the landlord's regular business hours within seven (7) days after execution of the writ, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If sold, the landlord must disburse any surplus proceeds to the tenant upon request within seven (7) days of the sale. If the total value of the property is less than \$500.00, it is deemed abandoned five (5) days after execution unless the tenant requests, prior to expiration of the five-day period, release of the property to the tenant, in which case the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon.
15. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.