

# Magisterial District Judge

## *Questions and Answers*

### Defending

#### An Action in Magisterial District Judge Court

A landlord who wants to evict a tenant, who has not moved in response to the landlord's eviction notice, must file a lawsuit at the Magisterial District Judge called a Landlord/Tenant Complaint. The Complaint, and a notice scheduling a hearing on the Complaint, will be given to the tenant by a constable or sheriff's deputy in person or by posting on the tenant's door. A copy of the Landlord/Tenant Complaint will also be sent to the tenant by regular mail.

A person sued by someone who does not want to evict them will get a Civil Complaint instead of a Landlord/Tenant Complaint.

#### **What is a Magisterial District Judge?**

A Magisterial District Judge is a locally elected official who decides civil lawsuits including landlord/tenant matters. The Magisterial District Judge used to be called a District Justice and before that a Justice of the Peace.

#### **Do I Need an Attorney to Defend Myself?**

No. The system is designed to work without attorneys.

#### **Should I Attend the Hearing?**

Yes, especially if you have a defense or a counterclaim. Even if you do not have a defense to what the Complaint says, you should still go to the hearing, because the person suing you might try to get the Magisterial District Judge to enter a bigger judgment against you than what is stated in the Complaint. If there is a problem with the date the hearing is scheduled, you may ask the Magisterial District Judge to reschedule it—called a continuance. If a Civil Complaint was filed your first request for continuance should be granted. Additional continuances or continuance of a hearing scheduled on a Landlord and Tenant Complaint for more than a very short period of time may be denied. **NOTE:** If the complaint filed against you is called a Civil Complaint, you must verbally or in writing file a notice of intention to defend with the Magisterial District Judge as soon as you receive the complaint but **at least five days** before the hearing.

#### **What is a Defense?**

A defense is your argument about why the landlord should not be allowed to evict you or why you should not have to pay the amount of money the landlord or other party suing you claims you owe. Some common defenses are that the landlord did not give a proper eviction notice, rent owed should be reduced or waived due to serious defects with the property (warranty of habitability) or the past due rent was not correctly calculated.

## **What is a Counterclaim?**

If you have a claim against the landlord or other party who sued you, you may file a counterclaim, also called a “cross-complaint,” at the Magisterial District Judge’s office. To file a counterclaim, go to the Magisterial District Judge’s office with your copy of the Landlord/Tenant or Civil Complaint and tell the clerk you want to file a counterclaim to that Complaint. (A counterclaim to a Civil Complaint must be filed at least 5 days before the hearing.) The Magisterial District Judge will provide a Civil Complaint form for you to fill out and return to the clerk. There is no filing fee, but you will have to pay other ancillary court fees and, if you are defending against a civil complaint, a fee to have your counterclaim served on the party that sued you. The Magisterial District Judge will, at the hearing, make a decision on both the original complaint and the counterclaim. **Instructions for completing a counterclaim are included on page 6 of this pamphlet.**

## **How Should I Prepare My Case?**

Presenting the case is a matter of common sense. You should make a written outline or checklist to use at the hearing. You want to be sure you ask all the questions and present all the evidence you want the Magisterial District Judge to consider.

## **What Happens at the Hearing?**

At the hearing, the person who sued you is allowed to testify first. He or she can testify and also have witnesses testify. After the party who sued you and their witnesses testify, the Magisterial District Judge will give you a chance to ask questions of those persons. You and your witnesses will then have a chance to testify. After you and each of your witnesses testifies, the other party may question you and your witnesses. The Magisterial District Judge may ask questions of the witnesses or you and the party who sued you at anytime. It is important not to interrupt the Magisterial District Judge or a witness unless you are making a legal objection to the testimony being presented. Remember, all testimony is under oath so it is important that you tell the Magisterial District Judge the truth to the best of your ability.

## **May I Bring Documents?**

Yes, you can bring any documents that help prove your case. Any document important for the case must be presented at the hearing. The Magisterial District Judge will not give you a chance to go home and get any documents you forget to bring to the hearing. The Magisterial District Judge cannot consider written statements from people who do not come to the hearing to testify if the other party objects. However, the Magisterial District Judge can consider a bill, estimate, receipt, canceled check or bank statement if it helps prove your defense or counterclaim.

## **What if Someone I Want to Be a Witness Does Not Want to Come to the Hearing?**

You have the right to get subpoenas from the Magisterial District Judge. A subpoena requires a witness to come to the hearing even if he or she does not want to come. If you request it in the subpoena, the witness can also be required to bring documents needed to prove your defense or counterclaim. This is important, for example, if you subpoena someone who made a record of an inspection of your home such as a municipal housing inspector or gas company repair person. You should obtain and serve subpoenas as soon as possible after you get the Landlord/Tenant or Civil Complaint to be

sure that the witnesses get them in time for the hearing.

### **May I Object to Something a Witness is Saying?**

Yes. The most common objections are relevancy and hearsay.

1. You can object to a statement that does not have anything to do with the case and is, therefore, not relevant. Example: The landlord testifies that they arrested your father fifteen years ago for drunk driving. That is not relevant to the eviction proceeding.
2. You can also object to hearsay. Example: The landlord testifies that your neighbor said to the landlord he saw your son breaking a window. A witness can only testify to what he or she actually saw, not what someone else said they saw.

You must make your objection at the time the witness is giving testimony that is not relevant or is hearsay. To object, interrupt the witness' testimony by stating: "I object because the testimony of the witness is (hearsay) (not relevant)."

### **When Will the Magisterial District Judge Decide?**

After all the testimony, the Magisterial District Judge will decide the case. The Magisterial District Judge may issue a decision in court after taking all the evidence. If not, the Magisterial District Judge must make a decision within three (3) days of the hearing on a Landlord/Tenant Complaint and five (5) days of the hearing on a Civil Complaint. The Magisterial District Judge will send a copy of the decision, or judgment, to you in the mail.

The judgment on a Landlord/Tenant Complaint must include separate amounts for the following: 1) the rent due; 2) the amount of damages; 3) the court costs due; 4) the amount awarded to you on any counterclaim you filed (this will reduce the amount of the judgment obtained by the landlord); 5) the amount of your normal monthly rent. If judgment for possession of your home is granted, "yes" will be stated next to the words "Grant possession." If you are only being sued for unpaid rent, the Magisterial District Judge may give you the option to stay in your home if you pay all rent due and court costs incurred before the date set for eviction. If you get this option, "yes" will be next to the words, "Grant possession if money judgment is not satisfied by the time of eviction."

### **What If I Do Not Agree With the Magisterial District Judge's Decision?**

You have the right to appeal a judgment entered against you. You file your appeal with the Prothonotary at the County Courthouse. Bring a copy of the judgment with you to the Prothonotary. There you will complete a form called a Notice of Appeal. There will be a filing fee, but you can request waiver of the fee by filling out an IFP form (<http://www.pacourts.us/learn/representing-yourself>). After filing, you must serve, by registered mail or personal service, the party who sued you and the Magisterial District Judge whose decision you are appealing. After doing so, you must complete and sign, in the presence of a notary, a proof of service form which must then be filed with the Prothonotary within 10-days of filing the appeal (attach sender's receipts to the proof of service if you completed service by certified mail). If you file an appeal from a Judgment

for Possession and want to stay in your home until the appeal is decided, you must file your appeal within 10-days of the date the Magisterial District Judge entered the judgment. If you are only appealing a money judgment, you have 30-days to file the appeal. The judgment date is the “disposition date” listed on the written decision.

**If you owe rent at the time you file your appeal and want to stay in possession during the appeal, you must post a bond in the amount of rent stated on the Notice of Judgment from the Magisterial District Judge, or three months rent, whichever is less. However, if you have very low income, you may only have to pay a third of your usual monthly rent as a bond when you file your appeal, although additional bond payments will be required during the appeal. Contact Northwestern Legal Services right away after the hearing for help in pursuing your appeal if you want to stay in possession of your home during the appeal—especially if you want to pay a reduced initial bond payment.**

### **What Happens if There is No Appeal?**

If the Magisterial District Judge grants a Judgment for Possession the landlord must wait 10 days and then request a document called an Order for Possession from the Magisterial District Judge. A constable or sheriff's deputy will serve the Order for Possession on you which gives you an additional 10 days to vacate the premises. If you do not move by the lock out date on the Order for Possession, the constable or sheriff's deputy will physically remove you from the property.

If the Magisterial District Judge grants a money judgment, you have 30 days to pay the judgment. If you do not pay it, the party who sued you can then go back to the Magisterial District Judge and request a document called an Order of Execution. A constable or sheriff's deputy will serve the Order of Execution on you. At the time the Order of Execution is given to you, the constable or sheriff's deputy will make a list of property he or she will sell to pay off the judgment against you. This list is called a levy. **Call Northwestern Legal Services right away for more help if a levy is put on your property.** If you do nothing, your property will be sold several weeks after the levy is made at a constable or sheriff's sale, unless it is worth less than \$300; or \$600 if you are married, and you and your spouse were both sued.

*We have attempted to insure the accuracy of the information in this pamphlet at the time it was created or revised. However, the law does change, sometimes quickly and unexpectedly. Therefore, you should consult an attorney before taking or refraining from any action based on the information in this pamphlet.*



## *IMPORTANT*

The following form is not complete. It cannot be used to file a complaint.

You should obtain full and complete multiple-page complaint form at your local Magisterial District Judge Office. The Magisterial District Judge may help you fill out the form, if you ask.

Attached is a sample of the Civil Complaint form that you may use to file a complaint for money damages in Magisterial District Judge court.



# ***INSTRUCTIONS***

## ***Completing a Civil Complaint or Counterclaim***

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**Note: Please Type all Court Forms if Possible. If Necessary, Print Neatly.**

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1. Fill in the plaintiff's name and address. If you are suing or countersuing someone, you are the Plaintiff.
2. Fill in the Defendant's name and address. If more than one person owes you the money you are asking for in the complaint, list all the names here. If you are filing a counterclaim, the Defendant is the person(s) who originally filed suit against you.
3. There is no filing fee, but you will have to pay ancillary court fees and a fee to have the complaint served (no service fee required if you are filing a counterclaim to a Landlord and Tenant Complaint). The clerk will fill in the fee(s) required. You can ask for a waiver of these fees by submitting an IFP petition to the Magisterial District Judge (Pa.R.C.P.M.D.J. Rule 206 E (iv)). A blank IFP form and instructions are provided below.
4. Enter the dollar amount of the damages you are seeking.
5. Describe the date, time and place of the transaction and the reason you are entitled to a judgment.
6. Print your name.
7. Sign your name. When you sign your name, you are swearing that what you have stated is true.
8. Leave the attorney information blank.
9. The Magisterial District Judge will insert the hearing time and date on the form and the address of the magisterial office on the complaint form.

At the time the complaint is filed, the Magisterial District Judge will set a hearing date which will not be less than 12 or more than 60 days from the date the complaint is filed. Counterclaims are heard at the same time as the hearing scheduled on the original complaint filed against you.

The Magisterial District Judge will serve the defendant with a copy of the complaint form at least 10 days before the hearing.

# ***INSTRUCTIONS***

## ***How to Complete a Petition to Proceed In Forma Pauperis (IFP)***

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**Note: Please Type all Court Forms if Possible. If Necessary, Print Neatly.**

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To begin any lawsuit you must pay a filing fee. However, having the filing fee waived may be possible if you can prove to the court that you cannot afford to pay the fee. Magisterial District Judge Rule 206E gives you the right to request In Forma Pauperis (IFP) status.

To do this, you must file a Petition to Proceed In Forma Pauperis. An IFP is a detailed list of your income and expenses. The IFP form also includes an affidavit, you are required to sign, stating that you cannot pay the costs associated with filing your lawsuit. You must complete the IFP and file it at the Magisterial District Judge office. The following are step-by-step instructions on how to fill out the IFP.

As in your complaint and order, complete the caption with all the parties' legal names, the docket number if they have assigned one and the type of case.

1. State whether you are the plaintiff or defendant.
3. (a) Fill in your name, address and social security number.
3. (b) If you are currently employed, print your employer's name, address your monthly salary, and the type of work you do. If you are not currently employed, fill in the dates of your last employment (if none, write "none"), your wages at your last job and the type of work you did.
3. (c) List any other income you received within the last twelve (12) months. If any of the entries apply to you, fill in your average monthly income from that source. If any entry does not apply, simply write in "none".
3. (d) List any income that other people in your household receive. If someone is not a member in your household, do not list their income here. If none of these apply, simply write in "none".
3. (e) List any property you own. If you do not have any of the type of property listed, simply write in "none".
3. (f) Fill in an average monthly figure where applicable and write "none" to a type of debt that does not apply to you. [Note: The "other" category is quite broad. You can use this category to list your average monthly electric, gas, oil, telephone and cable TV bills. You can also list miscellaneous expenses such as hospital bills, laundry, haircuts and food here. Make sure you list each expense and identify it.]

3. (g) List the people who depend on you for support. If you have a child(ren), list their names and ages here. Also, list any other people dependant upon you for support and their relationship to you.

4. & 5. These are standard statements that need to be included in your petition as they appear.

When you have completed the affidavit portion of the IFP, sign and date it at the bottom.

**NOTE: A blank IFP form is enclosed. If your Magisterial District Judge does not have an IFP form for you to fill out, you may complete the attached form and submit it when you file your counterclaim.**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff(s)  
VS.  
\_\_\_\_\_,  
Defendant(s)

: DOCKET NO.  
: DATE FILED:  
:  
:  
:  
:  
:

**PETITION TO PROCEED IN FORMA PAUPERIS**

I hereby request that I be permitted to proceed in forma pauperis (without payment of the filing fee). In support of this I state the following:

1. I am the (Plaintiff)(Defendant) in the above matter and because of my financial condition am unable to pay the fees and costs of prosecuting or defending the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

(a) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

(b) Employment - If you are presently employed, state:

Employer: \_\_\_\_\_

Address: \_\_\_\_\_

Salary or wages per month: \_\_\_\_\_

Type of work: \_\_\_\_\_

If you are presently unemployed, state:

Date of last employment: \_\_\_\_\_

Salary or wages per month: \_\_\_\_\_

Type of work: \_\_\_\_\_

c) Other income within the past twelve months

Business or profession: \_\_\_\_\_

Other self-employment: \_\_\_\_\_

Interest: \_\_\_\_\_

Dividends: \_\_\_\_\_

Pension and annuities: \_\_\_\_\_

Social Security benefits: \_\_\_\_\_

Support payments: \_\_\_\_\_

Disability payments: \_\_\_\_\_

Unemployment compensation and supplemental benefits: \_\_\_\_\_

Workman's compensation: \_\_\_\_\_

Public assistance: \_\_\_\_\_

Other: \_\_\_\_\_

(d) Other contributions to household support

Spouse's name: \_\_\_\_\_

If your spouse is employed, state: \_\_\_\_\_

Employer: \_\_\_\_\_

Salary or wages per month: \_\_\_\_\_

Type of work: \_\_\_\_\_

Contributions from children: \_\_\_\_\_

Contributions from parents: \_\_\_\_\_

Other contributions: \_\_\_\_\_

(e) Property owned

Cash: \_\_\_\_\_

Checking account: \_\_\_\_\_

Savings account: \_\_\_\_\_

Certificates of deposit: \_\_\_\_\_

Real estate (including home): \_\_\_\_\_

Motor vehicle: Make \_\_\_\_\_ Year \_\_\_\_\_

Cost \$\_\_\_\_\_ Amount owed \$\_\_\_\_\_

Stocks; bonds: \_\_\_\_\_

Other: \_\_\_\_\_

(f) Debts and obligations

Mortgage: \_\_\_\_\_

Rent: \_\_\_\_\_

Loans: \_\_\_\_\_

Other: \_\_\_\_\_

(g) Persons dependent upon you for support:

Spouse's name: \_\_\_\_\_

Children, if any:

<u>Name</u>	<u>Age</u>
_____	_____
_____	_____

Other persons:

<u>Name</u>	<u>Relationship</u>
_____	_____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff

Action by the Magisterial District Judge: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Magisterial District Judge