

EVICTION

Information for Landlords and Tenants About Forcible Entry and Detainer (F.E.D.) Actions

This booklet describes the procedure for evictions from residential property (houses, apartments, etc.). It does not discuss evictions from commercial or agricultural property or evictions after foreclosure of a mortgage.

The primary focus of the booklet is evictions for failure to pay rent. Evictions for other reasons are not discussed in detail, although the procedure for these evictions is similar.

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Alaska Court System

Most of the forms referenced in this booklet are available on the court system's website: <http://www.courts.alaska.gov/forms/index.htm>

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How F.E.D. Cases Work (Sequence of Events)

1. Notice To Quit given to tenant. Before a lawsuit to evict a tenant may be filed, the landlord must give the tenant written notice of the reason the landlord intends to evict the tenant ("terminate the tenancy"). The notice must give the tenant time to correct the problem (or move out) in order to avoid eviction.
2. F.E.D. lawsuit is filed. The landlord files a complaint with the court if the tenant does not fix the problem by the deadline set in the *Notice To Quit*.
3. Tenant is given notice of the lawsuit. The tenant is served with a copy of the complaint and a court summons. The summons orders the tenant to:
 - a. appear at an eviction hearing, and
 - b. file a written answer to any claim of damages made in the complaint.
4. Eviction Hearing. The court holds an eviction hearing within 15 days after the case is filed in court and at least 2 days after the summons is served on the tenant. At this hearing, the judge decides who gets possession of the property.
5. Judgment on Damages. If the complaint asks for damages, one of the following two things happens after the eviction hearing:
 - a. **Damages Trial.** This trial will only be held if, within 20 days after the complaint is served on the tenant, the tenant files an answer disagreeing with the claims for money damages made in the complaint.
 - b. **Default Judgment.** This will happen if the tenant fails to file an answer and the landlord requests a default judgment against the tenant for money.

I. INTRODUCTION

A. What is "Forcible Entry and Detainer"?

"Forcible entry and detainer" (F.E.D.) is a type of court case in which a property owner seeks possession of the owner's real property (like land, a house or an apartment) currently being occupied by another person or persons. Sometimes this type of case is referred to as an "eviction" or "possession" action.

There are two parts to an F.E.D. court case: the eviction phase and the damages phase. The eviction phase (hearing) happens soon after the case is filed. The damages phase is handled at a later date.

1. The Eviction Phase. During this phase, the court will decide whether to grant the landlord's request to regain possession of the premises. Other issues, such as how much money the tenant owes to the landlord will not be decided at this stage.
2. The Damages Phase. During this phase, the court will decide whether the landlord will get a judgment against the tenant for money. This phase will only be necessary if the landlord's complaint asks the court for money damages (unpaid rent, damages to the premises, etc.) If the tenant files a counterclaim, it will be decided at this hearing.

B. Legal Advice

If possible, it is usually a good idea to consult with a lawyer in these matters. For help in finding a lawyer who handles F.E.D. cases, you can call:

1. Lawyer Referral Service of the Alaska Bar Association. This service will give you the names of up to three attorneys who handle legal problems like yours. Each attorney has agreed to charge no more than \$125 for an initial half-hour consultation.
In Anchorage: 272-0352
Outside Anchorage: 800-770-9999 (toll-free within Alaska)
Bar Association website: www.alaskabar.org
Lawyer Referral Service website: From the website above, click on "Public Services" and then "Lawyer Referral Service."
2. Alaska Legal Services. This agency provides free legal assistance in some civil matters to low income Alaskans.
In Anchorage: 272-9431
Outside Anchorage: 888-478-2572 (toll-free within Alaska)
ALSC website: www.alsc-law.org
Free Legal Resources website: www.alaskalawhelp.org

3. Alaska Native Justice Center. This non-profit organization helps Alaska Natives with legal issues. The Center does not have attorneys, but can refer cases to attorneys if necessary.

In Anchorage: 793-3550

Outside Anchorage: Collect calls to the above number will be accepted.

Website: www.anjc.org

C. Where to Find More Information

1. **Landlord Tenant Booklet.** This booklet explains the rights and obligations of landlords and tenants. It also provides information about the eviction process. There are two versions of it:

a. The Alaska Real Estate Commission version, called What The Landlord And Tenant Act Means To You. You may review or print a current copy of the handbook :

(1) On the Alaska Department of Law's website:

<http://www.law.state.ak.us/department/civil/consumer/landlord-tenant.html>

(2) You may request a hard copy of the handbook to be mailed to you by calling (907) 269-2500 or for those outside of the Anchorage area (888) 576-2529 or you may pick up a copy at:

Alaska Department of Law - Civil Division
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994
(907) 269-5100

b. The court system version. This version, called The Alaska Landlord and Tenant Act (PUB-30), is a copy of the Real Estate Commission's version *with relevant statutes attached*. You can get a copy of [PUB-30](#) at most court locations and at the Anchorage Law Library.

2. **Alaska Statutes.**

- AS 09.45.060 - .160 describe eviction procedure.
- AS 34.03.010 - .390 is the "Uniform Residential Landlord And Tenant Act" which establishes the rights and duties of landlords and tenants.

3. **Alaska Rules of Court.**

- Civil Rule 85 describes eviction procedure

- Civil Rules 3, 4, 5, 6, 45, 55, 76, and others (general rules governing procedures in civil cases).
- 4. **Forms.** Court forms for F.E.D. actions are listed in Appendix 1 on page 30.

All of these items are available at court law libraries and at some court clerk offices. Most can be found on the court system's website: www.courts.alaska.gov They may also be available at public libraries.

II. INFORMATION FOR LANDLORDS: PROCEDURE FOR EVICTING TENANTS

A. Termination of Tenancy

Before filing a court action to evict a tenant, the landlord must give notice to the tenant. This notice is usually called a "Notice of Termination of Tenancy" or "Notice to Quit." The notice must explain what, if anything, the tenant can do to correct the problem and remain as a tenant. It must also include the deadline (both date and time) for correcting the problem. See AS 09.45.100 -.105.

When the eviction is for failure to pay rent, the landlord may use the court form CIV-725 *Notice to Quit*. Sample notice forms for eviction for other reasons (for example, intentional damage to the dwelling, illegal use of the premises, violation of the lease agreement, or non-payment of utilities) can be found in the Landlord Tenant Booklet described on page 4. (See AS 09.45.090(a)(2), AS 09.45.105 and AS 34.03.220 for information about the different deadlines and the required contents of these notices.)

B. Service of the “Notice to Quit”

AS 09.45.100(c) explains how the *Notice to Quit* must be given to the tenant:

A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being

- (1) Delivered to the tenant or person;
- (2) Left at the premises in case of absence from the premises; or
- (3) Sent by registered or certified mail.

The notice is typically delivered in person to the tenant by the landlord or property manager. If the landlord or property manager attempts to make personal service and the tenant is absent, the notice may be left on the premises. This is commonly done by taping the notice to the tenant's front door. Whoever delivers or posts the notice should be available to testify at the eviction hearing. Service by mail is seldom used because the tenant may not pick up the mail or the landlord may not receive the return receipt prior to the hearing.

C. Proof of Service of “Notice to Quit”

The landlord must prove to the court that the *Notice to Quit* was delivered as the statute requires. It is recommended that a record be made at the time of service describing how, when, and by whom the tenant was served. The court form *Notice to Quit* ([CIV-725](#)) provides space at the bottom for this record of service.

D. Providing Tenant with Time to Correct the Problem or Move

If the problem can be corrected, the tenant must be given time to correct it or move out before the landlord may file the court case. If the eviction is for nonpayment of rent, the tenant must be given seven days to pay the rent after receiving the *Notice to Quit*. If the eviction is for another reason, the amount of time will be different. See AS 09.45.090.

Note: If the notice is sent to the tenant by registered or certified mail, the tenant has three additional days to correct the problem. AS 09.45.090(c). Therefore, if the eviction is for failure to pay rent and the notice is mailed, the notice must give the tenant ten days instead of seven to pay the rent.

E. When Can a Lawsuit Be Filed

If the tenant does not correct the problem or move out within the statutory time period stated in the *Notice to Quit*, a lawsuit can be filed. AS 09.45.110. For example, if the *Notice to Quit* is for failure to pay rent and the tenant does not move out or pay the rent within seven days, the lawsuit can be filed on the eighth day. (Note: The first day is the day after you hand the notice to the tenant, and you should include Saturdays, Sundays and holidays when you count the seven days. Civil Rule 6).

F. Who Can Be Named as Plaintiff and Who Can Sign the Complaint

1. Who Can Be Named as Plaintiff.

The plaintiff in an F.E.D. action is the party seeking to evict the tenant. The plaintiff can be the owner of the property or a person authorized by the owner to file an F.E.D. action (for example, a property manager or a person acting under a “power of attorney”).¹

2. Who Can Sign the Complaint.

¹ Civil Rule 17(a) requires actions to be prosecuted in the name of the real party in interest. This rule also allows, however, that “a party with whom or in whose name a contract has been made for the benefit of another . . . may sue in that person’s own name without joining the party for whose benefit the action is brought.” Also see the statutes concerning Alaska’s statutory form power of attorney, AS 13.26.332 and AS 13.26.344(i).

If the plaintiff is the person who owns the property, then he or she can sign the complaint and appear in court on his or her own behalf at any hearings. If the plaintiff is a corporation, a property manager, or a person acting on behalf of the owner under a “power of attorney,” then an attorney must sign the complaint, because these persons or entities must always be represented in court by an attorney.² The only exception is a non-profit public housing corporation proceeding under AS 09.45.158, which may appear without an attorney.

G. Where to File

The lawsuit to get possession of the property must be filed in the judicial district in which the property is located. Civil Rule 3. A map of the judicial districts is in Appendix 2 on page 31. If the value of the past due rent and damage to the property is \$100,000 or less, you must file your case in the district court. AS 22.15.030(a)(6) and (b). If it is greater than \$100,000, you must file your case in superior court.³

H. How to File

1. Get the following forms from the court:
 - a. *Complaint for Forcible Entry and Detainer* ([CIV-730](#))
 - b. *Summons - Forcible Entry and Detainer* ([CIV-105](#))
 - c. *Case Description* ([CIV-125](#)⁴)
 - d. *Service Instructions* ([CIV-615](#))
 - e. *Judgment for Possession* ([CIV-300](#))
 - f. *Writ of Assistance* ([CIV-575](#))

2. Fill out the forms as follows:

² AS 22.20.040(a) states that “an action or proceeding may be prosecuted or defended by a party in person or by attorney.”

AS 22.20.040(a)(2) requires that corporations be represented in court by attorneys, unless there is an explicit exception in the law.

In Christensen v. Melinda, 857 P.2d 345 (Alaska 1993), the Alaska Supreme Court determined that a person with a power of attorney is not entitled to represent the principal (the person who granted the power) in court. If the person who holds the power of attorney files a suit on behalf of the principal, the person holding the power (if he/she is not an attorney) must hire an attorney to prosecute the case.

Representing another person or entity in court is practicing law. It can only be done by licensed attorneys. AS 08.08.210(a) states: “A person may not engage in the practice of law in the state unless the person is licensed to practice law in Alaska and is an active member of the Alaska Bar. ...”

³ Administrative Rule 45.

⁴ Use [CIV-125D](#) for district court cases and [CIV-125S](#) for superior court cases.

See Appendix 3 on page 32 for a sample of how to fill out the top of the forms (called the case caption). Please type or print neatly using black ink.

Note: From this point on, the tenant will be referred to as "defendant" and the landlord will be referred to as "plaintiff."

- a. *Complaint* ([CIV-730](#)). Be sure to name as defendants everyone listed on the lease and all other adults living in the dwelling. Fill in all the blanks on both pages except for the case number. Attach the *Notice to Quit* to the complaint.
- b. *Summons* ([CIV-105](#)). Prepare a separate summons for each named defendant. Fill in the caption, the "To" line (list only one defendant on each summons), and the name and address section in paragraph #2. The clerk's office will fill in the date, time and location of the hearing.
- c. *Case Description* ([CIV-125D](#) or [CIV-125S](#)). Check the "Forcible Entry and Detainer (F.E.D.)" box.
- d. *Service Instructions* ([CIV-615](#)). This form will give the process server the information necessary to find each of the defendants who need to be served with the summons and complaint. Read page 9 (Section I) about serving the defendant before filling out this form.
- e. *Judgment for Possession* ([CIV-300](#)). Fill in the case caption and the description and location of the dwelling. The court will fill in the rest of the form if you are successful at the eviction hearing.
- f. *Writ of Assistance* ([CIV-575](#)). You may need this form if the tenant does not move out by the date the judge sets at the eviction hearing. This writ gives a peace officer the authority to remove the tenant. Fill in the case caption and the description and location of the dwelling. The court will fill in the rest of the form if the writ is necessary.

If the judge signs this form and the tenant does not move out, you will need to arrange with your local law enforcement agency to have the writ served. The law enforcement agency may charge a fee for this.

3. Filing the forms and scheduling the eviction hearing.

File the completed forms at your local court and pay the court filing fee. The filing fee is \$125 if the amount of money claimed in the complaint is \$100,000 or less. The filing fee is \$200 if the amount claimed is more

than \$100,000.⁵ You may also need to pay the process server's fee at this time. See Section I below on serving the defendant.

The court clerk will schedule a hearing on the eviction phase of the case when the complaint is filed with the court. Civil Rule 85 requires the hearing to be held at least two days after the summons and complaint are served on the defendant and not more than 15 days after the case is filed in court. The clerk will ask you how soon you think the summons and complaint will be served on the tenant because the hearing cannot be held until two days after the tenant is served.

Note: If the summons and complaint are not served at least two days before the hearing, the judge will probably postpone the hearing. Please see section I.6 on page 10 for more information.

I. Serving the Defendant

Have the summons and complaint served on each of the named defendants by a process server or peace officer. (See Civil Rule 4.)

1. Choose a process server. The clerk's office has a list of process servers in your area. You can also find a list of licensed process servers on the Alaska State Trooper website: www.dps.state.ak.us/Statewide/PermitsLicensing. Click on "Civilian Process Server List." Many parts of the state do not have process servers. In those areas, the summons and complaint must be served by a peace officer (usually by a State Trooper). Check with the clerk's office about local practices.
2. Contact the process server to make arrangements for service of the summons and complaint. Service fees are set by the individual process server and must be paid directly to the process server. Note: Administrative Rule 11 governs the maximum amount you may recover as "costs" for this service from the tenant. The current amount recoverable is \$45.00 for each person on whom service is made *plus* a minimum of \$20.00 for the first 25 miles or portion thereof traveled by the process server. Additional amounts may be recovered for extra mileage or extra time spent serving the documents.
3. Fill out service instructions. You can use either the court's form ([CIV-615](#)) or the form provided by the process server you select. Fill out the service instructions as completely as possible. In the section in which you must list the documents to be served, write "F.E.D. summons and complaint." Provide as much information as possible about how to locate each defendant.
4. Deliver completed documents to process server and pay the service fee. The procedures for getting the service instructions and other documents to

⁵ Administrative Rule 9(b)(1) and 9(c)(1)
CIV-720 Eviction Booklet (8/15)

the process server vary from court to court. Please check with the local clerk's office or your process server for additional information.

5. Proof of service. After the process server gives the documents to the defendant(s), the process server must prepare a notarized document called a "Return of Service." A separate Return of Service must be prepared for each named defendant served with a summons and complaint. The Return of Service will prove to the court that the defendant knows about the eviction hearing and lawsuit. The process server must file all Returns of Service with the court and give copies to you before the eviction hearing. You should bring your copies of the Returns of Service to the eviction hearing.
6. Failure to serve documents. If the process server does not serve the summons and complaint at least two days before the eviction hearing, the hearing will probably be postponed. Civil Rule 85(a)(2) and AS 09.45.120. If this happens, you will need to contact the clerk's office for a new hearing date and a new summons.

J. Defendant's Response

The defendant must file an answer within 20 days after being served with the complaint.

1. *Defendant Files Answer.* If the defendant files an answer, there will need to be a trial to resolve the damages claims. For information about how to request a trial, see Chapter V on page 21. If no trial is set, the court will dismiss your case after 180 days for lack of prosecution. Civil Rule 85(a)(6).
2. *Defendant's Answer Includes a Counterclaim.* If the defendant's answer includes a counterclaim, you must respond to the counterclaim within 20 days after the answer is served on you. See Civil Rule 12(a). The defendant's counterclaim will be decided at the same trial as your claim for damages. If you do not answer the counterclaim, the defendant can get a default judgment against you.
3. *Defendant Does Not File an Answer.* If the defendant does not file a written answer within the 20-day time limit, you can ask the court for a default judgment against the defendant. You must serve your application on the defendant. See Chapter VI on page 24.

NOTE: If (i) you do not file an application for default judgment, and (ii) the case has been pending for more than 180 days from the date the complaint was filed, and (iii) no further trial or hearing is scheduled to take place in the case, then the court may dismiss the case for want of prosecution without further notice or order. If this happens, a party has the right to reopen this case no later than one year after dismissal by making a request to the court clerk in writing.

III. INFORMATION FOR TENANT: DEFENDING AGAINST EVICTION

For additional information about the eviction process, refer to Chapter I (pages 2-4) and the Landlord Tenant Booklet (described on page 4) or talk to an attorney about your rights as a tenant.

A. Notice to Quit

In order to evict you, the landlord must first give you a written notice that he/she intends to end your tenancy. The notice, which is often called a “Notice to Quit,” must tell you what you can do, if anything, to remain as a tenant. See pages 5 – 6 for more information about this notice.

If you do not cure the problem or move out by the time stated in the notice, the landlord can file a complaint against you in court asking for (1) your eviction and (2) a judgment against you for money (for such things as back rent, damages to the premises, and the costs of bringing the court action) or for other remedies (such as return of personal property).

When the landlord files the complaint, the court will give the landlord a summons to serve on you.

B. Summons

Read both the summons and the complaint carefully.

The summons will tell you

1. When your eviction hearing will be held, and
2. The time limit for filing a written answer to the plaintiff’s claims for rent and other damages.

The eviction and the claim for damages are two separate legal proceedings even though they are included in one complaint. You will have more time to file the answer to the damages claim than you will have to prepare for your eviction hearing. See Section D on page 15 about filing your answer.

C. Preparing for the Eviction Hearing

At the eviction hearing, the judge will decide whether you have to move out. If you want to oppose the eviction, you must attend the hearing and present your defense. You must bring with you any documents, photographs or other evidence you want the court to see and any witnesses that will testify for you. If you do not attend the hearing, the hearing will proceed without you and the judge will

probably order that you be evicted. The eviction hearing is described in more detail in chapter IV on page 19.

Since this hearing is usually scheduled to happen just 2 to 4 days after you receive the summons, you will have to determine very quickly whether you have any defenses that would prevent your eviction. Some possible defenses are listed below.

1. Defenses to Eviction for Failure to Pay Rent

The following are some of the main defenses a tenant can raise if the reason for eviction is failure to pay rent. You can find out more about these defenses and others in the Landlord Tenant Booklet (PUB-30) described on page 4 or in Alaska Statutes 34.03. The statutes listed below can be found in the back of [PUB-30](#).

Defense: Rent is not owed in the amount claimed because:

- a. The landlord has failed to maintain fit premises in violation of AS 34.03.100. The landlord's failure to maintain the premises has diminished the fair rental value of the premises, which offsets the amount of rent claimed.
- b. The landlord has wrongfully failed to supply heat, water, hot water, or other essential services (as required by AS 34.03.100). The tenant gave written notice to the landlord as required by AS 34.03.180(c). The tenant is entitled to a reduction in the amount of rent owed as described in AS 34.03.180.
- c. The landlord has unlawfully removed or excluded the tenant from the premises, or willfully diminished essential services. The statutory damages offset the amount of rent claimed. (AS 34.03.210 & AS 34.03.170)
- d. The landlord accepted the tenant's partial payment of rent after the tenant was given the Notice to Quit. Therefore, the landlord has waived the right to terminate the rental agreement for that breach. AS 34.03.240.
- e. The landlord increased the tenant's rent (or decreased the services provided to the tenant) in retaliation because the tenant complained to the landlord about the condition of the premises or tried to enforce the tenant's rights under the Alaska Landlord and Tenant Act. The tenant paid the amount of rent that the tenant believes he/she owes. AS 34.03.310.

2. Assistance from an Attorney.

If you want to contest the eviction, it is a good idea to hire an attorney to help you or at least try to talk to an attorney to find out about your rights as a tenant and any possible defenses you can raise. See pages 3-4 for information that may help you find an attorney.

3. How to Request Postponement of the Eviction Hearing.

If you believe you have a good defense to the eviction, but need a few more days to gather your evidence or get an attorney, you must ask for a “continuance” (a postponement of the hearing). You can use form CIV-733 to do this. Your request must show the judge that you have a good reason for delaying the hearing (for example, you need time to speak to your attorney, get receipts or locate a witness) and that you have made diligent efforts to prepare your defense.⁶ The judge will not grant a continuance if it appears that the need for one arises from your own delay or lack of diligence. Depending on the length of the delay you request, you may need to deposit cash or a surety bond⁷ with the court equal to the amount of rent due during the period of delay.⁸

To ask for a continuance, you must file a request (called a “motion”) with the court and mail or deliver a copy of it to the plaintiff (landlord). If possible, you should do this before the hearing. If you cannot, you must bring it to the hearing along with copies for yourself and the landlord. **Remember: Continuances are not automatic. You must show why a continuance is necessary. The judge will decide whether to grant the continuance.**

The following instructions are for form [CIV-733](#), *Expedited Motion for Continuance and Affidavit*.

- a. Fill out the top of the form (the location of the court, the names of the parties and the case number) the same way the complaint is filled out.
- b. Fill in the date of the eviction hearing.
- c. Length of Delay Requested. Indicate how many days you want to postpone the hearing. If you request more than two days, you must be prepared to deposit cash or a surety bond with the court to cover

⁶ Vinson v. Hamilton, 854 P.2d 733 (Alaska 1993).

⁷ A “surety bond” is a document that guarantees payment of money if certain things occur. The person or company that writes the bond is called the surety. The surety guarantees the payment by becoming liable (responsible) for it. Such bonds are generally available from insurance companies or third parties qualified to write surety bonds. There will be a fee. The court system does not provide forms for surety bonds in civil cases.

⁸ AS 09.45.120 and Civil Rule 85(a)(3).

rent that may accrue during the period of the continuance. For example, if you ask for a two-week continuance, you should be prepared to post an amount equal to two weeks' rent; if you ask for a 30-day continuance, you should be prepared to post an amount equal to one month's rent.

d. Reasons for Postponement. Describe why a continuance is necessary. There are two possible reasons:

(1) *You need more time to consult an attorney.* If you want to talk with or hire an attorney to represent you, and the attorney is unable to meet with you prior to the eviction hearing, the judge may allow a continuance. You must describe the efforts you have made to contact an attorney.

Example:

I need more time to talk to an attorney. I have made the following efforts to contact an attorney: I called the Lawyer Referral Service and got the names of three lawyers: Scott Turow, John Grisham, and Susan Miller. Mr. Grisham said he would be willing to help me but not on such short notice. He needs at least a week to fit me in.

(2) *You need more time to prepare to present your defense.* If this is your reason for asking for a continuance, you must state what your defense is and why you need more time to prepare it. Some possible defenses are described in section 1 above (page 12). The following is an example of how to write this in your motion:

I need more time to prepare to present the following defenses: The landlord has failed to maintain fit premises as required by AS 34.03.100. On March 5, a pipe broke in the unit above mine, and water came through the ceiling of my living room and ruined my couch and all the books in my bookcase. I notified the landlord immediately, and the landlord had a plumber stop the leak. I was unable to use the room for the rest of the month while the ceiling was being repaired and the carpet replaced. The landlord said he would not charge me rent for that month, and now he's trying to evict me for not paying that rent.

The reasons I need more time to present these defenses are (describe why you need more time to

gather evidence and/or witnesses): My neighbor, Adam Fleischman, was there when the landlord said I didn't have to pay the rent, but now Adam is away on a job in North Dakota. Adam will be back in two weeks and can testify for me.

D. Answering the Damages Claim

In addition to asking for your eviction, the complaint will usually ask for a judgment against you for such things as past due rent, other damages “in an amount to be proved in court” and costs and attorney fees.

You must file a written answer if you

- a. Disagree with the amount of rent claimed in the complaint, or
- b. Disagree with the plaintiff’s claim that you have caused additional damages, or
- c. Have a counterclaim you want to bring against the plaintiff.

Note: The complaint does not have to specify what the additional damages are because the plaintiff may not be able to determine what the damages are until the plaintiff regains possession of the premises. In order to find out exactly what damages the plaintiff is going to claim, you must file an answer opposing the complaint. When you find out what the plaintiff is claiming as damages, you may be able to defend against the claim by arguing that the “damage” was simply ordinary wear and tear (and not the result of abusive living) or that the damage occurred before you moved in. (See page 22 of the Landlord Tenant Booklet for more information about damages.)

Also note that it is not enough to object at the eviction hearing to the amount of rent claimed. You must file a written answer if you want to avoid a default judgment against you.

Your answer must be filed within 20 days after you are served with the summons. You may use court form [CIV-735](#), *Answer To F.E.D. Complaint*.

Fill out the form as follows (please type or print neatly using black ink):

1. **Caption.** Fill out the top of the form (the location of the court, the names of the parties and the case number) the same way the complaint is filled out.
2. **Paragraph 1.** This paragraph is about your eviction. If you do not oppose the eviction, check the “I ADMIT” box. If you oppose the eviction, check the “I DENY” box.
3. **Paragraph 2(a).** This paragraph is about the plaintiff’s claim for unpaid rent. If you agree that you owe the plaintiff rent, check the “I ADMIT” box and fill in the amount of money you believe you owe. If you disagree with the claim, check the “I DENY” box.

4. **Paragraph 2(b).** This paragraph is about the plaintiff’s claim for damages. If you agree that you owe the plaintiff money for damage to the property, check the “I ADMIT” box and fill in the amount of money you believe you owe. If you disagree with the claim, check the “I DENY” box. Note: the plaintiff’s complaint may not state the amount of additional damages the plaintiff is claiming. In order to find out exactly what damages the plaintiff is going to claim, check the “I DENY” box.

5. **Paragraph 3.** This paragraph is about your defenses to either the eviction or the damages claim or both. Check the box in front of any defenses you want to claim.
 - a. **The notice to quit was improper.** Explain why the notice was improper. For example, the notice did not explain what you had to do to correct the problem or give you a deadline for correcting it, or the landlord did not properly serve the notice on you. (See page 27 of the Landlord Tenant Booklet or AS 09.45.100 and .105).

 - b. **The plaintiff refused to accept the payment I offered or refused to allow me to fix the problem.**

 - c. **The amount of rent claimed is incorrect because:**
 - (1) **Rent is not owed in the amount claimed because plaintiff has failed to provide essential services or meet other obligations under the Landlord Tenant Act.** Check this box if you believe part or all of the rent is not owed because the plaintiff has failed to meet obligations. See the defenses described on page 12, section 1.

 - (2) **The following amounts were not credited to my account:**

Check this box if you have proof of payment of rent (receipts) or proof that you paid to make repairs or restore essential services, and you believe that these payments should be deducted from the amount of rent owed. List and explain the amounts.

 - d. **No damage was done to the rental property beyond ordinary wear and tear.** Check this box if you believe that no damage to the rental property occurred while you lived there beyond normal wear and tear. See page 22 of the Landlord Tenant Booklet for more information about damages.

 - e. **The rental property was fully cleaned prior to departure.** Check this box if you cleaned the rental property before you left and you do not want the plaintiff to charge you for cleaning. See

page 22 of the Landlord Tenant Booklet for information about what the plaintiff can charge you (or withhold from a security deposit) for cleaning the rental property.

6. **Paragraph 4 – Counterclaims.** Complete this section if you believe the plaintiff owes you money. Write in the amount you believe the plaintiff owes you or check the box that states that the amount owed will be determined at trial. Then check the boxes in front of each reason that applies. Note: Even if you raise some of these issues at the eviction hearing (as defenses to the amount of rent owed) and you lose the argument at the eviction hearing, you can still re-litigate these counterclaims at the damages trial.⁹
 - a. **Plaintiff entered my home without notice or my permission _____ times, and I am entitled to statutory damages under AS 34.03.300(b) of at least one month’s rent for each unlawful entry.** Check this box if the statement is true and write in the number of times the landlord unlawfully entered your home.
 - b. **Plaintiff’s failure to maintain a habitable dwelling reduced the value of the rental property. Plaintiff failed to make the following repairs or supply the following services: _____**
Rent should be reduced to \$ _____ per month. Check this box if the statement is true, and fill in the blanks.
 - c. **Plaintiff has refused to return or account for the security deposit of \$ _____ and I am entitled to the deposit and statutory damages under AS 34.03.070.** Check this box if the statement is true, and fill in the blank.
 - d. **Other.** If there are any other reasons why the plaintiff owes you money, check this box and state the reasons.
7. **Paragraph 5 – Request for Relief.** Check the boxes in this section that describe what you want the court to do.
8. Date and sign the form. Be certain to include your mailing address and a daytime phone number.
9. Fill out the “Certificate of Service” box. The “date” is the day you will mail or hand-deliver a copy of your *Answer* to the plaintiff.
10. Make two photocopies of your completed *Answer* form. Mail or hand-deliver a copy to the plaintiff (or plaintiff’s attorney) at the address provided in the summons. If you mail your *Answer*, use first-class mail. Keep one copy for your records.

⁹ Chilton – Wren v. Olds, 1 P.3d 693 (Alaska 2000)

After completing the *Answer*, file the original at the court. You can file it in person in the clerk's office or mail it using first-class mail. If mailed, be certain that it arrives within 20 days after you received the summons.

If you do not file a written answer within 20 days, the plaintiff may ask the court for a default judgment. Note: Even if you objected to the damage claim at the eviction hearing, you must still file a written answer with the court. Failure to do so may result in a default judgment against you. See chapter VI on page 24 and Civil Rule 55.

IV. THE EVICTION HEARING

If you have difficulty hearing, tell the clerk and ask to use the assisted listening equipment available in the courtrooms.

On the date set for the eviction hearing, the judge will ONLY consider the issue of who is entitled to possession of the property. The judge will NOT decide the plaintiff's claims for unpaid rent or other damages at this hearing. However, the defendant may present defenses to eviction that contest the amount of rent owed.

The plaintiff must be present in court and must be prepared to prove he/she is entitled to possession of the property. The defendant must also be present if the defendant wishes to offer defenses to eviction. The plaintiff and the defendant can each be represented by an attorney, but it is not required (unless the plaintiff is not the owner of the property as explained on page 6, Section F.2).

Both plaintiff and defendant must have all documents and other evidence relating to the eviction portion of the case with them in court. For the plaintiff, this may include the rental agreement, notice to quit, return of service, and other evidence relating to the reasons for eviction. For the defendant, this may include receipts or canceled checks showing the rent was paid or repairs were made, photographs or other evidence that support the defendant's claim for rent offsets or reductions.

If either the plaintiff or the defendant wishes to have witnesses testify at the eviction hearing, that party must arrange to have the witnesses present at the time of the hearing. Permission for a witness to appear telephonically must be obtained from the court prior to the hearing. Both parties can ask the court to issue subpoenas ordering witnesses to appear in court. A booklet about how to do this ([CIV-109](#)) is available at the court.

A. Hearing Procedure

The eviction hearing usually proceeds as follows:

1. On the day of your court hearing, check the court calendar for courtroom assignment. All parties should be inside the courtroom at the time scheduled for the hearing.
2. The court may have scheduled more than one case at the same time. The judge or the clerk will ask you to come forward when it is your turn.
3. The judge will expect the plaintiff to present testimony and documentation to prove that the requirements for an eviction have been satisfied. This may include a copy of the rental agreement or lease, proof that the summons and complaint were properly served, that the notice to quit met statutory requirements, and that the problems described in the notice, such as failure to pay rent, were not corrected.

4. The judge will ask the defendant to present testimony and documentation about any defenses to eviction. This may include receipts or canceled checks showing that the rent was paid or repairs were made, photographs, witness testimony, or other evidence that supports any claim the defendant may have for rent offsets or reductions.

5. The judge will make a decision either granting or denying the plaintiff's request for possession of the property.

6. If the judge grants possession to the plaintiff, the judge will order the defendant to leave the property by a specific date and time. If the plaintiff believes the defendant will not move out as ordered, the plaintiff may ask for a *Writ of Assistance* at this time. (See page 8, paragraph H. 2. f.)

7. If the judge denies possession to the plaintiff, the defendant may stay in the property.

B. Hearing Procedure if Defendant Does Not Appear

If the defendant does not appear at the eviction hearing, the judge may rule that the defendant loses the eviction portion of the case by default and order the defendant to vacate the premises. The judge will require testimony to establish proof that the defendant was served with the summons and complaint, that the notice to quit met statutory requirements and the defendant did not correct the problems described. If satisfactory proof is provided, the judge will order the eviction.

V. TRIAL TO DECIDE CLAIMS FOR DAMAGES

If the plaintiff's complaint asks for money damages (such as for unpaid rent, damages to the premises, etc.) and the defendant files a written answer within 20 days after being served with the complaint, there will need to be a trial to decide the amount of damages owed. If the defendant does not file a written answer, see Chapter VI on Default Judgment (page 24).

The "damages" portion of the F.E.D. action is a formal civil action and is governed by the Civil Rules. Contested civil actions can be very complicated, so it might be helpful to consult an attorney, particularly if an attorney represents the other side.

A. Scheduling the Damages Trial

Ask the clerk which of the following procedures applies to your case:

- In some courts, the court will automatically schedule either a pretrial conference or a trial date after the defendant files an *Answer*.
- In other courts, one of the parties must request that a trial be set. See Civil Rule 40(b). The form for requesting this trial is called a *Memorandum to Set Civil Case for Trial* ([CIV-200](#)). The form can be obtained from the clerk's office.

If a *Memorandum to Set* is required, do the following:

1. Fill out and file the [CIV-200](#) form as follows:

Fill out the top of the form (the location of the court, the names of the parties and the case number) the same way the complaint is filled out. Please type or print neatly using black ink.

- a. Paragraph 1 is a statement that tells the court the defendant has filed an answer and that the case is ready for trial.
- b. Estimated time for trial. Usually these trials take one to two hours or less.
- c. Jury demanded. Check the "No" box unless a timely demand for a jury trial was filed. See Civil Rule 38(b).¹⁰
- d. Nature of case. Check the "F.E.D." box.

¹⁰ The Alaska Constitution (Art. I Sec.16) provides the right to a jury trial on claims exceeding \$250. See Civil Rule 38 about how to "demand" a jury trial. Also, note that in Chilton-Wren v. Olds, 1 P.3d 693 (Alaska 2000), the Alaska Supreme Court held that the defendant (who properly filed her demand for a jury) did not waive her right to a jury in the damages trial by asserting her counterclaims to abate the amount of rent due in the eviction hearing.

- e. Legal preference. Check the "No" box. There is no scheduling preference for these trials.
- f. Names and addresses. Fill in the names, addresses and telephone numbers of all parties and attorneys.
- g. Date and sign the form.
- h. Fill out the "Certificate of Service" box on the original. On the first blank line, write the date you will mail or hand-deliver a copy of the form to the opposing party.
- i. Make two photocopies of your completed form. Mail or hand-deliver one copy to the opposing party or the party's attorney. Keep one copy for your records.
- j. File the original *Memorandum to Set* with the court in person or by first-class mail.

2. Objections

If the other party in the case objects to any information in the *Memorandum to Set*, that party must file written objections with the court and serve a copy on all other parties. This must be done within ten days after the *Memorandum* was served.

3. Notice of the Trial

The court will set a date and time for the trial and will send notice of the trial to all parties through the mail.

B. The Damages Trial

Both parties must have all written documents relating to the case with them in court. This may include receipts for rent, invoices for repairs, photographs, etc.

If either party wishes to have witnesses testify at the damages trial, that party must arrange to have the witnesses present at the time of the trial. If a party wants to appear telephonically or have a witness appear telephonically, permission must be obtained from the court prior to the trial.

The parties can request that the court issue subpoenas ordering witnesses to appear in court. The booklet "How to Subpoena a Witness" ([CIV-109](#)) is available at the court.

The damages trial will generally proceed as follows:

1. On the day of your trial, check the court calendar for your courtroom assignment. All parties should be inside the courtroom at the time scheduled for the trial.
2. The judge or the clerk will ask you to come forward when the judge is ready to hear your case.
3. The judge will ask the plaintiff to present testimony about why the plaintiff is entitled to money damages.
4. The judge will then ask the defendant to present testimony about any defenses or counterclaims.
5. The judge will make a decision and enter judgment.

VI. DEFAULT JUDGMENT

If the defendant does not file an answer, the plaintiff can ask the court for a judgment by default against the defendant. (Civil Rule 55) The procedure for getting a default judgment depends on whether or not the defendant appeared at the eviction hearing.

** **NOTE** * If you seek entry of a default, and the amount of damages you seek is greater than what was in the original complaint, a default cannot be entered until you serve the defendant(s) with either a copy of the Default Application (with attachments) or an amended complaint specifying the new amount of damages you are requesting. Service must be by process server, certified mail restricted delivery, or other acceptable Civil Rule 4 service.*

If the defendant does not file a written answer to the complaint, whether or not they appeared in court for the eviction hearing or filed any other written response with the court, the procedure for obtaining a default judgment is explained below.

Prepare Application

First, prepare an application for entry of default. You can use court form [CIV-740 Default Application, Affidavit and Entry](#). Type or print neatly using black ink.

Case Caption. Fill out the top of the form (the court location, the names of the parties and the case number) the same way the complaint is filled out.

Affidavit Section. The numbered instructions below correspond to the numbered paragraphs in the affidavit section.

1. Fill in the name and date served for each defendant who was served with the summons and complaint. Attach the original Return of Service for each defendant if it has not already been filed with the court.
2. Check the court file to make sure that no answer has been filed.
3. If the defendant is a person under age 18, a person in the active military service or a mentally incompetent person, the [CIV-740 Default Application](#) form cannot be used to obtain a default judgment because there are special laws protecting these people. These laws may require the appointment of a lawyer or guardian for the defendant at your expense or may prevent you from getting a default judgment. You will probably want to consult a lawyer.

4. Calculation of the amount owed. You must attach documentation to support all claims

a. Unpaid Rent. List the amount owed for each month.

Example:

Unpaid Rent - \$400 a month for June and July = \$800

Attach a copy of the rental agreement or lease and record of payments.

b. Damages to premises (*Itemize*).

Example:

Replace window screens	\$100	
Cleaning by A-1 Cleaning	<u>\$ 90</u>	
Total Damages		\$190

For the above example, attach an invoice from the hardware store and/or window repair person, and the invoice from the cleaning service. If you are charging for time you spent cleaning or making repairs, you should itemize your hourly rate and the hours you worked.

c. Late fee. Late fees will only be allowed if the rental agreement or lease has a provision for late fees. Additionally, late fees are usually not allowed after the tenant has left the premises. Instead, the plaintiff is generally entitled to recover prejudgment interest after the date of service of the summons and complaint. See AS 09.30.070 and AS 45.45.010(b).

d. Subtract Amounts Defendant Paid to Plaintiff

(1) Security Deposit. If you received a security deposit from the defendant, check the “Yes” box and fill in the amount received. Check the “No” box if you did not receive a security deposit.

(2) Other Payments. If you have received any money from the defendant since filing the complaint, check the “Yes” box and fill in the amount received. If no payments have been received, check the “No” box.

5. Costs

Itemize the costs you have incurred, including the filing fee and the fee you paid your process server to serve the summons and complaint. Do not include any costs previously awarded to you in the *Judgment for Possession*. Enter the total costs.

6. Actual Attorney Fees.

Skip this section unless an attorney represented you in this case. Do not include any attorney fees previously awarded to you in the *Judgment for Possession*.

Civil Rule 82(b)(4) determines the amount of attorney fees that will be awarded. This amount may be less than the actual attorney fees incurred.

7. Prejudgment Interest.

Prejudgment interest is interest on the principal amount due from the date it became due until the date the judgment is entered. Usually, the court will calculate prejudgment interest from the date the summons and complaint were served on the defendant unless the judge orders otherwise.

If you want interest to begin on a date other than the date the summons was served, you must attach a separate computation sheet showing the amounts due, the dates they became due, the interest rates and interest calculations, any payments, and how such payments were applied to interest and principal. (Civil Rule 58.2(b)).

Generally, prejudgment interest will not be awarded on unpaid rent if late fees have been assessed.

8. Prepare a proposed *Default Judgment* form. You can get this form ([CIV-745](#)) from the clerk's office. Complete the case caption and the case number as you did on your *Default Application*. The court will complete the rest of the judgment. File the proposed judgment with your *Default Application, Affidavit and Entry*.

Signature Section. Your signature on this form **must** be notarized. Sign and date the form in front of a notary public, court clerk, or other person authorized to administer oaths. Print your name and mailing address and have the notary sign and seal the notary section.

Certificate of Service Box. Before you file the *Default Application* with the court clerk, you must complete the Certificate of Service box on page 3 of the application form and send a copy of the application (and all its attachments) by first-class mail to each defendant named on the application. (Civil Rule 55(a)(2))

Note: You cannot serve the defendant at the address from which the defendant was evicted unless the defendant's current address and whereabouts are not readily ascertainable. (Civil Rule 85(a)(5))

Suggestions for ways to readily ascertain the defendant's current address:

- Check the court file.
- Call the defendant and request a current address.

- If you do not have a telephone number for the defendant, call directory assistance in all cities where you think the defendant may live for a current address or telephone number.
- Contact any references that were listed on the rental agreement or lease.
- Check the Internet. There are search engines as well as businesses available on the Internet that may be able to assist you in locating people throughout the United States. Also, you can access telephone directories for most cities in the United States through the Internet. Your local library may be able to help you with this.

Entry of Default box. Do not write in this box. It is for court use only.

File Application

File the *Default Application* (and attachments) with the court. There is no additional fee for this. You can file the documents in person in the clerk's office or mail them to the court using first-class mail.

Court Review

The court clerk will review your documents and determine whether default can be entered.

If there are any deficiencies in your documents, the court will notify you. You must correct the problem or the court will not process your application for entry of default and your case will be dismissed for lack of prosecution. (Civil Rule 85(a)(6)).

Occasionally, the court will have questions or need additional information regarding the damages you are claiming. The court may schedule a damages hearing to address these questions. If a hearing is scheduled, you will be notified of the hearing date by mail. At this hearing, you will be asked to provide additional documentation or testimony under oath about the damages.

Entry of Default

If there are no deficiencies in your documents, the clerk will sign the Entry of Default and the *Default Judgment* will be entered. The clerk will mail a copy of both documents to you at the address provided on your *Default Application*.

VII. AFTER JUDGMENT

A. Relief from Judgment

1. Request to Set Aside Default Judgment.

If you think a default judgment was improperly entered against you, you can ask the court to set aside the judgment. To do this, you must file with the court a request to set aside default judgment. Your request must be filed within a reasonable time after the default judgment was entered against you. Civil Rules 55(e) and 60(b). You must also serve a copy of your request on the opposing party in the case and show proof to the court that you did this. There is currently no court form for this request, however, you can review Small Claims form [SC-24](#) for an example of what a request should look like.

In your request to set aside default judgment, you must usually show two things:

- a. there are facts which show you could win the case if a trial were held; and
- b. there was a good reason why you failed to appear at trial or answer the complaint.

The court will allow the other party an opportunity to respond in writing to your request. The court will review both statements and notify you in writing of its decision. The court will not set aside a default judgment unless you give a good reason.

Filing a request to set aside a default judgment does *not* automatically stop the judgment creditor from having a Writ of Execution issued to collect the judgment. If you wish to keep the creditor from having a Writ of Execution issued against you, you must (1) file a motion requesting a stay of execution, and (2) file a bond or make a cash deposit with the court in the amount of the judgment, plus interest. You should contact the court for further information if you wish to post a bond.

2. Appeals.

If either party believes the court applied the law incorrectly or reached a decision which is not supported by the evidence presented, that party may appeal the judgment. Appeals are complicated, and you should consider talking to a lawyer if you want to appeal.

An appeal does not automatically give you a new trial. The court that hears your appeal will not accept any new evidence. The only information the court will consider on appeal is (1) the tape recording of the trial, (2) any items presented as evidence at the trial, (3) the documents in the court file, and (4) legal memoranda.

If your case was heard in the district court, your case will be appealed to the superior court. If your case was heard in the superior court, your case will be appealed to the supreme court.

Your appeal to either court must be filed within 30 days from the date the judgment is distributed.

For information about how to appeal your case to the superior court, ask the court clerk for the booklet *Instructions For Filing An Appeal From The District Court To The Superior Court* ([AP-200](#)).

There are currently no court forms or instructions regarding how to file an appeal to the supreme court. For information about this type of appeal, see the Rules of Appellate Procedure in the [Alaska Rules of Court](#).

NOTE: Filing an appeal does not automatically prevent the plaintiff from evicting the tenant or from enforcing (collecting) a money judgment. A tenant who appeals the court's eviction judgment can ask the court to allow him/her to stay on the premises until the appeal is heard. (The court may require that the tenant post a bond with the court pending a decision on the appeal.) For information about how to postpone enforcement of the judgment during an appeal, see the [AP-200](#) booklet mentioned above.

B. Collection of the Judgment

The court does NOT collect the judgment for the prevailing party. If the judgment debtor (the losing party) will not pay voluntarily, the judgment creditor (the party who wins the money judgment) may ask the court to issue a Writ of Execution.

A Writ of Execution is a court order directing a peace officer or process server to take property of the debtor to pay the judgment. Property can include money, bank accounts, wages, personal and real property or any other asset belonging to the debtor which has value.

For information about this, ask the court clerk for a copy of *Execution Procedure: Judgment Creditor Booklet* ([CIV-550](#)).

For information about the rights of the debtor, ask the clerk for a copy of the *Judgment Debtor Booklet* ([CIV-511](#)).

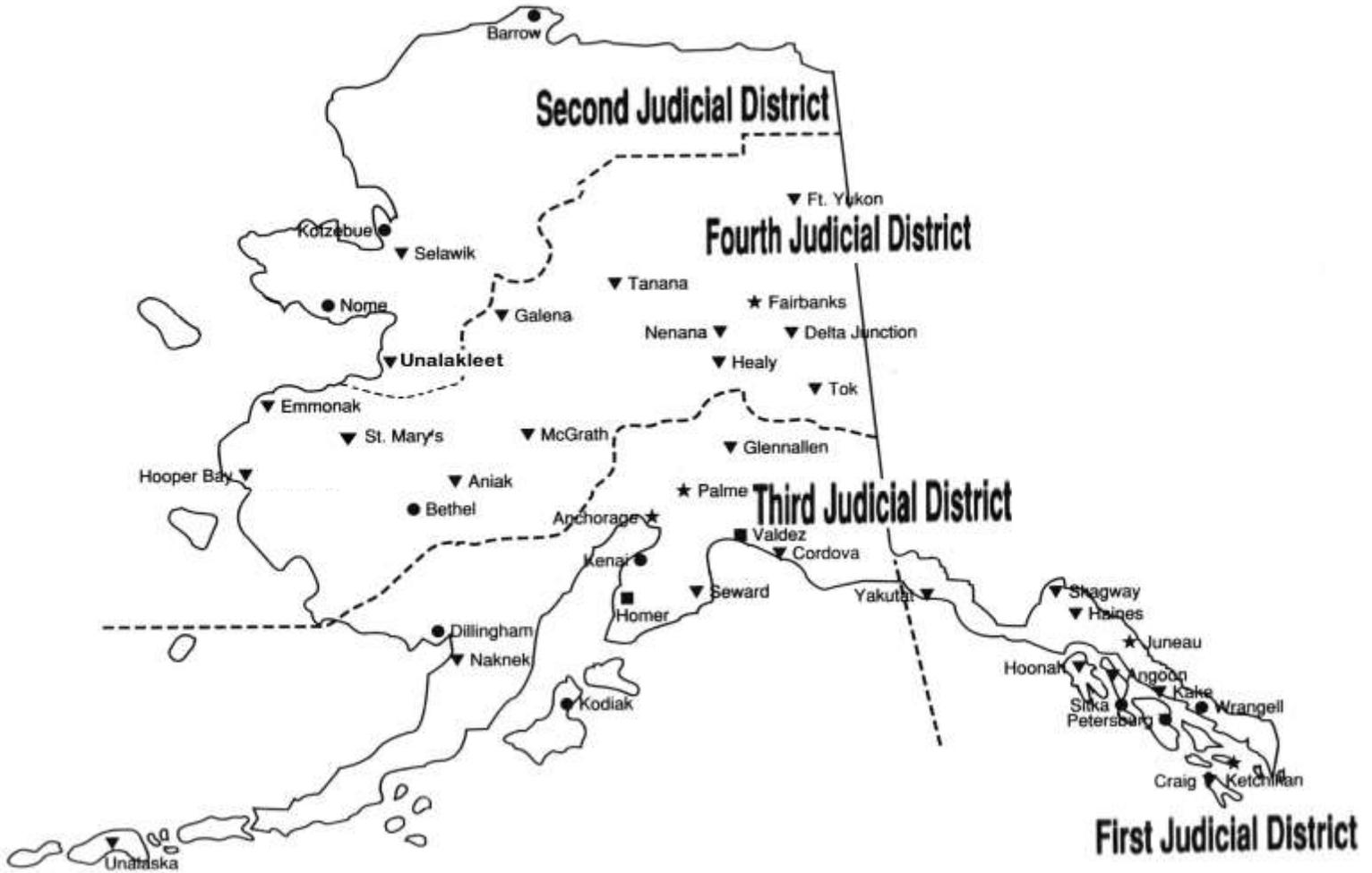
APPENDIX 1

LIST OF FORMS FOR F.E.D. CASES

1. Notice To Quit - For Non-Payment of Rent ([CIV- 725](#))
2. Complaint for Forcible Entry and Detainer ([CIV-730](#))
3. Summons - Forcible Entry and Detainer ([CIV-105](#))
4. Expedited Motion for Continuance –F.E.D. ([CIV-733](#))
5. Order on Expedited Motion for Continuance ([CIV-734](#))
6. Answer to F. E. D. Complaint ([CIV-735](#))
7. Service Instructions ([CIV-615](#))
8. Case Description ([CIV-125D](#), or [CIV-125S](#), ask the clerk for assistance)
9. Judgment for Possession ([CIV-300](#))
10. Writ Of Assistance ([CIV-575](#))
11. Memorandum To Set Civil Case For Trial ([CIV- 200](#))
12. Default Application, Affidavit and Entry (In F.E.D. Action) ([CIV-740](#))
13. Default Judgment (F.E.D.) ([CIV-745](#))
14. Subpoena to Appear (CIV-111)
15. Subpoena to Appear and Produce (CIV-110)
16. How to Subpoena a Witness ([CIV-109](#) Booklet)

APPENDIX 2

JUDICIAL DISTRICT MAP



- ★ Superior and District Courts
- Superior Court Locations
- District Court Locations
- ▼ Magistrate Locations

APPENDIX 3

HOW TO FILL OUT THE CASE CAPTION ON A FORM

Please type or print neatly using black ink when you fill out the forms.

Fill in the tops of the forms as shown in the following sample:

IN THE DISTRICT/ SUPERIOR COURT FOR THE STATE OF ALASKA	
AT <u>Anchorage</u>	
<u>Peter Property Owner</u>)
<u>DOB 1/23/45</u>)
Plaintiff,)
vs.)
<u>Tom Tenant and</u>)
<u>Teresa Tenant</u>)
<u>DOB 9/08/76</u>)
<u>DOB 8/09/77</u>)
Defendants.)
CASE NO. _____	CI
COMPLAINT FOR FORCIBLE ENTRY AND DETAINER (Seeking Eviction, Rent and Damages)	

On the top line, cross out "SUPERIOR" if you are filing in the district court.

On the "AT" line, fill in the city where the court is located (the court where you will file your complaint.).

On the "Plaintiff" line, fill in the name of the owner of the property or the person authorized to bring the action and the plaintiff's date of birth (if the plaintiff is a person).

On the "Defendant" line, fill in the names of the tenants and their dates of birth.

Do not fill in the "CASE NO." line on the complaint form. The court clerk will fill that in. On other forms filed after the complaint form, fill in the case number that the clerk wrote on the complaint.