

Forcible Entry and Detainer (FED) and Return of Personal Property Information

Marion County Circuit Court

The following is a brief outline of the eviction and return of personal property process. Most of the rules governing this process may be found in the Oregon Revised Statutes, available in the law library (located at 234 High Street SE, Salem, Oregon) or on the Internet at <http://www.leg.state.or.us/ors/>. This information should not be relied upon as a complete statement of the law. If you need help finding a lawyer, call the Oregon State Bar lawyer referral service at 1-800-452-7636, or if you can't afford a lawyer, contact Marion-Polk Legal Aid Service at 503-581-5265. Legal information for the public is also available through Tel-Law (1-800-452-4776) and through the Oregon State Bar's web site, www.osbar.org.

- 1. The FED process is for the possession of property only.** The FED process is limited to the issue of possession of property. Issues about money or damages are typically not decided in an FED case, except that the court may award the "prevailing party" (the winner) costs and attorneys fees. If you would like to raise issues other than who is entitled to possession, you will need to file a separate court action. The plaintiff may join related claims to the FED, but the case will be taken out of the expedited hearing process.
- 2. Notice.** In most cases, the plaintiff is required to provide the defendant with a notice before filing a complaint with the court. If the defendant is required by the notice to do something (pay rent, for example) or to quit doing something (loud music, for example), the plaintiff cannot obtain help from the Court unless the defendant does not comply with the notice.
- 3. Filing the complaint.** You must fill out and file a complaint and summons to get the case started, and pay the appropriate filing fee or ask the court to waive or defer the fee. Fill out the forms completely, except the case number and first appearance date, which will be provided for you when you file. The plaintiff is the person entitled to possession of the property (the owner), and the defendant is the person who has possession of the property. If you are filing on behalf of the plaintiff, wait to sign the complaint until you are in the presence of a notary public or court clerk (you will need picture ID). Attach a copy of the notice you provided to defendant to the complaint.
- 4. Service.** Have the complaint and summons served on the defendant. You may have the documents served by the Sheriff or a private process server (look in the yellow pages for more information). The law doesn't allow you to serve the papers yourself.
- 5. First Appearance.** The first appearance is usually scheduled between 8 and 15 days after the day the complaint is filed. The purpose of the first appearance is to find out if the parties still disagree, and if so, to attempt to resolve the case. A trial will not be held during the first appearance. In most cases, the complaint will be dismissed if the plaintiff doesn't appear, and a judgment will be entered against the defendant if he or she doesn't appear. If both parties appear, the judge, and possibly, a mediator, will talk to the parties about resolving the case. This process may take a couple of hours. If an agreement is reached, it will be put in writing, and both parties will be ordered to comply with it.
- 6. Answer.** If the case is not resolved at the first appearance, the defendant may ask for a trial by filing a written answer to the complaint. Unless otherwise ordered by the judge, the answer must be filed with the court by 5:00 p.m. on the same day as the first appearance, along with the appropriate filing fee. Answer forms are available from the information window on the first floor. The answer must be served on (delivered to) the plaintiff on the same day as the first appearance. If an answer is filed, the plaintiff is required to pay an

additional fee at the accounting window on the first floor by the end of the next judicial day following the first appearance.

7. **Trial.** The trial is usually held within 15 days of the first appearance. The plaintiff is required to pay a trial fee (in addition to the fee listed above in section (6) before the day of trial unless either party requests a jury trial. If a jury trial is requested, the party requesting the jury must pay a jury trial fee before the day of trial. If either party would like the trial recorded, a written request must be filed with the court and served on the other party, and a recording fee must be paid at least 48 hours before the trial.
8. **Judgment.** The “judgment” is the final document the judge signs at the end of the case, stating his or her decision. Usually, the judgment either dismisses plaintiff’s complaint or orders the defendant to move out of the property by a certain date (or return personal property). A judgment may also be entered if one party does not comply with an agreement reached in court or in mediation. The judgment may order one party to pay the other party’s costs and fees for bringing the case to court, and an additional prevailing party fee.
9. **Notice to Tenant to Move Out.** If a judgment of restitution is granted (a judgment giving possession of the property to plaintiff), the plaintiff may request that the court clerk issue a “Notice of Restitution.” This notice orders the defendant to move out of the property and remove all personal items within four days of service of the notice. If the fourth day falls on a weekend or holiday, the final move out time is midnight of the day before the next judicial day. There is a fee for the notice and must be served on the defendant by the sheriff’s office or a private process server.
10. **Enforcement of Judgment.** If the tenant does not move out of the property by the date on the notice of restitution, the plaintiff may request the court clerk to issue a “Writ of Execution of Judgment of Restitution.” The writ directs the sheriff’s office to physically remove the tenant from the property, and give plaintiff possession of the property. There is a fee for issuance of the writ, and a fee for the sheriff to deliver possession to the plaintiff.
11. **Storage of Tenant Property.** In a residential tenancy, if the tenant leaves without removing all of his or her personal property, the landlord is required to store the property for a period of time, and provide the tenant with notice that the property is available to be picked up. For more information, please call Tel-Law at 1-800-452-4776 and listen to Tape 1257, visit the Oregon State Bar’s web site, www.osbar.org, or contact a lawyer.

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE THIRD JUDICIAL DISTRICT**

PLAINTIFF (Tenant):

Name: _____)

Mailing Address: _____)

City: _____ State: _____ Zip: _____)

Telephone Number: _____)

vs.

DEFENDANT (Landlord)

Name: _____)

Mailing Address: _____)

City: _____ County: _____ State: _____ Zip: _____)

Phone number (if known): _____

COMPLAINT

Return of Personal Property

Case No: _____

☐ **INTERPRETER NEEDED**

Language: _____

1. Defendant(s) (is) (are) in possession of the following personal property belonging to the plaintiff(s):

☐ See attached list.

2. Defendant(s) took the personal property alleged in paragraph 1 from the premises rented by plaintiff(s) from defendant(s) at:

Street and Number	City	Zip	County
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3. Plaintiff(s) (is) (are) entitled to possession of the personal property because (check box(es)):

- ☐ Defendant(s) took the personal property wrongfully because plaintiff(s) had not abandoned the property, and because either there was no court order awarding defendant(s) possession of the premises or the plaintiff(s) (was) (were) not continuously absent from the premises for seven days after such as an order when defendant(s) removed the personal property.
- ☐ Defendant(s) lawfully took possession of the personal property after enforcement of a court order for possession of the premises pursuant to ORS 105.165, but refused to return the personal property to plaintiff(s) without payment although plaintiff(s) demanded return of the property within the time provided by ORS 90.425 or 90.675.
- ☐ Defendant(s) lawfully took possession of the personal property pursuant to ORS 105.161, but refused to return the personal property to plaintiff(s) although plaintiff(s) offered payment of all sums due for storage and any costs of removal of the personal property and demanded return of the property within the time provided by ORS 90.425 or 90.675.
- ☐ Other: _____

Wherefore, plaintiff(s) pray(s) for possession of the personal property and costs and disbursements incurred herein.

Signature of Plaintiff or Attorney _____

OSB

Print or Type Name _____

STATE OF OREGON)

) ss

County of Marion)

I, _____, being first duly sworn, depose and say that I am the agent or employee of Plaintiff, or an agent or employee of an agent of the plaintiff, in the within cause and that the foregoing complaint is true, as I verily believe.

Signature of Agent or Employee _____

Print Name _____

Witness my hand and official seal of said Court this _____ day of _____, 20____.

(SEAL)

By: _____

Trial Court Administrator/Clerk/Notary

I hereby certify that the foregoing copy of the Summons and Complaint are true and correct copies of the originals.

(SEAL)

By: _____

Trial Court Administrator/Clerk/Notary

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION**

Name: _____)
Plaintiff(s),) Case No.: _____)
vs.)
Name: _____)
Defendant(s))

SUMMONS
(Return of Personal Property / Tenancy
not covered by ORS Chapter 90)

To: _____
Name of Defendant(s)

Address of Defendant(s)

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY

You are hereby required to answer the complaint filed against you in the above-entitled action and to appear on _____, at _____ a.m./p.m., before a Judge in the above-entitled court at the following location:

**Marion County Courthouse
100 High St. NE, Salem, Oregon**

You must appear in this case or the other side will win automatically. If you fail to appear, the Plaintiff will take judgment against you for the restitution of certain ☐ personal property or ☐ premises, as described in Plaintiff's Complaint, plus costs and disbursements. To appear, you must be present, either in person or through an attorney, at the first appearance dated and time shown above.

ATTENTION DEFENDANT:

If you have any questions, see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service (503-684-3763, toll free in Oregon, 800-542-7636).

Plaintiff or Agent Signature OSB#

Print or Type Name of Plaintiff or Agent

Street Address City

State Zip Phone

Date

I certify that this is a true copy of the original Summons in the entitled action.

Date By: _____
Trial Court Administrator/Clerk/Notary

EVT# _____

An Option for Resolving Your Dispute: Mediation

Important Notice: If you are receiving this form as the filing party, you must serve this form on the responding party.

What is mediation?

- A voluntary way to resolve your case with the help of a neutral person (the mediator). Instead of having a judge decide your case, you can work with a mediator to settle your case. You can still go to trial if you do not reach an agreement.
- The mediator will help you and the other party communicate and come up with options to settle the case. The mediator does not take sides or give legal advice.

How does mediation work?

- The mediator will explain the process at the beginning of mediation. Parties may meet with the mediator together or the mediator may meet with you each separately. Either party can ask to meet with the mediator alone.
- During mediation, each party has an opportunity to suggest ideas for moving forward. The mediator helps the parties come up with ideas and possible solutions.
- If both parties agree to a resolution, you may not need to go to court or arbitration. There is only a resolution in mediation if both parties agree to it.

Why should I mediate?

- It can be faster, less expensive, and less stressful than a trial or hearing.
- Parties decide the outcome instead of a judge.
- Parties can find more creative ways to resolve the dispute.
- It's private and confidential (with a few exceptions).
- It gives parties an opportunity to hear each other's perspectives.
- Parties are more likely to follow mediated agreements than court judgments.
- Parties often report higher satisfaction than in a court trial.

Things to consider before mediation.

There may be times when mediation is not appropriate. Tell your mediator or attorney if:

- Mediation poses a risk to your safety;
- You can't make decisions about your case; or
- You think you'll agree to something you don't want.

The mediator may be able to address your concerns so that you can mediate.

Where do we meet with the mediator?

Mediation usually happens in person or by video conference (for example, Zoom or Webex).

Who chooses the mediator?

Some courts will provide a mediator in landlord-tenant and small claims cases. The parties may also agree on a private mediator on their own.

Another option is to go through a Community Dispute Resolution Center (CDRC). To find one go to: Oregon Office for Community Dispute Resolution | School of Law (uoregon.edu)

You can also find private mediators using these resources:

- Oregon Mediation Association - Find a Mediator: <https://ormediation.org>
- The mediator search tool at Mediate.com: <https://mediate.com>

How much does mediation cost?

Some courts offer free mediation services in landlord-tenant and small claims cases. Otherwise, the cost for a mediator varies. Private mediators usually charge by the hour. Community dispute resolution centers (CDRCs) may be less expensive.

Can I get an interpreter for mediation?

If the court sends the case to mediation, interpreters are available for people with limited English proficiency and for people who are deaf (ASL) or hard of hearing for free. Please let your mediator or the court know that you will need an interpreter prior to your court date or mediation conference.

How do I get my case to mediation?

- The court may refer your case to mediation without you asking.
- You can also ask the court to send your case to mediation by filing a request for mediation (check with your [local court](#) for forms).
- You may talk with the other person directly and agree on mediation. If you decide to work with a private mediator, contact the mediator directly to learn more about their process.

My case is going to arbitration – can I mediate my case instead?

Yes, some courts have an established mediation program and can refer you to a mediator. In these counties, arbitration is not required if the parties don't agree on an outcome in mediation. Instead, they are referred to a judge for further case processing.

If your court does not have a mediation program, the parties can still choose to mediate with a private mediator but may be required to attend arbitration if they can't agree on an outcome.

Local Mediation Program Information

Court location: Marion County Circuit Court

Mediation programs:

Small claims:

Cost to parties: Free

The court will refer the parties to mediation.

Landlord tenant:

Cost to parties: Free

The court will refer the parties to mediation.

Other: Civil, Arbitration and Probate cases

Cost: Varies, determined by Mediator

At least one party must request mediation.

Link to mediator information and forms:

<https://www.courts.oregon.gov/courts/marion/go/Pages/Mediation.aspx>

This form is available in Spanish, Korean, Russian, Traditional Chinese, Arabic and Vietnamese on the court's website:

<https://www.courts.oregon.gov/courts/marion/go/Pages/Mediation.aspx>

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE THIRD JUDICIAL DISTRICT

Plaintiff, Petitioner or Moving Party,

vs.

SUPPLEMENTAL AFFIDAVIT
(Servicemembers Civil Relief Act)

Case No. _____

Defendant, Respondent or Non-Moving Party.

I, _____, hereby swear or affirm the following information is true to the best of my knowledge: I am the Plaintiff/Petitioner/or Moving Party, in this proceeding.

☐ The Defendant / Respondent / Non-Moving Party ☐ is ☐ is not in military service. State supporting facts:

☐ I am unable to determine whether Defendant / Respondent / Non-Moving Party is in the military service. I have made the following efforts to make this determination:

☐ The Defendant / Respondent / Non-Moving Party has waived his/her rights under the Servicemembers Civil Relief Act, Pub.L. No. 108-189 (2003), as shown by the attached affidavit, labeled as Exhibit _____.

For Eviction (FED) cases only:

☐ No one in the dwelling from which eviction is sought is dependent on anyone active in the military. State supporting facts:

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury. (Sign in front of a notary or court clerk)

Dated Plaintiff /Petitioner/Moving Party (Signature) (Print Name)

Address City State Zip Telephone Number

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20____, by

Deputy Court Administrator/Notary Public