

# NY CLS CPLR § 3011, Part 1 of 4

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*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 30 Remedies and Pleading (§§ 3001 — 3045)*

## § 3011. Kinds of pleadings.

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There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff and a cross-claim against a defendant. A defendant's pleading against another claimant is an interpleader complaint, or against any other person not already a party is a third-party complaint. There shall be a reply to a counterclaim denominated as such, an answer to an interpleader complaint or third-party complaint, and an answer to a cross-claim that contains a demand for an answer. If no demand is made, the cross-claim shall be deemed denied or avoided. There shall be no other pleading unless the court orders otherwise.

## History

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Add, L 1962, ch 308, § 1; amd, L 1977, ch 26, § 1, eff Sept 1, 1977.

Annotations

## Notes

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### Derivation Notes:

Earlier statutes: CPA §§ 254, 260, 261, 272, 274; CCP §§ 478, 487, 500, 514, 516, 517; Code Proc §§ 141, 143, 149, 153.

**1976 Recommendations of the Committee to Advise and Consult with the Judicial Conference on the Civil Practice Law and Rules:**

This measure would amend CPLR 3011 which now requires, among other pleadings, an answer to a cross-claim. In cases arising out of the same incident, where there are multiple plaintiffs each suing numerous defendants, as for example under the theory of *Dole v. Dow Chemical Company*, 30 N.Y. 2d 143 (1972), the preparation and service of mandatory answers to cross-claims becomes extremely burdensome.

This bill would mitigate the problem by providing for an answer to a cross-claim only when it contains a demand for an answer. If there is no demand, the cross-claim would be deemed denied or avoided. That language is consistent with CPLR 3018(a) which provides that statements in a pleading are deemed denied or avoided where no responsive pleading is permitted.

Under the Civil Practice Act, the predecessor of the CPLR, there existed no requirement that an answer be served to a cross-claim. The requirement that every cross-claim be answered was inserted in the CPLR when that procedural act superseded the CPA in 1963, long before the advent of *Dole v. Dow Chemical Company*. This amendment would work a partial return to the CPA position in that an answer to a cross-claim would not automatically be required, but would be required if the cross-claim so demanded. The result will be to require answers to crossclaims when they serve a purpose but not otherwise, thereby serving the convenience of the courts and the parties and eliminating much unnecessary paperwork.

**Advisory Committee Notes:**

This section defines and limits pleadings. The first sentence is taken from Federal rule 7(a). The matter was formerly covered by CPA §§ 254 and 260. The specification in the latter section that an answer was the *only* pleading on the part of the defendant has been eliminated as misleading, especially with respect to third-party practice. Limitation on further pleadings is contained in the last sentence of this section.

The second sentence indicates that a counterclaim or cross-claim is included in an answer, as distinguished from a third-party complaint, which is treated in the third sentence as a separate pleading and may be served subsequent to the answer. This accords with former law. No change is intended from the former practice that a counterclaim might be made by one of several defendants against one of several plaintiffs and other persons. CPA § 266. This and other provisions regarding counterclaims are dealt with in greater detail in CPLR § 3019.

No answer to a cross-claim was formerly required in New York, although a cross-claim was similar to a third-party complaint, a counterclaim or, indeed, a complaint, with respect to the necessity of a responsive pleading. This section, requiring an answer to a cross-claim, is in accord with Federal rule 7(a) and most state practice. It would avoid such unfortunate results as the frustration of the summary judgment rule as between codefendants. See *Smith v Benjamin*, 147 NYS2d 524 (Sup Ct 1955), *aff'd* 2 AD2d 666, 153 NYS2d 545 (1st Dep't 1956).

The fourth sentence of the section is also based upon Federal rule 7(a). Despite the fact that former CPA § 272 provided that the plaintiff “may” reply to a counterclaim, former law was in accord with this rule.

It should be noted that the pleadings responsive to a complaint, a cross-claim, an interpleader complaint and a third-party complaint are each called an “answer” in this section; all of the rules that apply to answers thus apply to each.

The limitation on pleadings in the last sentence contains an exception which would permit the court to direct a reply to new matter in an answer, as might have been done under former CPA § 274. It is intended to give courts the widest possible discretion in requiring further pleadings.

## **Commentary**

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### **PRACTICE INSIGHTS:**

#### **ASSERTING COUNTERCLAIMS AND JURISDICTIONAL OBJECTIONS**

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## **INSIGHT**

A defendant with jurisdictional objections must be careful when asserting counterclaims. If the counterclaim is related to the main claim asserted by the plaintiff, a defendant can assert it and also contest jurisdiction. Asserting an unrelated counterclaim, however, will result in a waiver of jurisdictional defenses. The prudent attorney for the defendant could avoid asserting the counterclaim, litigate the jurisdictional objections and, if successful, sue the plaintiff in a more favorable jurisdiction.

## **ANALYSIS**

### **Asserting related counterclaim does not waive defendant's jurisdictional objections.**

Generally, in New York, counterclaims are not compulsory. Nevertheless, when sued, defendants frequently assert counterclaims, if available. If there are no jurisdictional issues, a defendant may freely assert those counterclaims. Moreover, if the counterclaim is related to the main claim, the defendant does not waive jurisdictional objections by pleading the counterclaim. A counterclaim is related when such counterclaim could potentially be barred under principles of collateral estoppel. If, for example, an attorney sued a client for unpaid fees, the client could assert a counterclaim for malpractice and also assert a jurisdictional objection.

### **Asserting unrelated counterclaim will result in waiver of jurisdictional defenses.**

Asserting an unrelated counterclaim, however, will result in a waiver of jurisdictional objections, "because defendant is taking affirmative advantage of the court's jurisdiction." *Textile Technology Exchange, Inc. v. Davis*, 81 N.Y.2d 56, 58-59, 595 N.Y.S.2d 729, 730, 611 N.E.2d 768, 769 (1993). See also *USI Sys. AG v. Gliklad*, 176 A.D.3d 555, 111 N.Y.S.3d 270 (1st Dep't 2019), *app. denied*, 35 N.Y.3d 910, 125 N.Y.S.3d 388, 149 N.E.3d 82 (2020) "Defendant's assertion of counterclaims that were unrelated to plaintiff's claim and to his own affirmative

defenses effected a waiver of his argument that he was not subject to personal jurisdiction in New York (citations omitted). Accordingly, the requisite jurisdiction was established for purposes of this article 53 proceeding, in which defendant raised substantive challenges to recognition of the Swiss judgment (citation omitted). The facts and issues that underlie the affirmative defenses are wholly distinct from the facts and issues from which the counterclaims arise, in particular, alleged breach of contract, and alleged torts by Kristy AG and its co-director, Nikolai Makurin, in connection with the transfer of Kristy Oil's business to Kristy AG. Given that the counterclaims do not arise out of the same transaction as alleged in the complaint, and they seek distinct damages, the doctrine of equitable recoupment, codified by CPLR 203(d), is unavailable to defendant (citation omitted).”).

As a result, if the counterclaim is unrelated, the better course could be for the defendant not to assert the counterclaim, litigate the jurisdictional objections and, if successful, sue the plaintiff in another jurisdiction, one preferably more advantageous to the defendant. If the jurisdictional challenge is denied, the defendant can then decide whether to move to amend to add the counterclaim or to bring a separate action. See CPLR 3025.

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**I. Under CPLR**

**1. In general**

Pleadings, particularly claims over, should be liberally construed. *Hobbs v Scorse*, 59 A.D.2d 1037, 399 N.Y.S.2d 783, 1977 N.Y. App. Div. LEXIS 14323 (N.Y. App. Div. 4th Dep't 1977).

Special Term was insufficiently informed of important circumstances involved in the nuisance complained of by plaintiffs, and it was therefore improvident for injunctive relief to be denied out of hand and plaintiffs relegated to damages for deprivation of quiet enjoyment of their apartment by incessant and disturbing noises caused by improper mounting of various pipes and pumps within the subject apartment building, where the record revealed a callous disregard of plaintiffs' rights in that, the cause of the nuisance having been discovered, not a whit was done toward abatement. *Hohenberg v 77 West 55th Street Associates*, 90 A.D.2d 750, 456 N.Y.S.2d 4, 1982 N.Y. App. Div. LEXIS 18945 (N.Y. App. Div. 1st Dep't 1982).

A motion for a default judgment on defendant's cross-claim against co-defendant, which was served as an independent pleading without leave of court almost one year after service of the movant's answer to the complaint in the main action, but which did not contain a demand for an



answer, was properly denied, since the lack of a demand relieved the defendant on whom the cross-claim was served of any obligation to serve an answer, in that when a cross-claim contains no such demand, the allegations of the cross-claim are deemed denied or avoided pursuant to CPLR § 3011. *Green Point Sav. Bank v Pagano*, 103 A.D.2d 735, 477 N.Y.S.2d 199, 1984 N.Y. App. Div. LEXIS 19334 (N.Y. App. Div. 2d Dep't 1984).

Misstatement of defendant's name in summons and complaint as Welbut instead of Welbilt was mere irregularity which in no way affected jurisdiction. *Marine Midland Realty Credit Corp. v Welbilt Corp.*, 145 A.D.2d 84, 537 N.Y.S.2d 669, 1989 N.Y. App. Div. LEXIS 1249 (N.Y. App. Div. 3d Dep't 1989).

Husband was not entitled to default judgment against wife, from whom he was separated, in action by bank against both to recover outstanding balance on joint credit card, where husband cross-claimed against wife for indemnification, wife did not respond, and court granted bank summary judgment against both; since husband did not expressly demand answer under CLS CPLR § 3011, cross claim was deemed denied or avoided. *Fleet Nat'l Bank v Harley*, 153 A.D.2d 1005, 545 N.Y.S.2d 854, 1989 N.Y. App. Div. LEXIS 11958 (N.Y. App. Div. 3d Dep't 1989).

Grant of defendant's motion for summary judgment on his cross claim against codefendant was premature, even though formal answer to cross claim was never interposed, where cross claim did not demand answer, and thus, under CLS CPLR § 3011, its allegations were deemed denied or avoided. *Aetna Cas. & Sur. Co. v McCarthy*, 246 A.D.2d 406, 666 N.Y.S.2d 432, 1998 N.Y. App. Div. LEXIS 287 (N.Y. App. Div. 1st Dep't 1998).

Dismissal of an owner's counterclaim was improper because, inter alia, the association failed to serve a reply to the counterclaim, notwithstanding the fact that the counterclaim was "denominated as such" in the owner's answer. *Board of Directors of Squire Green at Pawling Homeowners Assn., Inc. v Bell*, 89 A.D.3d 657, 933 N.Y.S.2d 288, 2011 N.Y. App. Div. LEXIS 7659 (N.Y. App. Div. 2d Dep't 2011).

Plaintiff's notices of discontinuance were not untimely because a motion to dismiss was not a responsive pleading for purposes of N.Y. C.P.L.R. 3217 as it did not fall within the meaning of a pleading under N.Y. C.P.L.R. 3011 since a motion was defined in N.Y. C.P.L.R. 2211 as an application for an order; the terms "responsive pleading" and "motion to dismiss pursuant to N.Y. C.P.L.R. 3211" were not used interchangeably in the New York State Civil Practice Law and Rules, but were treated as distinct, separate items. The legislative history of N.Y. C.P.L.R. 3217 supported this interpretation, and as plaintiff's notices of discontinuance were timely, the action was discontinued and the sanctions award was a nullity. *Harris v Ward Greenberg Heller & Reidy LLP*, 151 A.D.3d 1808, 58 N.Y.S.3d 769, 2017 N.Y. App. Div. LEXIS 4909 (N.Y. App. Div. 4th Dep't), app. dismissed, 151 A.D.3d 1810, 54 N.Y.S.3d 347, 2017 N.Y. App. Div. LEXIS 4910 (N.Y. App. Div. 4th Dep't 2017).

No pleading should be unduly limited on technical grounds, especially where no substantial rights of a party will be affected; or when the other litigant would not be prejudiced or surprised by a sudden turn of events. *Hoffer v Corwin*, 62 Misc. 2d 60, 307 N.Y.S.2d 1019, 1970 N.Y. Misc. LEXIS 1849 (N.Y. City Ct. 1970).

Provision in lease that tenant agreed in the event of a nonpayment summary proceeding that no setoff or counterclaim whatever of any nature will be interposed by or on behalf of tenant in any such proceeding did not preclude court's granting setoff where tenants had in good faith sought Real Property Actions and Proceedings Law § 755 order to withhold rent for failure to provide heat and hot water during a number of days in the winter and where consideration of that application required court to hear all of the evidence relevant to the question of a setoff. *Steinberg v Carreras*, 74 Misc. 2d 32, 344 N.Y.S.2d 136, 1973 N.Y. Misc. LEXIS 1929 (N.Y. Civ. Ct. 1973), rev'd, 77 Misc. 2d 774, 357 N.Y.S.2d 369, 1974 N.Y. Misc. LEXIS 1239 (N.Y. App. Term 1974).

Statutes relating to kinds of pleadings permitted and pertaining to counterclaims and cross claims did not confer jurisdiction on Supreme Court, Special Term, and did not relieve town of binding effect of determination made by Public Service Commission in adjudicating claim by

town and its lighting district against telephone utility, which subsequently sought to have rental charges imposed against town and district after they installed lighting equipment on utility's poles, for back damages due to discrimination in granting municipal discounts. *New York Tel. Co. v North Hempstead*, 86 Misc. 2d 487, 385 N.Y.S.2d 436, 1975 N.Y. Misc. LEXIS 3362 (N.Y. Sup. Ct. 1975), *aff'd*, 52 A.D.2d 934, 385 N.Y.S.2d 505, 1976 N.Y. App. Div. LEXIS 12804 (N.Y. App. Div. 2d Dep't 1976).

A motion for summary judgment would be denied where plaintiff did not proceed by motion but instead amended its summons as of course so as to change the name of defendant from Freedom Foods to Freedom Foods of New York, Inc., names for which separate certificates of doing business were on file, since a summons is not a pleading and may not be amended without leave of the court, and an amendment to correct a name thereupon must proceed by application to the court under CPLR § 2001. *Lotito's Brooklyn Dairy Products, Inc. v Freedom Foods*, 113 Misc. 2d 115, 448 N.Y.S.2d 345, 1980 N.Y. Misc. LEXIS 2981 (N.Y. City Ct. 1980).

Prior court approval is required in order to properly plead cross claim in summary—or any other type of special—proceeding. *Balaban v Phillips*, 138 Misc. 2d 990, 526 N.Y.S.2d 347, 1988 N.Y. Misc. LEXIS 116 (N.Y. Civ. Ct. 1988).

Defendant's motion to vacate a default judgment of foreclosure and sale was properly denied where defendant appeared pro se and served document described in bold letters as a "notice of appearance" in which he acknowledged both service of the summons and complaint, the sum due, and proposed a repayment schedule which plaintiff subsequently rejected, and where, notwithstanding that an additional copy of the summons and complaint were mailed to defendants pursuant to CPLR § 308, defendant did not interpose any further pleadings, in that defendant's notice of appearance did not constitute an answer, as it was not so described nor was it treated as such by the parties after its imposition, it contained no response to the allegations in the complaint nor any affirmative defenses, and it merely acknowledged the debt due and proposed a schedule of repayment together with lacking a meritorious defense. *Leone*

v Johnson, 99 A.D.2d 567, 471 N.Y.S.2d 393, 1984 N.Y. App. Div. LEXIS 16802 (N.Y. App. Div. 3d Dep't 1984).

Trial court properly granted an individual a default judgment on a cross claim against a financial company pursuant to N.Y. C.P.L.R. 3019(d); the matter was controlled by N.Y. C.P.L.R. 3019(d), which provided that the financial company was required to serve a reply or answer, and N.Y. C.P.L.R. 3011 did not relieve the financial company of the requirement that it file a reply or answer to the cross claim. *Franzone v Quinn*, 300 A.D.2d 857, 750 N.Y.S.2d 899, 2002 N.Y. App. Div. LEXIS 12438 (N.Y. App. Div. 3d Dep't 2002).

Appeals court stated that where parties charted their own procedural course, they were free to do as long as it did not conflict with public policy; for example, by making a cross motion in a different action than the one in which the main motion was interposed, or by moving for summary judgment after the entry of judgment. *J & A Vending, Inc. v J.A.M. Vending, Inc.*, 303 A.D.2d 370, 757 N.Y.S.2d 52, 2003 N.Y. App. Div. LEXIS 2073 (N.Y. App. Div. 2d Dep't 2003).

Appeals court, in affirming the buyer's leave to replead, stated where there was evidence of conduct on the part of one of the seller's principals following the stated closing date that reflected an intent to waive the seller's right to cancel the contract for failure to obtain an area variance by that date, under those circumstances, it was improper for the seller to suddenly attempt to cancel the contract without first notifying the buyer that time was of the essence; the seller was required to set a new date for closing and make time of the essence by giving clear, distinct, and unequivocal notice to that effect giving the buyer a reasonable time in which to act, and by informing the buyer that if he did not perform by that date, he was to be considered in default. *Moray v DBAG, Inc.*, 305 A.D.2d 472, 760 N.Y.S.2d 193, 2003 N.Y. App. Div. LEXIS 5415 (N.Y. App. Div. 2d Dep't 2003).

Real estate seller in a buyer's suit for specific performance is not entitled to dismissal on the ground that the buyer fails to demonstrate that he is ready, willing, and able to close before the commencement of the action; although buyers who seek specific performance must ordinarily show that they are ready, willing, and able to perform, such proof is not required where the

necessity for such a tender is obviated by acts of the other party amounting to an anticipatory breach of the contract. *Moray v DBAG, Inc.*, 305 A.D.2d 472, 760 N.Y.S.2d 193, 2003 N.Y. App. Div. LEXIS 5415 (N.Y. App. Div. 2d Dep't 2003).

Defendant's failure to annex to his motion for summary judgment copies of any answers to the cross claims filed against him by his codefendants in a personal injury action was not fatal to his motion because no demands for replies were made in those pleadings and therefore, the were simply deemed denied. *Singh v Brown*, 982 N.Y.S.2d 860, 43 Misc. 3d 715, 2014 N.Y. Misc. LEXIS 1321 (N.Y. Sup. Ct. 2014).

Summons with notice served upon architectural firm and equipment company pursuant to CLS CPLR § 305(b) triggered commencement of 30-day removal period, even though such summons is not classified as “pleading” under CLS CPLR § 3011, because federal law is determinative and New York summons with notice is deemed “initial pleading” for purposes of 28 USCS § 1446(b). *Jones Chemicals, Inc. v Distribution Architects Int'l, Inc.*, 786 F. Supp. 310, 1992 U.S. Dist. LEXIS 3210 (W.D.N.Y. 1992).

For purposes of determining if insurers were required to post a bond as security under the New York Insurance Law, a court held that motions to compel arbitration and motions to dismiss for lack of subject matter jurisdiction were pleadings within the meaning of the statute. However, the bond requirement was not triggered because the policies were issued in Bermuda and delivered in Bermuda; nor did insurers trigger the bond requirement by transacting business in New York, as issuance and delivery of an insurance policy outside New York, in and of itself, did not constitute the transaction of business under the N.Y. Insurance Law or under N.Y. Civil Practice Law and Rules. *Drennen v Certain Underwriters at Lloyd's of London (In re Residential Capital, LLC)*, 563 B.R. 756, 2016 Bankr. LEXIS 3799 (Bankr. S.D.N.Y. 2016).

## **2. Complaint and answer**

So long as a pleading sets forth allegations which suffice to spell out a claim for relief, it is not subject to dismissal by reason of the inclusion therein of additional nonactionable allegations.

Nader v General Motors Corp., 25 N.Y.2d 560, 307 N.Y.S.2d 647, 255 N.E.2d 765, 1970 N.Y. LEXIS 1618 (N.Y. 1970).

Plaintiff may not utilize as admissions in its favor those parts of answer favorable to its contention and refuse to be bound by those parts that are unfavorable. Case Press, Inc. v Kennai Drilling, Ltd., 55 A.D.2d 590, 390 N.Y.S.2d 93, 1976 N.Y. App. Div. LEXIS 15288 (N.Y. App. Div. 1st Dep't 1976).

Plaintiff's default for failure to timely file a complaint should not have been relieved where his only excuse was that it was "inadvertent and not deliberate" and where there had been no showing that his claim had legal merit. Steen v New Deal Delivery Service, Inc., 79 A.D.2d 963, 435 N.Y.S.2d 278, 1981 N.Y. App. Div. LEXIS 9833 (N.Y. App. Div. 1st Dep't), aff'd, 54 N.Y.2d 796, 443 N.Y.S.2d 611, 427 N.E.2d 770, 1981 N.Y. LEXIS 2714 (N.Y. 1981).

Plaintiff husband had right to discontinue his divorce action through service of notice on wife, without seeking court order, where neither complaint nor responsive pleading was ever served. Newman v Newman, 245 A.D.2d 353, 665 N.Y.S.2d 423, 1997 N.Y. App. Div. LEXIS 12867 (N.Y. App. Div. 2d Dep't 1997).

While former clients could have interposed their legal malpractice claims as cross-claims in a prior action regarding the purchase of real property in which their attorneys and a law firm were co-defendants with the clients, the clients were not required to do so either by N.Y. C.P.L.R. § 3011 or by collateral estoppel and res judicata as the issue in the prior action was whether the tenants of the premises purchased by the clients had a valid right of first refusal to purchase. Kahn v Taub, 47 A.D.3d 455, 849 N.Y.S.2d 522, 2008 N.Y. App. Div. LEXIS 325 (N.Y. App. Div. 1st Dep't 2008).

Although the complaint of a department store stated a cause of action for goods sold and delivered, a judgment based on that complaint must be discharged of record by reason of the debtor's discharge in bankruptcy, notwithstanding the purchases had been made within a period approximately two weeks before the filing of the petition in bankruptcy, since the complaint had

never been amended to allege fraud or to include allegations upon which an action in fraud could be based or deduced. Application of Galich, 59 Misc. 2d 836, 300 N.Y.S.2d 670, 1969 N.Y. Misc. LEXIS 1488 (N.Y. County Ct. 1969).

Although photography clients failed to attach a copy of the photographer's answer, which was a pleading under N.Y. C.P.L.R. 3011, to their motion for summary judgment, the court declined to summarily deny the motion on that ground pursuant to N.Y. C.P.L.R. 3212(b), as it would result in further delay of the outcome; further, the answer was in the court clerk's file, such that it was considered. Whalen v Villegas, 968 N.Y.S.2d 343, 40 Misc. 3d 310, 2013 N.Y. Misc. LEXIS 1324 (N.Y. Dist. Ct. 2013).

### **3. Counterclaim and reply**

There is nothing in the language of CPLR 3011 that mandates a departure from the rule that a counterclaim may not be interposed in a reply. Habiby v Habiby, 23 A.D.2d 558, 256 N.Y.S.2d 634, 1965 N.Y. App. Div. LEXIS 4846 (N.Y. App. Div. 1st Dep't 1965).

Order allowing plaintiff to serve a reply would be reversed where the answer did not contain a designated counterclaim and the reply would serve no legitimate function in the action. Olsen & Chapman Constr. Co. v Cazenovia, 30 A.D.2d 738, 291 N.Y.S.2d 388, 1968 N.Y. App. Div. LEXIS 3588 (N.Y. App. Div. 3d Dep't 1968).

A watershed district's failure to counterclaim against a contractor in an action by the contractor for damages resulting from the district's termination of a contract for the construction of a dam, in which the jury found that the district's termination of the contract was justified by the contractor's failure to timely perform, did not bar a subsequent suit by the district against the contractor and the insurance company that issued the bond guaranteeing the performance of the contract; thus, the contractors motion for summary judgment dismissing the complaint on the grounds of res judicata or collateral estoppel would be denied. Batavia Kill Watershed Dist. v Charles O. Desch, Inc., 83 A.D.2d 97, 444 N.Y.S.2d 958, 1981 N.Y. App. Div. LEXIS 14759

(N.Y. App. Div. 3d Dep't 1981), aff'd, 57 N.Y.2d 796, 455 N.Y.S.2d 597, 441 N.E.2d 1115, 1982 N.Y. LEXIS 3708 (N.Y. 1982).

State Division of Lottery was entitled to reinstatement of its counterclaim in Court of Claims seeking recovery of balance due from lottery management corporation for quantity of lottery tickets forwarded to corporation to sell in its vending machines prior to termination of license agreement between corporation and state where (1) no reply to state's counterclaim was ever served, as required by CLS CPLR § 3011, (2) agreement, not provisions of CLS Tax § 1607, controlled matter of termination, (3) corporation did not deny that it had breached agreement, and (4) counterclaim set forth sufficient cause of action for breach. *Automated Ticket Systems, Ltd. v State*, 125 A.D.2d 55, 512 N.Y.S.2d 283, 1987 N.Y. App. Div. LEXIS 40601 (N.Y. App. Div. 3d Dep't 1987).

There is no provision in Civil Practice Law and Rules for service of counterclaim where summons is served without complaint, and subsequent complaint is never filed; counterclaim may be interposed only through service of answer. *Newman v Newman*, 245 A.D.2d 353, 665 N.Y.S.2d 423, 1997 N.Y. App. Div. LEXIS 12867 (N.Y. App. Div. 2d Dep't 1997).

Purported counterclaim asserted by defendant wife in divorce action was nullity where husband had served summons without complaint, and no subsequent complaint was ever filed. *Newman v Newman*, 245 A.D.2d 353, 665 N.Y.S.2d 423, 1997 N.Y. App. Div. LEXIS 12867 (N.Y. App. Div. 2d Dep't 1997).

Wife, whose purported counterclaim in husband's divorce action was nullity, still had same rights that she had before husband's action was commenced, including right to commence her own matrimonial action asserting same claims set forth in purported counterclaim. *Newman v Newman*, 245 A.D.2d 353, 665 N.Y.S.2d 423, 1997 N.Y. App. Div. LEXIS 12867 (N.Y. App. Div. 2d Dep't 1997).

Affirmative defense to counterclaim should be set forth in reply to counterclaim, rather than answer. *Vassar v Jackson*, 72 Misc. 2d 652, 340 N.Y.S.2d 151, 1973 N.Y. Misc. LEXIS 2284



(N.Y. Sup. Ct.), *aff'd*, 42 A.D.2d 693, 344 N.Y.S.2d 1020, 1973 N.Y. App. Div. LEXIS 7558 (N.Y. App. Div. 2d Dep't 1973).

As plaintiff's reply may only respond to a counterclaim denominated as such, plaintiff's effort to plead new causes of action against defendant and third-party defendant without leave of court was unauthorized. *Axelrod & Co. v Telsey*, 77 Misc. 2d 1035, 353 N.Y.S.2d 596, 1973 N.Y. Misc. LEXIS 1237 (N.Y. Sup. Ct. 1973).

Fact that plaintiff, who commenced divorce action by service of summons and who simultaneously filed petition and writ of habeas corpus seeking child custody, did not serve a complaint prior to expiration of time for so doing did not preclude defendant, who prior to adjourned return date of writ agreed to accord plaintiff visitation with one child, from thereafter seeking her own divorce, notwithstanding that papers which she filed were labeled "verified answer and counterclaim"; such documents were not required to be stricken on ground that no answer may be interposed when a complaint has not been served. *Edelman v Edelman*, 88 Misc. 2d 156, 386 N.Y.S.2d 331, 1976 N.Y. Misc. LEXIS 2602 (N.Y. Sup. Ct. 1976).

N.Y. C.P.L.R. 3011 only requires a reply to a counterclaim that has been denominated as such, with the obvious implication being that one can have a counterclaim without calling it such. *Continental Cas. Co. v Employers Ins. Co. of Wausau*, 839 N.Y.S.2d 403, 16 Misc. 3d 223, 237 N.Y.L.J. 92, 2007 N.Y. Misc. LEXIS 3336 (N.Y. Sup. Ct. 2007), *rev'd*, 60 A.D.3d 128, 871 N.Y.S.2d 48, 2008 N.Y. App. Div. LEXIS 9966 (N.Y. App. Div. 1st Dep't 2008).

Granting a husband judgment to set aside a prenuptial agreement negotiated and consented to by the parties merely because the wife failed to timely reply to the husband's counterclaims was inappropriate because the judgment would have had longstanding and unintended repercussions. The wife's counsel asserted that the failure to reply was due to an office oversight, the default did not appear to have been willful, the wife had been actively litigating

and mediating the matter, and there was no prejudice to the husband. *J.M. v G.V.*, 225 N.Y.S.3d 859, 2025 N.Y. Misc. LEXIS 31 (N.Y. Sup. Ct. 2025).

In proceeding brought to confirm arbitration award, respondent employer waives its right to remove action to federal court where it answers petition on merits and request affirmative relief in counterclaim which seeks to modify or vacate award. *In re Application of Harris*, 560 F. Supp. 940, 1983 U.S. Dist. LEXIS 17388 (S.D.N.Y. 1983).

For purposes of 28 USCS § 1446(b), initial pleading is complaint, not summons with notice served prior to complaint as permitted by New York law, and petition for removal is therefore timely if filed within 30 days of service of complaint. *E.W. Howell Co. v Underwriters Laboratories, Inc.*, 596 F. Supp. 1517, 1984 U.S. Dist. LEXIS 22121 (E.D.N.Y. 1984).

#### **4. Third-party complaint and answer**

An answer is the required responsive pleading to a cross-complaint. *Bides v Abraham & Strauss Div. of Federated Dep't Stores, Inc.*, 33 A.D.2d 569, 305 N.Y.S.2d 336, 1969 N.Y. App. Div. LEXIS 3082 (N.Y. App. Div. 2d Dep't 1969).

Where a defendant does not serve a reply to a defendant-intervenor's answer with cross claims, the defendant's affirmative defenses need not be ignored insofar as the defendant-intervenor's motion for summary judgment is concerned; the defendant-intervenor's pleading made no demand for an answer, its cross claim was deemed denied (CPLR 3011), and inasmuch as the defendant-intervenor was on notice of the affirmative defenses, they are deemed interposed. *Airco Alloys Div., Airco, Inc. v Niagara Mohawk Power Corp.*, 76 A.D.2d 68, 430 N.Y.S.2d 179, 1980 N.Y. App. Div. LEXIS 11729 (N.Y. App. Div. 4th Dep't 1980).

In action by contractor against homeowners, although homeowners had made demand for answer to their cross claims against subcontractors to vacate notices of lien, summary judgment was not available to homeowners against subcontractors where issue had not been joined on

cross claims. *AEC Bldg. Assocs. v Crystal*, 246 A.D.2d 496, 667 N.Y.S.2d 399, 1998 N.Y. App. Div. LEXIS 163 (N.Y. App. Div. 2d Dep't 1998).

In action to recover for lead paint injuries sustained by plaintiffs' infant son, Appellate Division affirmed trial court's unappealed dismissal of action against landlords and, upon reversing trial court's erroneous dismissal of defendant county's cross claim against landlords, converted reinstated cross claim to third-party complaint; where landlords had been parties since commencement of action, no purpose would be served by compelling county to implead them formally as third-party defendants. *Mc Cants v Thompson*, 285 A.D.2d 967, 727 N.Y.S.2d 676, 2001 N.Y. App. Div. LEXIS 6964 (N.Y. App. Div. 4th Dep't 2001).

Those branches of an architect's motion in a personal injury case which were for summary judgment dismissing the cross claims insofar as asserted against it, and for summary judgment on its cross claim for contractual indemnification against an owner were not premature simply because a formal answer thereto was never interposed, as the cross claims did not demand an answer. *Jones v Rochdale Vil., Inc.*, 96 A.D.3d 1014, 948 N.Y.S.2d 77, 2012 N.Y. App. Div. LEXIS 5061 (N.Y. App. Div. 2d Dep't 2012).

While this section and CPLR § 1008 mandate an answer to a third-party complaint, in view of the provisions of CPLR § 1003 that the CPLR also applies to further proceedings in pending actions, but former procedure applies where the new procedure would not be feasible or would work injustice, a third-party complaint served pursuant to § 193-A of the Civil Practice Act, which made an answer to a third-party complaint clearly permissive, would be subject to the provisions of § 193-A of the CPA where the CPLR provisions would indeed work injustice. *Multari v Glalin Arms Corp.*, 51 Misc. 2d 1019, 274 N.Y.S.2d 827, 1966 N.Y. Misc. LEXIS 1509 (N.Y. Sup. Ct. 1966), modified, 28 A.D.2d 122, 282 N.Y.S.2d 782, 1967 N.Y. App. Div. LEXIS 3482 (N.Y. App. Div. 2d Dep't 1967).

Although the definition of cross-claim contained in CPLR § 3019, subd b includes a claim of a "respondent" against a "judgment debtor" in a special proceeding brought pursuant to CPLR § 5227, counterclaim was not proper in special proceeding where court had not granted garnishee

permission to file such counterclaim against judgment creditor, and where counterclaim, set forth in “wherefore” clause of garnishee’s answer, failed to comply with separate pleading requirements of CPLR § 3014. *Michigan Associates v Emigrant Sav. Bank*, 74 Misc. 2d 495, 345 N.Y.S.2d 329, 1973 N.Y. Misc. LEXIS 1888 (N.Y. Civ. Ct. 1973).

N.Y. C.P.L.R. § 3211(h) applies to third-party claims because (1) N.Y. C.P.L.R. § 3011 mentions third-party complaints as a complaint against any other person not already a party and (2) N.Y. C.P.L.R. § 214-d(5), in specifying the preconditions of time and notice that are required before suits can be brought against licensed architects and engineers, applies equally to third-party claims as to all others. *Aegis Ins. Servs. v Seven World Trade Center Co. L.P.* (In re Sept. 11 Prop. Damage & Bus. Loss Litig.), 481 F. Supp. 2d 253, 2007 U.S. Dist. LEXIS 16864 (S.D.N.Y. 2007).

## **II. Under Former Civil Practice Laws**

### **A. Complaint**

#### **5. Generally**

In civil actions an information and a complaint are synonymous, and a complaint preferred on behalf of the state in a civil complaint is usually termed an information. *People v McClellan*, 105 N.Y.S. 844, 54 Misc. 130, 1907 N.Y. Misc. LEXIS 375 (N.Y. Sup. Ct.), rev’d, 119 A.D. 416, 104 N.Y.S. 447, 1907 N.Y. App. Div. LEXIS 3951 (N.Y. App. Div. 1907).

#### **6. Affidavits**

An affidavit is not a substitute for a complaint and an action to reform a trust deed cannot be commenced by affidavit. *In re Federman*, 267 N.Y.S. 126, 149 Misc. 4, 1933 N.Y. Misc. LEXIS 1652 (N.Y. Sup. Ct. 1933).

## **B. Answer**

### **7. Generally**

In view of CPA §§ 260 and 261, RCP 113 (Rule 3212 herein), applied to an answer which contained a counterclaim. *Chelsea Exch. Bank v Munoz*, 202 A.D. 702, 195 N.Y.S. 484, 1922 N.Y. App. Div. LEXIS 4961 (N.Y. App. Div. 1922).

Where there is no complaint, there can be no answer. *White v National Bondholders Corp.*, 78 N.Y.S.2d 468, 191 Misc. 536, 1948 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct.), *aff'd*, 273 A.D. 963, 79 N.Y.S.2d 315, 1948 N.Y. App. Div. LEXIS 5480 (N.Y. App. Div. 1948).

### **8. Frivolous answer**

The answer in an action on a protested note, without denying any of the allegations of the complaint, averred that plaintiff ought not to maintain the action as to the amount of the protest fees claimed in the complaint, because defendant was the maker of the note. Held, answer was frivolous, and plaintiff was entitled to judgment less those fees. *Mixer v Schreiner*, 15 N.Y.S. 782, 1891 N.Y. Misc. LEXIS 132 (N.Y. Super. Ct. 1891).

### **9. Election to proceed under rules**

Defendant could answer or proceed under RCP 106 (§ 2002 herein) or 107 (§ 5520(a) herein) but could not do both. *Kaluszer Young Men's Benevolent Soc., Inc. v Independent Young Men's Sick Benevolent Soc., Inc.*, 247 N.Y.S. 447, 139 Misc. 391, 1931 N.Y. Misc. LEXIS 1044 (N.Y. Sup. Ct.), *aff'd*, 233 A.D. 706, 249 N.Y.S. 930, 1931 N.Y. App. Div. LEXIS 11892 (N.Y. App. Div. 1931).

### **10. Folios**

The practice of referring in an answer to parts of the complaint as “at” or “between” certain folios, did not conform to the spirit of CPA § 10 (§§ 201, 218(a) herein) and served no useful purpose on appeal where the original folios did not appear in the case. *Caulkins v Bolton*, 98 N.Y. 511, 98 N.Y. (N.Y.S.) 511, 1885 N.Y. LEXIS 634 (N.Y. 1885).

Where an answer and the verification taken together were more than two folios in length, but neither taken alone contained two folios, held that they were not required to be folioed. *German American Bank v Champlin*.

## **C. Contents of Answer**

### **11. Generally**

An answer which admits the debt, but denies the alleged fiduciary character of the defendant is unauthorized. *Wood v Henry*, 40 N.Y. 124, 40 N.Y. (N.Y.S.) 124, 1869 N.Y. LEXIS 9 (N.Y. 1869).

Provisions of CPA §§ 261, 262 (Rule 3014, now Civ Rights Law 78), and 339 (§ 4540 herein) were intended to govern when a pleading was served, and had no application upon assessment of damages, taken upon default of an answer, except as provided in CPA § 339. *McClelland v Climax Hosiery Mills*, 252 N.Y. 347, 169 N.E. 605, 252 N.Y. (N.Y.S.) 347, 1930 N.Y. LEXIS 631 (N.Y. 1930).

Answer to immaterial allegations not essential. *Brody v Madison Lunch, Inc.*, 199 A.D. 640, 192 N.Y.S. 10, 1922 N.Y. App. Div. LEXIS 8067 (N.Y. App. Div. 1922).

Under CPA §§ 261, 262 (Rule 3014, now Civ Rights Law 78), and RCP 90 (Rule 3014 herein), an answer should have been so drafted as to disclose readily to the court what the issues were. It was unnecessary to admit formally anything in the complaint; as to such matters only denials were provided for. Following denials, the answer might next contain a statement of new matter constituting a defense or counterclaim, and it might set out as many defenses or counterclaims,

or both, as defendant had; but each should be separately stated, numbered and divided into paragraphs, numbered consecutively, and, as nearly as might, contain a separate allegation. These provisions were mandatory. *International R. Co. v Jaggard*, 204 A.D. 67, 197 N.Y.S. 384, 1922 N.Y. App. Div. LEXIS 8927 (N.Y. App. Div. 1922).

The answer must comply with statutory provisions. *Merchants' Nat'l Bank v R. Prescott & Son, Inc.*, 223 A.D. 194, 228 N.Y.S. 483, 1928 N.Y. App. Div. LEXIS 6164 (N.Y. App. Div. 1928).

Under old equity practice an answer was supposed to meet all allegations of the bill. *Kaluszer Young Men's Benevolent Soc., Inc. v Independent Young Men's Sick Benevolent Soc., Inc.*, 247 N.Y.S. 447, 139 Misc. 391, 1931 N.Y. Misc. LEXIS 1044 (N.Y. Sup. Ct.), *aff'd*, 233 A.D. 706, 249 N.Y.S. 930, 1931 N.Y. App. Div. LEXIS 11892 (N.Y. App. Div. 1931).

While CPA § 261 permitted defendant to set forth in his answer counterclaims as well as denials and defenses, CPA § 272 permitted plaintiff to include in his reply only denials and defenses. *Phillips v Manufacturers Trust Co.*, 26 N.Y.S.2d 58, 175 Misc. 1009, 1940 N.Y. Misc. LEXIS 2605 (N.Y. Sup. Ct. 1940), *aff'd*, 261 A.D. 946, 27 N.Y.S.2d 185, 1941 N.Y. App. Div. LEXIS 8230 (N.Y. App. Div. 1941).

Where there is no complaint, there can be no answer. *White v National Bondholders Corp.*, 78 N.Y.S.2d 468, 191 Misc. 536, 1948 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct.), *aff'd*, 273 A.D. 963, 79 N.Y.S.2d 315, 1948 N.Y. App. Div. LEXIS 5480 (N.Y. App. Div. 1948).

There is no different rule of pleading in an answer from that prescribed for a complaint as to the manner in which facts are to be stated. *Ashley v Lamb*, 2 N.Y.S. 678, 1888 N.Y. Misc. LEXIS 732 (N.Y. Sup. Ct. 1888), *rev'd*, 3 N.Y.S. 715, 50 Hun 568, 1889 N.Y. Misc. LEXIS 64 (N.Y. Sup. Ct. 1889).

The answer must contain a general or specific denial of each material allegation of the complaint controverted by the defendant, or statement of any new matter constituting a defense or counterclaim. *Mixer v Schreiner*, 15 N.Y.S. 782, 1891 N.Y. Misc. LEXIS 132 (N.Y. Super. Ct. 1891).

The requirements of CPA § 261 were violated by an answer containing omissions, evasions, subtle suggestions and deceptions, in seeking to interpose an alleged counterclaim to a promissory note. *Goodman & Suss, Inc. v Wallack*, 195 N.Y.S. 328, 1922 N.Y. Misc. LEXIS 1389 (N.Y. Sup. Ct. 1922).

Habeas corpus return was in legal effect answer to allegations of relator's petition for writ and was intended to operate as pleading within CPA § 261, and should have complied with it. *People ex rel. Bernard v Ashworth*, 43 N.Y.S.2d 366, 1943 N.Y. Misc. LEXIS 2211 (N.Y. Sup. Ct. 1943).

An answer may contain both a denial, general or specific, and a statement of new matter constituting a defense. *Burley v German-American Bank*, 111 U.S. 216, 4 S. Ct. 341, 28 L. Ed. 406, 1884 U.S. LEXIS 1777 (U.S. 1884).

A person improperly served may answer denying the indebtedness, and is not bound to seek relief by motion. *Barney v Northern Pac. R.R.*, 56 How. Pr. 23, 1878 N.Y. Misc. LEXIS 196 (N.Y. Sup. Ct. 1878).

## **12. Construing answer with complaint**

An answer must be construed by reference to the material allegations of the complaint. *Holland v Grote*, 193 N.Y. 262, 86 N.E. 30, 193 N.Y. (N.Y.S.) 262, 1908 N.Y. LEXIS 643 (N.Y. 1908).

A bad answer is good enough for a bad complaint. *City Trust Co. v Anthony Ricci Realty Co.*, 241 N.Y.S. 481, 137 Misc. 128, 1930 N.Y. Misc. LEXIS 1210 (N.Y. City Ct. 1930).

Where there is no complaint, there can be no answer. *White v National Bondholders Corp.*, 78 N.Y.S.2d 468, 191 Misc. 536, 1948 N.Y. Misc. LEXIS 2266 (N.Y. Sup. Ct.), *aff'd*, 273 A.D. 963, 79 N.Y.S.2d 315, 1948 N.Y. App. Div. LEXIS 5480 (N.Y. App. Div. 1948).

## **13. Conclusions**



Allegations “that there never was any valuable or other legal consideration” for mortgage are not frivolous as stating mere conclusions of law. *First Nat'l Bank v Robinson*, 105 A.D. 193, 94 N.Y.S. 767, 1905 N.Y. App. Div. LEXIS 2038 (N.Y. App. Div. 1905), *aff'd*, 188 N.Y. 45, 80 N.E. 567, 188 N.Y. (N.Y.S.) 45, 1907 N.Y. LEXIS 1104 (N.Y. 1907).

Other allegations held to constitute mere conclusions and therefore to be insufficient as denials or defenses are: That plaintiff has an adequate remedy at law. *Ludlow v Woodward*, 117 A.D. 525, 102 N.Y.S. 647, 1907 N.Y. App. Div. LEXIS 294 (N.Y. App. Div. 1907).

A mere allegation, unsupported by facts, that there was “never any adequate consideration” for the contract upon which plaintiff sued, is a conclusion of law and states no defense. *Ellis v Keeler*, 126 A.D. 343, 110 N.Y.S. 542, 1908 N.Y. App. Div. LEXIS 3345 (N.Y. App. Div. 1908).

In an action for rent providing that the tenant could cancel the lease upon a stated condition, a defense is sufficient which alleges that the defendant did cancel the lease because of the condition using the language of the lease to frame the condition. *Farnham v Le Bolt & Co.*, 133 A.D. 520, 117 N.Y.S. 730, 1909 N.Y. App. Div. LEXIS 2221 (N.Y. App. Div. 1909).

Pleading conclusions of law render the answer insufficient. *Lion Brewery of New York City v Loughran*, 223 A.D. 623, 229 N.Y.S. 216, 1928 N.Y. App. Div. LEXIS 6282 (N.Y. App. Div. 1928).

In an action on a contract, allegations of and counterclaim alleging that signature to the contract had been procured through fraud, false representations and duress and claiming damages, were sufficient. *Galloway v Wolfe*, 232 A.D. 163, 249 N.Y.S. 608, 1931 N.Y. App. Div. LEXIS 13759 (N.Y. App. Div. 1931).

Defense resting on conclusory allegations of conspiracy in action on note by assignee, held insufficient. *Newgold v Bon Ray Hotel Corp.*, 263 A.D. 899, 32 N.Y.S.2d 589, 1942 N.Y. App. Div. LEXIS 7272 (N.Y. App. Div. 1942).

“That therefore (after stating insufficient facts) the said contract was illegal and cannot be enforced” is a conclusion of law. *Vonnoh v Sixty-Seventh Street Atelier Bldg.*, 105 N.Y.S. 155, 55 Misc. 222, 1907 N.Y. Misc. LEXIS 575 (N.Y. App. Term 1907).

For conclusory allegation in action against corporation “that therefore the said contract was illegal and cannot be enforced by the plaintiff” see *Vonnoh v 67th Street Atelier Bldg.* *Vonnoh v Sixty-Seventh Street Atelier Bldg.*, 105 N.Y.S. 155, 55 Misc. 222, 1907 N.Y. Misc. LEXIS 575 (N.Y. App. Term 1907).

That the plaintiff bank warranted the truth of a given statement. *Stapleton Nat'l Bank v United States Fidelity & Guaranty Co.*, 113 N.Y.S. 25, 60 Misc. 206, 1908 N.Y. Misc. LEXIS 657 (N.Y. Sup. Ct. 1908), rev'd, 131 A.D. 157, 115 N.Y.S. 372, 1909 N.Y. App. Div. LEXIS 760 (N.Y. App. Div. 1909).

In action on an indemnity policy, that death did not occur under circumstances covered by contract is a combined conclusion of law and fact and is proper. *Lavine v Indemnity Ins. Co.*, 254 N.Y.S. 804, 142 Misc. 422, 1931 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct.), aff'd, 234 A.D. 906, 254 N.Y.S. 1000, 1931 N.Y. App. Div. LEXIS 11176 (N.Y. App. Div. 1931).

Answer on policy of indemnity insurance, alleging that death did not occur under circumstances within the contract, was held to be a proper conclusion of fact rather than evidence, see *Lavine v Indemnity Ins. Co.*, 254 N.Y.S. 804, 142 Misc. 422, 1931 N.Y. Misc. LEXIS 990 (N.Y. Sup. Ct.), aff'd, 234 A.D. 906, 254 N.Y.S. 1000, 1931 N.Y. App. Div. LEXIS 11176 (N.Y. App. Div. 1931).

Allegations “that there was an entire failure of consideration for the promissory note in the complaint set forth” and denying “that the amount or any part thereof is due to plaintiff,” are not frivolous as stating mere conclusions of law. *Churchill v Witbeck*, 10 N.Y.S. 263, 1890 N.Y. Misc. LEXIS 2068 (N.Y. Sup. Ct. 1890).

For conclusory allegations in answer to nuisance action against village for injuries from traffic light, see *Wenzel v Duncan*, 32 N.Y.S.2d 223, 1941 N.Y. Misc. LEXIS 2523 (N.Y. Sup. Ct. 1941).

In action against village for injuries from traffic light stanchion, that injuries “were caused by negligence of operators of such motor vehicles.” *Wenzel v Duncan*, 32 N.Y.S.2d 223, 1941 N.Y. Misc. LEXIS 2523 (N.Y. Sup. Ct. 1941).

## **D. Reply**

### **I. In General**

#### **14. Generally**

The purpose of requiring a reply is to avoid the necessity of proving new matter alleged in the answer if admitted by the plaintiff, or compelling the latter to set up new matter in avoidance. *Humboldt Exploration Co. v Fritsch*, 150 A.D. 90, 134 N.Y.S. 747, 1912 N.Y. App. Div. LEXIS 7060 (N.Y. App. Div. 1912).

The purpose of CPA § 274 was to afford a remedy to a defendant who might otherwise be embarrassed in going to trial well knowing that plaintiff might give evidence in avoidance of his defense, and yet not know in advance the form which such possible attack might take. *O'Keefe v Young & Rubicam, Inc.*, 257 A.D. 141, 12 N.Y.S.2d 31, 1939 N.Y. App. Div. LEXIS 7691 (N.Y. App. Div. 1939).

Plaintiff could not be required to reply only to new matter set up in one paragraph of special defense as he had the right to reply to the whole defense. *Paterno Bros., Inc., v Frazee*, 146 N.Y.S. 1072 (N.Y. App. Term 1914).

The granting or denial of a motion requiring a reply does not indicate an opinion on the part of the court that the pleading is either good or bad. *Federal Advertising Agency, Inc. v Rubber & Celluloid Harness Trimming Co.*, 172 N.Y.S. 186 (N.Y. App. Term 1918).

Plaintiff, unless so ordered, is not required to reply to a defense, but without a reply may introduce evidence either in denial or avoidance. *Union Trust Co. v Barber*, 177 N.Y.S. 590 (N.Y. Sup. Ct. 1919).

### **15. Reply in special proceedings**

CPA § 274 applied only to actions under the Civil Practice Act and did not apply to a proceeding by certiorari to review an assessment for tax purposes, regulated by Tax Law, art 13. *People ex rel. New York C. R. Co. v Bissell*, 207 A.D. 705, 201 N.Y.S. 865, 1923 N.Y. App. Div. LEXIS 5988 (N.Y. App. Div. 1923).

The Surrogate's Court has the discretionary right to direct the filing of a reply in a discovery proceeding where the answer contains new matter constituting a defense by way of avoidance. *In re Unger's Estate*, 16 N.Y.S.2d 609, 172 Misc. 952, 1939 N.Y. Misc. LEXIS 2581 (N.Y. Sur. Ct. 1939), *aff'd*, 259 A.D. 823, 19 N.Y.S.2d 28 (N.Y. App. Div. 1940).

Reply directed to affirmative defense in answer in discovery proceeding questioning owner of property held improperly used as excuse for demanding jury trial of issue raised in answer. *In re Peterson's Estate*, 23 N.Y.S.2d 614, 175 Misc. 345, 1940 N.Y. Misc. LEXIS 2342 (N.Y. Sur. Ct. 1940).

### **16. Compelling reply**

A reply may be compelled to a plea in bar of a former judgment, but laches may warrant its denial. *Evelyn Goldsmith Home v Island Park Associates*, 227 A.D. 668, 236 N.Y.S. 26, 1929 N.Y. App. Div. LEXIS 7032 (N.Y. App. Div. 1929).

The objection of nonjoinder of an indispensable party could not be raised by a motion to compel a reply to a defense alleging such nonjoinder. *Jones v Gabrielli*, 6 A.D.2d 542, 180 N.Y.S.2d 58, 1958 N.Y. App. Div. LEXIS 4041 (N.Y. App. Div. 3d Dep't 1958).

Without an order directing the service of a reply, plaintiff is not compelled to reply to the defense of payment of an insurance premium for which it is suing. *Globe & Rutgers Fire Ins. Co. v Leshner, Whitman & Co.*, 215 N.Y.S. 225, 126 Misc. 874, 1926 N.Y. Misc. LEXIS 1135 (N.Y. City Ct. 1926).

Under an order directing plaintiff to reply to new matter in answer, a denial is a sufficient compliance; but it will only avail at the trial to enable plaintiff to controvert the new matter and not to prove an avoidance thereof. *WINCHESTER v BROWNE*, 26 Abb. N. Cas. 387, 1891 N.Y. Misc. LEXIS 3304 (N.Y. Sup. Ct. Feb. 1, 1891).

It is doubtful whether court is authorized to direct codefendant to serve answer to cross-complaint. *Smith v Benjamin*, 147 N.Y.S.2d 524, 1955 N.Y. Misc. LEXIS 3040 (N.Y. Sup. Ct. 1955), *aff'd*, 2 A.D.2d 666, 153 N.Y.S.2d 545, 1956 N.Y. App. Div. LEXIS 5064 (N.Y. App. Div. 1st Dep't 1956).

## **17. Discretion**

The right to require the plaintiff in an action to reply to new matter set out in the answer, is within the discretion of the court, and will not be exercised where the only purpose subserved thereby is to avoid the necessity of taking testimony by commission. *Toplitz v Levering*, 71 A.D. 37, 75 N.Y.S. 678, 1902 N.Y. App. Div. LEXIS 906 (N.Y. App. Div. 1902).

Discretion reviewable on appeal, *Porter v American Tobacco Co.*, 140 A.D. 871, 125 N.Y.S. 710, 1910 N.Y. App. Div. LEXIS 3063 (N.Y. App. Div. 1910).

It is only where a defendant set up new matter by way of avoidance that the court has discretionary power to order a reply. *Fragner v Fischel*, 141 A.D. 869, 126 N.Y.S. 478, 1910 N.Y. App. Div. LEXIS 3979 (N.Y. App. Div. 1910).

Discretion to compel a reply to new matter contained in answer is freely exercised when the court can see that the new matter, if true, is of such a character as may possibly avoid surprise

at trial, or entirely prevent or shorten the trial. *Dittenfass v Horsley*, 171 A.D. 507, 157 N.Y.S. 632, 1916 N.Y. App. Div. LEXIS 5323 (N.Y. App. Div. 1916).

A reply will be ordered where necessary to prevent surprise, narrow the issues, expedite the trial, or where it is just and reasonable that such a reply should be made, depending upon the sound discretion of the court. *Barker v O'Grady*, 162 N.Y.S. 262, 98 Misc. 42, 1916 N.Y. Misc. LEXIS 745 (N.Y. Sup. Ct. 1916).

Where in action for declaratory judgment that policy does not cover claim involved defendant pleads defense that plaintiff was member of association which had agreed to include such coverage in all policies written after a certain date, even though not specifically included by the express terms of the policy, and therefore that plaintiff's policy must be so read, defendant will be granted order directing plaintiff to reply thereto showing grounds of avoidance, to prevent surprise at trial. *Phoenix Assurance Co. v De Lair*, 17 Misc. 2d 391, 190 N.Y.S.2d 781, 1959 N.Y. Misc. LEXIS 4311 (N.Y. Sup. Ct. 1959).

Court directed a reply to defense of laches where it found that a useful purpose would be served thereby by limiting and defining the issues. *Bleakney v Schrauff*, 18 Misc. 2d 919, 186 N.Y.S.2d 412, 1959 N.Y. Misc. LEXIS 3735 (N.Y. Sup. Ct. 1959).

The court may, in its discretion, require a reply to new matter set up by way of avoidance, and such discretion should be exercised to promote the interest of justice. *Cauchois v Proctor*, 29 N.Y.S. 770, 79 Hun 388 (1894), app. dismissed, 144 N.Y. 655, 39 N.E. 857, 144 N.Y. (N.Y.S.) 655, 1895 N.Y. LEXIS 580 (N.Y. 1895).

Generally, the discretion of the court cannot be invoked, unless it appears that the defense is sufficient, not a pleading of evidence in support of a general denial; that the issue be one not already framed; and that its purpose is not to save defendant the difficulty of proving his defense. These tests should be applied to the various defenses to determine whether a reply should be ordered. *Merinos Viesca y Compania, Inc. v Pan American Petroleum & Transport Co.*, 40 F.2d 928, 1930 U.S. Dist. LEXIS 2087 (D.N.Y. 1930).

### **18. —Reply to amended answer**

It is discretionary with the court to grant an order that a reply be made to an amended answer after a cause has been set down for trial. *Hallenborg v Greene*, 87 A.D. 259, 84 N.Y.S. 319, 1903 N.Y. App. Div. LEXIS 2629 (N.Y. App. Div. 1903).

### **19. —Executors and administrators**

The court should require plaintiff to reply to a defense in an action by an heir against the executor for fraud of his testator, as to an agreement between the testator and the plaintiff on the settlement of a prior action, these matters being peculiarly within his personal knowledge. *Richards v Greason*, 128 A.D. 320, 112 N.Y.S. 675, 1908 N.Y. App. Div. LEXIS 463 (N.Y. App. Div. 1908).

Where an executor has no personal knowledge of the matters pleaded, his motion for a reply to new matter will be granted with more than ordinary liberality. *Mogilevich v Grayzel*, 228 A.D. 821, 240 N.Y.S. 540, 1930 N.Y. App. Div. LEXIS 13516 (N.Y. App. Div. 1930).

Where the answer sets up new matter, the fact that plaintiffs are administrators is no reason why they should not be ordered to reply. *McGin v Torren*, 5 Month L Bull 29.

### **20. Time for application**

An order requiring a reply can be granted only upon the application of the defendant and he waives the right by delaying to make the motion until the action has been referred and noticed for hearing. *Sterling v Metropolitan Life Ins. Co.* 6 NYSR 96. But a motion to compel a reply need not be denied simply because a defendant has served a cross notice of trial. *Cavanagh v Oceanic S. S. Co.*, 9 N.Y.S. 198, 56 Hun 641, 1890 N.Y. Misc. LEXIS 84 (N.Y. Sup. Ct. 1890).

### **21. Application by plaintiff**

The defendant alone has the authority to apply to the court to compel a reply to the new matter constituting a defense by way of avoidance. *McRoy Clay Works v Naughton*, 84 A.D. 477, 82 N.Y.S. 979, 1903 N.Y. App. Div. LEXIS 1801 (N.Y. App. Div. 1903).

Plaintiff may not make application to compel reply. *Taubenfeld v Taubenfeld*, 100 N.Y.S.2d 546, 197 Misc. 1072, 1950 N.Y. Misc. LEXIS 2154 (N.Y. Sup. Ct. 1950).

## **22. Counterclaim**

Where matter pleaded as a separate defense was in substance a counterclaim, plaintiff was justified in serving a reply. *Hume v Woodruff*, 197 A.D. 510, 189 N.Y.S. 382, 1921 N.Y. App. Div. LEXIS 7492 (N.Y. App. Div. 1921).

Plaintiff cannot be compelled to reply to a counterclaim. *Hansen v Storm*, 21 Misc. 2d 561, 195 N.Y.S.2d 814, 1959 N.Y. Misc. LEXIS 2843 (N.Y. Sup. Ct. 1959).

When the new matter as set forth in an answer approaches too closely the boundary line between new matter constituting an affirmative defense and new matter setting forth a counterclaim, the pleader must label his plea if he desires a reply without an order of the court; a prayer for affirmative relief is not sufficient to force a reply. *Wood v Gordon*, 13 N.Y.S. 595, 1891 N.Y. Misc. LEXIS 1582 (N.Y. City Ct. 1891), *aff'd*, 18 N.Y.S. 109 (N.Y.C.P. 1892).

CPA § 274 did not authorize the court to require a reply to a counterclaim. *Adams v Robert*, 25 Hun 118 (N.Y. 1881).

CPA § 274 did not require a reply to an answer averring new matter but not containing a counterclaim. *Springer v Bien*, 10 N.Y.S. 530, 1890 N.Y. Misc. LEXIS 834 (N.Y.C.P. 1890), *aff'd*, 128 N.Y. 99, 27 N.E. 1076, 128 N.Y. (N.Y.S.) 99, 1891 N.Y. LEXIS 963 (N.Y. 1891).

## **23. Review of order**



The appellate division will not interfere with the discretion of the special term in denying a motion to compel the plaintiff to reply unless a clear case for such interference be presented. *Porter v American Tobacco Co.*, 140 A.D. 871, 125 N.Y.S. 710, 1910 N.Y. App. Div. LEXIS 3063 (N.Y. App. Div. 1910).

Exercise of discretion may be reviewed on appeal. *Linzee v Frankfort General Ins. Co.*, 162 A.D. 282, 147 N.Y.S. 606, 1914 N.Y. App. Div. LEXIS 6024 (N.Y. App. Div. 1914).

The court on appeal cannot determine whether the plaintiff was bound to reply to an amended answer where such amended answer does not appear in the case. *Lamberty v Roberts*, 9 N.Y.S. 607, 56 Hun 644, 1890 N.Y. Misc. LEXIS 288 (N.Y. Sup. Ct. 1890).

#### **24. Voluntary reply to defense**

CPA § 274 did not authorize a voluntary reply to new matter by way of avoidance, but only where the new matter is in the nature of a counterclaim; if no reply be required the new matter in the answer is deemed to be controverted. *Davis Confectionery Co. v Rochester German Ins. Co.*, 141 A.D. 909, 126 N.Y.S. 723, 1910 N.Y. App. Div. LEXIS 3990 (N.Y. App. Div. 1910).

Where defense or partial defenses would not constitute counterclaims, an order to make them more definite and certain does not authorize plaintiffs to reply. *Simmons v Simmons*, 4 N.Y.S. 221, 1888 N.Y. Misc. LEXIS 1104 (N.Y. Sup. Ct. 1888).

Plaintiff, unless so ordered, is not required to reply to a defense, but without a reply may introduce evidence either in denial or avoidance. *Union Trust Co. v Barber*, 177 N.Y.S. 590 (N.Y. Sup. Ct. 1919).

A reply voluntarily submitted to a defense constituting new matter will be stricken on motion of defendant. *Union Trust Co. v Barber*, 177 N.Y.S. 590 (N.Y. Sup. Ct. 1919).

A reply to new matter in avoidance, put in without the direction of the court, will be stricken out as irregular. *Dillon v Sixth Ave. R. Co.* 46 Super Ct (14 Jones & S) 21.

## **II. Defenses by Way of Avoidance; Particular Actions**

### **25. Generally**

Where the allegations of the answer are simply specific denials of the allegations of the complaint, supplementing a general denial incorporated in the answer, such denials do not consist of new matter and the defendant is not entitled to require the plaintiff to serve a reply. *Burr v Union Surety & Guaranty Co.*, 86 A.D. 545, 83 N.Y.S. 756, 1903 N.Y. App. Div. LEXIS 2413 (N.Y. App. Div. 1903).

As a general rule, when the new matter set forth in a plea in bar is of such a character that, if true, it will constitute a complete defense to the action unless avoided, the ordering of reply will clarify the issues and prevent surprise. *Schweitzer v Hamburg-Amerikanische Packetfahrt Actien Gesellschaft*, 149 A.D. 900, 134 N.Y.S. 812, 1912 N.Y. App. Div. LEXIS 6533 (N.Y. App. Div. 1912).

New matter alleged in the answer by way of avoidance is admitted by failure to reply where reply has been ordered, but its legal sufficiency to constitute a defense is not waived. *Humboldt Exploration Co. v Fritsch*, 150 A.D. 90, 134 N.Y.S. 747, 1912 N.Y. App. Div. LEXIS 7060 (N.Y. App. Div. 1912).

If matter can be proved under a denial, it is not new matter. *O'Keefe v Young & Rubicam, Inc.*, 257 A.D. 141, 12 N.Y.S.2d 31, 1939 N.Y. App. Div. LEXIS 7691 (N.Y. App. Div. 1939).

A reply will not be required to so called "defenses" the subject matter of which may properly be proved under a general denial. *Johnson v Andrews*, 68 N.Y.S. 764, 34 Misc. 89, 1901 N.Y. Misc. LEXIS 151 (N.Y. Sup. Ct. 1901).

The court will compel the plaintiff to reply to new matter set up by way of defense in an answer where a reply may result in the disposition of the case by motion for judgment on the pleadings. *Lincoln Trust Co. v McVickar*, 123 N.Y.S. 723, 68 Misc. 132, 1910 N.Y. Misc. LEXIS 365 (N.Y. Sup. Ct. 1910).

Where separate defenses may constitute a complete defense, a motion by the defendants to compel the plaintiff to reply should be granted. *Livingston v A. B. Dick Co.*, 256 N.Y.S. 755, 143 Misc. 490, 1932 N.Y. Misc. LEXIS 1024 (N.Y. Sup. Ct. 1932).

No reply is necessary where the defendant sets up a settlement and discharge as a defense to an action on contract for labor and services. *Maricle v Brooks*, 5 N.Y.S. 210, 51 Hun 638, 1889 N.Y. Misc. LEXIS 2892 (N.Y. Sup. Ct. 1889).

Where an answer is lengthy and contains detailed statements many of which can be proved without inconvenience by the production of words, a motion to require the plaintiff to reply to the new matter set up in the answer will be denied. *Columbus, H. V. & T. R. Co. v Ellis*, 11 N.Y.S. 768, 1890 N.Y. Misc. LEXIS 2351 (N.Y. Sup. Ct. 1890).

Where an answer consists of the setting forth of evidentiary facts and not the tendering of an issue of fact, or the allegation of a conclusion of fact, a reply should not be compelled as a party is not required to admit or deny evidence set out in a pleading. *Steinway v Steinway*, 22 N.Y.S. 945, 68 Hun 430 (1893).

New matter not constituting a defense by way of avoidance was not within CPA § 274. An avoidance implies that, but for the avoiding matter, the plaintiff would be entitled to judgment. 63 How. Pr. 159, 1882 N.Y. Misc. LEXIS 153.

## **26. Bankruptcy**

A reply will be ordered where an answer sets up discharge in bankruptcy. *Poillon v Lawrence* (1879) 43 Super Ct (11 Jones & S) 385, revd on other grounds 77 N.Y. 207.

Errors in account stated, and fraud in a discharge in bankruptcy, pleaded by the defendant, may be shown by the plaintiff, without a reply. *Welsh v German American Bank* (1878) 42 Super Ct (10 Jones & S) 462, affd 73 N.Y. 424.

## **27. Contracts**

In this action for damages for breach of contract defendants are entitled to an order striking out, as irrelevant, redundant and unnecessary, certain affirmative defenses contained in plaintiff's reply to defendants' answer alleging two affirmative defenses where it appears that the service of the reply was compelled by an order and that the defenses therein, which are designated as "affirmative replies," do not allege facts by way of avoidance, but merely enlarge upon the denials contained in the reply. *O'Keefe v Young & Rubicam, Inc.*, 257 A.D. 141, 12 N.Y.S.2d 31, 1939 N.Y. App. Div. LEXIS 7691 (N.Y. App. Div. 1939).

In action against contractor by subcontractor's assignee, reply compelled to defense that plaintiff failed to file its assignment as required by Lien L § 15. *Charles C. Kellogg & Sons Co. v De Lia*, 262 A.D. 803, 28 N.Y.S.2d 4, 1941 N.Y. App. Div. LEXIS 5923 (N.Y. App. Div. 1941).

## **28. —Professional services**

Motion in action for professional services to compel plaintiff to reply to separate defense of accord and satisfaction granted where plaintiff received and collected check "in payment" and retained proceeds thereof. *Dennett v Goelet*, 256 N.Y.S. 393, 143 Misc. 195, 1931 N.Y. Misc. LEXIS 1007 (N.Y. City Ct. 1931).

## **29. —Rescission**

Plaintiff in an equitable action to secure rescission of a contract held properly required to reply to affirmative defense setting up a waiver of the right to maintain the action by subsequently instituting an action for damages on the same contract in another jurisdiction. *Clark v Kirby*, 204 A.D. 447, 198 N.Y.S. 172, 1923 N.Y. App. Div. LEXIS 9493 (N.Y. App. Div. 1923).

## **30. Insurance**

A plaintiff suing on a policy of burglary insurance should be compelled to reply to a defense of breach of warranty and to a defense of an attempt to defraud the defendant by exaggerating the

claim. *Shaff v United Surety Co.*, 142 A.D. 465, 127 N.Y.S. 8, 1911 N.Y. App. Div. LEXIS 332 (N.Y. App. Div. 1911).

Answer in action on burglary policy that insured had overestimated loss by fraudulent claim to defraud insurer did not set up new matter. *Linzee v Frankfort General Ins. Co.*, 162 A.D. 282, 147 N.Y.S. 606, 1914 N.Y. App. Div. LEXIS 6024 (N.Y. App. Div. 1914).

Defendant's denial of performance by plaintiffs in action on insurance contract put in issue the performance of conditions precedent so that a breach of warranty or condition constituting a condition precedent would not be a defense of new matter by way of avoidance, but facts showing fraud or the breach of warranties other than conditions precedent would ordinarily be new matter constituting a defense by way of avoidance. *Goldberg v Great Eastern Casualty Co.*, 169 N.Y.S. 113 (N.Y. App. Term 1918).

In an action against an assessment insurance company, brought by a beneficiary to recover on a certificate of membership where the defendants' answer alleged new matter, i. e., the making and nonpayment, on motion of defendants' counsel, the court will require the plaintiff to reply to the new matter set up in defendants' answer. *Rogers v Mutual Reserve Fund Life Asso.*, 1 How. Pr. (n.s.) 194.

Where a defendant insurance company set up false statements on the application, and also the lapse of the policy. *Schwan v Mutual Trust Fund Life Asso.*

### **31. Mortgages**

Where in an action to foreclose a mortgage the defendant, by a separate defense and set-off, seeks a judgment declaring that the plaintiff is not entitled to a deficiency judgment, the plaintiff is not required to serve a reply. *Title Guarantee & Trust Co. v Harris*, 243 A.D. 619, 276 N.Y.S. 522, 1935 N.Y. App. Div. LEXIS 7363 (N.Y. App. Div. 1935).

### **32. Necessaries of infant**

In action by stepfather against natural father for necessities furnished to infant son, and father pleaded that he was performing separation agreement, reply to new matter was directed. *O'Brien v Springer*, 107 N.Y.S.2d 631, 202 Misc. 210, 1951 N.Y. Misc. LEXIS 2400 (N.Y. Sup. Ct. 1951).

### **33. Negotiable instruments**

In action by drawee of bill of exchange against acceptor, a counterclaim of a right of action against the drawer must be held good on motion by plaintiff for judgment on the pleadings, in the absence of a reply. *Anglo & London-Paris Nat'l Bank v S. A. Jacobson Co.*, 196 A.D. 51, 187 N.Y.S. 508, 1921 N.Y. App. Div. LEXIS 5476 (N.Y. App. Div. 1921).

### **34. Partnership**

Where an action has been brought against parties who claim to be copartners and one or more of them answer that they were only special partners, such defendants claiming to have been special partners are entitled to an order of the court requiring the plaintiff to reply to their allegations that they were special partners. *Hartford Nat'l Bank v Beinecke*, 15 A.D. 474, 44 N.Y.S. 486, 4 N.Y. Ann. Cas. 219, 1897 N.Y. App. Div. LEXIS 481 (N.Y. App. Div. 1897).

Where defendant answered a limited partnership instead of a general one as alleged, being necessary to raise a definite issue as to what violation of the statute was relied on. *Williams v Kilpatrick*, 21 Abb NC 61.

### **35. Pendency of prior action**

If the pendency of a prior action upon the cause set up as a counterclaim does not appear upon the face of the counterclaim, plaintiff may set it up by a reply. *Ansorge v Kaiser*, 3 N.Y.S. 785, 1889 N.Y. Misc. LEXIS 86 (N.Y. Sup. Ct. 1889).

### **36. Prior judgment conclusive**

Where, in an action for a tort the answer alleges that a former recovery was had for the same tort against a joint tort-feasor, the failure of the plaintiff to reply to the answer is not an admission of the allegation that such judgment was paid, as such defense is not a counterclaim and requires no reply; it merely sets out matter in avoidance. *Reno v Thompson*, 111 A.D. 316, 97 N.Y.S. 744, 1906 N.Y. App. Div. LEXIS 153 (N.Y. App. Div. 1906).

Plaintiff will not be compelled to serve a reply to new matter in an answer which sets up the statute of limitations and an adjudication in another state, which is claimed to constitute a res adjudicata. *N Y., Lake Erie & Western R.R. v Robinson*, 12 N.Y.S. 208, 25 Abb. N. Cas. 116, 1887 N.Y. Misc. LEXIS 158 (N.Y. App. Term 1887).

Plaintiff cannot be compelled to reply to allegations of new matter in the answer setting forth the details of legal proceedings had in another state. *Winchester v Browne*, 11 N.Y.S. 614, 1890 N.Y. Misc. LEXIS 2261 (N.Y. Sup. Ct. 1890).

Where the answer sets up a judgment in favor of plaintiff the effect of which will be to lead to judgment in favor of defendant, a reply may be required. *Mercantile Nat'l Bank v Corn Exchange Bank*, 25 N.Y.S. 1068, 73 Hun 78 (1893).

### **37. Real property**

In an action of trespass the complaint alleged entry on the lands of the plaintiff, and cutting and carrying away trees and timber; the answer alleged that one W became the owner and possessor of the land in 1831, and that he and his successors had owned and occupied it since that time. Held, that a reply was not required. *Argotsinger v Vines*, 82 N.Y. 308, 82 N.Y. (N.Y.S.) 308, 1880 N.Y. LEXIS 359 (N.Y. 1880).

In action to remove cloud on title, where it was alleged that drainage proceedings were void, a paragraph in answer setting out drainage proceedings in detail, with conclusion that it was legal, did not constitute a counterclaim and reply was not necessary. *Whitney v Considine Investing*

Co., 173 N.Y.S. 66, 104 Misc. 688, 1918 N.Y. Misc. LEXIS 896 (N.Y. Sup. Ct. 1918), aff'd, 187 A.D. 960, 175 N.Y.S. 926, 1919 N.Y. App. Div. LEXIS 7036 (N.Y. App. Div. 1919).

### **38. Release**

Where defendant in an action for breach of promise of marriage pleaded a release and plaintiff served no reply, but offered evidence in support of her claim that her signature to the release was procured by fraud, the new matter thus set up by the defendant was deemed to have been controverted by avoidance rather than by traverse, and the burden of establishing the claim of fraud was upon the plaintiff. *Lynch v Figge*, 200 A.D. 92, 192 N.Y.S. 873, 1922 N.Y. App. Div. LEXIS 8129 (N.Y. App. Div. 1922).

In action for personal injuries where defendant set up release, plaintiff should have been required to file a reply. *Writting v New York & Long Island Traction Co.*, 153 N.Y.S. 1081, 91 Misc. 231, 1915 N.Y. Misc. LEXIS 880 (N.Y. County Ct. 1915).

### **39. Sales**

CPA § 274 authorized the court, in its discretion, to compel a reply to new matter by way of avoidance contained in an answer. When, in an action for goods sold and delivered to a woman, the defendant answers that the plaintiff had accepted part payment by her husband and his confession of judgment for the balance of the value of the same goods prior to the action, the plaintiff should be ordered to reply to the new matter. *Seaton v Garrison*, 116 A.D. 301, 101 N.Y.S. 526, 1906 N.Y. App. Div. LEXIS 2657 (N.Y. App. Div. 1906).

### **40. Statutes generally**

A plaintiff is not obliged to reply to an answer setting forth a statute as a bar. *Atkins v Hertz Drivurself Stations, Inc.*, 261 N.Y. 352, 185 N.E. 408, 261 N.Y. (N.Y.S.) 352, 1933 N.Y. LEXIS



1293 (N.Y. 1933), aff'd, 291 U.S. 641, 54 S. Ct. 437, 78 L. Ed. 1039, 1934 U.S. LEXIS 527 (U.S. 1934).

#### **41. —Foreign statute**

In an action by an employer against a steamship company for personal injuries, as answer setting up that the contract of employment was governed by the German law and that under that law no action would lie, requires an order for a reply. *Schweitzer v Hamburg-Amerikanische Packetfahrt Actien Gesellschaft*, 149 A.D. 900, 134 N.Y.S. 812, 1912 N.Y. App. Div. LEXIS 6533 (N.Y. App. Div. 1912).

#### **42. —Statute of Frauds**

Where the complaint in an action upon the contract which must be in writing does not state whether the contract is in writing or not, the plaintiff will be required to reply to a separate defense pleading the statute of frauds. *Guinzburg v Joseph*, 141 A.D. 472, 126 N.Y.S. 324, 1910 N.Y. App. Div. LEXIS 3892 (N.Y. App. Div. 1910).

Motion to compel plaintiff to reply to a separate defense of the Statute of Frauds granted where the defense is valid if the promise relied on was oral. *Palmer v Anderson*, 243 A.D. 618, 276 N.Y.S. 478, 1935 N.Y. App. Div. LEXIS 7356 (N.Y. App. Div. 1935).

A reply will be ordered to compel a plaintiff to state whether or not a contract sued upon is in writing, where the defendant sets up the statute of frauds, and the reply may enable the defendant to move for judgment on the pleadings and thus expedite the determination of the case without a trial. *Barker v O'Grady*, 162 N.Y.S. 262, 98 Misc. 42, 1916 N.Y. Misc. LEXIS 745 (N.Y. Sup. Ct. 1916).

Court directed a reply to defense of statute of frauds. *Bleakney v Schrauff*, 18 Misc. 2d 919, 186 N.Y.S.2d 412, 1959 N.Y. Misc. LEXIS 3735 (N.Y. Sup. Ct. 1959).

#### **43. —Statute of Limitations**

Even the statute of limitations is no bar to a counterclaim unless set up by reply. *Isham v Davidson*, 52 N.Y. 237, 52 N.Y. (N.Y.S.) 237, 1873 N.Y. LEXIS 243 (N.Y. 1873).

The plea of the statute of limitations is a plea of avoidance and, therefore, the court may require the plaintiff to reply to the plea of a foreign statute of limitations, asserted by a foreign corporation, where such statute may be material. *Olsen v Singer Mfg. Co.*, 138 A.D. 467, 122 N.Y.S. 822, 1910 N.Y. App. Div. LEXIS 1555 (N.Y. App. Div. 1910).

Complaint construed as stating causes of action in contract, and not in fraud, and motion for order directing reply to special defenses of limitations. *Koerner v Apple*, 198 A.D. 540, 190 N.Y.S. 619, 1921 N.Y. App. Div. LEXIS 8138 (N.Y. App. Div. 1921).

Where plaintiff pleads limitations as defense to counterclaim, defendant was directed to reply to plaintiff's defense by way of avoidance. *Rosner v Globe Valve Corp.*, 276 A.D. 462, 95 N.Y.S.2d 531, 1950 N.Y. App. Div. LEXIS 4890 (N.Y. App. Div. 1950).

Where the answer set up the statute of limitations, the complaint having alleged that a former suit was dismissed solely for want of jurisdiction, so that plaintiff might have the question of the bar of the statute determined without the expense of preparation for trial. *Cavanagh v Oceanic S. S. Co.*, 9 N.Y.S. 198, 56 Hun 641, 1890 N.Y. Misc. LEXIS 84 (N.Y. Sup. Ct. 1890).

It is within the discretion of the court to require a reply to the statute of limitations, and it will not be done to save the defendant from proving its defenses. *Perls v Metropolitan Life Ins. Co.*, 8 N.Y.S. 532, 1890 N.Y. Misc. LEXIS 1661 (N.Y.C.P. 1890).

#### **44. Ultra vires**

Neither CPA § 243 (§ 3018 herein) nor CPA § 274 required plaintiff to plead that the defendant was estopped to raise the defense of ultra vires. *Salmon v Rochester & Lake Ontario Water Co.*, 197 N.Y.S. 769, 120 Misc. 131, 1923 N.Y. Misc. LEXIS 1488 (N.Y. Sup. Ct. 1923).

#### **45. Usury**

In mortgage foreclosure against mortgagor and his grantee, allegation of usury held affirmative defense which required no reply. *Edelman v Cymberg*, 261 A.D. 698, 27 N.Y.S.2d 151, 1941 N.Y. App. Div. LEXIS 7413 (N.Y. App. Div.), reh'g denied, 262 A.D. 921, 29 N.Y.S.2d 909, 1941 N.Y. App. Div. LEXIS 6485 (N.Y. App. Div. 1941).

#### **46. Wills**

In an action to determine the validity of a will plaintiff may be compelled to reply to new matter contained in the answer. *Twamley v McKennell*, 137 A.D. 574, 122 N.Y.S. 237, 1910 N.Y. App. Div. LEXIS 733 (N.Y. App. Div. 1910).

### **Research References & Practice Aids**

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#### **Cross References:**

Interpleader, CLS CPLR 1006.

Service of pleadings and demand for complaint, CLS CPLR 3012.

Statements, CLS CPLR 3014.

Particularity in pleadings as to specific matters, CLS CPLR 3015.

Particularity in specific actions, CLS CPLR 3016.

Motion to correct pleadings, CLS CPLR 3024.

Amended and supplemental pleadings, CLS CPLR 3025.

Motion to dismiss, CLS CPLR Rule 3211.

Judgment upon part of cause of action, CLS CPLR 5012.

Insolvency proceedings, objections to discharge, CLS Dr & Cr §§ 69., 70., 105.

§ 3011. Kinds of pleadings.

Foreclosure of mechanics lien in court not of record, CLS Lien § 48.

Claim against vessel, answer to, CLS Lien § 96.

Pleadings in answer to determine claim to real property, CLS RPAPL § 1517.

Foreclosure of lien of water rents, CLS Vill § 11-1118.

Pleadings, CLS Unif RIs for NYC Civil Ct § 208.7.

Pleadings, CLS UDCR § 212.7.

**Federal Aspects:**

Pleadings, generally, Rules 7 to 16 of the Federal Rules of Civil Procedure, USCS Court Rules.

Pleadings allowed, Rule 7 of the Federal Rules of Civil Procedure, USCS Court Rules.

Form of pleadings, Rule 10 of the Federal Rules of Civil Procedure, USCS Court Rules.

**Jurisprudences:**

8B NY Jur 2d Automobiles and Other Vehicles § 962.

9 NY Jur 2d Bailments and Chattel Leases §§ 127., 138.– 140., 142.

13 NY Jur 2d Businesses and Occupations §§ 539., 652.

14 NY Jur 2d Business Relationships §§ 51., 208.

14A NY Jur 2d Business Relationships §§ 546., 554., 603., 695., 740., 742., 747., 782., 789.

15 NY Jur 2d Business Relationships §§ 1033., 1042., 1054., 1169.

15A NY Jur 2d Business Relationships §§ 1216., 1455., 1458., 1459., 1467., 1490., 1506., 1507., 1544., 1547., 1548., 1556., 1558., 1578., 1589., 1614., 1616., 1624., 1647., 1652., 1654., 1655., 1657., 1663., 1667–. 1669., 1676., 1725., 1727., 1730., 1745.

16 NY Jur 2d Business Relationships §§ 1806., 1878., 1885.

§ 3011. Kinds of pleadings.

16 NY Jur 2d Cancellation and Reformation of Instruments §§ 39., 66., 68., 70., 72., 75., 78., 86.

21 NY Jur 2d Contempt § 74.

22 NY Jur 2d Contracts §§ 39., 45., 66., 233., 288., 302., 319., 322., 342., 343.

22A NY Jur 2d Contracts §§ 370., 384., 409., 420., 422., 424., 436., 437., 439., 444., 456., 472., 473., 596., 621.

36 NY Jur 2d Damages §§ 52., 77., 80., 169., 186., 192.— 196., 198., 199., 201.

37 NY Jur 2d Death § 463., 466.

44 NY Jur 2d Defamation and Privacy §§ 340., 343.

45 NY Jur 2d Domestic Relations §§ 149., 152., 163., 193., 209., 214., 247., 249., 290., 292., 301.

47A NY Jur 2d Domestic Relations § 1971.

49 NY Jur 2d Domicil and Residence § 47.

49 NY Jur 2d Easements and Licenses in Real Property § 227.

50 NY Jur 2d Elevators and Escalators §§ 9., 10., 16., 20., 22., 30., 33., 35., 41., 49.

52 NY Jur 2d Employment Relations §§ 67., 68.

82 NY Jur 2d Parties §§ 69., 72.

84 NY Jur 2d Pleading §§ 5., 6., 27., 99.— 101., 114., 125., 168., 188., 191., 195., 200.— 203., 207.

84 NY Jur 2d Pleading §§ 4., 5., 26., 69., 94., 118., 156., 176., 179., 183., 188., 189., 191., 195., 195., 198.

96 NY Jur 2d Specific Performance §§ 4., 43., 44., 46., 64., 65., 67., 68.

§ 3011. Kinds of pleadings.

104 NY Jur 2d Trespass §§ 10., 12., 13., 15., 39., 44.

1 Am Jur 2d, Accord and Satisfaction § 53.

9 Am Jur 2d, Bankruptcy §§ 214 et seq.

25 Am Jur 2d, Duress and Undue Influence §§ 36., 37.

27A Am Jur 2d, Equity §§ 159., 160., 161., 196.

28 Am Jur 2d, Estoppel and Waiver §§ 161.— 165., 220.

36 Am Jur 2d, Foreign Corporations §§ 561.— 566.

61A Am Jur 2d, Pleading §§ 1 et seq.

3 Am Jur Trials 681., Tactics and Strategy of Pleading.

## **Treatises**

### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3011, Kinds of Pleadings.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions §§ 34.01, 36.04.

1 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶302.01, 302.02; 2 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶508.02; 4 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶1807.06, 1808.06; 5 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶¶2103.12, 2104.07.

### **Matthew Bender's New York CPLR Manual:**

CPLR Manual § 6.01. Joinder of claims and consolidation of actions; joint trials.

CPLR Manual § 10.06. Cases Construing CPLR Article 16.

CPLR Manual § 19.04. Types of pleadings permitted.

§ 3011. Kinds of pleadings.

CPLR Manual § 19.10. Responsive pleadings.

CPLR Manual § 19.11. Counterclaims.

CPLR Manual § 19.12. Cross-claims.

**Matthew Bender's New York Practice Guides:**

1 New York Practice Guide: Domestic Relations §§ 3.04, 4.09; 2 New York Practice Guide: Domestic Relations § 34.16.

2 New York Practice Guide: Business and Commercial § 12.16.

**Matthew Bender's New York AnswerGuides:**

LexisNexis AnswerGuide New York Civil Litigation § 3.05. Answering Complaint.

**Annotations:**

Propriety of attaching photographs to a pleading. 33 ALR3d 322.

**Matthew Bender's New York Checklists:**

Checklist for Answering Complaint LexisNexis AnswerGuide New York Civil Litigation § 3.04.

**Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 3011:1 et seq.

LexisNexis Forms FORM 75-CPLR 3011:1.— Complaint Skeleton Form.

LexisNexis Forms FORM 75-CPLR 3011:10.— Skeleton Form of Answer Setting Forth Several Counterclaims.

LexisNexis Forms FORM 75-CPLR 3011:11.— Answer Setting Forth Cross-Claims; Answer of Third-Party Defendant (Proposed Official Form 24).

LexisNexis Forms FORM 75-CPLR 3011:12.— Skeleton Form of Answer to Cross-Claim.

LexisNexis Forms FORM 75-CPLR 3011:13.— Notice of Motion for Permission to Answer Cross-Claim Where No Demand Made.

LexisNexis Forms FORM 75-CPLR 3011:14.— Affidavit in Support of Motion for Permission to Answer Cross-Claim Where No Demand Made.

LexisNexis Forms FORM 75-CPLR 3011:15.— Order Permitting Answer to Cross-Claim Where no Demand Made.

LexisNexis Forms FORM 75-CPLR 3011:16.— Answer to Interpleader Complaint.

LexisNexis Forms FORM 75-CPLR 3011:17.— Reply Skeleton Form.

LexisNexis Forms FORM 75-CPLR 3011:18.— CPLR 3011 Notice of Motion to Compel a Reply to Defense.

LexisNexis Forms FORM 75-CPLR 3011:19.— CPLR 3011 Affidavit in Support of Motion to Compel Reply to Defense.

LexisNexis Forms FORM 75-CPLR 3011:2.— Skeleton Form of Complaint Joining Two Causes of Action.

LexisNexis Forms FORM 75-CPLR 3011:20.— CPLR 3011 Order Directing Plaintiff to Reply to Defense.

LexisNexis Forms FORM 75-CPLR 3011:21.— CPLR 3011 Skeleton Form of Reply to Affirmative Defense.

LexisNexis Forms FORM 75-CPLR 3011:3.— Complaint Joining Several Persons as Plaintiffs; General Form.

LexisNexis Forms FORM 75-CPLR 3011:3A.— General Form of Complaint in Action Against Defendants Severally Liable.

LexisNexis Forms FORM 75-CPLR 3011:4.— Interpleader Complaint; General Form.



LexisNexis Forms FORM 75-CPLR 3011:4A.— Defensive Interpleader Complaint (Official Form No. 18).

LexisNexis Forms FORM 75-CPLR 3011:4B.— Defensive Interpleader Complaint (Proposed Official Form No. 20).

LexisNexis Forms FORM 75-CPLR 3011:5.— Third-Party Complaint (Proposed Official Form No. 24).

LexisNexis Forms FORM 75-CPLR 3011:6.— Skeleton Form of Answer Setting Forth Denials and Affirmative Defenses.

LexisNexis Forms FORM 75-CPLR 3011:7.— Answer to Complaint, Counterclaim and Cross-Claim; Official Form 17.

LexisNexis Forms FORM 75-CPLR 3011:8.— Skeleton Form of Answer to Several Causes of Action.

LexisNexis Forms FORM 75-CPLR 3011:9.— Answer to Complaint, Counterclaim and Cross-Claim; Proposed Official Form 18.

LexisNexis Forms FORM 70-CV26:1.— Complaint to Recover for Unlawful Arrest While Attending Court Under Subpoena.

LexisNexis Forms FORM 70-CV40:1.— Complaint to Recover for Unlawful Discrimination in Public Place.

LexisNexis Forms FORM 70-CV42:1.— Complaint in Action Against Utility Company Alleging Discrimination in Employment.

LexisNexis Forms FORM 70-CV43:1.— Complaint in Action Against Officer of Labor Union Alleging Discrimination.

LexisNexis Forms FORM 70-CV47:1.— Complaint Against Restaurant for Denying Admission to Blind or Deaf Person.

LexisNexis Forms FORM 70-CV51:1.— General Form of Complaint in Action to Recover Damages for Invasion of Privacy in Violation of New York Civil Rights Law.

LexisNexis Forms FORM 70-CV51:2.— Complaint by Physician Against Medical Facility for Unauthorized Use of Photograph and Name in Calendar.

LexisNexis Forms FORM 70-CV51:3.— Complaint in Action by Dancer Against Adult Nightclub for Unauthorized Use of Picture and Videotape.

LexisNexis Forms FORM 70-CV51:4.— Third-Party Complaint Against Website Administrator in Action by Dancer Against Adult Nightclub for Unauthorized Use of Picture and Videotape.

LexisNexis Forms FORM 70-CV70:1.— Complaint to Recover for Unauthorized and Vexatious Suit.

LexisNexis Forms FORM 70-CV74:1.— Complaint in Action for Libel for Erroneous Report of Judicial Proceeding.

LexisNexis Forms FORM 1434-19181.— CPLR 3011: Complaint - Skeleton Form.

LexisNexis Forms FORM 70-CV18-c:1.— Complaint in Action Against Owner of Publicly Assisted Housing Accommodation for Discrimination.

LexisNexis Forms FORM 70-CV40-a:1.— Complaint in Action Against Board of Education for Inquiry Regarding Religion of Plaintiff.

LexisNexis Forms FORM 70-CV40-b:1.— Complaint in Action to Recover Penalty for Denial of Equal Rights in Theater.

LexisNexis Forms FORM 70-CV40-c:1.— Complaint in Action to Recover Penalty for Unlawful Discrimination.

LexisNexis Forms FORM 70-CV47-a:1.— Complaint Alleging Employment Discrimination Against a Deaf or Blind Person.

LexisNexis Forms FORM 70-CV76-a:1.— Action by Public Applicant or Permittee for Damages Resulting from Malicious Communication of Defendant.

LexisNexis Forms FORM 70-CV80-b:1.— Complaint Against Former Fiancee for Return of Engagement Ring.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq. (remedies and pleadings).

**Texts:**

2 Bergman on New York Mortgage Foreclosures (Matthew Bender) §§ 16.01., 17.02.

Gerrard, Ruzow, Weinberg, Environmental Impact Review in New York (Matthew Bender) § 7.10.

**Hierarchy Notes:**

NY CLS CPLR, Art. 30

**Forms**

**Form 1**

**Skeleton Form of Complaint**

SUPREME COURT, _____ COUNTY	
ALBERT ADAMS, Plaintiff, against BENJAMIN BATES, Defendant	Complaint Index No. _____ [if assigned]

Plaintiff, complaining of defendant, by \_\_\_\_\_, his attorney, alleges:

1. [In this and succeeding numbered paragraphs, set forth the facts constituting the cause of action.]

WHEREFORE, plaintiff demands judgment against the defendant in the sum of \_\_\_\_\_ dollars with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, together with the costs and disbursements of this action.

\_\_\_\_\_  
Attorney for Plaintiff

Office & P. O. Address,

\_\_\_\_\_ Street,

\_\_\_\_\_, New York

Telephone No. \_\_\_\_\_

## **Form 2**

### **Introductory Statement in Complaint**

The plaintiff, complaining of the defendant, alleges:

## **Form 3**

### **Introductory Statement in Complaint; Another Form**

The plaintiff, complaining of the defendant, by \_\_\_\_\_, his attorney, respectfully shows to this court [on information and belief] and alleges as follows:

## **Form 4**

### **Verification of Complaint**

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

\_\_\_\_\_  
[Print name to be signed]

[Jurat]

## Form 5

### Verification of Complaint; Another Form

STATE OF NEW YORK

CITY OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being duly sworn, states that he is the attorney for plaintiff in this action and that the foregoing complaint is true to his own knowledge, except as to matters therein stated on information and belief and as to those matters he believes it to be true; that the grounds of his belief as to all matters not stated upon his knowledge are correspondence and other writings furnished to him by plaintiff and interviews with officers and employees of plaintiff; and that the reason why the verification is not made by plaintiff is that [e.g., plaintiff is a foreign corporation].

\_\_\_\_\_  
[Print signer's name below signature]

## Form 6

### Skeleton Form of Complaint Alleging Two Causes of Action

Complaint

§ 3011. Kinds of pleadings.

[Title of court and action]

Index No. \_\_\_\_\_ [if assigned]

Plaintiff, by \_\_\_\_\_, his attorney, complaining of the defendant, alleges:

FOR A FIRST CAUSE OF ACTION

[Here are alleged, in numbered paragraphs, the facts constituting the first cause of action.]

FOR A SECOND SEPARATE AND DISTINCT CAUSE OF ACTION

[Prior statements in the first cause of action are deemed repeated or adopted whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters (CPLR R 3014). Therefore, it is unnecessary to allege in second cause of action "Plaintiff repeats etc." unless such a recitation is needed for clarity (Leg Doc (1957) No. 6(b) p 61). However, if such recitation is deemed necessary, allege as shown in paragraph 11, infra.]

11. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs numbered \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ of this complaint with the same force and effect as if fully set forth herein.

[In additional numbered paragraphs are alleged whatever additional facts are necessary to constitute the second cause of action.]

WHEREFORE plaintiff demands judgment against the defendant in the sum of \_\_\_\_\_ dollars with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on the first cause of action above stated, and in the sum of \_\_\_\_\_ dollars with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on the second cause of action above stated, together with the costs and disbursements of this action.

[Endorsement, address and verification.]

**Form 7**

**Title of Action, Generally**

SUPREME COURT, \_\_\_\_\_ COUNTY

ALBERT ADAMS,

Plaintiff,

against

BENJAMIN J. BATES,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

## Form 8

### Allegations Showing Residence of Parties

SUPREME COURT, \_\_\_\_\_ COUNTY

Complaint

[Title of cause]

Index No. \_\_\_\_\_ [if assigned]

The plaintiff, by \_\_\_\_\_, his attorney, complaining of the defendants, alleges:

1. The plaintiff is a resident of the County of \_\_\_\_\_, State of New York.

2. The defendant \_\_\_\_\_, is a resident of the County of \_\_\_\_\_, State of New York.

3. On information and belief, the defendant \_\_\_\_\_, is a resident of the County of \_\_\_\_\_, State of New York.

## Form 9

### Title of Action Where Party Is Known by More Than One Name

SUPREME COURT \_\_\_\_\_ COUNTY

Albert Adams,

Plaintiff,

against

Benjamin J. Bates, also known as B.  
Joseph Bates,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

## Form 10

### Title of Action and Necessary Allegations Where the First Name of a Party Is Unknown

SUPREME COURT _____	COUNTY _____
Albert Adams,	
Plaintiff,	
against	
Benjamin Bates and "Mary"	
Bates, the first name "Mary"	Complaint
being fictitious and intended to designate the wife of	Index No. _____ [if assigned]
the	
said Benjamin Bates,	
Defendants.	

[Introductory paragraph]

1. The party designated herein as "Mary" Bates is the wife of the defendant Benjamin Bates, whose true first name is unknown to plaintiff, and the first name "Mary" is fictitious.

## Form 11

### Title of Action and Necessary Allegations Where the Name of a Defendant Is Entirely Unknown to Plaintiff

SUPREME COURT _____	COUNTY _____
Albert Adams,	
Plaintiff,	
against	
Benjamin Bates and "John Doe"	
the name "John Doe" being fictitious and intended	
to designate the person operating the automobile of the	Complaint
said Benjamin Bates at the time and place herein alleged,	Index No. _____ [if assigned]
Defendants.	

[Introductory paragraph]



1. The party designated herein as “John Doe” is the person who, at the time and place herein mentioned, was operating an automobile belonging to the defendant Benjamin Bates, as hereinafter described. The true name of said person is unknown to plaintiff, and the name “John Doe” is fictitious.

## **Form 12**

### **Allegation That Party Is a Domestic Corporation**

1. The plaintiff [or defendant] is, and at all times herein mentioned was, a domestic corporation.

## **Form 13**

### **Allegation That Party Is a Domestic Corporation, Incorporated Under a Special Act**

1. The plaintiff is, and at all times herein mentioned was, a domestic corporation, duly organized and existing under and pursuant to Chapter \_\_\_\_\_ of the Laws of 18\_\_\_\_.

## **Form 14**

### **Allegation That Party Is a Foreign Corporation**

1. On information and belief the defendant \_\_\_\_\_ is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_.

## **Form 15**

### **Allegations Where Party Is a Corporation Which Has Changed its Name**

Plaintiff [or defendant] is a domestic corporation, having been duly incorporated under the corporate name of \_\_\_\_\_ Corporation, and thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, having duly changed its name to \_\_\_\_\_, Inc., under which latter name it has since conducted business.

## Form 16

### Allegations Where Party Is a Consolidated Corporation

1. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the \_\_\_\_\_ Corp. and \_\_\_\_\_, Inc., were domestic corporations, and on or about said date were duly consolidated, pursuant to the provisions of Article 9 of the Business Corporation Law of the State of New York, into a single corporation under the name of \_\_\_\_\_ Corporation, the plaintiff [or defendant] herein.

## Form 17

### Allegation That Plaintiff Is a Foreign Corporation Entitled to Do Business in New York

1. Plaintiff is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and prior to the times hereinafter mentioned had duly complied with Article 13 of the Business Corporation Law of the State of New York, and had received from the Secretary of the State of New York a certificate of authority to do business in the State of New York.

## Form 18

### Title and Allegations Where Plaintiff Is an Unincorporated Association

SUPREME COURT _____	COUNTY _____
Albert Adams, as President [or Treasurer] of the XYZ Association, Plaintiff, against Benjamin Bates, Defendant.	Complaint Index No. _____ [if assigned]

The plaintiff, complaining of the defendant, by \_\_\_\_\_, his attorney, alleges:

1. At all times hereafter mentioned the XYZ Association, hereinafter referred to as the Association, was and now is an unincorporated association.

2. The plaintiff, at the time of the commencement of this action, was and is the president of said association.

## Form 19

### Title and Allegations Where Defendant Is an Unincorporated Association

SUPREME COURT _____	COUNTY _____
Benjamin Bates, Plaintiff, against Albert Adams, as President [or Treasurer] of the XYZ Association, Defendant.	Complaint Index No. _____ [if assigned]

The plaintiff, complaining of the defendant by \_\_\_\_\_, his attorney, alleges:

1. At all times hereinafter mentioned the XYZ Association, hereinafter referred to as the Association, was and now is an unincorporated association duly existing under and by virtue of the General Association Law of the State of New York.

2. At the time of the commencement of this action, Benjamin Bates was the President of the said XYZ Association.

## Form 20

### Title, Identifying Allegations and Prayer in Complaint on Contract Against Unincorporated Political Committee

[Title of court and cause]

§ 3011. Kinds of pleadings.

\_\_\_\_\_ ,

Plaintiff,

against

\_\_\_\_\_, as treasurer of

\_\_\_\_\_ Committee,

Defendant.

Complaint

Index No. \_\_\_\_\_

On information and belief, at all the times hereinafter mentioned, the \_\_\_\_\_ Committee was and is an unincorporated association, having an office and place for the transaction of business in the city of \_\_\_\_\_, New York.

On information and belief, at the time of the commencement of this action, the above-named \_\_\_\_\_ was the treasurer of said \_\_\_\_\_ Committee.

[Follow with allegations in usual form alleging contract and breach thereof.]

WHEREFORE, plaintiff demands judgment against said \_\_\_\_\_, the defendant herein, in the sum of \_\_\_\_\_ dollars [\$\_\_\_\_\_], with interest from \_\_\_\_\_, together with the costs and disbursements of this action.

## Form 21

### Allegations for Dissolution of Voluntary Association, for Good Cause Shown

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff and the defendants formed a partnership or joint-stock association for the purpose of \_\_\_\_\_ [state purpose, such as establishing and publishing a daily and a weekly, and other newspapers, in the city of \_\_\_\_\_] under certain articles of association of which a copy is hereto annexed, marked Exhibit A, and made part hereof. [Copy of articles annexed, which included a provision that no sale of any portion of the interest of any of the parties should be made without notice to the others and an opportunity given them to purchase.]

2. The plaintiff and the defendants subsequently made their contributions to the capital of the partnership or association, in pursuance of the aforesaid articles and the business contemplated in them was commenced \_\_\_\_\_ [State activity, such as, by the publication of a daily newspaper in the city of \_\_\_\_\_, called "The \_\_\_\_\_," and of a weekly newspaper in the same city, called "The Weekly \_\_\_\_\_"; and also a second daily newspaper called "The \_\_\_\_\_ Evening \_\_\_\_\_"; also, a semi-weekly newspaper called "The Semi-Weekly \_\_\_\_\_";] that the association's said business continued under and in pursuance of the said articles until some time in 20\_\_\_\_\_, when the defendant \_\_\_\_\_, having purchased from the plaintiff and the defendant \_\_\_\_\_ [State amount, such as, twenty-four of the one hundred] shares of the capital stock mentioned in the articles of partnership or association, with the assent of the parties interested therein, the said articles were modified by the addition of the following clause: \_\_\_\_\_ [set forth clause].

3. Thereafter the business of the partnership or association has been conducted under the style of \_\_\_\_\_, and that it has continued the said business; that by various sales and transfers, the proprietorship of the \_\_\_\_\_ [one hundred] shares of the association now stands upon the books of the association as follows:

\_\_\_\_\_  
\_\_\_\_\_

4. \_\_\_\_\_ [Show a state of affairs existing within the association which produces discord, or inability advantageously to conduct its affairs, and therefore furnishes in equity a ground for adjudging its dissolution, as: Although twenty-five shares of the said capital stock stand in plaintiff's name, five of the said shares are held by him for the defendant \_\_\_\_\_, and equitably belong to him; and that although thirty shares of the said capital stock stand in the name of the defendant \_\_\_\_\_, the defendant \_\_\_\_\_ and the defendant \_\_\_\_\_ claim that twenty-

nine shares thereof equitably belong to the said \_\_\_\_\_, and the plaintiff claims that some instrument of transfer exists by which the said \_\_\_\_\_ has assigned them to said \_\_\_\_\_; but that said assignment has been made without the consent or approbation of the other proprietors, and with full notice on the part of the said \_\_\_\_\_ of the rights and claims of the said \_\_\_\_\_, as hereinafter stated; that no offer to sell such twenty-nine shares was ever made to the association pursuant to the sixth provision of said articles, and no transfer of the said shares has ever been made pursuant to the said articles of association; but that the same remain standing in the name of the said \_\_\_\_\_; that the defendant \_\_\_\_\_ claims and insists that he owns the said thirty shares of stock standing in the name of the said \_\_\_\_\_, and that he purchased the same on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, with the assent of the plaintiff and defendant \_\_\_\_\_, who, with the defendants \_\_\_\_\_ and \_\_\_\_\_, constituted all the directors of the association, and by a waiver on the part of the association of the prior right of purchase; that an action was commenced in the \_\_\_\_\_ Court in \_\_\_\_\_, 20\_\_\_\_\_, by the defendant \_\_\_\_\_, against the defendant \_\_\_\_\_, to compel him to transfer the said thirty shares of stock to him in pursuance of such purchase; that a trial of the said action has taken place, and a decision has been made therein by a single justice of the court, dismissing the complaint of the said \_\_\_\_\_, from which the said \_\_\_\_\_ declares he shall, and the plaintiff believes he will, appeal to the \_\_\_\_\_ Court].

5. After the commencement of the said action, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in consequence of the want of a harmonious prosecution of its business between the directors of the said association pending the same, an agreement was entered into by and between the plaintiff and the defendants \_\_\_\_\_ and \_\_\_\_\_, of which the following is a copy: [agreement that two of the directors shall manage for benefit of all].

6. In pursuance of the said agreement, the plaintiff and the defendant \_\_\_\_\_ have, since it was made, had the care and direction of the business of the said association, and have continued the business upon account thereof.

7. The said association now owns \_\_\_\_\_ [List properties, such as: a large quantity of steam engines, printing apparatus, and printing materials, and of conveniences for printing and publishing newspapers, of great value; that it also has debts due to a large amount; that the said newspapers have a very large circulation, and a very large and valuable advertising patronage, and that the good will of the said newspapers is of very great value, and constitutes a very considerable portion of the capital and property of the said association] that the said property of the association, and its good will, are of far greater value, taken together and as a whole, than they would be if separated and divided; and that no equitable division of the capital and property of the said association can be made without great loss to the persons interested therein, excepting by a sale thereof and a division of its proceeds among them, in proportion to their respective interests.

8. Being desirous of discontinuing his connection with the said association as a partner, on account of the difficulties existing between some of the parties as aforesaid, and to dissolve the partnership and have the affairs of the association put into liquidation, on the \_\_\_\_\_ and \_\_\_\_\_ days of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff dissolved the partnership existing between himself and the defendants, by serving upon them a notice, of which the following is a copy: \_\_\_\_\_ [Copy notice of dissolution pursuant to provision in Articles of Association.]

9. Plaintiff and the defendant \_\_\_\_\_ are now continuing the business on joint account of, and for the common benefit of, the persons who own the said capital stock and property of the association, until the property of the said association, with its good will, can be sold, under the direction of a receiver to be appointed by the court, or until the court shall make some order in relation thereto.

WHEREFORE, plaintiff demands judgment as follows:

1. That the said partnership or association, under the style of \_\_\_\_\_, be dissolved.
2. That the rights of the plaintiff and defendants respectively therein be declared, and, if necessary, that any of the parties to this action may interplead for the purpose of ascertaining their several rights.
3. That pending this action a receiver be appointed of the property, rights and good will of the association, with power to sell and dispose of the same for the benefit of all the parties to this action entitled thereto.
4. That a division of the proceeds of such property, rights, and good will, after the payment of all just debts of the association, be made between the parties entitled thereto, in the proportion of their respective rights.
5. That the plaintiff may have such other or further order or relief as may be proper.

## Form 22

### Title and Allegations Where Partnership Sues in Firm Name, Pursuant to Civil Practice Law and Rules § 1025

SUPREME COURT _____ COUNTY	
Albert Adams & Co.,	
Plaintiff,	
against	Complaint
Benjamin Bates,	Index No. _____ [if assigned]
Defendant.	

The plaintiff complaining of the defendant, by \_\_\_\_\_, its attorney, alleges:

1. At all times herein mentioned plaintiff was and still is a partnership, duly organized and existing under the laws of the State of New York, the members of which were and are Albert Adams and Charles Coe.



### Form 23

#### Title and Allegations Where Partners Are Sued Under Their Individual Names

SUPREME COURT _____	COUNTY _____
Albert Adams, Plaintiff, against Benjamin Bates and Charles Coe, co-partners doing business under the firm name of The XYZ Co., Defendants.	Complaint Index No. _____ [if assigned]

The plaintiff, complaining of the defendants, by \_\_\_\_\_, his attorney, alleges:

1. At all times herein mentioned defendants were and are co-partners, doing business under the firm name of The XYZ Co.

### Form 24

#### Title and Allegations in Action Against Former Partners

SUPREME COURT \_\_\_\_\_ COUNTY \_\_\_\_\_

§ 3011. Kinds of pleadings.

\_\_\_\_\_,

Plaintiff,

against

\_\_\_\_\_ and \_\_\_\_\_

individually and as co-partners formerly doing business under the firm

\_\_\_\_\_

Defendants.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Introductory paragraph.]

1. At all times herein mentioned, until on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendants, \_\_\_\_\_ and \_\_\_\_\_, were co-partners doing business under the firm name of \_\_\_\_\_.

## **Form 25**

### **Allegation in Action by or Against Surviving Partner**

1. At all times herein mentioned until the death of \_\_\_\_\_, which occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff [or defendant] and the said \_\_\_\_\_ were co-partners doing business under the firm name of \_\_\_\_\_, and since the death of the said \_\_\_\_\_, the plaintiff [or defendant] has been and is the sole surviving member of the said partnership.

## **Form 26**

### **Allegations Where Partner Refuses to Join Copartner as Plaintiff**

Defendant \_\_\_\_\_ is jointly interested with plaintiff, as copartner, in the cause of action herein set forth, and before commencing this action plaintiff requested defendant \_\_\_\_\_ to join as a coplaintiff herein but he refused so to do and therefore is made a defendant.

## **Form 27**

### **Allegations in Complaint Against Partner not Joined in Prior Action on Partnership Liability**

On \_\_\_\_\_, 20\_\_\_\_\_, an action was commenced by plaintiff herein upon a partnership liability against \_\_\_\_\_.

Defendant herein, one of the partners in said partnership was not made a defendant in said action.

Final judgment was rendered in said action in favor of plaintiff and against the defendant [defendants] therein, by the \_\_\_\_\_ court for \_\_\_\_\_ County, on \_\_\_\_\_, 20\_\_\_\_\_.

Said judgment remains wholly unsatisfied.

\_\_\_\_\_ [state facts constituting cause of action].

**Form 28**

**Title and Allegations in Action by an Executor**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

Albert Adams, as executor of the last will and  
testament of John Adams, deceased,  
Plaintiff,  
against  
Benjamin Bates,  
Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

The plaintiff, as executor of the last will and testament of John Adams, deceased, complaining of the defendant by \_\_\_\_\_, his attorney, alleges:

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, John Adams died, a resident of the County of \_\_\_\_\_, leaving a last will and testament wherein the plaintiff was appointed sole executor thereof.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said will was duly admitted to probate by the Surrogate of the County of \_\_\_\_\_, and letters testamentary upon said will were duly granted to the plaintiff by said Surrogate, and the plaintiff thereupon duly qualified as such executor and has ever since been and now is acting as such executor.

**Form 29**

**Title and Allegations in Action Against Administrator**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

Albert Adams,

Plaintiff,

against

Benjamin Bates, as administrator of the goods,

chattels and credits of John Bates deceased,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Introductory paragraph.]

1. On information and belief, John Bates died intestate, a resident of the County of \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

2. On information and belief, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the defendant was duly appointed administrator of the goods, chattels and credits of the said John Bates, deceased, by order of the Surrogate of said County of \_\_\_\_\_, and defendant duly qualified as such administrator and ever since has been and now is acting as such administrator.

### **Form 30**

#### **Allegations in Action By Limited Administrator**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, died intestate, a resident of the County of \_\_\_\_\_, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, letters of administration limited to the prosecution of this action were duly issued to the plaintiff herein by the Surrogate's Court of said County of \_\_\_\_\_, and the plaintiff duly qualified as such administrator and has since been acting and is now acting as such.

### **Form 31**

#### **Allegations in Action Against Temporary Administrator**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above named \_\_\_\_\_ died a resident of the County of \_\_\_\_\_, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the defendant was duly appointed temporary administrator of the goods, chattels and credits of said



decedent by the Surrogate's Court of the County of \_\_\_\_\_, and thereupon duly qualified and has ever since and is now acting as such temporary administrator.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by an order of the Surrogate's Court of said County of \_\_\_\_\_, plaintiff was duly granted leave to bring an action against defendant, as such temporary administrator, upon the cause of action herein alleged.

## **Form 32**

### **Allegations in Action By Ancillary Administrator**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the above-mentioned \_\_\_\_\_, died intestate, a resident of the State of \_\_\_\_\_, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, letters of administration upon the estate of said decedent were duly issued to the plaintiff by the \_\_\_\_\_ Court of \_\_\_\_\_ County in said State, which was and is a court of competent jurisdiction.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a duly exemplified copy of said letters of administration was filed in the office of the Surrogate's Court of the County of \_\_\_\_\_, State of New York, and ancillary letters of administration were thereupon duly issued by said Surrogate's Court to the plaintiff, who thereupon duly qualified as such and has ever since been acting as such ancillary administrator.

## **Form 33**

### **Allegations in Action by Administrator With the Will Annexed**

1. [Allege death of testator, probate of his will and granting of letters testamentary as in Form 28, supra.]

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said executor died [or resigned], and thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, letters of administration with the will annexed upon the estate of the said \_\_\_\_\_, deceased, were duly issued to plaintiff by the Surrogate of the County of \_\_\_\_\_, and plaintiff thereupon duly qualified and has ever since been acting as such administrator with the will annexed.

#### **Form 34**

##### **Allegations in Action by Administrator de Bonis non**

1. [Allege death of intestate and issuance of letters of administration as in Form 28, supra.]

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said administrator died, leaving certain assets of the estate of the said \_\_\_\_\_ unadministered, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, letters of administration de bonis non of the goods, chattels and credits of the said \_\_\_\_\_, deceased, were duly issued to the plaintiff by the Surrogate's Court of the County of \_\_\_\_\_, and plaintiff thereupon duly qualified and has ever since been acting as such administrator.

#### **Form 35**

##### **Allegations in Action by Ancillary Executor**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, died a resident of the State of \_\_\_\_\_, leaving a last will and testament wherein plaintiff was appointed sole executor thereof, and thereafter said will was duly admitted to probate by the \_\_\_\_\_ Court of \_\_\_\_\_ County in said state, which was and is a court of competent jurisdiction, and letters testamentary were duly issued to the plaintiff by said court upon said will.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff filed and recorded in the office of the Surrogate of the County of \_\_\_\_\_, State of New York, a duly exemplified copy of said will, and ancillary letters testamentary thereon were thereupon duly issued by the Surrogate of said \_\_\_\_\_ County to the plaintiff, who thereupon duly qualified and thereafter acted and is now acting as such ancillary executor.

**Form 36**

**Title and Allegations in Action by General Guardian of Infant**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

\_\_\_\_\_, as general guardian of the person and property  
of

\_\_\_\_\_, an infant,

Plaintiff,

against

\_\_\_\_\_,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff was duly appointed general guardian of the person and property of \_\_\_\_\_, an infant, by the Surrogate's Court of the County of \_\_\_\_\_, and letters of general guardianship were duly issued to the plaintiff by the said Surrogate's Court, and plaintiff duly qualified as such general guardian and is now acting as such.

**Form 37**

**Title and Allegations in Action by Guardian of Incapacitated Person**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

\_\_\_\_\_, as guardian of  
\_\_\_\_\_, an incapacitated person,  
Plaintiff,  
against  
\_\_\_\_\_,  
Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in a proceeding duly instituted in the \_\_\_\_\_ Court, \_\_\_\_\_ County, the above named \_\_\_\_\_ was duly found to be an incapacitated person, and plaintiff was, by order of said Court, duly made and entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, appointed guardian of the person and property of the said \_\_\_\_\_, and duly qualified as such and is now acting as such guardian.

### **Form 38**

#### **Necessary Allegations in Action Against Guardian of Incapacitated Person**

1. [Allege appointment of guardian as in Form 37, supra.]
2. By an order duly made by this court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and duly entered in the office of the clerk of the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff was granted leave to bring this action.

### **Form 39**

#### **Title and Allegations in Action By Testamentary Trustee**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

\_\_\_\_\_, as trustee under the last will and testament of

\_\_\_\_\_, deceased,

Plaintiff,

against

\_\_\_\_\_,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]



[Introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the above named \_\_\_\_\_, died a resident of the County of \_\_\_\_\_, leaving a last will and testament which was duly admitted to probate by the Surrogate of the County of \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and letters testamentary upon said will were thereupon duly issued by the said Surrogate to the executor named in said will.

2. By said will, the said \_\_\_\_\_, gave, devised, and bequeathed certain of his property to the plaintiff as trustee, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, letters of trusteeship were duly issued to the plaintiff by the Surrogate's Court of the County of \_\_\_\_\_, and plaintiff duly qualified and is now acting as such trustee.

**Form 40**

**Title and Allegations in Action by Trustee of Nontestamentary Trust**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

\_\_\_\_\_, as trustee under instrument made by  
\_\_\_\_\_,

dated \_\_\_\_\_,

Plaintiff,

against

\_\_\_\_\_,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Introductory paragraph.]

1. At all times herein mentioned plaintiff was and is a domestic corporation, duly authorized under the laws of the State of New York to act in a fiduciary capacity.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the above named \_\_\_\_\_ executed an instrument, a copy of which is hereto attached, marked "Exhibit A", and made a part hereof, whereby he transferred to the plaintiff, in trust, certain property described in said instrument, and plaintiff thereupon accepted the trust created by said instrument and now holds the said property subject to the terms and provisions of the said instrument.

#### **Form 41**

##### **Allegations in Action by or Against Surviving Trustee**

1. [Allege appointment of all original trustees, substantially as in Form 39, supra.]

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_, one of said trustees, died, and since that date the plaintiff [or defendant] has been and now is sole surviving trustee under the last will and testament of the said \_\_\_\_\_.

#### **Form 42**

##### **Title and Allegations Where Party Is a Trustee in Reorganization Under Chapter 11 of the Bankruptcy Act**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

\_\_\_\_\_,

Plaintiff,

against

\_\_\_\_\_, as Trustee of

Complaint

\_\_\_\_\_, Inc., in reorganization under

Index No. \_\_\_\_\_ [if assigned]

Chapter 11

of the Bankruptcy Act of the United States,

Defendant.

[Introductory paragraph.]

1. \_\_\_\_\_, Inc., is a domestic corporation.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_, Inc., duly filed in the office of the Clerk of the United States District Court for the \_\_\_\_\_ District of New York a petition for re-organization of the said corporation pursuant to the provisions of Chapter 11 of the Bankruptcy Act of the United States, and thereafter such proceedings were had upon said petition that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ was duly appointed by said court as trustee of the estate of the said \_\_\_\_\_, Inc., and thereupon duly qualified as such and ever since has been and now is acting as such trustee.

### **Form 43**

#### **Allegations as to Appointment, etc., of Plaintiff as Receiver of Rents in Foreclosure Suit**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff was appointed receiver of the rents of premises known as \_\_\_\_\_, by \_\_\_\_\_ court of \_\_\_\_\_ County, in a foreclosure suit pending in said court in which \_\_\_\_\_ was plaintiff and \_\_\_\_\_ was defendant; plaintiff executed and acknowledged in the usual form and filed within \_\_\_\_\_ days, with the clerk of the \_\_\_\_\_ court of \_\_\_\_\_, a bond, with sureties approved by said court, conditioned for the proper discharge of his duties as such receiver, and to account for all funds coming into his hands according to the orders of said court, in the penal sum of \_\_\_\_\_ dollars, and has ever since been and still is acting and engaged in the discharge of his duties as such receiver.

### **Form 44**

**Allegations as to Appointment, etc., of Receiver in Supplementary Proceedings**

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff was duly appointed receiver of all the property of \_\_\_\_\_ and \_\_\_\_\_, judgment debtors, in proceedings pending in the \_\_\_\_\_ Court of \_\_\_\_\_ County, entitled "In the matter of the examination of \_\_\_\_\_, judgment debtor, in proceedings supplementary to execution," upon the application of \_\_\_\_\_ and \_\_\_\_\_, judgment creditors, by an order in said proceedings made by the Hon. \_\_\_\_\_ and filed and recorded in the office of the clerk of the County of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

2. Plaintiff thereafter duly executed and acknowledged his bond, approved by Mr. Justice \_\_\_\_\_, in the penal sum of \_\_\_\_\_ dollars, and conditioned for the faithful discharge of the plaintiff's duties as such receiver, which bond was duly filed in the office of the clerk of said \_\_\_\_\_ Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and plaintiff duly qualified and is now acting as such receiver.

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff was duly authorized to commence this action, by an order made and signed by Hon. \_\_\_\_\_ one of the justices of the \_\_\_\_\_ court of \_\_\_\_\_.

**Form 45**

**Title and Allegations in Action by Assignee for Benefit of Creditor**

SUPREME COURT \_\_\_\_\_ COUNTY

§ 3011. Kinds of pleadings.

\_\_\_\_\_, as assignee for the benefit of creditors of  
\_\_\_\_\_,

Plaintiff,

against

\_\_\_\_\_,

Defendant.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Allege cause of action of assignor against defendant.]

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said \_\_\_\_\_ duly executed and delivered to plaintiff an assignment of all his property, including the claim hereinbefore set forth, for the benefit of his creditors, which assignment was thereupon duly filed and recorded in the office of the clerk of the county of \_\_\_\_\_.

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and before the commencement of this action, plaintiff duly qualified as such assignee and entered upon his duties as such, and made and filed the inventory and bond required by law.

**Form 46**

**Title and Allegations Where Public Officer or Board Members Are Sued Under Their Individual Names**

SUPREME COURT \_\_\_\_\_ COUNTY



§ 3011. Kinds of pleadings.

\_\_\_\_\_,

Plaintiff,

against

\_\_\_\_\_, as Superintendent

\_\_\_\_\_,

\_\_\_\_\_, constituting the Civil Service Commission of  
the State of New York,

Defendants.

Complaint

Index No. \_\_\_\_\_ [if assigned]

[Introductory paragraph.]

1. On information and belief, defendant \_\_\_\_\_, at all times hereinafter mentioned has been and is the Superintendent of Insurance of the State of New York, and the defendants \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ have been and are the members constituting the Civil Service Commission of the State of New York.

#### **Form 47**

#### **Title of Action Where Public Officer or Body Is Sued Under His or Its Official Title, Pursuant to Civil Practice Law and Rules § 1023**

SUPREME COURT _____ COUNTY	
_____, Plaintiff, against The Superintendent of Insurance and the Civil Service Commission of the State of New York, Defendant.	Complaint Index No. _____ [if assigned]

#### **Form 48**

#### **Allegations That Parties Are Municipal Officials**

1. At all times herein mentioned the defendant \_\_\_\_\_ was and now is mayor of the City of \_\_\_\_\_, duly elected, qualified and acting as such, and the defendants \_\_\_\_\_ and \_\_\_\_\_ were and are the Commissioners of Elections of the County of \_\_\_\_\_, duly appointed, qualified and acting as such.

#### **Form 49**

### **Allegation That Plaintiff Is an Attorney**

At all times hereinafter mentioned, plaintiff was and still is an attorney and counselor at law duly licensed and admitted as such and practicing his profession at \_\_\_\_\_.

### **Form 50**

### **Allegation That Plaintiff Is Duly Licensed to Practice a Profession**

1. At all times herein mentioned, the plaintiff was and now is a physician and surgeon [or dentist, registered professional nurse, practical nurse, civil engineer and surveyor, etc.] duly licensed to practice as such.

### **Form 51**

### **Allegation That Plaintiff Is Licensed as a Real Estate Broker or Salesman**

1. At all times herein mentioned, plaintiff was and now is a duly licensed real estate broker [or salesman] having his office at \_\_\_\_\_, in the City of \_\_\_\_\_.

### **Form 52**

### **Allegation That Plaintiff Is a Licensed Employment Agency**

1. At all times herein mentioned the plaintiff was and still is engaged in conducting an employment agency in the City of \_\_\_\_\_, and prior to all the times herein mentioned plaintiff had duly obtained from the Commissioner of Licenses [or Mayor] of said City a license to conduct such agency.

### **Form 53**

### **Title and Allegations in Action by Infant Plaintiff**

SUPREME COURT \_\_\_\_\_ COUNTY  
\_\_\_\_\_, an infant, by \_\_\_\_\_

§ 3011. Kinds of pleadings.

\_\_\_\_\_, his [general guardian,  
guardian ad litem, or parent, as the case may be],

Plaintiff,

against

\_\_\_\_\_,

Defendant.

Complaint

Index No. [if assigned]

[Introductory paragraph.]

1. At all times herein mentioned, plaintiff was and now is an infant, under eighteen years of age.

2. [By order of this court, made on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, and entered in the office of the clerk of the county of  
\_\_\_\_\_ on the same date (or on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_), \_\_\_\_\_ was duly appointed  
guardian ad litem of the plaintiff for the purpose of prosecuting this action.]

or

2. [That no guardian of the property of said infant or guardian ad litem for said infant has been  
appointed and this action is brought on behalf of said infant by \_\_\_\_\_, the  
father (or as the case may be) of said infant, with whom said infant resides.]

or

2. [As the case may be if a guardian of the infant's property has been appointed.]

**Form 54**

**Jurisdictional Allegations Where Action Is Brought in County Court**

The defendant is a resident of the County of \_\_\_\_\_.

OR

The defendant has an office for the transaction of business within the County of  
\_\_\_\_\_, and the cause of action alleged herein arose in said County.

OR

The defendant is a domestic corporation, whose principal place of business is located within the County of \_\_\_\_\_, [or maintaining an office, factory or shop within the County of \_\_\_\_\_].

OR

At all times herein mentioned the defendant was and now is a domestic railroad corporation, and a portion of the railroad operated by defendant is within the County of \_\_\_\_\_.

### **Form 55**

#### **Jurisdictional Allegations Where Action Is Brought in a City Court**

At all times herein mentioned the plaintiff [or defendant] was and now is a resident of the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of New York.

[In each case the statute creating the particular city court must be consulted to determine the exact jurisdictional requirements.]

### **Form 56**

#### **Jurisdictional Allegations Where Action Is Brought in Justice's Court**

The plaintiff [or defendant] is a resident of the Town [or City] of \_\_\_\_\_, in the County of \_\_\_\_\_, State of New York.

[The town or city named must be either the one in which the action is brought or an adjoining town or city.]

### **Form 57**

**Jurisdictional Allegations in an Action Against a Foreign Corporation, Brought by a Nonresident or Another Foreign Corporation**

This action is brought to recover damages for breach of a contract made within the State of New York.

OR

This action is brought to recover damages for breach of a contract relating to property which was situated within the State of New York at the time said contract was made.

OR

This action is brought to recover real property situated within the State of New York.

OR

This action is brought to replevy a chattel within the State of New York.

OR

The cause of action herein alleged arose within the State of New York, and the object and effect of this action will not affect the title to any real property situated outside the State of New York.

OR

The defendant is a foreign corporation, duly organized and existing under the laws of the State of \_\_\_\_\_, and at all times herein mentioned was and now is doing business within the State of New York.

OR

The cause of action herein alleged arose out of the transaction of business by the defendant within the State of New York.

OR

The cause of action herein alleged arose out of the commission, by the defendant, of a tortious act within the State of New York.

OR

The cause of action herein alleged arose out of the ownership [use or possession], by the defendant, of real property situated within the State of New York.

## **Form 58**

### **Allegation of Leave to Sue**

Plaintiff has been duly granted leave to bring this action by an order of this Court [or of the \_\_\_\_\_ Court, \_\_\_\_\_ County] duly made and entered in the office of the County Clerk of the County of \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

## **Form 59**

### **Allegation as to City Ordinance or Local Law**

At all times herein mentioned there was in full force and effect in said City of \_\_\_\_\_ an ordinance [or local law], known as Ordinance No. \_\_\_\_\_ [or Local Law No. \_\_\_\_\_ of \_\_\_\_\_], section \_\_\_\_\_ of which provides as follows: \_\_\_\_\_ [quote pertinent part of ordinance or local law].

## **Form 60**

### **Allegation as to Statute of Foreign State**

At all times hereinafter mentioned there was in full force and effect in said State of \_\_\_\_\_ a statute known as section \_\_\_\_\_ of the General Laws of said State, which provides as follows: \_\_\_\_\_ [quote the statute].

## **Form 61**

### **Allegations as to Existence and Terms of Private Statute**

By an act of the Legislature of the State of New York, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, constituting chapter \_\_\_\_\_ of the Session Laws of that year, and entitled \_\_\_\_\_, it was enacted that \_\_\_\_\_ [quote the material portion of the statute].

## **Form 62**

### **Allegations as to Legal Effect of Statutes of Sister State as to Bequests to Religious Society**

By the laws of the State of \_\_\_\_\_, plaintiff is now, and always has been, competent to take and hold said legacy and to sue for and recover the same;

At the time of the death of said \_\_\_\_\_, it was and still is the law of said State of \_\_\_\_\_, that incorporated and unincorporated religious societies may appoint trustees, not exceeding five in number, to hold and manage property bequeathed to them.

Before the commencement of this action, plaintiff duly appointed three trustees to hold and manage said bequest; each of said trustees has accepted his said appointment, and said trustees are ready and prepared to receive said bequest and administer it according to law.

## **Form 63**

### **Allegations as to Law of Sister State as to Trustees**

On information and belief, by the law of the State of \_\_\_\_\_, the parties to said indenture who received or who had in their possession or control the property therein provided to be held in trust, became trustees ad interim for the purposes expressed in said



indenture until the qualification of the trustees named in such indenture or the appointment of others in their place.

#### **Form 64**

#### **Allegations as to Law of Sister State as to Priorities Between Successive Assignees of Chose in Action**

At all of the times herein mentioned it was and is the law of the State of \_\_\_\_\_ that as between successive assignments of a chose in action due to the same assignor, the one which being acquired without notice of prior ones, is first brought to the knowledge of the debtor, is entitled to priority; and that claims of competing assignees of a chose in action rank as between themselves not in the order of the dates of the assignments to them, but according to the date when they respectively gave notice to the debtor of the assignment of their chose in action; and that if an assignee of a chose in action fails to give notice to the debtor owing the same, a subsequent assignee of the same chose in action without notice of the former assignment, will upon giving notice of his assignment acquire priority.

#### **Form 65**

#### **Allegations as to Law of Inheritance, etc., of Foreign Country**

Under and by virtue of the laws of the Kingdom of \_\_\_\_\_ where the said intestates resided and whereof they were citizens, and to the laws to which they were subject, the right of succession to the estate of both said deceased members of said firm of \_\_\_\_\_ who so died intestate as aforesaid, vested immediately after their death as to one-half thereof in \_\_\_\_\_, their mother, and as to the remaining one-half as aforesaid in \_\_\_\_\_, their nephew as the only next of kin of the said intestates.

Under and by virtue of the laws of the Kingdom of \_\_\_\_\_ where the said instrument in writing herewith attached and marked

“Exhibit A” was executed, and in which the said contracting parties resided and of which they were citizens, and to the laws of which they were subject, the said instrument in writing was a legal and valid agreement and the parties thereof had legal power to give a valid title and to dispose of the said rights in said intestate’s estates of said \_\_\_\_\_ and \_\_\_\_\_.

## **Form 66**

### **Allegation of Statute of Foreign Country**

That the laws of \_\_\_\_\_ provide that immediately upon the death of a subject of \_\_\_\_\_, the legal title to the estate of such deceased person vests in the \_\_\_\_\_, and that the \_\_\_\_\_, which is invested by the plaintiff with the exclusive jurisdiction and power over the interpretation and administration of all laws pertaining to religion and domestic relations of the land, must assume physical control of all the property and estate of the said deceased person and distribute it according to the Domestic Relations Law of \_\_\_\_\_, which requires the heirs and other persons who may claim any part of such property and estate to appear before the court at the place where the said deceased person departed this life and prove their claims.

## **Form 67**

### **Allegation as to Judicial Construction of Foreign Statute**

The highest court of appellate jurisdiction of said State of \_\_\_\_\_, has decided that the effect of said statute is that \_\_\_\_\_ [give construction of statute as so decided].

## **Form 68**

### **Allegation as to Existence of Prior Judgment**

In an action in the Supreme Court, County of \_\_\_\_\_, wherein \_\_\_\_\_ was plaintiff and \_\_\_\_\_ was defendant, a judgment was duly rendered on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in favor of the said \_\_\_\_\_, against the said \_\_\_\_\_, for the sum of \_\_\_\_\_ dollars, which judgment was duly docketed and the judgment roll duly filed in the office of the Clerk of the County of \_\_\_\_\_ on the same date. Said judgment has not been modified, vacated or reversed, and is still in full force and effect.

### **Form 69**

#### **Allegation as to Jurisdiction of Foreign Court**

Said court [of sister state] had jurisdiction and was duly authorized and empowered by the laws of the State of \_\_\_\_\_ to issue said letters as aforesaid.

OR

Under the laws of the State of \_\_\_\_\_ said court [of sister state] had jurisdiction to hear and determine said action and to render said judgment.

### **Form 70**

#### **Allegation as to Filing Transcript of Judgment**

On or about \_\_\_\_\_, 20\_\_\_\_\_, a transcript of said judgment was duly filed and said judgment was duly docketed in the office of the clerk of the County of \_\_\_\_\_.

### **Form 71**

#### **Allegation as to Issuance of Execution**

An execution upon said judgment was duly issued, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the sheriff of the County of \_\_\_\_\_, where the said \_\_\_\_\_ [judgment debtor] then resided, a copy of which execution is hereto annexed, marked "Exhibit A", and made a part of this complaint.

OR

An execution upon said judgment was duly issued, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the sheriff of the County of \_\_\_\_\_, where the said \_\_\_\_\_ [judgment debtor] then resided, commanding him to satisfy said judgment out of the personal property of the said \_\_\_\_\_ in said county, or if sufficient personal property could not be found, out of the real property belonging to him on the day said judgment was rendered, or at any time thereafter.

## **Form 72**

### **Allegations as to Levy of Execution**

On or about \_\_\_\_\_, 20\_\_\_\_\_, the sheriff of \_\_\_\_\_ County as such levied upon and took possession of the said \_\_\_\_\_ under an execution issued upon a judgment recovered by one \_\_\_\_\_ against plaintiff in the \_\_\_\_\_ Court, County of \_\_\_\_\_.

## **Form 73**

### **Allegation Where Written Instrument Is Annexed to Complaint**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and defendant entered into a contract in writing, a true copy of which is hereto annexed, marked "Exhibit A".

#### **Form 74**

##### **Allegation That Cause of Action Was Assigned to Plaintiff**

[Allege facts constituting assignor's cause of action against defendant.]

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ [the assignor] duly assigned, for a valuable consideration, all his rights, title and interest in and to the contract hereinbefore specified [or \_\_\_\_\_ dollars of the amount due or to become due to him under said contract heretofore specified — or — his right of action against the defendant by reason of the foregoing facts], to the plaintiff by an instrument in writing signed by the said \_\_\_\_\_, a copy of which is annexed to this complaint and made a part hereof.

#### **Form 75**

##### **Allegation in Action on Contract Made by Agent of Defendant**

On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant, by one \_\_\_\_\_, his agent, duly authorized thereto, entered into an agreement with plaintiff whereby, \_\_\_\_\_ [continue in usual form].

#### **Form 76**

##### **Allegation in Action by Principal on Contract Made by His Agent**

On or about \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, plaintiff, through \_\_\_\_\_, his duly authorized agent, entered into an agreement with defendant whereby \_\_\_\_\_ [continue in usual form].

#### **Form 77**

##### **Allegation of the Execution of a Contract for the Sale of Real Property**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, plaintiff and defendant entered into a written agreement, of which a copy is hereto annexed, marked "Exhibit A", and made a part of this complaint, whereby it was mutually agreed that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff would sell and convey to the defendant by a good and sufficient warranty deed of conveyance, the following described real estate, to wit: [describe property].

### **Form 78**

#### **Allegation of Terms of Contract, Where no Copy Attached to Complaint**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, defendant entered into a contract with plaintiff whereby, in consideration of \_\_\_\_\_ [here allege money to be paid, services to be rendered, or other conditions to be performed by plaintiff], defendant agreed to \_\_\_\_\_ [here allege conditions to be performed by the defendant].

### **Form 79**

#### **Allegation of Terms of Contract, Where Copy Is Attached to Complaint**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and defendant entered into a written contract, a copy of which is hereto annexed, whereby it was mutually agreed that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff should sell and convey to the defendant by a good and sufficient warranty deed the premises known as No. \_\_\_\_\_, \_\_\_\_\_ Street in the City of \_\_\_\_\_, and the defendant should pay therefor the sum of \_\_\_\_\_, as follows: \_\_\_\_\_ on the execution of said agreement, \_\_\_\_\_ in cash upon the delivery of said deed, and \_\_\_\_\_ by the defendant executing and delivering to plaintiff a purchase money bond and mortgage, as more fully set forth in said contract.

## **Form 80**

### **General Allegation of Consideration**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a valuable consideration, defendant entered into an agreement with plaintiff wherein defendant agreed that \_\_\_\_\_ [state terms of agreement].

## **Form 81**

### **Allegation of Consideration Paid at Date of Contract**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ dollars then paid to him by plaintiff, defendant entered into an agreement with plaintiff wherein defendant agreed that \_\_\_\_\_ [state terms of agreement].

## **Form 82**

### **Allegation of Consideration Payable in the Future**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ dollars which plaintiff agreed to pay, defendant entered into an agreement with plaintiff wherein defendant agreed that \_\_\_\_\_ [state terms of agreement].

## **Form 83**

### **General Allegation of Due Performance by Plaintiff**

Plaintiff has duly performed all the conditions of said contract on his part.

## **Form 84**

### **Allegation of Tender of Performance**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly tendered to the defendant the sum of \_\_\_\_\_ dollars and demanded that defendant perform the conditions of said contract on his part, but the defendant wholly failed and refused to do so and still fails and refuses to do so.

## **Form 85**

### **Allegation of Tender of Performance by Plaintiff**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the office of \_\_\_\_\_, plaintiff was present and was ready, willing and able to perform the conditions of such contract on his part, that is, to pay to defendant the sum of \_\_\_\_\_ dollars [or to deliver to defendant the said \_\_\_\_\_, or as the case may be] and duly tendered payment [or delivery] thereof to defendant, and then and there demanded of defendant that he perform the conditions of said contract on his part, and particularly that the defendant \_\_\_\_\_ [allege concurrent conditions which the contract requires the defendant to perform], but defendant then refused and has ever since failed and refused to do so.

## **Form 86**

### **Allegation of Performance Except as Prevented by Impossibility**

Plaintiff has duly performed all the conditions of said contract on his part except that he failed to give notice of said accident to the defendant within \_\_\_\_\_ days after it occurred, as required by said contract, and the reason for plaintiff's failure to do so was that it was impossible for him to give notice to defendant within such time in that said accident rendered plaintiff unconscious and he remained unconscious for \_\_\_\_\_ days thereafter. Plaintiff duly gave notice of said accident to defendant as soon as reasonably possible after he regained consciousness, to wit, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



## **Form 87**

### **Allegation of Performance Except as Prevented by Defendant**

Plaintiff has duly performed all the conditions of said contract on his part except that \_\_\_\_\_ [state the acts of defendant preventing performance by the plaintiff, for example, "plaintiff did not complete the agreed services by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, because defendant prevented him from doing so in that defendant failed to procure the materials to be used by plaintiff in performing said services until the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_"].

## **Form 88**

### **Allegation of Performance Except as Waived by Defendant**

Plaintiff has duly performed all the conditions of said contract on his part except that he did not \_\_\_\_\_ [state particular conditions not performed, for example, "notify defendant of the delivery of the said \_\_\_\_\_, by registered mail, as agreed in said contract"], because defendant waived performance of said condition by plaintiff in that \_\_\_\_\_ [state particular facts constituting waiver, for example, "he advised plaintiff on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, that he had already learned of such delivery and that written notice thereof would be unnecessary"].

## **Form 89**

### **Allegation of Waiver of Performance by Defendant**

Plaintiff duly performed all the conditions of said contract on his part up to the time of the breach of said contract by defendant, as hereinafter more specifically provided, save and except only the stipulation to abstain totally from the use of intoxicating liquors during the continuance of said contract, and at the time of such breach by defendant the plaintiff was able, ready and

willing to perform all the stipulations and conditions upon his part, and would have performed the same except for said breach by defendant.

Plaintiff did not totally abstain from the use of intoxicating liquor during the continuance of said contract, but such use by plaintiff was not excessive and did not prevent or interfere with the due and full performance by plaintiff of all the other stipulations and conditions upon his part in said contract.

Defendant waived plaintiff's breach of the stipulation to abstain totally from the use of intoxicating liquors during the continuance of said contract; long prior to the completion of said manuscript, and its delivery to and acceptance by defendant, defendant had full knowledge and well knew of plaintiff's said use of intoxicating liquor during the continuance of said contract, but nevertheless acquiesced in and failed to object thereto, and did not terminate the contract on account thereof; with full knowledge of said breach by plaintiff, defendant continued to exact and require of plaintiff performance of all the other stipulations and conditions of said contract and treated the same as still in force, and continued to and did receive installments of manuscript under said contract, and continued to make and did make payments to plaintiff by way of advancements, and finally accepted and published said manuscript as aforesaid; at no time during the performance of said contract by plaintiff did defendant notify or intimate to plaintiff that defendant would insist upon strict compliance with said stipulation to abstain totally from the use of intoxicating liquor, or that defendant intended to take advantage of plaintiff's said breach, and on account and by reason thereof refuse to pay plaintiff the royalty stipulated in said contract; on the contrary, and with full knowledge of plaintiff's said use of intoxicating liquors, defendant repeatedly avowed and repeated to plaintiff that he was entitled to and would receive said royalty payments, and plaintiff believed and relied upon said representations, and in reliance thereon continued in the performance of said contract until the time of the breach thereof by defendant as hereinafter specifically alleged, and at all times during the writing of said treatise and after as well as before publication thereof as aforesaid, it was mutually understood, agreed and intended by the parties hereto that notwithstanding plaintiff's said use of intoxicating liquors,

he was nevertheless entitled to receive and would receive said royalty as the same accrued under said contract.

## **Form 90**

### **Allegation of Breach by Defendant**

The defendant failed and neglected to perform the conditions of said contract on his part in that he failed to \_\_\_\_\_ [state the particular terms of the contract which defendant failed to perform, for example, "pay plaintiff the said sum of \_\_\_\_\_ dollars, or any part thereof, although payment thereof was duly demanded by plaintiff"].

## **Form 91**

### **Breach of Contract in Writing**

[Caption]

The plaintiff, by his attorney, for his complaint against the defendant, alleges:

1. That at \_\_\_\_\_, on or about \_\_\_\_\_, 20\_\_\_\_\_ the defendant [or "defendants"] for a valuable consideration, entered into an agreement in writing with plaintiff, a copy of which is hereto annexed, marked "Exhibit A" and made a part of this complaint [or, where copy of contract is not annexed, substitute after word "plaintiff" a clause such as "wherein and whereby it was agreed between plaintiff and defendant that" etc., "stating the material parts of the contract so far as they relate to the cause of action sued on"], wherein the defendant agreed to \_\_\_\_\_ [state legal effect of contract].

2. That plaintiff has duly performed all the conditions of such agreement on his part [or state the facts to show performance on the part of plaintiff]. [If performance by plaintiff waived or excused, state facts to show such waiver or excuse.]

3. That defendant has failed and neglected to \_\_\_\_\_ [state breach of contract relied on. If breach is failure to pay money, insert the words “pay the said sum of \_\_\_\_\_ dollars, or any part thereof, although payment thereof has been duly demanded by plaintiff”].

4. That plaintiff has been damaged in the sum of \_\_\_\_\_ dollars by reason of the breach of the agreement aforesaid.

[Prayer for relief]

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_ [Attorney's address]

Telephone No. \_\_\_\_\_

[Verification]

## Form 92

### Breach of Contract in Writing—Another Form

[Caption and introductory paragraph]

1. That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant and the plaintiff entered into an agreement in writing, dated that day, of which a copy is hereto annexed, marked “Exhibit A,” and made part of this complaint.

2. That therein the defendant on his part agreed \_\_\_\_\_ [specify in legal effect what defendant agreed to do].

3. In consideration of which plaintiff on his part promised and agreed to \_\_\_\_\_.

4. That the plaintiff on his part has duly performed all the terms and conditions of said agreement by him to be performed [or, allege that the plaintiff on his part has ever been and still is ready and willing to perform said agreement].

5. That the defendant has not performed said agreement in this, to wit:  
\_\_\_\_\_.

6. That by reason of such breaches the plaintiff has sustained damages in the sum of \_\_\_\_\_ dollars.

[Prayer for relief]

\_\_\_\_\_  
\_\_\_\_\_ [Attorney's address]

Telephone No. \_\_\_\_\_

[Verification]

## Form 93

### Breach of an Express Contract

[Caption and introductory paragraph]

1. That at all the times hereinafter mentioned the plaintiff was and still is a resident of the Borough of Manhattan, City, County and State of New York.

2. That heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff and one \_\_\_\_\_ entered into an agreement whereby the said \_\_\_\_\_ then and there promised and agreed to pay to the plaintiff the sum of \_\_\_\_\_, each and every month during her natural life, in consideration of the plaintiff's promise, then and there made, to give up and isolate herself from her friends, to give up the position she then had, abandon all other callings and forms of livelihood and thenceforth, to consent to subject herself to the control of the said

\_\_\_\_\_, and the cures and treatments to be administered to her by and under the supervision and direction of the said \_\_\_\_\_, for the serious and dangerous illness and ailment and diseases and grievous bodily infections, from which, at the said time, the plaintiff was suffering and from which for a period of about six years prior thereto, the plaintiff had been suffering, as a direct result and consequence of the dangerous injections, inoculations and germs administered to and introduced into her body and system by the said \_\_\_\_\_ during a period of about six years prior to about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

3. That thereafter, and after the making of the said agreement, the plaintiff did, at all times, upon the demand or request of the said \_\_\_\_\_, consent to and subject herself to, the control of the said \_\_\_\_\_ and to the attempted and purported cures and treatments administered to her by and under the supervision and direction of the said \_\_\_\_\_ for the said illness, ailments, diseases and bodily afflictions resulting as aforesaid from the said injections, inoculations and germs.

4. That the plaintiff duly performed all the terms and conditions on her part to be performed under the said agreement.

5. That the said \_\_\_\_\_ has breached the said agreement and the terms thereof in that, among other things, since the month of \_\_\_\_\_, 20\_\_\_\_\_, he has failed and refused to pay to the plaintiff the said sum of \_\_\_\_\_ a month each and every month during the remainder of the plaintiff's natural life, pursuant to the terms of the said agreement or any part thereof, although the plaintiff has duly demanded the said payment from him.

6. That since the making of the aforesaid agreement, and as a result of isolating herself from her friends and giving up her occupation and livelihood, and as a result furthermore of the said breach of the said agreement and the nonpayment of the said monthly payments, the plaintiff has suffered and still suffers great mental anguish and pain.

7. That as a result of the said attempted and purported cures and treatments administered to the plaintiff by and under the supervision and direction of the said \_\_\_\_\_, and as a result also of the said breach of the said agreement, the plaintiff has suffered and still suffers great and serious bodily pain and mental anguish.

8. That by reason of all of the foregoing, the plaintiff has been damaged to the extent of \_\_\_\_\_.

WHEREFORE the plaintiff demands judgment against the defendant in the sum of \_\_\_\_\_, with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_, together with the costs and disbursements of this action.

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_ [Attorney's address]

Telephone No. \_\_\_\_\_

[Verification]

#### **Form 94**

#### **Allegation of Breach by Defendant in That he Failed to Pay the Installments of Principal, Interest, Insurance, and Taxes**

The defendants have made default in the terms and conditions of said contract in that they failed to pay the installment of principal and interest due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and they have also failed to pay the installment of principal and interest due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. Defendants have also failed to pay the insurance premiums due and payable upon the insurance on the building on the land described in paragraph \_\_\_\_\_ of this complaint, and plaintiff was required to and did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, pay the said insurance

premiums, being the sum of \$\_\_\_\_\_; defendant also failed to pay the taxes levied and assessed against said land, and plaintiff was required to and did pay the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, being the sum of \$\_\_\_\_\_.

#### **Form 95**

##### **Allegations as to Nonpayment**

No part of said sum has been paid, although payment thereof has been duly demanded.

#### **Form 96**

##### **Allegations as to Partial Payment**

No part of said sum has been paid, except the sum of \_\_\_\_\_ dollars paid on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the balance of \_\_\_\_\_ dollars remains due and owing to plaintiff.

#### **Form 97**

##### **Allegations as to Demand for Payment**

Before the commencement of this action [or “on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_”] plaintiff demanded payment of said sum of \_\_\_\_\_ dollars but that defendant has refused [or “failed”] to pay the same or any part thereof.

#### **Form 98**

##### **Allegation of Demand**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly demanded of defendant that he \_\_\_\_\_ [allege particulars of demand].



## **Form 99**

### **Allegations Anticipating and Avoiding Defense of Payment**

On or about \_\_\_\_\_, 20\_\_\_\_\_, defendant delivered to plaintiff as in payment for \_\_\_\_\_, his promissory note due on \_\_\_\_\_, 20\_\_\_\_\_; said note was duly presented for payment to defendant on the day of its maturity but the same was not paid, and is now in plaintiff's possession and will be produced and surrendered at the trial of this action.

## **Form 100**

### **Allegations as to Agreement to Pay in Specific Property**

In payment and consideration of said services to be performed by plaintiff, defendant agreed to assign and deliver to plaintiff \_\_\_\_\_ shares of the common stock of \_\_\_\_\_ Corp.

## **Form 101**

### **Allegations in Action to Recover Liquidated Damages**

It was provided in said contract that if [specify the breach for which liquidated damages are payable], defendant would pay to plaintiff the sum of \_\_\_\_\_ dollars as liquidated damages, and not as a penalty, for his violation of said contract, and that upon such violation said sum of \_\_\_\_\_ dollars should become immediately due and payable from defendant to plaintiff.

## **Form 102**

### **Allegation as to Loss of Profit on Resale**

By reason of the defendant's refusal to complete the transaction and to convey the premises by him contracted to be conveyed, plaintiff has been damaged in the sum of \$\_\_\_\_\_

due to the fact the plaintiff had agreed to resell the said property to another party, the before-mentioned sum being the difference between the contract price and the price the plaintiff was to sell to the other party, and plaintiff has incurred an additional expense of \$\_\_\_\_\_ for attorney's fees in connection with said transaction and has expended the sum of \$\_\_\_\_\_ for broker's commissions.

### **Form 103**

#### **Allegations as to Revival of Debt by New Promise**

[The following paragraph may be necessary where defendant's debt has been discharged in bankruptcy or barred by the statute of limitations.]

Thereafter on or about \_\_\_\_\_, 20\_\_\_\_\_, defendant promised in writing that he would pay such indebtedness to the plaintiff.

### **Form 104**

#### **Allegations as to Custom of Trade or Business**

At the time when said agreement was made, there was a general custom and usage in the \_\_\_\_\_ trade [or "profession," or as the case may be], well understood by both the plaintiff and the defendant, to the effect that \_\_\_\_\_.

In accordance with such custom, \_\_\_\_\_ [state facts in regard to acts done].

### **Form 105**

#### **Allegation of Money Loaned, Payable on Demand**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff loaned defendant \$\_\_\_\_\_ at his request and upon his promise to repay the same upon demand with interest at the rate of \_\_\_\_\_% per annum.

## **Form 106**

### **Allegation as to Plaintiff's Reliance Upon Defendant's Representation**

In reliance upon defendant's representations aforesaid, and in ignorance of the facts so concealed by defendant, plaintiff paid to \_\_\_\_\_, Inc., the sum of \$\_\_\_\_\_ for an assignment of said contract, and thereafter purchased said premises from said \_\_\_\_\_ pursuant to said contract for the price of \$\_\_\_\_\_ stipulated in said contract.

## **Form 107**

### **Allegation as to the Execution of a Negotiable Instrument**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant made and delivered to plaintiff, for value received, his promissory note in writing, dated on that day, whereby he promised to pay to the order of the plaintiff, at \_\_\_\_\_ the sum of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, [or "\_\_\_\_\_ months after date", or "on demand", or as the case may be] with interest at the rate of \_\_\_\_\_% per annum.

## **Form 108**

### **Allegations Incorporating Schedule of Goods Sold in Accordance With CPLR 3016(f).**

A schedule of the merchandise so sold and delivered to defendant, and containing the items of plaintiff's claim and the agreed price of each item, is hereto annexed, marked "Exhibit A", and made a part of this complaint.

## **Form 109**

### **Allegations Where Seller Fails to Deliver and Purchaser Buys in Open Market**

Within a reasonable time after the defendant failed to ship or deliver said goods, plaintiff purchased similar goods in the open market at the lowest price for which he was able to purchase the same, and paid therefor the sum of \$\_\_\_\_\_, which was the sum of \$\_\_\_\_\_ in excess of the price for which defendant agreed to sell and deliver said goods to plaintiff.

## **Form 110**

### **Complaint on Account Stated; Copy Attached as Exhibit**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an account was stated between the plaintiff and the defendant, a copy of which is hereto annexed, marked "Exhibit A" and made a part of this complaint; upon such statement a balance of \_\_\_\_\_ dollars was found and agreed to be due to the plaintiff from the defendant.

2. The defendant then agreed to pay the same, but no part thereof has been paid.

[Demand for judgment, endorsement, address, telephone number and verification.]

## **Form 111**

### **Complaint on Account Stated; No Copy of Account Attached to Complaint**

[Caption and introductory paragraph]

1. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff had loaned to the defendant various sums of money and had received from the defendant various partial repayments thereof, and on or about said date an account was stated between plaintiff and defendant upon which a balance of \_\_\_\_\_ dollars was found to be due to the plaintiff from the defendant, which sum the defendant promised and agreed to pay, but no part thereof has been paid.

[Demand for judgment, endorsement, address, telephone number and verification.]

**Form 112**

**Complaint in Action on Account Stated by Operation of Law; Statement Receiver by Defendant and Accepted Without Objection**

[Caption and introductory paragraph]

1. At all the times hereinafter mentioned the plaintiffs were and still are copartners in the City of \_\_\_\_\_ as brokers, under the firm name and style of \_\_\_\_\_.

2. At various times during the years 20\_\_\_\_\_ and 20\_\_\_\_\_, plaintiffs were employed by defendant, as brokers, to make purchases and sales of stock and securities for the account of and at the risk of defendant on commission.

3. At various times during the period aforesaid these plaintiffs purchased and sold for the defendant under said employment, at his request and for his account and risk, various stocks and securities, of which purchases and sales defendant was duly notified.

4. In making such purchases and sales as aforesaid plaintiffs, at the risk of the defendant, advanced large sums of money which with their commissions and other expenses incurred therein amounted in the aggregate, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the sum of \_\_\_\_\_ dollars over and above all sums received from defendant or on his account.

5. From time to time during their said employment these plaintiffs made and rendered to the defendant accurate statements of the transactions between the defendant and these plaintiffs, which statements showed the whole amount paid, laid out and expended by plaintiffs for the defendant at his request and for his benefit, together with the amount of purchases and sales made by plaintiffs for defendant's account with the commissions thereon and other charges and expenses made and incurred therein as well as all moneys received from the defendant or for

which he was entitled to credit, which statements were received by the defendant and retained by him without objection being made thereto or any item thereof.

6. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a full, just and true account was made and stated between the defendant and these plaintiffs which showed a balance of \_\_\_\_\_ dollars due to these plaintiffs from defendant, over and above all sums received from defendant and for which he was entitled to credit, which said account was delivered to and received and accepted by defendant and by him retained without objection being made thereto or to any item thereof.

7. By reason of the premises the defendant is indebted to these plaintiffs in the sum of \_\_\_\_\_ dollars together with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_.

8. Defendant has neglected and refused to pay these plaintiffs, although due demand has been made for payment.

[Demand for judgment, endorsement, address, telephone number and verification.]

### **Form 113**

#### **Complaint on Account Stated; Attorney's Fees and Disbursements**

[Caption and introductory paragraph]

1. At all times hereinafter mentioned plaintiff was and still is an attorney and counselor at law, duly admitted to practice as such in the State of New York.

2. Between the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff herein performed work and rendered services to the defendant above named, as attorney and counselor at law, and in the course of performing such services, advanced and laid out various sums of money for and on behalf and for the benefit of the said defendant.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an account was duly stated between the plaintiff and the defendant for such work, labor and services, and money advanced, as aforesaid, and upon such account stated there was found to be due to the plaintiff from the defendant the sum of \_\_\_\_\_ dollars, which the defendant duly promised and agreed to pay.

4. No part of the said sum has been paid by the defendant to the plaintiff except the sum of \_\_\_\_\_ dollars on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, leaving a balance due and unpaid to the plaintiff herein of the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

#### **Form 114**

#### **Complaint in Action on Account Stated; Employer Against Salesman, for Amounts Drawn in Excess of Commissions Earned**

[Caption and introductory paragraph]

1. At all the times hereinafter mentioned the plaintiff was engaged in the buying and selling and delivery of coal at wholesale and retail in the City of \_\_\_\_\_, under the name and style of \_\_\_\_\_.

2. Heretofore, and on or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff entered into a contract in writing with defendant, by which defendant agreed to sell coal for the plaintiff exclusively for a period of one year, which was to begin as of the date of \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is hereto annexed, marked "Exhibit A," and made a part of this complaint.

3. Under said agreement, "Exhibit A," defendant entered into the employment of this plaintiff, and continued in said employment during the year 20\_\_\_\_\_, and thereafter the plaintiff and defendant by an agreement in writing signed by plaintiff and defendant, agreed to and did renew said agreement, "Exhibit A," for a further term of one year from

\_\_\_\_\_, 20\_\_\_\_\_, upon the same terms and conditions in all respects, and said defendant did continue in said plaintiff's employment under the said agreement, until \_\_\_\_\_, 20\_\_\_\_\_.

4. During said period, the defendant from time to time drew, as he desired, divers sums of money, on account of commissions earned, and to be earned and to be received by him under said agreement.

5. On or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff and defendant had a settlement of all their transactions arising out of their business relations, as well as under said agreement, "Exhibit A," up to \_\_\_\_\_, 20\_\_\_\_\_, and a dispute then arose as to the balance then due from said defendant to this plaintiff, and the accounts of said parties were then stated, whereby in settlement of said account it was then and there agreed by and between this plaintiff and defendant that there was due and owing from said defendant to this plaintiff on that day the sum of \_\_\_\_\_ dollars, which said defendant then and there promised and agreed to pay.

6. On \_\_\_\_\_, 20\_\_\_\_\_, defendant left the plaintiff's employ.

7. Between \_\_\_\_\_, 20\_\_\_\_\_, and \_\_\_\_\_, 20\_\_\_\_\_, the sales made and contracted to be made by the defendant amounted to the sum of \_\_\_\_\_ dollars, upon which defendant's commissions pursuant to said agreement amounted to \_\_\_\_\_ dollars, but during said period, defendant drew moneys from time to time in the total amount of \_\_\_\_\_ dollars, leaving a balance due and owing plaintiff from defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, amounting to \_\_\_\_\_ dollars, no part of which has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 115**

**Complaint on Account Stated; Agreement to Deliver Corporate Bonds in Payment**



[Caption and introductory paragraph]

1. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff rendered and performed certain work, labor and services for and on account of and for the benefit of the defendant herein.

2. On or about the said \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an account was stated and had between the plaintiff and the defendant and, upon said statement and accounting, there was found to be due and owing by the defendant to the plaintiff, the sum of \_\_\_\_\_, which sum the defendant then and there promised and agreed to pay to the plaintiff in \_\_\_\_\_% first mortgage bonds of \_\_\_\_\_ Company, which bonds were due on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ and which bonds were alleged by the said defendant to be of the value of \$\_\_\_\_\_.

3. The defendant promised and agreed to deliver and assign the said bonds to the plaintiff but has neglected and refused to do so.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 116**

### **Complaint on Account Stated; Liquidating Partner after Dissolution of Partnership**

[Caption and introductory paragraph]

1. At all times hereinafter mentioned, and until the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and one \_\_\_\_\_ were partners, doing business under the firm name and style of \_\_\_\_\_.

2. Defendant is a domestic corporation, duly organized and existing under the laws of the State of New York and having its principal offices at \_\_\_\_\_.

3. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said partnership had sold to the defendant large quantities of \_\_\_\_\_, and had received from the defendant various payments on account.

4. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said partnership was dissolved and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an account was stated between said partnership and the defendant, a copy of which is hereto annexed, marked "Exhibit A", and made a part of this complaint, and it was then found and agreed that the defendant was indebted to said partnership in the sum of \_\_\_\_\_ dollars, which the defendant promised and agreed to pay as soon as it had received payment of certain accounts then owing to it by certain other persons and corporations, to wit, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

5. On information and belief said accounts have been paid to defendant in full.

6. Upon the dissolution of said partnership, and by the terms of the dissolution agreement, the plaintiff was made liquidating partner and was duly authorized to collect all moneys due and owing to said partnership, and plaintiff has duly notified defendant thereof.

7. No part of the said sum due from the defendant to said partnership has been paid, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 117**

### **Complaint in Action by Stockbroker on Account Stated**

[Caption and introductory paragraph]

1. Heretofore and prior to and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff, together with \_\_\_\_\_ and \_\_\_\_\_ were co-partners engaged in the business of bankers and brokers

in the City of \_\_\_\_\_, under the firm name and style of \_\_\_\_\_ and Co.

2. Thereafter and prior to the month of \_\_\_\_\_, 20\_\_\_\_\_, said \_\_\_\_\_ retired from such firm and said \_\_\_\_\_ and the plaintiff acquired and succeeded to all his interests in the said firm and continued to conduct the said business under the said firm name until on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ when \_\_\_\_\_ died and the plaintiff is now the sole surviving partner of the said firm.

3. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant employed the firm of \_\_\_\_\_ and Co. to buy and sell certain stocks and bonds for him and at his risk upon commission, and promised and agreed to pay said firm all sums advanced by the firm in the purchase thereof and also all commissions for the purchase and sale thereof. The said firm did purchase and sell such stocks and bonds for the defendant and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the account between the said firm and the defendant was duly stated and it was agreed that the defendant was indebted to the said firm in the sum of \$\_\_\_\_\_.

4. No part of the sum of \$\_\_\_\_\_ has been paid by the defendant to the said firm although at the time the account was stated, the defendant agreed to make payment of said sum of \$\_\_\_\_\_ to the firm.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 118**

### **Complaint in Action to Correct Account Stated**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, an account was stated between plaintiff and defendant, relating to

certain dealings theretofore had, upon which there was found due to the plaintiff the sum of \_\_\_\_\_ dollars, which the defendant thereupon promised to pay the plaintiff.

2. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff ascertained that the said account was by mistake on his part erroneously stated, in that, \_\_\_\_\_ [specify the error showing it to be of fact, as for example “an item, the sum of \_\_\_\_\_ dollars for goods, wares and merchandise which were sold and delivered by the plaintiff to the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, had been inadvertently omitted in the statement of said account, and should have been included, as part of the dealings and transactions intended to be included therein”].

3. Immediately upon discovering said error and omission and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff informed the defendant of the said error and demanded a restatement of said account, and requested the defendant to correct the same, which he refused and still refuses to do.

4. Said account should be corrected by \_\_\_\_\_ [state how, for example, “by adding the omitted item aforesaid to the charges against the defendant, and making the balance due to the plaintiff thereon the sum of \_\_\_\_\_ dollars instead of the sum of \_\_\_\_\_ dollars, as now erroneously appears thereby”].

WHEREFORE, the plaintiff demands judgment against the defendant:

1. That said error in said account stated may be corrected as above set forth.

2. That he have judgment against the defendant for the sum of \_\_\_\_\_ dollars with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, with the costs and disbursements of this action.

[Endorsement, address, telephone number, and verification.]

**Complaint in Action By Contractor On Account Stated and For Unpaid Labor, Material, Services, and Improvements**

[Caption and introductory paragraph]

FIRST CAUSE OF ACTION

1. That plaintiff, \_\_\_\_\_, at all times hereinafter mentioned was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business situated in the County of \_\_\_\_\_ and the State of New York.
2. That, upon information and belief, the defendants, \_\_\_\_\_ and \_\_\_\_\_, at all times hereinafter mentioned were, and remain, residents of the State of New York.
3. Commencing on or about \_\_\_\_\_, 20\_\_\_\_\_, and continuing through and including \_\_\_\_\_, 20\_\_\_\_\_, defendants repeatedly requested plaintiff to perform certain work, labor and services and otherwise make improvements to, on, and about property owned by the defendants and located in the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of New York.
4. That plaintiff has substantially and completely performed all of the above-described and requested work, labor, services and improvements to the defendants' property.
5. To date, the total agreed price, and fair and reasonable value, of the work, labor, services and improvements described above is \$\_\_\_\_\_.
6. To date, on account of the above-described work, labor, services, and improvements, defendants have paid plaintiff a total of \$\_\_\_\_\_.
7. Despite due demand, defendants have failed, neglected, and/or refused to pay plaintiff the balance due on account of the aforesaid work, labor, services and improvements, of \$\_\_\_\_\_.

## SECOND CAUSE OF ACTION

8. Between \_\_\_\_\_, 20\_\_\_\_\_, and \_\_\_\_\_, 20\_\_\_\_\_, at least two statements of account were rendered to defendants by plaintiff on account of the above-described work, labor, services and improvements.

9. To date, defendants have failed, neglected, and/or refused to respond to the aforesaid statements of account.

10. By reason of the above, an account has been stated by plaintiff to defendants in the sum of \$\_\_\_\_\_.

## THIRD CAUSE OF ACTION

11. Plaintiff repeats and realleges paragraphs 1 through 10 as though set forth at length herein.

12. By reason of the above, defendants have been unjustly enriched in the sum of \$\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### Form 120

#### **Complaint in Action by Hospital To Recover Money Owed For Professional Services Rendered by Hospital in Medical Treatment of Deceased Patient**

[Caption and introductory paragraph]

1. Plaintiff \_\_\_\_\_ Memorial Hospital is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in \_\_\_\_\_, Florida, and is authorized to operate a hospital under the laws of the State of Florida.

2. Upon information and belief, defendant \_\_\_\_\_ and defendant \_\_\_\_\_, are the President and Treasurer, respectively, of the Health and Welfare Fund of Hospital, Surgical, Dental, Optical and Major Medical Plan of the United

\_\_\_\_\_ Workers Union Local \_\_\_\_\_ (hereinafter referred to as the "Fund"), an unincorporated association with its principal place of business at \_\_\_\_\_ Avenue, \_\_\_\_\_, New York, and is engaged in the business of administering health insurance plans.

3. Upon information and belief, \_\_\_\_\_ was a resident of \_\_\_\_\_, New York, County of \_\_\_\_\_ and died on or about April 9, 1990.

4. \_\_\_\_\_ was granted Limited Letters of Administration for the Estate of \_\_\_\_\_ on January 10, 1991 by the \_\_\_\_\_ County Surrogate's Court.

5. Upon information and belief, the Fund issued a policy of insurance to \_\_\_\_\_, covering her and her husband, \_\_\_\_\_, for hospital and major medical benefits.

6. On \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ executed an Admission Agreement with \_\_\_\_\_ Memorial Hospital (hereinafter referred to as the "Hospital"), whereby he agreed to be liable for all hospitalization charges in the event such charges were not covered by insurance benefits.

7. Mr. \_\_\_\_\_ also authorized payment directly to the Hospital of the insurance hospital benefits and major medical benefits due to him.

8. On or about March 20, 1990, the Hospital obtained approval from the Fund for coverage of benefits for Mr. \_\_\_\_\_ for fourteen (14) days of stay at 100% coverage.

9. From March 20, 1990 through April 9, 1990, \_\_\_\_\_ was treated at the Hospital for rheumatoid lung disease.

10. The Hospital rendered professional services in the medical treatment of Mr. \_\_\_\_\_ at the request of Mr. \_\_\_\_\_, and the reasonable value of such services was, 1,221.14.

11. On or about April 22, 1990, the Hospital billed the Fund for the services provided to Mr. \_\_\_\_\_ from March 20, 1990 through April 9, 1990 for 1,221.14.

12. Payment has been demanded from the Fund, but no amount has been paid.

#### FIRST CAUSE OF ACTION

13. Plaintiff repeats and realleges the allegations in paragraphs 1-12 as if set forth fully herein.

[Demand for judgment, endorsement, address, telephone number, and verification.]

14. Pursuant to the Admission Agreement executed with the Hospital, \_\_\_\_\_ is liable to the Hospital for the services provided to him, from March 20, 1990 through April 9, 1990; totaling 1,221.14.

15. No amount of that sum has been paid to the Hospital.

16. Wherefore, \_\_\_\_\_, as Personal Representative and Limited Administratrix of the state of \_\_\_\_\_, is liable to the Hospital for 1,221.14 plus interest from April 9, 1990.

#### SECOND CAUSE OF ACTION

17. Plaintiff repeats and realleges the allegations in paragraphs 1-16 as if set forth fully herein.

18. Pursuant to the policy of insurance issued by the Fund to Mrs. \_\_\_\_\_, which covered the hospitalization and medical services provided to Mr. \_\_\_\_\_ at the Hospital from March 20, 1990 through April 9, 1990, the Fund is liable to the hospital for 1,221.14 plus interest from April 9, 1990.

19. Plaintiff demanded said amount, and defendant refused to pay the same.

#### THIRD CAUSE OF ACTION

20. Plaintiff repeats and realleges the allegations in paragraphs 1-19 as if set forth fully herein.



21. On or about April 22, 1990, a full, just and true account was made and stated between the Hospital and the Fund which showed a balance of 1,221.14 due from the Fund, which said account was delivered to and received and accepted by the Fund and retained without objection.

22. Accordingly, the Fund is liable to plaintiff for 1,221.14 plus interest from April 22, 1990.

23. The Fund has neglected and refused to pay this amount to the Hospital, although due demand has been made for payment.

## **Form 121**

### **Complaint By Banking Corporation to Recover Money Owed for Credit Card Charges**

[Caption and introductory paragraph]

1. Plaintiff was and is a national banking corporation organized and existing under the laws of the United States of America with its principal office and place of business at \_\_\_\_\_ Avenue, \_\_\_\_\_, New York.

2. On information and belief, defendants reside at \_\_\_\_\_ Avenue, \_\_\_\_\_, New York.

3. Prior to the commencement of this action, this account was assigned to plaintiff by the \_\_\_\_\_ Bank & Trust Co. for a good and valuable consideration and notices were given to defendants of plaintiff's rights to payments.

4. At the defendants' request, plaintiff's assignor issued a \_\_\_\_\_ Credit Card, Account Number \_\_\_\_\_ to defendants on or about \_\_\_\_\_, 20\_\_\_\_\_ whereby defendants agreed to pay to plaintiff or plaintiff's assignor in consideration for loans granted and/or goods, wares and merchandise purchased or services rendered to the defendant by use of said credit card including service charges and/or late charges, if any, within the past four years. See Exhibit A attached hereto.

5. The plaintiff's assignor's Credit Card Agreement provides for the "addition of attorneys' fees, to the extent permitted by law". It is requested that the attorney fees be fixed at 20% of the balance due.

6. On information and belief, thereafter, there were charges made by defendants by use of said credit card, and there is now due from defendant who are in default the sum of \$ \_\_\_\_\_. See Exhibit B attached hereto and made a part hereof.

7. Plaintiff requests attorney fees of \$ \_\_\_\_\_ for a total of \$ \_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 122**

### **Complaint On Account Stated for Goods, Services and Wares Delivered**

[Caption and introductory paragraph]

1. That the plaintiff is and was at all times material to this cause of action a corporation organized and existing pursuant to the laws of the State of New York with offices to do business in the County of \_\_\_\_\_ and State of New York.

2. [Allege status of defendants].

3. That prior hereto the plaintiff delivered to the defendants the special instance and request of the defendants certain goods, wares and services for an agreed price and upon an open account.

4. That at various times during the delivery of such goods, war and services and on numerous occasions thereafter, accounts were stated between the plaintiff and the defendants; that there is presently due and owing from the defendants to the plaintiff for such goods, wares and services delivered, after the deduction of all amounts paid by the defendants to the plaintiff in partial satisfaction thereof the sum of \$ \_\_\_\_\_ with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_, representing the agreed price and reasonable value of such services delivered by the plaintiff and to the the deduction of all payments made by the defendants in partial satisfaction thereof.

5. That an account was stated between the plaintiff and the defendants in the amount of \$ \_\_\_\_\_ with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 123**

#### **Allegations in Action by Assignee**

[Caption and introductory paragraph]

[State in separate paragraphs the cause of action sued on the same as if there had been no assignment of the cause of action.]

5. Heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_, duly assigned the contract hereinbefore specified and all his rights, title and interests thereto to the plaintiff [by an instrument in writing signed by the said \_\_\_\_\_, a copy of which is annexed to this complaint and made a part hereof].

6. Written notice of the said assignment was given to the defendant by the plaintiff on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number and verification.]

### **Form 124**

#### **Allegation that Assignment Has Been Consented to**

The said assignment was duly consented to by the defendant, as required by the contract hereinbefore set forth, by an instrument in writing duly made and executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is annexed hereto and made a part hereof.

### **Form 125**

### **Allegation of Assignment of Moneys Due Under a Contract**

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ duly assigned, transferred and set over unto the plaintiff, all its rights, title and interest in and to the moneys due and to become due under the aforesaid contract, and the plaintiff is now the owner and holder of said claim.

### **Form 126**

### **Complaint in Action by Assignee of Judgment**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the \_\_\_\_\_ Co. duly commenced an action against the defendant in the \_\_\_\_\_ Court, County of \_\_\_\_\_ and State of New York, by the service of a summons and complaint upon the defendant and thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ such proceedings were duly had in such action and a judgment was duly given by the said court against the defendant for the sum of \_\_\_\_\_, with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, amounting in all to the sum of \$\_\_\_\_\_ plus the sum of \$\_\_\_\_\_ costs and disbursements making a total sum of \$\_\_\_\_\_.

2. The defendant took no appeal from the said judgment and the time to do so has expired.

3. Heretofore and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a valuable consideration, the \_\_\_\_\_ Co., by an instrument in writing, duly assigned, transferred and set over to the plaintiff, all its rights, title and interest in and to the aforesaid judgment and claim against the defendant and the plaintiff is and has been since the said date the lawful owner and holder thereof.

4. Payment of said judgment was duly demanded by the \_\_\_\_\_ Co. prior to the aforesaid assignment and was duly demanded by the plaintiff after the said assignment but no part of said judgment has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 127**

### **Complaint by Payee Against Acceptor of Bill of Exchange; Copy of Bill Included in Complaint**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, one \_\_\_\_\_ drew his draft or bill of exchange directed to the defendant and delivered the same to the plaintiff for value; the following is a copy of said draft or bill of exchange: \_\_\_\_\_ [insert copy].

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant accepted said bill of exchange, and the following is a copy of said acceptance: \_\_\_\_\_ [insert copy].

3. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly presented the said draft or bill of exchange to the defendant for payment but the defendant has refused and neglected to make payment.

4. Plaintiff is the owner and holder of said draft or bill of exchange.

5. There is now due and unpaid on the said bill the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 128**

**Complaint by Payee Against Acceptor of Bill of Exchange Where Legal Effect of Bill Is Pleaded**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ duly drew his certain bill of exchange in writing dated on that day directed to the defendant, \_\_\_\_\_, at \_\_\_\_\_, and thereby ordered the defendant to pay to the order of the plaintiff \_\_\_\_\_ dollars, \_\_\_\_\_ days after said date [or “three days after sight of said bill of exchange,” or otherwise as the case may be], and duly delivered the same to this plaintiff for value received.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_, the defendant, \_\_\_\_\_ duly accepted said bill.

3. Thereafter and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly presented said bill of exchange for payment and payment thereof was refused by the defendant, and no part thereof has been paid [in a proper case add “except the sum of \_\_\_\_\_ dollars, paid on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_”].

4. Plaintiff is the owner and holder of said bill of exchange.

5. There is now due and unpaid on the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 129**

**Complaint by Payee of Bill of Exchange Against Acceptor for Honor**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, A duly drew and delivered to the plaintiff his bill of exchange in writing dated on that day and directed to B, and thereby ordered B to pay to the order of this plaintiff the sum of \_\_\_\_\_ dollars, \_\_\_\_\_ days after sight of said bill, for value received, and plaintiff is now the owner and holder thereof.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, said bill was duly presented to B for acceptance, but B refused to accept the same, of all of which due notice was thereupon given to A and said bill was thereupon duly protested for nonacceptance.

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, with plaintiff's consent, the defendant duly accepted said bill for the honor of A.

4. At the time said bill was payable by the terms thereof, the same was duly presented for payment to B, but B failed and refused to pay the same and it was thereupon duly protested for nonpayment, of all of which due notice was given to the defendant and to the said A.

5. Plaintiff is the owner and holder of said bill, no part of which has been paid.

6. There is now due and unpaid on the said bill the sum of \$\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 130**

### **Complaint by Payee for Breach of Contract to Accept Bill of Exchange**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant, for value, unconditionally promised in writing to

accept certain drafts to the amount of \_\_\_\_\_ dollars to be drawn by \_\_\_\_\_, as drawers, on him, the defendant, as drawee.

2. In pursuance of said unconditional promise the said \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, drew their certain draft or bill on the defendant, of which the following is a copy: \_\_\_\_\_.

3. The plaintiff, relying upon the faith of the unconditional promise of defendant to accept the said bill, received the same for a valuable consideration and paid therefor the sum of \_\_\_\_\_ dollars and is now the owner and holder of said bill.

4. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said bill was duly presented to the defendant for acceptance and payment but defendant declined and refused to accept or pay said bill [whereupon said bill was duly protested for nonacceptance, at a cost of \_\_\_\_\_ dollars which plaintiff was required to pay], and notice of said presentment, nonacceptance and nonpayment was duly given to \_\_\_\_\_.

5. Said bill remains wholly unpaid and there is now due and owing thereon the sum of \_\_\_\_\_ dollars, with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 131**

### **Complaint in Action on Nonnegotiable Order**

[Caption and introductory paragraph]



1. Upon information and belief that at all the times hereinafter mentioned the defendant was and still is a corporation, organized and existing under the laws of the state of \_\_\_\_\_.

2. That at all the times hereinafter mentioned, R. T. and A. T. were engaged in business as copartners under the firm name and style of \_\_\_\_\_.

3. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ made and delivered to plaintiff an order, of which the following is a copy [copy of order].

4. Upon information and belief that the defendants duly accepted said order and promised to pay said sum to plaintiff from the first money due \_\_\_\_\_ on account of the said agreement existing between \_\_\_\_\_ and the defendant.

5. Upon information and belief that the payment of said \_\_\_\_\_ was postponed and extended by said \_\_\_\_\_ and the plaintiff herein to the second payment due on account of the said agreement existing between \_\_\_\_\_ and the defendant, on or about \_\_\_\_\_, \_\_\_\_\_.

6. Upon information and belief that the said postponement and extension to said second payment, due and payable on or about \_\_\_\_\_, on account of the said contract between said \_\_\_\_\_ and defendant, was accepted by the defendant.

7. Upon information and belief that thereafter, to wit, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the aforesaid second payment from the said \_\_\_\_\_ to the said \_\_\_\_\_ became due and payable and applicable to the payment of the said sum of \_\_\_\_\_ dollars due and owing to the plaintiff herein; and the said second payment due and payable from the said \_\_\_\_\_ to the said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ exceeds the sum of \_\_\_\_\_ dollars.

8. Upon information and belief that the defendant appropriated out of the said second payment due on or about the \_\_\_\_\_ day of \_\_\_\_\_ the sum of \_\_\_\_\_ dollars to the use of the defendant.

9. Upon information and belief that thereafter and before the commencement of this action the plaintiff duly demanded payment of the sum of \_\_\_\_\_ dollars from the defendant.

10. Upon information and belief that no part of the said sum of \_\_\_\_\_ dollars has been paid, and that by reason of the above the defendant became indebted to the plaintiff in the sum of \_\_\_\_\_ dollars and interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 132**

### **Complaint by Payee of Bill of Exchange Against Drawer of Bill for Nonacceptance**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, the defendant drew and delivered to the plaintiff for value received, his bill of exchange in writing dated on that day, and directed to \_\_\_\_\_, and thereby ordered said \_\_\_\_\_ to pay to the order of this plaintiff the sum of \_\_\_\_\_ dollars, \_\_\_\_\_ days after the date [or sight] of said bill.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ said bill of exchange was duly presented to said \_\_\_\_\_ for acceptance, but the said \_\_\_\_\_ refused to accept or pay the same and due notice of said presentation and refusal of \_\_\_\_\_ to accept or pay said bill was given to the defendant [if a foreign bill of exchange add "and said bill was thereupon duly protested for nonacceptance at a cost of \_\_\_\_\_ dollars, which plaintiff was required to pay"].

3. Plaintiff is now the owner and holder of said bill, and no part of the same has been paid and there is now due and payable thereon the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 133**

#### **Complaint by Payee on Bill Payable at Sight or on a Day Certain**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, defendant drew and delivered to plaintiff his bill of exchange in writing, of which plaintiff is now the owner and holder, in words and figures as follows: \_\_\_\_\_ [set out bill of exchange payable in such time and manner that no acceptance is required].

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, said bill of exchange was duly presented to \_\_\_\_\_, drawee, for payment, but was not paid, of all of which due notice was given to defendant.

3. The same has not been paid, nor any part thereof and there is now due and payable on the said bill the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 134**

#### **Complaint by Payee Against Drawer of Bill Where Drawee Is a Fictitious Person**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, defendant made and delivered to plaintiff a draft or bill of exchange in words and figures as follows: \_\_\_\_\_. [Set forth copy of bill.]

2. Said \_\_\_\_\_, named therein as drawee, was a fictitious person, and known by defendant to be such.

3. No part of the same has been paid, and plaintiff is now the owner and holder thereof.

4. There is now due and payable on the said draft or bill the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 135**

#### **Complaint in Action by Endorsee of Bill of Exchange Against Acceptor**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ drew and delivered his bill of exchange directed to the defendant and thereby required defendant to pay to the order of \_\_\_\_\_, \_\_\_\_\_ days after the date of said bill the sum of \_\_\_\_\_ dollars.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, defendant duly accepted said bill in writing.

3. Thereafter and before maturity the said \_\_\_\_\_ [name of payee] duly endorsed said bill of exchange in blank and delivered same to plaintiff, for value received.

4. Said bill was duly presented to defendant on the date of its maturity and payment thereof was duly demanded, but was refused.

5. Plaintiff is now the owner and holder of said bill.

6. No part of said bill has been paid and there is now due and payable thereon the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 136**

#### **Complaint in Action by Remote Endorsee of Bill of Exchange Against Acceptor**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, defendant, \_\_\_\_\_, accepted and delivered to \_\_\_\_\_, the payee therein named, a bill of exchange, of which the following is a copy: \_\_\_\_\_ [insert copy of the bill and acceptance].

2. The said \_\_\_\_\_ [name of payee] thereafter duly endorsed said bill and delivered it so endorsed to \_\_\_\_\_, and thereafter and before maturity the same was delivered to and came lawfully into the possession of this plaintiff, for value.

3. Said bill was duly presented to defendant on the date of its maturity and payment of same demanded, but was refused.

4. Plaintiff is now the owner and holder of same, and no part thereof has been paid.

5. There is now due and payable on said bill the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 137**

#### **Complaint in Action by Endorsee of Foreign Bill of Exchange Against Drawee after Acceptance of Bill**

[Caption and introductory paragraph]

1. The plaintiff is a corporation organized under the laws of \_\_\_\_\_ and having its principal office and place of business at No. \_\_\_\_\_ street in City of \_\_\_\_\_.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the City of \_\_\_\_\_, one A drew his certain draft or bill of exchange in writing, dated on that day, and directed to the defendant at \_\_\_\_\_, and thereby required the defendant to pay to the order of A the sum of \_\_\_\_\_ lire sixty days after the date of said draft or bill of exchange.

3. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant duly accepted the said draft or bill of exchange.

4. Thereafter, before maturity of the said draft or bill of exchange, A duly endorsed and delivered the same, and thereafter, and before maturity the said draft duly came to the possession of the plaintiff for value, and the plaintiff thereupon became and still is the owner and holder thereof.

5. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the maturity of the said draft or bill of exchange, the same was duly presented to the defendant at \_\_\_\_\_, for payment but payment was refused, and no part thereof has been paid.

6. The value of the lira in United States currency is and was, at the maturity of said bill, \_\_\_\_\_ cents, and the sum of \_\_\_\_\_ lire, directed to be paid by said draft or bill of exchange, is and then was equivalent in United States currency to \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 138**

**Complaint in Action by Endorsee of Bill of Exchange Against Drawer and Acceptor**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant, A, duly drew his bill of exchange bearing date on that day addressed to the defendant, B, and ordered the said B to pay, \_\_\_\_\_ days after sight, to the order of C, \_\_\_\_\_ dollars and thereupon, for value received, the said A duly delivered said bill of exchange to said C.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the said bill of exchange was duly presented to B for acceptance and was duly accepted by him.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and before it became due, C duly endorsed said bill of exchange and delivered the same to the plaintiff for value and the plaintiff is still the owner and holder thereof.

4. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, when said bill of exchange became due by the terms thereof, the same was presented to B, the acceptor, for payment, and payment was thereupon demanded and refused, whereupon said bill of exchange was duly protested for nonpayment and notice of said demand, refusal and protest was duly given to A at a cost of \_\_\_\_\_ dollars, which plaintiff was required to pay.

5. No part of said bill of exchange has been paid, and there is now due thereon the sum of \_\_\_\_\_ dollars, with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 139**

**Complaint in Action by Endorsee of Bill of Exchange Against Drawer and Acceptor;**

**Another Form**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant A drew and delivered to C his certain bill of exchange in writing in words and figures as follows: \_\_\_\_\_.

2. On \_\_\_\_\_, 20\_\_\_\_\_, C endorsed the same to plaintiff [or “endorsed the same in blank and delivered it so endorsed”], and thereafter and before maturity, the same came lawfully into the possession of plaintiff for value.

3. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant B, upon sight thereof, duly accepted said bill in writing.

4. At maturity, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the same was duly presented to B for payment and payment duly demanded but the same was not paid [if a foreign bill, add “and was thereupon duly protested for nonpayment at a cost of \_\_\_\_\_ dollars which plaintiff was required to pay”], of all of which due notice was given to the defendants A and C.

5. Plaintiff now lawfully owns and holds said bill, and no part thereof has been paid and there is now due and payable on said bill the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 140**

### **Complaint in Action by Endorsee Against Drawers and Endorser of Bill of Exchange for Refusal of Drawee to Accept**

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendants A and B, made and drew their bill of exchange in writing in words and figures as follows: \_\_\_\_\_.



2. The said A and B then and there for value delivered the same to the defendant C.

3. Afterwards, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant C endorsed the same to the plaintiff [or “endorsed the same in blank and delivered it so endorsed”] and thereafter and before maturity the same was delivered to and came lawfully into the possession of the plaintiff for value.

4. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said bill was duly presented to \_\_\_\_\_ for acceptance, but was not accepted [if a foreign bill, add, “and was thereupon duly protested for nonacceptance at a cost of \_\_\_\_\_ dollars, which plaintiff was required to pay”], of all of which due notice was given to each of the defendants.

5. Plaintiff now lawfully owns and holds said bill and no part of the same has been paid and there is now due and payable thereon the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 141**

### **Complaint by Drawer of Bill of Exchange Against Acceptor**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff drew and delivered to the payee therein named, his certain bill of exchange in writing, in words and figures as follows: \_\_\_\_\_.

2. Thereafter, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, defendant, upon sight and for value received, accepted said bill in writing, payable \_\_\_\_\_ days after the date thereof.

3. \_\_\_\_\_ days after the date of said bill the same was duly presented to the defendant for payment, but was not paid in whole or in part.

4. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, said bill was returned to plaintiff for nonpayment, and plaintiff as drawer thereof was then and there compelled to and did take up and pay to said \_\_\_\_\_ [or "to the holder thereof"] the sum of \_\_\_\_\_ dollars, being the amount of said bill [with interest, etc.].

5. Plaintiff has duly notified defendant of his payment of said bill and demanded that defendant repay to plaintiff the said sum of \_\_\_\_\_ dollars, but no part of same has been repaid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 142**

### **Complaint by Drawer of Bill of Exchange Against Drawee after Acceptance; Another Form**

[Caption and introductory paragraph]

1. At all the times hereinafter mentioned the plaintiff was and still is a domestic corporation.

2. Upon information and belief, at all the times hereinafter mentioned defendant was and still is a foreign corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff drew a draft upon the defendant for the sum of \_\_\_\_\_ dollars, payable on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, of which the following is a copy: \_\_\_\_\_.

4. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a valuable consideration, defendant duly accepted said draft and agreed to pay the same.

5. On \_\_\_\_\_, 20\_\_\_\_\_, said draft was duly presented to the defendant for payment in accordance with the terms thereof, but the same was not paid, and said draft was dishonored and was duly protested for nonpayment.

6. Said draft has not been paid, nor has any part thereof, and plaintiff is now the owner and holder of said draft.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### Form 143

#### Allegations in Complaint of Excuse for Failure to Present for Acceptance

\_\_\_\_\_

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, diligent search and inquiry was made for said drawee at \_\_\_\_\_, the address given of said drawee on said bill of exchange, in order that the said bill might be presented to him for acceptance, but he could not be found and said bill of exchange was not accepted and due notice was thereupon given to \_\_\_\_\_ that said \_\_\_\_\_ could not be found and that said bill remained unpaid. [or "and said bill was thereupon duly protested for nonacceptance and notice thereof was given to the said \_\_\_\_\_."]

\_\_\_\_\_

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and before said bill could be presented for acceptance in due course to the one to whom the same was directed, the defendant, \_\_\_\_\_, the maker of said bill, countermanded the same and instructed and directed \_\_\_\_\_ not to accept or pay the same, whereupon said bill was not presented for acceptance.

\_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, (date and place where presentment should have been made), said \_\_\_\_\_, the drawee of said bill, was dead, of all of which defendant had due notice.

*Drawee under disability.*

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, (date and place at which presentment should have been made) said \_\_\_\_\_, the drawee thereof, was an infant (or name whatever status creates disability) and without capacity to contract by bill, of all of which defendant had due notice.

**Form 144**

**Allegations in Complaint to Show Waiver of Presentation for Payment and Notice of Dishonor**

At the time of such delivery defendant waived the presentation of said bill of exchange to the drawee for payment and notice of nonpayment thereof and endorsed such waiver upon said bill.

**Form 145**

**Complaint by Accommodation Acceptor Against Drawer**

[Caption and introductory paragraph]

1. On \_\_\_\_\_, 20\_\_\_\_\_ plaintiff and defendant entered into an agreement whereby plaintiff agreed to accept for defendant's accommodation a certain bill of exchange in the sum of \$\_\_\_\_\_, drawn by defendant on plaintiff, dated \_\_\_\_\_, 20\_\_\_\_\_, and payable in \_\_\_\_\_ months from date to the order of defendant, and to deliver the same to be by him negotiated for his own benefit [add, if desired: a copy of which bill of exchange is hereto annexed]; and defendant agreed to indemnify and save plaintiff harmless from any loss or damage by reason of his acceptance of said bill of exchange.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff accepted said bill of exchange and delivered the same so accepted to defendant who thereupon negotiated the same.

3. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff as such acceptor was called upon and obliged to pay, and did pay, to one \_\_\_\_\_, the holder of said bill of exchange the sum of money therein with interest thereon, and costs of a certain action before then brought in the \_\_\_\_\_ Court of \_\_\_\_\_, on said bill of exchange by said holder against plaintiff.

4. Plaintiff became obligated to pay, and did pay \$\_\_\_\_\_ to \_\_\_\_\_, his attorney for his legal services rendered to defend plaintiff in said action brought by \_\_\_\_\_, said holder of said bill of exchange.

5. By reason of the foregoing plaintiff has been damaged by defendant in the sum of \$\_\_\_\_\_, no part of which has been paid by defendant, although duly demanded.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 146**

### **Complaint in Action on Undertaking for Payment of Money Only**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a valuable consideration, defendant made and delivered to plaintiff his bond, a copy of which is hereto annexed and made a part hereof, marked "Exhibit A."

2. Plaintiff is now the owner and holder of said bond.

3. No part of said bond has been paid, and there is now due to the plaintiff on said bond from the defendant the sum of \_\_\_\_\_ dollars, with interest from \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 147**

#### **Complaint in Action on Undertaking for Payment of Money Only; Another Form**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the above-named defendant made, executed and delivered to the plaintiff his certain bond under his hand, dated that day, wherein he acknowledged himself firmly bound to pay to the said plaintiff, his executors, administrators or assigns, the sum of \_\_\_\_\_ dollars; said bond being conditioned that if the said \_\_\_\_\_, defendant, should pay or cause to be paid the sum of \_\_\_\_\_ dollars, to the plaintiff, his executors, administrators or assigns, \_\_\_\_\_ days after date, with interest at the rate of \_\_\_\_\_ per cent per annum, then in that case the said bond should be void, but otherwise to be in full force and effect, a copy thereof being attached hereto, and made a part hereof.

2. The plaintiff is now the holder of the said bond and has duly performed all the conditions of the bond as required of him.

3. The said defendant has failed to perform the conditions of said bond, by neglecting and refusing to pay the same or any part thereof; and there is now due to the plaintiff the sum of \_\_\_\_\_ dollars and interest thereon, from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 148**

#### **Complaint on Bail Bond of Defendant Arrested in Matrimonial Action**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant surety company.]

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in an action in the \_\_\_\_\_ Court, \_\_\_\_\_ County, by this plaintiff against one \_\_\_\_\_, said \_\_\_\_\_ was arrested by the sheriff of the County of \_\_\_\_\_ pursuant to an order of arrest theretofore duly granted in said action.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant, as bondsman of said \_\_\_\_\_, executed and delivered its undertaking in the amount of \_\_\_\_\_ dollars, whereby it undertook that the said \_\_\_\_\_ would obey an order, decree or judgment of said court or of an appellate court directing him to do an act specified in such order or judgment, or in default of obeying the same would surrender himself to proceedings to punish him for failure to obey the same. A copy of said undertaking is hereto annexed and made a part of this complaint. Said undertaking was duly filed in the office of the clerk of the County of \_\_\_\_\_, State of \_\_\_\_\_ and said \_\_\_\_\_ was thereupon discharged from arrest on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

4. Thereafter, in said action a final decree of divorce was made and entered in favor of the plaintiff against the said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, directing the said \_\_\_\_\_ to pay the plaintiff alimony of \_\_\_\_\_ dollars per month on or before the \_\_\_\_\_ day of each month thereafter.

5. Said \_\_\_\_\_ failed to obey such direction contained in said decree of divorce, in that he failed to pay the plaintiff the alimony directed for the month of \_\_\_\_\_, 20\_\_\_\_\_, and all succeeding months, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an order was duly made by Hon. \_\_\_\_\_, one of the justices of said court,

adjudging the said \_\_\_\_\_ guilty of contempt of court and committing him to jail for his failure to obey said decree.

6. Thereafter said order was duly issued to the sheriff of the County of \_\_\_\_\_, where the said \_\_\_\_\_ then resided, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said sheriff duly made his return thereof, certifying that the said \_\_\_\_\_ could not be found within said county; and said \_\_\_\_\_ has failed to surrender himself as provided in said undertaking.

7. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly demanded of defendant the performance of said undertakings; a copy of said demand is annexed hereto and made a part of this complaint.

8. Plaintiff has duly performed all the conditions required of her in the said undertaking, but defendant has wholly failed to perform the conditions required of him therein, to plaintiff's damage in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 149**

### **Complaint in Action on Jail Limits Bond After Escape of Defendant Arrested**

[Caption and introductory paragraph]

1. At all times herein mentioned the defendant \_\_\_\_\_ surety company was and now is a corporation organized under the laws of the state of \_\_\_\_\_.

2. In an action in this court, brought by this plaintiff against the defendant \_\_\_\_\_, plaintiff recovered a judgment against the said \_\_\_\_\_ for the sum of \_\_\_\_\_ dollars, which judgment was duly entered and docketed, and the judgment roll duly filed, in the office of the Clerk of the County of \_\_\_\_\_.



\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

3. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff issued an execution against the person of the said defendant \_\_\_\_\_ to the Sheriff of the County of \_\_\_\_\_, directing him to commit the said defendant to jail until he should pay the said judgment or be discharged according to law.

4. On or about the same day the said defendant \_\_\_\_\_ was arrested by the Sheriff of the County of \_\_\_\_\_.

5. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant \_\_\_\_\_ surety company, together with the defendant \_\_\_\_\_, duly made, executed and delivered its jail limits undertaking to the Sheriff of the County of \_\_\_\_\_, a true copy of which is hereto annexed and made a part of this complaint.

6. Thereupon the said defendant \_\_\_\_\_ was admitted to the jail limits of the County of \_\_\_\_\_, which then were and now are the boundaries of the City of \_\_\_\_\_ in said County.

7. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said sheriff delivered to the attorneys for the plaintiff in said action, a certified copy of said jail limit undertaking and execution and the return thereon.

8. Said plaintiff's attorneys did not, within \_\_\_\_\_ days thereafter, or at any other time, serve a notice upon the sheriff, that they, or the plaintiff did not accept the said surety or bail.

9. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said jail limit undertaking was allowed and approved by one of the justices of this court.

10. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said defendant \_\_\_\_\_, went at large beyond the liberties of the jail, to wit, to the City of \_\_\_\_\_, \_\_\_\_\_ County, State of \_\_\_\_\_.

11. Said going at large beyond the said jail limits was without the assent of plaintiff, at whose instance the said prisoner was in custody.

12. On said day and while the said prisoner was beyond the jail limits as aforesaid, this action was commenced by service of the summons herein upon the defendant surety company.

13. Said defendant \_\_\_\_\_ has never been discharged by due course of law, or otherwise.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 150**

### **Complaint on Undertaking Given to Release Attachment**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant surety company.]

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in an action then pending in the \_\_\_\_\_ Court, \_\_\_\_\_ County, wherein the plaintiff herein was plaintiff and one \_\_\_\_\_ was defendant, a warrant of attachment was duly issued to the sheriff of the County of \_\_\_\_\_, and thereafter was duly levied by said sheriff upon certain goods and chattels of the said \_\_\_\_\_.

3. To procure the discharge or release of said attachment, defendant made and delivered its undertaking, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, whereby it undertook that the said \_\_\_\_\_ would pay to the plaintiff the amount of any

judgment which the plaintiff might recover in said action, not exceeding \_\_\_\_\_ dollars, with interest and costs; and said undertaking was duly filed with the clerk of said court, and thereupon the said attachment was discharged and released. A copy of the said undertaking, marked "Exhibit A", is hereto annexed and made a part of this complaint.

4. Thereafter plaintiff recovered judgment in said action against the said \_\_\_\_\_ in the amount of \_\_\_\_\_ dollars, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the judgment roll was duly filed and said judgment was duly docketed in the office of the clerk of the County of \_\_\_\_\_.

5. Payment of said judgment has been duly demanded, but no part thereof has been paid, either by the said \_\_\_\_\_ or by the defendant herein.

6. Plaintiff has duly performed all the conditions of said undertaking on his part.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 151**

### **Complaint in Action on Undertaking to Secure Performance of Building Contract**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff and defendant, \_\_\_\_\_, entered into an agreement in writing for the construction of a certain building in \_\_\_\_\_; the defendant, in consideration of the payment of \$\_\_\_\_\_, to be made to him, agreed to furnish all the materials and labor to fully build, pursuant to the plans and specifications therefor which were attached to and made a part of the said contract, a copy of which is attached hereto and made a part hereof, so as to fully carry out the design of the work of construction of said building, as set forth in said specifications, plans and drawings, in a workmanlike manner to the satisfaction of

\_\_\_\_\_, the architect and superintendent of said building, on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

2. In and by said contract the plaintiff on his part agreed to and with the defendant, \_\_\_\_\_, that in consideration of his furnishing all of the materials and fully executing and performing said work of construction and completing said building to the full and complete satisfaction of the said architect, and at the time in said contract mentioned, the plaintiff would pay to him therefor the sum of \_\_\_\_\_ dollars; that it would pay the same on the estimates of work done and materials furnished and used in said building made by the said architect, reserving \_\_\_\_\_ per cent therefrom until said work on said building was finished in every particular and approved; and that it would pay the balance of said sum when said building should be accepted by said architect, and he should certify, in writing, that defendant, \_\_\_\_\_, was entitled thereto.

3. Among other things, it was in and by said contract agreed and provided that the payments made by the plaintiff to defendant, \_\_\_\_\_, on account of said work during the progress thereof, should in no case be construed as an acceptance of the work done.

4. It was further therein agreed that in case said building should not be completed in the time fixed therefor in said contract, that damages arising from the nonfulfilment of the contract, as regards time of completion, should be equal to a fair rent of said building and the lands upon which the same is situated, for each and every day after the time of completion the work remained unfinished on said building.

5. It was further in and by said agreement and specifications agreed that the said \_\_\_\_\_, as such architect, should superintend the work on said building, that he should have power to adjust all claims of the defendant, \_\_\_\_\_, against the plaintiff, and to decide upon the fitness of the material used in said building, and that in all cases of difference of opinion between the plaintiff and defendant, \_\_\_\_\_, in any matter connected with the construction of said building, the decision of said architect should be final and binding.

6. For the purpose of securing to this plaintiff the due performance of said agreement, the defendant, \_\_\_\_\_, at the request of the plaintiff, and in consideration of said agreement, and pursuant to the specifications therein, executed and procured to be executed by the defendants, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, under his and their respective hands and seals, an undertaking bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in and by which undertaking the defendant \_\_\_\_\_, as principal, and said \_\_\_\_\_, as sureties, acknowledged themselves to be held and firmly bound unto the plaintiff, in the sum of \_\_\_\_\_ dollars, for the payment of which sum well and truly to be made, they bound themselves in and by said undertaking jointly and severally, the condition of said undertaking being such that if the defendant, \_\_\_\_\_, should faithfully keep and perform the agreement above mentioned, the said undertaking should be void, otherwise to remain in full force and virtue, which said undertaking the defendant then and there delivered to the plaintiff, a copy of which is attached hereto, and made a part hereof.

7. The defendant, \_\_\_\_\_, did not faithfully keep and perform said agreement above mentioned; in the erection and construction of said building, defendant, \_\_\_\_\_, used and put into the same inferior, imperfect, unseasoned lumber, timber and material, and not such lumber, timber and material as was and is required by said agreement and said specifications; said lumber, timber and materials have so shrunk as to leave the woodwork and finish of said building in a very imperfect and entirely different condition from that required by said agreement and specifications, and the work done by defendant, \_\_\_\_\_, is inferior, unskillful, unworkmanlike and not such as is required by the said agreement, plans and specifications in many respects and particulars, among which the plaintiff alleges the following: \_\_\_\_\_ [state points required by the contract and specify wherein performance is imperfect].

8. On information and belief, by reason of the failure of the defendant, \_\_\_\_\_, to use proper materials and do proper, skilful and workmanlike work in the construction of said building, the plaintiff has sustained damages in the sum of \_\_\_\_\_ dollars.

9. Defendant, \_\_\_\_\_, wholly failed to complete said building within the time fixed by said agreement; he did not complete the same, even in the imperfect manner above specified until \_\_\_\_\_ months after the time so agreed, and by reason of such delay in completion the plaintiff was kept out of the use and occupation of said building for more than \_\_\_\_\_ months; and a fair rent for said building and premises for the time the plaintiff was so deprived of and kept out of the use and occupancy of the same is the sum of \_\_\_\_\_ dollars.

10. Before said building was completed and during the months of \_\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_\_, plaintiff (after the time for completion had passed) was obliged, in order to keep the plaster from freezing and spoiling and the building from being damaged by dampness, to procure coal and keep said building warm during the drying of said plaster, and paid for coal and for a laborer to attend the fires and keep said building warm, the sum of \_\_\_\_\_ dollars.

11. By reason of the failure of defendant, \_\_\_\_\_, to keep and perform said contract in time and manner as by said contract agreed and according to its conditions and terms the plaintiff has suffered damages in the sum of \_\_\_\_\_ dollars [the total of the amounts stated in paragraphs 8, 9 and 10].

12. Plaintiff has duly performed all of the conditions of said contract on his part.

13. There now remains unpaid on said contract and to be due upon due performance thereof the sum of \_\_\_\_\_ dollars; and the defendant, \_\_\_\_\_, has done extra work and furnished extra materials not required by said contract, of the value of \_\_\_\_\_ dollars, making together the sum of \_\_\_\_\_ dollars, and the

damages sustained as herein alleged, after deducting said sum of \_\_\_\_\_ dollars, is the sum of \_\_\_\_\_ dollars.

14. The said defendants, under and by the terms of said undertaking above described, are jointly and severally indebted to the plaintiff in the said sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

[Another form]

1. The plaintiffs, \_\_\_\_\_ and \_\_\_\_\_, at all times hereinafter mentioned were and now are a duly organized copartnership carrying on business as engineers and contractors, under the firm name of \_\_\_\_\_, in various parts of the United States and elsewhere.

2. The defendant, \_\_\_\_\_ Surety Company, at all times hereinafter mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of \_\_\_\_\_, having its chief office and principal place of business in the City of \_\_\_\_\_, State of \_\_\_\_\_, and was duly authorized to carry on business in the State of New York as a surety company.

3. On or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiffs entered into a certain contract with \_\_\_\_\_, wherein and whereby said \_\_\_\_\_ agreed to well and sufficiently furnish and provide all the work and materials necessary or required to fully do, perform and complete all structural steel erection in and connecting with \_\_\_\_\_ grain elevator, situate in \_\_\_\_\_ street, in \_\_\_\_\_, consisting of working house, train shed, galleries and roof over concrete tank, steel hopper bottom in concrete tank and marine tower in connection therewith, for certain compensation, as shown and agreed upon in said contract, a copy of which is hereto annexed, marked Exhibit "A," and made a part of this complaint.

4. To secure the performance by said \_\_\_\_\_ of the terms and conditions of said contract on its part to be performed, and for a valuable consideration to the defendant in hand paid, the defendant did execute and deliver to the plaintiffs its certain bond or obligation in writing, sealed with its seal, a copy of which is hereto annexed, marked Exhibit "B" and made a part of this complaint.

5. Said \_\_\_\_\_ failed to fulfill the terms and conditions of said contract of \_\_\_\_\_, 20\_\_\_\_\_, but abandoned said construction in an incomplete condition, whereby the plaintiffs were caused great delay and damage, and were forced to and did expend large sums of money, and work, labor and services completing said work as in said contract specified, and in so completing said work said plaintiffs expended the sum of \_\_\_\_\_ dollars, being \_\_\_\_\_ dollars in excess of the amount unpaid to the said \_\_\_\_\_ upon the said contract, and to be paid to him upon due performance thereof.

6. The defendant although duly notified of the default of said \_\_\_\_\_ did not itself undertake the completion of said contract of \_\_\_\_\_, 20\_\_\_\_\_.

7. The plaintiffs duly performed and fulfilled each and every condition of said contract of \_\_\_\_\_, 20\_\_\_\_\_, to be by them performed.

8. The plaintiffs duly performed and fulfilled each and every condition of said bond of \_\_\_\_\_, 20\_\_\_\_\_, to be by them performed.

9. By reason of the premises there is due and owing the plaintiffs from the defendant the sum of \_\_\_\_\_ dollars together with interest thereon, and the same has been demanded, but said sum has not been paid nor any part thereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]



## **Complaint in Action Against Surety on Contractor's Bond**

[Caption and introductory paragraph]

1. At all times herein mentioned defendant is and was a corporation organized under the laws of the State of \_\_\_\_\_ and doing business as a surety company.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and one \_\_\_\_\_ entered into a written contract by which the said \_\_\_\_\_ agreed to erect a dwelling house on premises of the plaintiff known as No. \_\_\_\_\_ Street, in the City of \_\_\_\_\_, for which the plaintiff agreed to pay the sum of \_\_\_\_\_ dollars. A true copy of said contract is hereto annexed and made a part of this complaint.

3. To secure the performance of said contract by the said \_\_\_\_\_, and for a valuable consideration, the defendant on or about \_\_\_\_\_, 20\_\_\_\_\_, executed and delivered to the plaintiff a certain bond or undertaking, a copy of which is hereto annexed and made a part of this complaint.

4. The said \_\_\_\_\_ failed to perform the terms and conditions of his said contract, and on or about \_\_\_\_\_, 20\_\_\_\_\_, abandoned said contract and ceased work thereunder and failed to complete the same.

5. Notice of such default by the said \_\_\_\_\_ was duly given to defendant on or about \_\_\_\_\_, 20\_\_\_\_\_, and plaintiff then demanded of defendant that it complete the work under said contract, but defendant failed and refused to do so. [This allegation need be inserted only if the bonds require notice and demand.]

6. By reason of the failure of the said \_\_\_\_\_, and of the defendant, to perform said contract, plaintiff was required to and did expend the sum of \_\_\_\_\_ dollars to complete the work left incomplete by the said \_\_\_\_\_. Said sum was the reasonable cost of completing said work.

7. Plaintiff has duly performed all the conditions of both said contracts on his part.

8. No part of the said sum of \_\_\_\_\_ dollars has been paid, although payment thereof has been duly demanded of defendant, all to the plaintiff's damage in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 153**

### **Complaint in Action by General Contractor Against Subcontractor's Surety**

[Caption and introductory paragraph]

1. Plaintiff is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of New York.

2. Defendant is and at all times herein mentioned was a corporation organized under the laws of the State of \_\_\_\_\_, and engaged in business as a surety company.

3. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and one \_\_\_\_\_ entered into a written contract whereby the plaintiff agreed to erect upon premises owned by the said \_\_\_\_\_ at \_\_\_\_\_ Street in the City of \_\_\_\_\_ an office building in accordance with the plans and specifications set forth in said contract.

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff, as contractor, entered into a contract with \_\_\_\_\_, Inc., as sub-contractor, whereby the said \_\_\_\_\_, Inc., agreed to perform all the \_\_\_\_\_ work, and furnish all incidental materials necessary for the construction of said apartment house. A copy of said contract is hereto annexed and made a part of this complaint.

5. To secure the performance by the said \_\_\_\_\_, Inc., of the terms and conditions of said sub-contract, and for a valuable consideration, the defendant executed and

delivered to the plaintiff its bond, dated \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is hereto annexed and made a part of this complaint.

6. The said \_\_\_\_\_, Inc., failed to perform the conditions of said contract and ceased all work thereunder when the same was wholly incomplete.

7. On or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly notified the defendant of such default on the part of the said \_\_\_\_\_, Inc., and demanded that the defendant complete the said contract of the said \_\_\_\_\_, Inc., but the defendant failed and refused to do so.

8. By reason of the failure of the said \_\_\_\_\_, Inc., and of the defendant to perform said contract, plaintiff was required to expend the sum of \_\_\_\_\_ dollars to complete the work left incomplete by the said \_\_\_\_\_, Inc. Said sum was the reasonable cost of completing said work, all to the plaintiff's damage in the sum of \_\_\_\_\_ dollars.

9. Plaintiff has duly performed on its part all conditions of its said contract with the said \_\_\_\_\_, Inc., and of the said bond made and executed by the defendant.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 154**

### **Complaint in Action on Injunction Bond, Against Reinsurer of Original Surety**

[Caption and introductory paragraph]

1. At all the times hereinafter mentioned the above-named defendant was and still is a domestic corporation, engaged in a general surety business.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, judgment was duly made and given by the \_\_\_\_\_ court of \_\_\_\_\_, in an action in which the plaintiff herein was the plaintiff therein and \_\_\_\_\_ was

defendant, in favor of the said plaintiff, for the sum of \_\_\_\_\_ dollars damages and costs; the defendant therein appealed from said judgment to the Appellate Term of the Supreme Court, \_\_\_\_\_ Department, and duly filed an undertaking, executed by the \_\_\_\_\_ company of \_\_\_\_\_, to the effect that the above-named surety would pay to the plaintiff the amount of said judgment, if said appeal were dismissed.

3. Thereafter said appeal was duly dismissed by the said Appellate Term, and an order and judgment of dismissal was duly entered in the office of the clerk of the \_\_\_\_\_ court of \_\_\_\_\_.

4. The said defendant and the said surety failed to pay the amount of said judgment, or any part thereof; whereupon an action was duly commenced in the \_\_\_\_\_ court of \_\_\_\_\_ by the plaintiff herein, against \_\_\_\_\_ company, as surety upon the afore-mentioned undertaking.

5. Thereupon in and about the month of \_\_\_\_\_, 20\_\_\_\_\_, an action was commenced in the \_\_\_\_\_ court, \_\_\_\_\_ County, wherein the aforesaid \_\_\_\_\_ was plaintiff and the plaintiff herein was defendant, to enjoin the latter from "taking any proceedings to enforce said judgment" of the \_\_\_\_\_ court and from prosecuting his suit upon the aforesaid undertaking given upon the said appeal.

6. Issue was duly joined in the said injunction action and such proceedings were thereupon had that, on or about \_\_\_\_\_, 20\_\_\_\_\_ an order was duly made by the \_\_\_\_\_ court, \_\_\_\_\_ County, and duly entered in the office of the clerk of the County of \_\_\_\_\_, directing the entry of judgment on the pleadings in favor of the defendant, \_\_\_\_\_, directing that the complaint be dismissed; on or about \_\_\_\_\_, 20\_\_\_\_\_, a judgment was duly entered in the office of the clerk of the County of \_\_\_\_\_ in favor of

said defendant \_\_\_\_\_, dismissing plaintiff's complaint, according to the terms of the foregoing order, and said complaint was thereupon duly dismissed.

7. Such proceedings were thereafter had, on or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff in said action, \_\_\_\_\_, obtained an injunction order in said action and caused the same to be duly entered in the office of the clerk of \_\_\_\_\_ County, which order enjoined and restrained the defendant, \_\_\_\_\_, from taking any proceedings to collect the aforesaid \_\_\_\_\_ court judgment and from prosecuting the action in the said court against the surety on said undertaking, during an appeal, taken or to be taken, from judgment on the pleadings in the Supreme Court, and the said \_\_\_\_\_ was thereupon enjoined accordingly.

8. Annexed hereto and made a part hereof, is a true copy of the said restraining order, is marked Exhibit "A" and included herein as if herein set out at length.

9. Pursuant to said order and on or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff \_\_\_\_\_ in the said injunction suit caused to be duly filed in the office of the clerk of the County of \_\_\_\_\_, an undertaking duly executed by the \_\_\_\_\_ Surety Company, in the sum of \_\_\_\_\_ dollars to the effect that the said surety would pay all costs and damages which the defendant, \_\_\_\_\_, in said action, might sustain by reason of the granting of said injunction order, if the last-mentioned judgment on the pleadings entered or to be entered, should be finally affirmed on appeal; thereafter the said \_\_\_\_\_ caused to be delivered to the said \_\_\_\_\_, a duplicate original of the said undertaking with notice of filing, and duly endorsed by a judge of the Supreme Court, \_\_\_\_\_ County, as to form and sufficiency.

10. Annexed hereto, and made a part hereof, is a true copy of said undertaking, and marked Exhibit "B."

11. On or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff in said action \_\_\_\_\_, duly appealed to the Appellate Division of the Supreme Court, \_\_\_\_\_ Department, from the judgment on the pleadings and from the order granting the same. On or about \_\_\_\_\_, 20\_\_\_\_\_, an order was duly made and entered in the office of the clerk of the Appellate Division, affirming in all things the order and judgment so appealed from and thereafter, and on or about \_\_\_\_\_, 20\_\_\_\_\_, a judgment of affirmance was duly made and given by the Supreme Court, \_\_\_\_\_ County, and duly entered in the office of the clerk of the county of \_\_\_\_\_, and said judgment of the Supreme Court was thereby duly affirmed.

12. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff in said action, \_\_\_\_\_, appealed to the Court of Appeals from the aforesaid order and judgment of affirmance, and thereafter the defendant in said action, \_\_\_\_\_, (the plaintiff herein), duly moved before the Court of Appeals to have the said appeal dismissed on the ground that the same was frivolous, upon a hearing duly had, said motion was granted and said appeal was duly dismissed on the ground the same was frivolous and an order to that effect was duly entered in the office of the clerk of the Court of Appeals.

13. Thereafter, on or about \_\_\_\_\_, 20\_\_\_\_\_, and on or about \_\_\_\_\_, 20\_\_\_\_\_, respectively, judgment was duly made and given by the Supreme Court, \_\_\_\_\_ County, and was duly entered in the office of the clerk of the County of \_\_\_\_\_, dismissing said appeal on the ground that the same was frivolous and the said appeal was thereby duly dismissed as frivolous.

14. Copies of said order and judgment, marked respectively Exhibits "C" and "D" are hereto annexed and made a part hereof.

15. Copies thereof with notice of entry were duly served upon \_\_\_\_\_, the plaintiff in said action, and also upon \_\_\_\_\_ Surety Company, and upon

\_\_\_\_\_ Surety Company, the defendant herein, prior to the commencement of this action and prior to the granting of the order of reference hereinafter mentioned.

16. On or about \_\_\_\_\_, 20\_\_\_\_\_, a motion was duly made in the Supreme Court, \_\_\_\_\_ County, returnable at special term, for an order vacating and setting aside the injunction order above referred to, which was granted; and an order vacating and setting aside the injunction order was duly entered with the clerk of the County of \_\_\_\_\_, and copies thereof with notice of entry were duly served respectively on \_\_\_\_\_, the \_\_\_\_\_ Surety Company and the defendant in this action.

17. Thereafter proceedings were duly had which resulted in an order being entered on or about \_\_\_\_\_, 20\_\_\_\_\_, appointing a referee, and directing said referee to ascertain and determine the damages sustained by this plaintiff, by reason of the injunction order aforesaid, and such proceedings were thereupon duly had by reason of said order of reference, thereafter said referee duly filed his report, together with the testimony taken before him duly signed, and the exhibits offered in evidence.

18. Said report found that the plaintiff's damages, sustained by reason of said injunction order, amounted to the sum of \_\_\_\_\_ dollars, together with referee's and stenographers' fees.

19. Said report was duly filed in the office of the clerk of \_\_\_\_\_ County, and a copy thereof with notice of filing was duly served upon \_\_\_\_\_, and notice of filing thereof was served upon the \_\_\_\_\_ Surety Company and the defendant in this action.

20. Such proceedings were thereupon duly had in the Supreme Court of \_\_\_\_\_ County, and said report was, by an order of the said court, duly made and entered in the office of the clerk of \_\_\_\_\_ County, on

\_\_\_\_\_, 20\_\_\_\_\_, duly confirmed in all respects, and said order of confirmation now remains in full force and effect.

21. The said referee's fees upon the above-named reference amounted to the sum of \_\_\_\_\_ dollars; which sum was duly agreed upon by stipulation on the record before the referee, by and between \_\_\_\_\_ and \_\_\_\_\_, through their respective attorneys.

22. The stenographer's fees on the reference amounted to the sum of \_\_\_\_\_ dollars, which sum is the result of a stipulation duly agreed upon in the manner indicated in the next preceding paragraph; the referee's stenographer's fees for preparing the report are of the reasonable value of \_\_\_\_\_ dollars.

23. On or about \_\_\_\_\_, 20\_\_\_\_\_, the aforesaid referee's fees and the stenographer's charges were duly passed upon and duly taxed by the clerk of \_\_\_\_\_ County, after due notice of said taxation had been duly served upon the attorneys for \_\_\_\_\_, and the aforementioned sums were found to be correct, and that a true copy of said bill of costs, so taxed, is hereunto annexed, and made a part hereof, and marked Exhibit "E."

24. Prior to the commencement of this action, a copy of said order of confirmation with notice of entry was duly served upon \_\_\_\_\_ and the \_\_\_\_\_ Surety Company, and the defendant in this action.

25. On or about \_\_\_\_\_, 25\_\_\_\_\_, <sup>1</sup>\_\_\_\_\_ Surety Company, i.e., the surety on the said undertaking, duly filed and delivered by \_\_\_\_\_, as a condition for the granting of the injunction order of \_\_\_\_\_, 25\_\_\_\_\_, entered into a contract in writing for the benefit of the plaintiff, with \_\_\_\_\_ Surety Company, the defendant herein, wherein the said \_\_\_\_\_ Surety Company duly



assigned, transferred and set over to the defendant, the \_\_\_\_\_  
\_\_\_\_\_ Surety Company, all its right, title and interest in and to certain  
surety bonds and undertakings, and the premiums due thereon or to become due, including the  
one filed and delivered by \_\_\_\_\_, as above  
stated.

26. Annexed hereto and made a part hereof, as is herein fully set forth, and marked Exhibit "F,"  
is a true copy of the said agreement between the said surety companies.

27. \_\_\_\_\_ Surety Company, for the valuable  
considerations mentioned in the said contract, reinsured the undertaking now sued upon, and  
agreed to fulfill the obligations incurred by \_\_\_\_\_  
\_\_\_\_\_ Surety Company under said undertaking, to the plaintiff herein; and  
expressly assumed all the liability of \_\_\_\_\_  
Surety Company thereunder in the manner and form, and to the same extent as contracted for  
by the last-named company and agreed to pay to the plaintiff any of the sums found due him  
under such contract of surety, in the manner, form and terms provided for therein.

28. The undertaking upon which this action is brought was expressly mentioned in Schedule  
"A," referred to in paragraph one of said contract, marked Exhibit "E," as one of the surety bonds  
formerly insured by \_\_\_\_\_ Surety Company  
and reinsured by the defendant herein.

29. Plaintiff has duly demanded of \_\_\_\_\_, that  
he pay the sum of \_\_\_\_\_ dollars as found by the referee heretofore mentioned,  
composed of the following sums, to wit: \_\_\_\_\_  
\_\_\_\_\_, and which sum was duly confirmed in the manner and form  
heretofore stated; but said \_\_\_\_\_ has failed to  
pay any part of the said sum.

30. The said \_\_\_\_\_ Surety Company, and \_\_\_\_\_, the defendant herein, have wholly failed and neglected to perform the terms of the undertaking sued upon and assumed by it, as aforesaid, and to pay to the plaintiff all damages sustained by plaintiff, including the referee's and stenographers' fees, as set out heretofore, and the full amount thereof is now due and unpaid.

31. The plaintiff herein has duly performed the terms and conditions of the bond sued upon herein by him, but neither the defendant company nor its assignor, nor \_\_\_\_\_, the principal in said bond, has duly performed the terms and conditions of the bond, on its or his part to be performed respectively, to the damage of the plaintiff as before stated in the sum of \_\_\_\_\_ dollars.

32. Plaintiff has duly demanded of said defendant, \_\_\_\_\_ Surety Company, the aforesaid sum of \_\_\_\_\_ dollars, and said defendant has wholly failed and refused to pay the same, and no part thereof has been paid by the defendant or any other person or company.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 155**

### **Complaint in Action on Employee's Indemnity Bond**

[Caption and introductory paragraph]

1. At all times hereinafter mentioned, plaintiffs were, and now are, co-partners doing business under the firm name and style of \_\_\_\_\_.

2. At all times hereinafter mentioned, defendant was, and now is, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to engage in business in the State of New York as a surety company.

3. The defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the City of \_\_\_\_\_, \_\_\_\_\_ County, State of New York, was engaged by and through \_\_\_\_\_, its agent, in bonding and indemnifying employers against pecuniary loss by reason of any act or acts of larceny or embezzlement on the part of an employee while in the service of an employer.

4. On and prior to said \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiffs were engaged in and carrying on a \_\_\_\_\_ business in the City of \_\_\_\_\_, and had in their employ one \_\_\_\_\_ as their night watchman, and it was the duty of said \_\_\_\_\_ to remain in and about the buildings of the plaintiffs in which their said \_\_\_\_\_ business was being conducted for the purpose of preventing the goods and chattels of the plaintiffs from being carried away, stolen or otherwise taken from the premises of the plaintiffs.

5. Defendant was requested to, and in pursuance of such request did, furnish to the plaintiffs, a bond guaranteeing the fidelity of the said \_\_\_\_\_ as employee of the plaintiffs, a copy of which is attached hereto and made a part hereof.

6. Between the said \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiffs sustained a loss of personal property belonging to them, and located in said buildings, of more than \_\_\_\_\_ dollars in value, by and through the act or acts of larceny and embezzlement on the part of the said \_\_\_\_\_ while in the performance of his duties as night watchman at the buildings of the plaintiffs.

7. Upon discovering said act or acts of larceny and embezzlement on the part of the said \_\_\_\_\_, plaintiffs immediately dismissed him from their services and notified the defendant, as required by the terms and conditions of said bond, of the act or acts of larceny and embezzlement of the said \_\_\_\_\_, and did, within \_\_\_\_\_ months after such discovery, file with the defendant, as required by

the terms and conditions of said bond, an itemized statement of claim, and plaintiffs have duly performed all the conditions of said bond on their part.

8. The loss sustained by plaintiffs by reason of the said act or acts of larceny and embezzlement of \_\_\_\_\_ exceeds the amount of the said bond, and plaintiffs have not received or recovered of or from the said \_\_\_\_\_, or anyone else, the said personal property, or any part thereof, or any money or other property therefor.

9. The defendant has not paid to the plaintiffs, pursuant to the terms and conditions of said bond, the amount for which the said bond indemnifies the plaintiffs, or any part thereof, although the same has long since been due and plaintiffs have demanded same. To the damage of the plaintiffs in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 156**

### **Complaint in Action on Bond of Bank Cashier**

[Caption and introductory paragraph]

1. [Allege corporate existence of plaintiff bank.]

2. [Allege corporate existence of defendant surety company.]

3. At all times hereinafter mentioned, until the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ was the duly appointed cashier of the plaintiff.

4. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a valuable consideration, defendant as surety executed and delivered to plaintiff a fidelity bond guaranteeing the faithful performance by the said \_\_\_\_\_ of his duties as cashier of plaintiff. A copy of said bond is hereto annexed and made a part of this complaint.

5. The condition of the said bond was that the defendant would, within \_\_\_\_\_ months next after proof of loss as set forth in said bond, reimburse the plaintiff to the extent of \_\_\_\_\_ dollars, and no further, for all pecuniary loss sustained by the plaintiff of money, securities or other personal property in the possession of the said \_\_\_\_\_, or for the possession of which he was responsible, by any act or acts of fraud or dishonesty committed by him in the performance of the duties of his office or position in the service of plaintiff as aforesaid, and occurring during the continuance of said bond, and discovered and notified to the defendant within \_\_\_\_\_ months after the expiration or cancellation of said bond, or within \_\_\_\_\_ months after the death, resignation or removal of the said \_\_\_\_\_, prior to the expiration or cancellation of said bond.

6. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff caused said bond to be renewed for a period of one year ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by payment of the annual premium to the defendant and by the acceptance thereof by said defendant and the issuance of its continuation certificate or receipt therefor. A copy of said certificate or receipt is hereto annexed and made a part of this complaint.

7. Thereafter the plaintiff caused said bond to be further renewed for a period of one year ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by like payment to the defendant of the annual premium therefor, and the issuance by the defendant of its further continuation certificate or receipt therefor, a copy of which is hereto annexed and made a part of this complaint.

8. After the execution of said bond, and prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ fraudulently and dishonestly misappropriated and converted to his own use \_\_\_\_\_ dollars belonging to the plaintiff, but in his possession or for the possession of which he was responsible in the performance of his duties as cashier, and the said \_\_\_\_\_ has never repaid

the same or any part thereof to the plaintiff, although due demand for such repayment has been made.

9. Plaintiff has duly performed all the conditions of the said bond on part, and duly gave notice to defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and promptly after discovering such misappropriation and conversion by the said \_\_\_\_\_, said notice having been given by registered letter addressed to the defendant at its home office, and did within \_\_\_\_\_ days after the date of said notice file with the defendant an itemized claim under said bond, duly sworn to, and has produced for investigation by the defendant, as required by said bond, all books, vouchers and other evidence required by it.

10. The defendant has failed and refused to reimburse the plaintiff for the loss sustained by plaintiff through said misappropriation and conversion by the said \_\_\_\_\_, although plaintiff has duly demanded that defendant do so.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 157**

### **Complaint in Action on Bond of Bank Officer; Another Form**

[Caption and introductory paragraph]

1. On \_\_\_\_\_, 20\_\_\_\_\_, and ever since that time, the plaintiff was, and has been and now is, a banking corporation, organized and existing under the laws of the state of New York, and doing business at \_\_\_\_\_, in \_\_\_\_\_ County in said state and defendant \_\_\_\_\_ was and is a corporation organized under the laws of the state of New York, duly authorized to do business as a surety company.

2. At that time and continuously up and until about, \_\_\_\_\_, 20\_\_\_\_\_, the defendant, \_\_\_\_\_ was an employee of plaintiff, and

on \_\_\_\_\_, 20\_\_\_\_\_ was required by the plaintiff to give security to plaintiff, against pecuniary loss it might sustain by any act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on his part, directly or through connivance with others while in any position or at any location, in the employ of plaintiff.

3. In pursuance of said requirements of the plaintiff, on \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ County, State of New York, the defendants made, executed and delivered to the plaintiff, for a valuable consideration, their surety bond, a copy of which is hereto annexed, marked "Exhibit A," and made a part of the complaint.

4. At the time of the making of said surety bond or contract of indemnity by the defendants, as aforesaid, and from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, until the happening of the pecuniary loss and damage hereinafter mentioned, \_\_\_\_\_ remained continuously in the service and employ of the plaintiff.

5. At the time of the pecuniary loss to the plaintiff as hereinafter mentioned, the said surety bond or contract of indemnity was in full force and effect and had not been terminated by the defendant \_\_\_\_\_ company, by \_\_\_\_\_ days' notice to the plaintiff, or in any other way.

6. The pecuniary loss hereinafter stated to the plaintiff, was partially discovered, on \_\_\_\_\_, 20\_\_\_\_\_, and during the continuance of the obligation of defendants in said surety bond or indemnity contract contained.

7. Notice of such loss was delivered to the defendant \_\_\_\_\_ company, at its home office in the City of \_\_\_\_\_ within \_\_\_\_\_ days of such partial discovery of loss, and a claim for such loss, so far as then known by the plaintiff, in writing, showing the items and dates of said loss, so far as then known, was submitted by the plaintiff to the defendant, \_\_\_\_\_ company, at its home office, on \_\_\_\_\_, 20\_\_\_\_\_, at its request.

8. Plaintiff did not make and submit such itemized claim of its said loss, within \_\_\_\_\_ [period limited in policy for making notice] months after such partial discovery thereof because it was impossible so to do, as it did not and could not ascertain the facts upon which to make said claim within said \_\_\_\_\_ months' time, as the defendant \_\_\_\_\_ company well knew, and because the defendant \_\_\_\_\_ company, after the receipt by it of said notice of \_\_\_\_\_, 20\_\_\_\_\_, and before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, waived the delivery of said claim within said \_\_\_\_\_ months' time.

9. After the said \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and while said surety bond or indemnity contract was in full force and effect, \_\_\_\_\_, while such employee of the plaintiff, by his acts of fraud and dishonesty, embezzled a large sum of money, to wit, \_\_\_\_\_ dollars, lawful money of the United States, the property of the plaintiff, that came into his possession by virtue of said employment, whereby the plaintiff suffered loss and damage in said amount.

10. Plaintiff has duly performed all the conditions of said contract on its part, except as to filing claim within \_\_\_\_\_ months, which defendant \_\_\_\_\_ company waived as aforesaid.

11. No part of the loss and damage sustained by plaintiff as aforesaid has been paid, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 158**

### **Complaint in Action on Auctioneer's Bond**

[Caption and introductory paragraph]



1. At all the times hereinafter mentioned the defendant was and is a foreign corporation, organized and existing under the laws of the State of \_\_\_\_\_, engaged in the business of guaranteeing the faithfulness of persons holding positions of trust and the performance of contracts other than insurance policies and executing and guaranteeing bonds and undertakings required or permitted in all actions or proceedings at law.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ made application to <sup>6</sup>, then and now the city clerk of the City of \_\_\_\_\_, for a license permitting the said \_\_\_\_\_ to carry on the business and occupation of an auctioneer in the City of \_\_\_\_\_, pursuant to the statutes of this State in such case made and provided.

3. The said \_\_\_\_\_ therewith presented his bond duly executed by himself as principal and the defendant, \_\_\_\_\_, as surety in the penal sum of \_\_\_\_\_ dollars, in accordance with the statutes of this State in such cases made and provided, of which said bond a copy is hereto annexed and made a part hereof.

4. Thereafter and upon the filing of the aforesaid bond in the aforesaid office, and the same having been duly accepted and approved by the said city clerk, a license was issued by him on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the said \_\_\_\_\_, permitting the said \_\_\_\_\_ to engage in and carry on the business and occupation of an auctioneer, for a period of one year from the said date.

5. Thereafter upon the expiration of the said year, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ made application to the said city clerk for the continuation of the said license or a new license permitting him to carry on the said business and occupation of an auctioneer, and therewith presented his bond duly executed by himself as principal and the defendant as surety in the penal sum of \_\_\_\_\_ dollars, in accordance with the statutes of this State in such cases made and provided, of which said bond a copy is hereto annexed and made a part hereof.

6. Pursuant to the said licenses and each of them the said \_\_\_\_\_ did enter into and carry on said business and occupation of an auctioneer at \_\_\_\_\_ street, in the City of \_\_\_\_\_, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, this plaintiff dealt with the said \_\_\_\_\_ as such auctioneer, and consigned to him for sale at auction a large quantity of goods and merchandise of the value of \_\_\_\_\_ dollars.

7. Thereafter and between the months of \_\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ sold at auction the said goods and merchandise so consigned for sale by this plaintiff, but during said times and ever since refused and neglected to turn over to this plaintiff or to account to him for part of the moneys arising from the said sales, to the amount of about \_\_\_\_\_ dollars and converted the same to his own use.

8. By reason of such neglect, refusal and conversion, the said \_\_\_\_\_ cheated and defrauded this plaintiff, and did not well and truly carry on his said business or occupation of auctioneer, and did not in all things obey and conform to all the laws of the State of \_\_\_\_\_, and all ordinances and resolutions of the municipal assembly of the said City of \_\_\_\_\_, relating especially to the business of auctioneer in the said City of \_\_\_\_\_, according to the conditions of the said bonds.

9. Thereafter and prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff, pursuant to the statutes of this State in such cases made and provided, complained in writing of the fraud thus practiced upon him by the said auctioneer \_\_\_\_\_ to the president of the municipal council of the City of \_\_\_\_\_, and on the said day, pursuant to the said statute, the said president of the municipal council, due notice and opportunity of defense having been given, took the testimony of both parties, the plaintiff herein and said \_\_\_\_\_, under oath relating to the said charge of fraud contained in the said complaint; both the plaintiff and said \_\_\_\_\_ were present at the said hearing and were represented by counsel; the said president of the municipal council, after

such hearing, pursuant to the authority vested in him by section \_\_\_\_\_ of the charter of the City of \_\_\_\_\_, found and determined the said charges were in his opinion sustained, and revoked the license granted to said defendant auctioneer as hereinbefore set forth, and directed his bonds hereinbefore referred to and set forth, to be forfeited, and an order to the foregoing effect signed by the said president was entered in the office of the clerk of the City of \_\_\_\_\_.

10. Plaintiff has duly requested and demanded of the said \_\_\_\_\_, that he account for and pay said moneys to this plaintiff, but the said \_\_\_\_\_, has wholly neglected and refused to do so. The plaintiff gave due notice of all the aforesaid to the defendant, \_\_\_\_\_, and thereupon demanded payment by the defendant of the said sum of \_\_\_\_\_ dollars, but the defendant has wholly refused and neglected to pay the same, and the same has not, nor has any part thereof, been paid all to the plaintiff's damage in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 159**

### **Complaint in Action on Bond of Executor**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_, died a resident of the County of \_\_\_\_\_, leaving a last will and testament which was duly admitted to probate by the surrogate of said county on or about \_\_\_\_\_, 20\_\_\_\_\_, and thereafter letters testamentary thereon were issued by said surrogate on or about \_\_\_\_\_, 20\_\_\_\_\_, to \_\_\_\_\_ and to the plaintiff herein, the executor and executrix named in said will, who duly qualified as such.

2. The said \_\_\_\_\_ was then and is now a non-resident of this state, and before said letters were issued to him the said \_\_\_\_\_ together with the defendant made and executed a bond, a copy of which is hereto attached and made a part of this complaint. The defendant herein is a domestic corporation duly authorized to engage in business as a surety company.

3. Said bond, after being duly acknowledged, was thereupon filed in the office of the said surrogate, and letters testamentary were thereafter issued to the said \_\_\_\_\_, as aforesaid.

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, a decree was duly made and entered by said surrogate, revoking the letters testamentary which had previously been issued to the said \_\_\_\_\_. No successor was appointed in his place and the plaintiff is now the sole executrix of the last will and testament of said testator.

5. Thereafter said \_\_\_\_\_ made and filed with said surrogate's court an account of his proceedings as executor, and a petition for settlement thereof, upon which a citation was duly issued to and served upon all persons interested, including the defendant.

6. On or about \_\_\_\_\_, 20\_\_\_\_\_, a decree was duly made and entered by said surrogate's court, finally settling and allowing the accounts of the said \_\_\_\_\_ as executor, and directing him to pay over to plaintiff as executrix the sum of \_\_\_\_\_ dollars, being the funds of the said estate then remaining in his hands.

7. On information and belief, said \_\_\_\_\_ is not within the State of New York, and has no property within the State of New York out of which said sum due from him can be collected.

8. No part of said sum has been paid although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## Form 160

### Complaint in Action on Undertaking Given as Security for Costs

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ commenced an action against the plaintiff herein, in the \_\_\_\_\_ court of \_\_\_\_\_ County; and therein such proceedings were duly had that the said \_\_\_\_\_ was ordered by said court to give security for costs in said action, by an order of the court dated and entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

2. Thereupon, the defendant herein, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, duly made and caused to be filed in the office of the clerk of said court, his undertaking in writing under his hands whereby he undertook, pursuant to the statute, that he would pay all costs that might accrue in said action not exceeding the sum of \_\_\_\_\_ dollars.

3. Afterwards such proceedings were duly had in said action that a judgment for costs therein was duly rendered in favor of this plaintiff and against said \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars.

4. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff herein duly demanded payment of the said sum of \_\_\_\_\_ dollars from the defendant herein, but he has not paid the said sum nor any part thereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## Form 161

### Complaint in Action by Sheriff Against Surety on Bond of Deputy Sheriff

§ 3011. Kinds of pleadings.

1. Upon information and belief, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, one \_\_\_\_\_, the then sheriff of the County of \_\_\_\_\_, duly elected at a general election held in the County of \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, being about to appoint and employ the defendant \_\_\_\_\_ as a deputy sheriff of the County of \_\_\_\_\_, the said defendant \_\_\_\_\_, as principal, and the defendants \_\_\_\_\_ and \_\_\_\_\_, as sureties, duly executed and delivered to the said \_\_\_\_\_ their joint and several bond, in the sum of \_\_\_\_\_ dollars, conditioned that the said \_\_\_\_\_ should in all things well and truly execute and perform the duties of the office of deputy sheriff of the said County of \_\_\_\_\_, during continuance in said office, and should at all times save and keep harmless and indemnified the said \_\_\_\_\_, his heirs, executors and administrators, of, from and against all issues, demands, damages, costs, liabilities and charges whatsoever to be produced, imposed, prosecuted, demanded or demandable of, or against the said \_\_\_\_\_, his heirs, executors and administrators, for or by reason of any neglect of any kind whatsoever of the said \_\_\_\_\_ in executing wrongfully, and neglecting to execute said office of deputy sheriff and also for or by reason of any manner of nonfeasance or misfeasance or malconduct of the said \_\_\_\_\_ in anywise touching the execution of his said office of deputy sheriff during the time aforesaid; and which said bond further expressly provided that the recovery against said \_\_\_\_\_ [sheriff], of any judgment for or by reason of any of the matters aforesaid, should be conclusive evidence of the liability to him of the defendants herein, for the full amount which he might by the terms of such judgment be adjudged or required to pay, together with lawful interests thereon, and all costs, counsel fees and expenses incurred by him in the defense of any such suit, action or proceeding. A copy of said bond is hereto annexed and made a part of this complaint.

2. Upon information and belief, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ duly entered upon the performance and discharge of the duties of deputy sheriff, and continued therein down to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at which date the said \_\_\_\_\_ ceased to hold the said office of sheriff of the County of \_\_\_\_\_.

3. Upon information and belief, between \_\_\_\_\_, 20\_\_\_\_\_, and \_\_\_\_\_, 20\_\_\_\_\_, both days inclusive, one \_\_\_\_\_, at the special instance and request of the said defendant \_\_\_\_\_, acting as such deputy sheriff, as aforesaid, performed for and rendered \_\_\_\_\_ nights' services in watching, caring for and protecting certain property levied upon by the said defendant, \_\_\_\_\_, as deputy sheriff, under and by virtue of certain writs or warrants of attachment issued out of the Supreme Court, County of \_\_\_\_\_, directed to and duly delivered to said \_\_\_\_\_, as such sheriff, and by him duly given for execution to said defendant \_\_\_\_\_, as his deputy. Such employment of said \_\_\_\_\_ by said \_\_\_\_\_, as above set forth, was wrongful and unnecessary.

4. Upon information and belief, the said defendant, \_\_\_\_\_, wholly failed and neglected to pay to the said \_\_\_\_\_ his reasonable charges for such \_\_\_\_\_ nights' services rendered him as aforesaid, or any part or portion thereof.

5. Upon information and belief, thereafter, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by reason of said failure and neglect on the part of the said defendant, \_\_\_\_\_, to pay to said \_\_\_\_\_ his reasonable charges for the services rendered as aforesaid, the said \_\_\_\_\_ commenced an action in the city court of \_\_\_\_\_, against the said \_\_\_\_\_, as sheriff of the County of \_\_\_\_\_, to recover

the value of such \_\_\_\_\_ nights of service rendered by said \_\_\_\_\_ to such deputy sheriff, \_\_\_\_\_; thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, judgment was duly obtained therein by the said \_\_\_\_\_ against the said \_\_\_\_\_, as sheriff of the County of \_\_\_\_\_, for \_\_\_\_\_ dollars, and was by said \_\_\_\_\_ duly entered with the clerk of the city court of \_\_\_\_\_ on the same day.

6. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ died, leaving a last will and testament, which was thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, duly admitted to probate in the office of the surrogate of the County of \_\_\_\_\_.

7. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, letters testamentary were duly issued to \_\_\_\_\_, the plaintiff herein, duly appointing her executrix of the last will and testament of the said \_\_\_\_\_, deceased, and thereafter the said plaintiff duly qualified and entered upon the discharge of her duties as such executrix.

8. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said plaintiff was compelled to and did pay to the said \_\_\_\_\_, or his attorney of record, the aforementioned judgment of \_\_\_\_\_, plaintiff, against \_\_\_\_\_, as sheriff of the County of \_\_\_\_\_, defendant, with interest thereon to the date of payment, amounting in all to the sum of \_\_\_\_\_ dollars, and the said judgment was thereupon discharged of record.

9. By reason of said action between the said \_\_\_\_\_, plaintiff, and \_\_\_\_\_, as sheriff, etc., defendant, and by reason of the said judgment the said \_\_\_\_\_ has necessarily incurred various disbursements and has paid counsel fees in defending the same, amounting in all to the sum of \_\_\_\_\_ dollars.



10. The said defendant \_\_\_\_\_ and the said defendants \_\_\_\_\_ and \_\_\_\_\_, have, and each of them has, wholly failed and neglected to pay to said plaintiff the said sums so paid by reason of said judgment and of said disbursements and fees, as stipulated in said bond aforementioned, though payment thereof any of each of said sums has been heretofore duly demanded of the said defendants and each of them, and the same remain wholly due and payable to the said plaintiff.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 162**

### **Complaint in Action by Town on Bond of Town Treasurer**

[Caption and introductory paragraph]

1. The above-named defendant \_\_\_\_\_ was during the period from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the duly qualified and acting town treasurer of the plaintiff town, a municipal corporation, duly organized and existing as such.

2. Upon his election thereto, and before entering upon the duties of said office, and to qualify himself to enter thereon, the said defendant, as principal, and the defendants \_\_\_\_\_ and \_\_\_\_\_, as sureties, duly executed under their hands and seals and delivered to the plaintiff the official bond required by law, wherein they bound themselves, their heirs, executors and administrators, jointly and severally, to the plaintiff in the sum of \_\_\_\_\_ dollars, to be paid to said town; a copy of said bond is attached hereto and made a part of this complaint.

3. During the term of office of said defendant \_\_\_\_\_, there came to the hands of said defendant \_\_\_\_\_, and was received by him as such treasurer of said town, the plaintiff, the sum of \_\_\_\_\_ dollars; and there was

disbursed and paid out by him the sum of \_\_\_\_\_ dollars, leaving a balance in his hands of \_\_\_\_\_ dollars, which should have been accounted for to said town by him upon the expiration of his term of office.

4. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the term of office of the said \_\_\_\_\_ expired and he was succeeded in said office by \_\_\_\_\_, who was the duly elected and qualified successor of said defendant as such treasurer.

5. Upon the settlement of the said defendant, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said balance above stated remained in his hands of the moneys of said town.

6. Said defendant, in breach of the said bond, has failed and refused, and still refuses, to pay over to his successor, according to law, or to account for said sum of \_\_\_\_\_ dollars, although demand was made therefor by \_\_\_\_\_, his successor, and by the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_; and no part thereof has been paid, all to the plaintiff's damage in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 163**

### **Skeleton Form of Complaint in Action on Official Bond of Public Officer**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ was duly elected [or "appointed"] \_\_\_\_\_ [title of office] of the county [or "city" or "town" or as the case may be] of \_\_\_\_\_, for the term of \_\_\_\_\_.

2. On \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_, as principal, and \_\_\_\_\_ company [or “\_\_\_\_\_ and \_\_\_\_\_”] as surety [or “sureties”] duly executed and delivered to the city [or as the case may be] of \_\_\_\_\_, a bond in the sum of \_\_\_\_\_ dollars guaranteeing the faithful performance by the said <sup>1</sup> of his duties as such \_\_\_\_\_ [or as the case may be]. A copy of said bond is hereto annexed, made a part hereof.

3. Said \_\_\_\_\_, between \_\_\_\_\_, 20\_\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ [state facts to show breach of bond].

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, by an order duly made and entered in this court, leave was granted to this plaintiff to maintain an action on the aforesaid bond.

[Demand for judgment, endorsement, address, telephone number and verification.]

## **Form 164**

### **Complaint in Action on Sheriff’s Official Bond**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ was duly elected sheriff of the County of \_\_\_\_\_ for a term of \_\_\_\_\_ years.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said \_\_\_\_\_ as principal and defendant as surety executed and delivered to the \_\_\_\_\_ of said county their bond in the sum of \_\_\_\_\_ dollars, conditioned upon the faithful performance by the said \_\_\_\_\_

\_\_\_\_\_ of his duties as sheriff of said county. A copy of said bond is attached hereto and made a part of this complaint.

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff recovered a judgment in the \_\_\_\_\_ Court, County of \_\_\_\_\_, in his favor against one \_\_\_\_\_ for the sum of \_\_\_\_\_ dollars, and the judgment roll was duly filed and said judgment was duly docketed on the said date in the office of the clerk of the County of \_\_\_\_\_.

4. An execution against the property of the said \_\_\_\_\_ was duly issued upon said judgment, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and directed to the said \_\_\_\_\_ as such sheriff, by which he was directed to satisfy the said judgment and collect the said sum of \_\_\_\_\_ dollars, with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, out of the personal property of the said judgment debtor, and if sufficient personal property could not be found, out of the real property belonging to him at the time when said judgment was docketed in the clerk's office of the County of \_\_\_\_\_, or at any time thereafter; and to return said execution to the clerk of the County of \_\_\_\_\_ within sixty days after the receipt thereof.

5. Acting under and by virtue of said execution, the said \_\_\_\_\_, as such sheriff, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, levied upon and seized certain chattels of the said \_\_\_\_\_, of a value equal to or greater than the sum he was directed by said execution to collect.

6. No part of said sum has been paid to the plaintiff by the said \_\_\_\_\_, although payment thereof has been duly demanded.

7. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff recovered a judgment in the \_\_\_\_\_ Court, County of \_\_\_\_\_, against the said \_\_\_\_\_, as such sheriff, for the sum of \_\_\_\_\_

\_\_\_\_\_ dollars, damages which the plaintiff had sustained by reason of the failure of this said \_\_\_\_\_ as such sheriff to pay to the plaintiff the sum directed by said execution, and also for the sum of \_\_\_\_\_ dollars as costs and charges of the plaintiff in said last-mentioned suit, whereby the plaintiff sustained further damages to the amount of the said costs and charges.

8. Leave has been granted to the plaintiff by an order of this court, entered in the \_\_\_\_\_ County Clerk's office of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to maintain an action upon the said official bond of the said \_\_\_\_\_ as such sheriff, for the default of the said \_\_\_\_\_ as aforesaid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 165**

### **Complaint in Action by Sheriff on Bond to Indemnify Him for Levy Upon Property Claimed by Third Parties**

[Caption and introductory paragraph]

1. From \_\_\_\_\_, 20\_\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_\_, plaintiff was the duly elected sheriff of the County of \_\_\_\_\_.

2. On information belief defendant is and at all times herein mentioned was a corporation existing under the laws of the State of New York and engaged in business as a surety company.

3. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant executed and delivered to plaintiff, as such sheriff, its bond in the sum of \_\_\_\_\_ dollars, a copy of which is hereto attached and made a part of this complaint.

4. Said bond recited a judgment obtained by one \_\_\_\_\_ against \_\_\_\_\_ in the Supreme Court, County of \_\_\_\_\_, and the issuance of an execution thereunder to plaintiff as sheriff, and further recited that certain property which said judgment creditor believed to be the property of said judgment debtor might be claimed by other parties. The condition of said bond was that if the defendant should indemnify and save harmless the plaintiff as sheriff against all liability, costs and expenses arising out of a levy by him upon said property under the execution aforesaid, then said obligation was to be void, but otherwise to remain in full force and effect, all as more fully set forth in the copy of said bond annexed hereto.

5. After the execution and delivery of said bond, and at the request of the said judgment creditor, the plaintiff as sheriff levied upon said property for the purpose of satisfying in whole or in part the execution as aforesaid.

6. Thereafter and on or about \_\_\_\_\_, 20\_\_\_\_\_, by reason of the said levy, one \_\_\_\_\_, commenced an action against this plaintiff as sheriff in the Supreme Court, \_\_\_\_\_ County, wherein such proceedings were had that on or about \_\_\_\_\_, 20\_\_\_\_\_, the judgment was rendered against this plaintiff in favor of the said \_\_\_\_\_, in the sum of \_\_\_\_\_ dollars, based upon the said levy by this plaintiff.

7. When said action against this plaintiff was begun, and on or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff notified defendant thereof and requested defendant to defend the same. Said request was repeated on or about \_\_\_\_\_, 20\_\_\_\_\_, before the trial of said action, but defendant failed and refused to defend the same or to give plaintiff any assistance in the defense thereof.

8. In the defense of said action against him, plaintiff necessarily incurred costs, counsel fees and expenses in the amount of \_\_\_\_\_ dollars.

9. Defendant has wholly failed to indemnify the plaintiff against liability under said judgment and the said costs, counsel fees and expenses, and no part of the sum stipulated in said bond has been paid, although payment thereof has been duly demanded.

10. Plaintiff has duly performed all the conditions of said bond or contract on his part.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 166**

### **Complaint in Action on Undertaking; Special Damages**

[Caption and introductory paragraph]

#### **FOR A FIRST CAUSE OF ACTION**

1. Plaintiff is a domestic corporation.

2. Defendant \_\_\_\_\_ Surety Company is a domestic corporation.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ made his certain promissory note in writing, whereby for value received he promised to pay to the order of the \_\_\_\_\_ Company the sum of \_\_\_\_\_ dollars, three months after said date. Thereafter and before its maturity said note was duly endorsed and delivered by said \_\_\_\_\_ Company to one \_\_\_\_\_, who likewise thereafter and before maturity endorsed and delivered the said note to plaintiff, and, as collateral security for the payment of the said note, deposited with plaintiff certificate No. 14 for three hundred shares of the capital stock of the \_\_\_\_\_ Manufacturing Company in the name of the defendant \_\_\_\_\_, and which had, endorsed upon it, an assignment executed by said defendant, in blank, of one hundred shares of said stock represented by said certificate.

4. No part of said note had been paid to plaintiff, except the sum of \_\_\_\_\_ dollars, paid \_\_\_\_\_, 20\_\_\_\_\_, and except the further sum of

\_\_\_\_\_ dollars, received from the sale of the collateral deposited with said note as hereafter more fully alleged.

5. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, defendant \_\_\_\_\_ commenced an action at law in the Supreme Court of the State of New York, seeking to recover of plaintiff said one hundred shares of the capital stock, and the certificate therefor, being numbered 14, of the \_\_\_\_\_ Manufacturing Company, deposited as collateral for the payment of the note described in paragraph marked “3” herein.

6. During the pendency of said suit, plaintiff advertised for sale said stock held as collateral for said indebtedness, and defendant \_\_\_\_\_, thereupon applied to the Supreme Court in and for the county of New York, stock until the determination of the action brought by him for the recovery of such stock. Upon such application for an injunction the court made and entered an order, dated \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is annexed hereto and marked “Exhibit A.”

7. Subsequently and pursuant to said order defendants, \_\_\_\_\_ and the \_\_\_\_\_ Surety Company, made and executed an undertaking filed in the office of the clerk of New York county, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, whereby they jointly and severally agreed to pay to plaintiff the sum of \_\_\_\_\_ dollars, lawful money of the United States. The said undertaking recited the said order of the Supreme Court of New York, dated \_\_\_\_\_, 20\_\_\_\_\_, and it was therein provided that if defendant \_\_\_\_\_, should indemnify and hold plaintiff, the \_\_\_\_\_ National Bank, harmless from any and all damage, interest, costs or other expense, by reason of or growing out of the issuance or continuance of the injunction and as security for the amount of the indebtedness claimed to be due this plaintiff and on which it claimed to hold the certificate of stock above referred to, as collateral, then the obligation was to be void; otherwise, to remain in full force and effect. A copy of said undertaking is annexed hereto and marked “Exhibit B.”



8. The said action brought by \_\_\_\_\_ against this plaintiff was tried at a trial term of the Supreme Court of the State of New York, and resulted in a judgment for this plaintiff, and an adjudication that defendant \_\_\_\_\_ was not entitled to the possession of said shares of stock, until the indebtedness due this plaintiff was paid, and the said action was dismissed upon the merits, with costs. No appeal from said judgment has been taken by defendant \_\_\_\_\_, and the action is now fully determined. A copy of said judgment is annexed hereto and marked "Exhibit C."

9. Since the final determination of said action, plaintiff has sold, at public sale, to the highest bidder, the one hundred shares of stock deposited with it as collateral, and there was realized from such sale the sum of \_\_\_\_\_ dollars, less the expenses of said sale amounting to \_\_\_\_\_ dollars. The amount of indebtedness for which said stock was originally deposited was the sum of \_\_\_\_\_ dollars, with interest from \_\_\_\_\_, 20\_\_\_\_\_, subject to a credit of \_\_\_\_\_ dollars, paid \_\_\_\_\_, 20\_\_\_\_\_.

10. Plaintiff has not collected any other portion of the said indebtedness from any person liable therefor, and there remains now due upon said indebtedness to plaintiff, as hereinbefore more particularly set forth, for which said stock was deposited as collateral, the sum of \_\_\_\_\_ dollars with interest from \_\_\_\_\_, 20\_\_\_\_\_, subject to a credit of \_\_\_\_\_ dollars, paid \_\_\_\_\_, 20\_\_\_\_\_, and less the sum of \_\_\_\_\_ dollars, received from the sale of said collateral.

11. Defendants have failed to perform the undertakings of the said bond in that they have refused and failed to pay to plaintiff, although duly demanded, the sum of [fifteen hundred] dollars, due to plaintiff as provided in said undertaking.

FOR A SECOND CAUSE OF ACTION

12. Plaintiffs were compelled to and did retain attorneys to defend the cause for an injunction restraining plaintiff from selling and disposing of the said application for an injunction made by defendant \_\_\_\_\_, and were compelled to and did pay out sums of money for advertising the sale of the collateral, and the adjournment thereof pending the decision upon the application for a preliminary injunction. The one hundred shares of stock of the \_\_\_\_\_ Manufacturing Company, deposited as collateral for said indebtedness at the time of the issuance of said order; viz., \_\_\_\_\_, 20\_\_\_\_\_, was of sufficient value to have paid the indebtedness for which plaintiff held such stock as collateral, which was the sum of \_\_\_\_\_ dollars, with interest from \_\_\_\_\_, 20\_\_\_\_\_; but, pending the trial, the said stock became much less valuable, and plaintiff was only able to obtain for the said one hundred shares which it so held, at public auction, after the termination of the said action brought by defendant \_\_\_\_\_ the sum of \_\_\_\_\_ dollars, by all of which plaintiff has been damaged and has been put to expense and cost by reason of and growing out of the issuance of such injunction in at least the sum of \_\_\_\_\_ dollars. Payment has been duly demanded of the defendant \_\_\_\_\_, and the defendant \_\_\_\_\_ Surety Company, of the said sum of \_\_\_\_\_ dollars, and, although long past due, the defendants and each of them have refused to make such payment, or any part thereof.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 167**

### **Complaint in Action on Bond of Administrator**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, defendants, together with one M.N., made and delivered to the surrogate of the county of \_\_\_\_\_ their bond in writing, under their hands and seals, a true copy of

which is hereto annexed marked "Exhibit A" [or allege legal effect of bond, whereby they jointly and severally bound themselves to the state of \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, conditioned that if the said M.N. should faithfully discharge the trust reposed in him as administrator of all and singular the goods, chattels and credits of <sup>7</sup>, of the city of \_\_\_\_\_, county of \_\_\_\_\_, and state of \_\_\_\_\_, deceased, and should obey all lawful decrees and orders of the surrogate's court touching the administration of the estate committed to him then the obligation to be void, otherwise to remain in full force and effect].

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and after the making and delivery of the bond as aforesaid, letters of administration upon the said estate of said decedent were duly issued and granted by the said surrogate of the county of \_\_\_\_\_ to the said M.N. and the said M.N. thereupon duly qualified and acted and is still acting as such administrator.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said M.N. duly presented to the said surrogate of the county of \_\_\_\_\_, an account of his proceedings as such administrator, together with a petition for a judicial settlement of such account, and a citation thereon was duly issued by the said surrogate addressed to all of the persons required by law to be cited in such a proceeding including the defendants herein as sureties upon the said administrator's bond as aforesaid, and the said citation was duly served upon all of the persons including the defendants herein.

4. Thereafter such proceedings were had upon such accounting, that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a decree was duly made and entered by the surrogate of the county of \_\_\_\_\_, by which it was duly adjudged and decreed that the said administrator had in his hands the sum of \_\_\_\_\_ dollars as the balance of the assets of the said decedent that had come into his hands as such administrator, and the said administrator was ordered and directed to pay and distribute said balance as follows, to wit: [insert provisions of decree].

5. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a transcript of said decree was duly filed in the office of the clerk of the county of \_\_\_\_\_, and said decree duly docketed in said office.

6. Execution thereon was duly issued to the sheriff of the county of \_\_\_\_\_, commanding him to satisfy the same out of the personal property of said \_\_\_\_\_, and if sufficient personal property could not be found, then out of the real property belonging to him in said county at the time of the filing and docketing thereof.

7. At the time of the issuance of the said execution, the said M.N. was, and now is, a resident of the said county of \_\_\_\_\_.

8. The said sheriff has returned said execution wholly unsatisfied and the same still remains unpaid and unsatisfied.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 168**

### **Complaint in Action on Official Bond**

[Caption and introductory paragraph]

1. Plaintiff is a resident of \_\_\_\_\_, \_\_\_\_\_ County, New York.

2. Defendant \_\_\_\_\_ is a domestic corporation.

3. At the time hereinafter mentioned, defendant \_\_\_\_\_ was, and now is, \_\_\_\_\_ [sheriff] of \_\_\_\_\_ County.

4. At the time hereinafter mentioned, defendant \_\_\_\_\_ was, and still is, a \_\_\_\_\_ [deputy sheriff] of \_\_\_\_\_ County, duly appointed by defendant \_\_\_\_\_ and acting as such.

5. Before entering upon and assuming the duties of such office, defendant, \_\_\_\_\_, as \_\_\_\_\_ [sheriff] of <sup>1</sup> County, and defendant \_\_\_\_\_, as his surety, jointly and severally duly executed his official bond which was duly approved and filed in the \_\_\_\_\_ county clerk's office, a copy of which, marked Exhibit A, is annexed hereto and made a part hereof.

6. On information and belief, on or about \_\_\_\_\_, 20\_\_\_\_\_, defendants \_\_\_\_\_ and \_\_\_\_\_, acting as \_\_\_\_\_ [sheriff and deputy sheriff] respectively, as aforesaid, were \_\_\_\_\_ [searching for a prisoner who, on that day, had escaped from the custody of said <sup>2</sup> [sheriff] where he had been committed on conviction of a felony].

7. \_\_\_\_\_ [In the course of, and as a part of such search, defendants \_\_\_\_\_ and \_\_\_\_\_ broke into and entered the home of the deponent at \_\_\_\_\_, New York, without legal right, and wrongfully and unlawfully assaulted, beat, and struck plaintiff about the head, face, back, and other parts of the body, with fists, blackjacks, and other instruments].

8. \_\_\_\_\_ [No escaped prisoner then was, or had been, in plaintiff's home].

9. \_\_\_\_\_ [As a result of such assault, beating, and striking, plaintiff suffered serious personal injuries which are of a permanent nature, and from which plaintiff suffered and continues to suffer great pain. Plaintiff was confined to the hospital and to his bed for a considerable time, was compelled to pay large sums for medical attendance and was prevented from performing his usual occupation], all in the plaintiff's damage in the sum of \$\_\_\_\_\_.

10. On or about \_\_\_\_\_, 20\_\_\_\_\_, by order of Hon. \_\_\_\_\_, Justice of the Supreme Court, plaintiff was granted leave to maintain an action on the official bond of defendant, \_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 169**

### **Allegation of Leave to Sue**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an order was duly made and entered in the said Supreme Court, permitting the plaintiffs herein to maintain an action in their own names on the said undertaking hereinbefore set forth, against the said \_\_\_\_\_, and against each, every, and all of the other above-named defendants, in this court, upon the causes of action herein set forth.

## **Form 170**

### **Complaint in Action by Contractor for Agreed Compensation on Completion of Contract**

[Caption and introductory paragraph]

1. The plaintiff and the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, entered into a certain contract in writing, for the erection of a \_\_\_\_\_ on the premises of defendant at \_\_\_\_\_, a copy of which contract is hereto annexed and made a part of this complaint.

2. Plaintiff has duly performed all of the conditions of said contract on his part to be performed.

3. No part of the sum required to be paid to plaintiff by defendant under the said contract has been paid except the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 171**

### **Complaint in Action by Contractor for Services in Excavating**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, plaintiff and defendant entered into an agreement in writing, under their hands and seals, of which a copy is hereto annexed and made a part of this complaint, whereby the plaintiff on his part undertook and agreed to do all the excavating which the defendant might desire to have done on certain premises known as \_\_\_\_\_, such excavation to be done under the direction of the defendant and his engineer, and the plaintiff to be paid for his said work by the defendant as the work progressed, on estimates to be furnished by said engineer showing the amount actually done and to be paid for.

2. Defendant, in consideration of the premises, did, for himself, his heirs and assigns, covenant and agree, in said agreement, that he would pay the plaintiff for such excavation at the rate of \_\_\_\_\_ cents per cubic yard, \_\_\_\_\_ per cent thereof to be as the work should progress, upon the production by the plaintiff of the said engineer's estimates and certificate showing the work to be properly done and the amount of earth removed by the plaintiff, and defendant therein agreeing to pay the plaintiff \_\_\_\_\_ per cent of the full price, the remaining \_\_\_\_\_ per cent to be paid in cash at the expiration of six months from the completion of the work.

3. It was further agreed that the plaintiff would and should fully complete such excavation on or before \_\_\_\_\_, 20\_\_\_\_\_, and would furnish delivered upon said premises, as said engineer or defendant should direct, as much gravel as said defendant should desire at the rate of \_\_\_\_\_ cents per cubic yard, to be paid, as aforesaid, upon the certificate and estimates of said engineer.

4. In said agreement the plaintiff agreed to pay to defendant as liquidated damages the sum of \_\_\_\_\_ dollars per day for every day after said \_\_\_\_\_, 20\_\_\_\_\_, that the work should remain incomplete and that he should place all earth removed from any part of the premises on any other part of the premises as defendant or city engineer should direct, as by said contract will more fully appear.

5. Pursuant to said contract the plaintiff was requested by the defendant to commence work on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and not before, and thereupon immediately entered upon the performance thereof and executed the same under the direction of the defendant and his engineer, and in all things duly performed the terms of said contract, on his part to be performed, until on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on which day the defendant discharged the plaintiff from said work and refused to permit him to do any further excavating or further perform any of the provisions thereof.

6. The total amount excavated by the plaintiff under said contract was \_\_\_\_\_ cubic yards; and the performance of said contract was duly accepted by defendant, and his said engineer thereupon gave his estimates and certificates showing such quantity of excavation to have been done, and said certificates and estimates were duly produced and presented to the defendant, long before the commencement of this action.

7. No part of said sum has been paid except the sums following paid respectively at the dates hereafter named, to wit: \_\_\_\_\_.

There is a balance justly due and owing to the plaintiff from the defendant, under said contract, of the sum of \_\_\_\_\_ dollars with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and although the same became due and payable long before the commencement of this action, yet the defendant, although said estimates and certificates have been produced and presented to him, and though often requested, neglects and refuses to pay the same.

8. By reason of the above, plaintiff has been damaged in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]



## **Complaint in Action by Contractor Where Building Not Completed Within Time Fixed by Contract**

[Caption and introductory paragraph]

### **FOR A FIRST CAUSE OF ACTION**

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the City of \_\_\_\_\_, the plaintiff and defendant entered into an agreement in writing whereby the plaintiff agreed to tear down and remove the building on the premises at No. \_\_\_\_\_, \_\_\_\_\_ street, in the City of \_\_\_\_\_, to make all the excavations for cellar and foundations of a new proposed building on said premises and erect, complete and finish the proposed new building for the defendant upon the said premises at No. \_\_\_\_\_, \_\_\_\_\_ street, and make all the proposed alterations and additions in the building of the defendant, Nos. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ street, and the connections between said last-mentioned building and the proposed new building, and to provide on said premises all the materials for the foregoing; all of the foregoing was to be done by the plaintiff in the best workmanlike manner and to the best of its ability, and in accordance with specified drawings, plans and specifications of \_\_\_\_\_, the architect of the defendant. In and by said contract it was provided that all of said work, except the mason work, which the plaintiff agreed to perform itself, was to be sublet by the plaintiff to subcontractors, selected in a manner satisfactory to the defendant and approved by it, and the proper performance of all contracts made with subcontractors was to be guaranteed by the plaintiff.

2. In and by said contract the plaintiff guaranteed to the defendant that the total cost to the defendant of said new building and alterations of the existing building should not exceed \_\_\_\_\_ dollars and agreed to exert its best efforts to reduce the cost to the defendant of any and all items of expense, and to reduce the cost of said work as far as may be, all saving of expense below said guaranteed amount of cost to enure to the benefit of the defendant. In and by said contract the plaintiff further agreed that said building and alterations should be

erected and completed according to the terms of said contract on or before \_\_\_\_\_, 20\_\_\_\_\_, except for delay caused by fire or strikes, not occasioned by the fault of the plaintiff, or its subcontractors. In and by said contract the defendant agreed to pay to the plaintiff upon the certificate of the architect the amounts as they fell due and became payable according to the terms respectively of the contracts of the various subcontractors aforesaid and also to pay monthly upon such certificate the actual cost of the mason work done and materials furnished by the plaintiff. Defendant further agreed to pay to the plaintiff, in addition to the foregoing, the sum of \_\_\_\_\_ dollars, in full for the performance of said contract, in installments as follows: \_\_\_\_\_ dollars when the roof was tight; and the remaining \_\_\_\_\_ dollars when the work was completely finished.

3. The plaintiff duly performed all the conditions of said contract on its part, except that it did not complete said buildings and alterations on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. The delay in the completion of said building and alterations by the time specified was not occasioned by any fault on the part of the plaintiff or its subcontractors, but was caused by strikes and by the acts of the defendant in failing to deliver possession of said premises to the plaintiff until on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_; in its substituting trim covered with metal in lieu of the trim called for in the specifications, and cement floors in lieu of wood floors as originally provided in the specifications, and in making other substantial changes, additions and alterations in the plans and specifications; in interfering with the work as it progressed; in delaying decisions upon modifications, changes and alterations and upon questions relating to the methods of work as they arose; in failing to furnish promptly necessary information and data for the work; in deviating from the original plans and specifications and in making such substitutions and additions to said plans and specifications and such changes in said new building and alterations as necessarily prevented the completion of said building and alterations by the time specified in said contract. The defendant, by reason of the facts aforesaid duly waived the requirement of said contract that the said buildings and alterations should be completed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and said building and alterations were fully

completed within a reasonable time in view of the facts and circumstances hereinbefore stated, and were so completed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

4. The defendant has paid to the plaintiff the sum of \_\_\_\_\_ dollars, as provided in such contract, but has failed to pay to the plaintiff the residue of \_\_\_\_\_ dollars, stipulated in said contract, although the said building was completely finished and said alterations were completely made long before the commencement of this action and the payment of said sum became due and was duly demanded on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

FOR A SECOND CAUSE OF ACTION

The plaintiff, repeating the allegations contained in the preceding paragraphs of this complaint, and hereby realleging the same as if repeated in full, further alleges as follows:

5. The defendant made numerous additions to and alterations in said contract of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, many of them of a radical nature, the performance of which involved a greater amount of services and for a longer period of time than was contemplated between the parties at the time said contract was entered into, or than was expressed within the terms of said contract; the plaintiff has performed extra work and rendered extra services to the defendant in superintending and completing the large amount of additions, substitutions and alterations in and to the original plans and specifications ordered by the defendant and such extra work and extra services are reasonably worth the sum of \_\_\_\_\_ dollars, no part of which has been paid although duly demanded.

Wherefore, the plaintiff demands judgment for the sum of \_\_\_\_\_ dollars, with interest on \_\_\_\_\_ dollars from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on the first cause of action, and the sum of \_\_\_\_\_ dollars, with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on the second cause of action, making together the sum of \_\_\_\_\_ dollars, with interest as aforesaid, together with the costs and disbursements of this action.

[Endorsement, address, telephone number, and verification.]

**Form 173**

**Complaint in Action by Contractor Prevented from Completing Contract**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_, this plaintiff, and the defendant entered into a contract, a copy of which, marked "Exhibit A", is hereto annexed and made a part of this complaint.

2. In pursuance of the terms of said contract, and of the specifications thereto attached and made a part thereof, plaintiff entered into the work therein specified upon giving the bond required thereby, satisfactory to the said engineer and said defendant, and continued on the work provided for in and by said contract up to on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

3. In preparing to perform and in performing the work specified in said contract and specifications, the plaintiff necessarily expended the sum of about \_\_\_\_\_ dollars. All of the work done and performed by said plaintiff was performed strictly in accordance with the terms of said contract and specifications, to the entire satisfaction of the engineer of defendant in charge of the said work, and in a manner acceptable to the defendant, and said work was accepted by said defendant as satisfactory, and as having been done in a workmanlike manner and in accordance with the terms of said contract and specifications.

4. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant, without any fault, cause or reason for the same, of or on the part of the said plaintiff stopped the work under the said contract and prevented said plaintiff from continuing any further work under, and completing the same, and said plaintiff, compelled thereto by the defendant, did discontinue and suspend the said work under said contract although plaintiff was fully equipped

and prepared to continue said work, and had expended a large amount of money in material and supplies necessary to complete the same.

5. From the time of the commencement of the said work of constructing the \_\_\_\_\_ provided for in said contract, the said plaintiff performed work and labor in accordance with the terms thereof to the amount of \_\_\_\_\_ dollars, for which estimates were furnished to them and to the said defendant by the engineer of the defendant in charge of said work, on which said estimates the defendant paid said plaintiff the sum of \_\_\_\_\_ dollars, leaving a balance due from defendant on said estimates of the sum of \_\_\_\_\_ dollars, which defendant agreed to pay, but has since refused, and still refuses, to pay, which said estimates are in the words and figures following, to wit: \_\_\_\_\_.

6. Plaintiff has duly performed all the conditions of said contract on his part, except as prevented by the defendant as aforesaid, and at the time defendant so prevented plaintiff from completing performance thereof, plaintiff was and still is ready, able and willing to perform all the conditions of said contract in full, and duly tendered performance thereof to the defendant, who refused to permit the plaintiff to complete performance.

7. No part of the amount payable to plaintiff pursuant to the terms of said contract has been paid, except the sum of \_\_\_\_\_ dollars, and payment of the balance has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 174**

### **Complaint in Action on Construction Contract for Instalments Due Where Contract Terminated Because of Failure to Pay Instalments**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and defendant entered into a contract in writing, a copy of which is hereto annexed, marked "Exhibit A," and made a part hereof, wherein and whereby the plaintiff agreed to perform certain work, labor and services and furnish certain materials for the masonry and for the foundation called for in the plans for the improvement of the defendant's water power at the north end of the dam in the Village of \_\_\_\_\_, N. Y., for the cost of all labor, coal and other materials furnished by the plaintiff in and about said work, plus \_\_\_\_\_ per cent of the cost of said coal, labor and materials, the plaintiff to furnish without extra charge all necessary machinery and the defendant to furnish without extra charge any and all electric power required to operate the said machinery, the tools to be furnished by the plaintiff not to include the sheet piling necessary in and about said work.

2. The defendant under and by virtue of conditions of said contract agreed to make monthly payments on or before the fifteenth of each month for all work and labor performed and materials furnished by the plaintiff in and about the performance of said work during the preceding month, plus \_\_\_\_\_ per cent of said amount, less the amount due the defendant, if any, for electric power furnished by the defendant to the plaintiff in and about their work on contract number \_\_\_\_\_ of the Barge Canal.

3. During the progress of said contract the defendant, by its officers and agents, changed the said contract and included more work under said contract.

4. Said contract was not completed by the plaintiff for the reason that the defendant, its officers and agents, failed to comply with the condition thereof, in that the defendant, by its officers and agents failed and refused to pay to the plaintiff as specified in said contract on or about the \_\_\_\_\_ of each and every month, or at any other time, the amount due for the preceding month for work, labor and materials furnished, although a statement for the same has been rendered by the plaintiff to the defendant and the defendant requested to pay the same, which the defendant, through its officers and agents, refused and neglected to pay. Plaintiff is now and always has been ready and willing to complete said contract according to

said agreement, but the defendant, its officers and agents, have failed and refused to perform its part of said agreement, and failed and refused to pay the plaintiff as they by the terms of said agreement had agreed to.

5. The plaintiff commenced work under and pursuant to said contract on or about \_\_\_\_\_, 20\_\_\_\_\_, and duly performed all the conditions thereof on his part until and for some time after the defendant neglected and refused to pay the monthly installments due thereunder; the actual cost to the plaintiff for the labor, coal and other materials furnished by the plaintiff under and in pursuance to said contract, plus the \_\_\_\_\_ per cent stipulated in said contract and the reasonable value thereof was \_\_\_\_\_ dollars, no part of which has been paid, except the sum of \_\_\_\_\_ dollars, included in which sum is all the cash paid to the plaintiff by the defendant on said contract, and also the value and agreed price of all labor and materials, light and power furnished by the defendant to the plaintiff, up to and including \_\_\_\_\_, 20\_\_\_\_\_; the defendant fully paid either by cash or by light, power, labor and materials furnished to the plaintiff, all sums due under and pursuant to said contract up to and including \_\_\_\_\_, 20\_\_\_\_\_; but the defendant neglected and refused to pay the monthly installments due thereunder for work done, and materials furnished, after \_\_\_\_\_, 20\_\_\_\_\_, although the same was frequently demanded of the defendant by the plaintiff, and although the defendant was notified by the plaintiff that unless the same was paid the plaintiff would cease work; the plaintiff did finally, on or about \_\_\_\_\_, 20\_\_\_\_\_, cease work under said contract, and notified the defendant that he would not complete the same unless he was paid what was due under the said contract; there was on \_\_\_\_\_, 20\_\_\_\_\_, and there is now due and owing to the plaintiff from the defendant for work done, and materials furnished, upon said contract, the sum of \_\_\_\_\_ dollars, with interest from \_\_\_\_\_, 20\_\_\_\_\_, no part of which has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 175**

**Complaint in Action Against Contractor for Failure to Complete Building Already Leased to Third Person**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the plaintiff and the defendant entered into a written agreement, whereby the defendant agreed to erect, in a substantial manner, a two-story frame house in the Village of \_\_\_\_\_, County of \_\_\_\_\_, and to have the said house completed and ready for occupancy on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a copy of the contract being annexed hereto, marked "Exhibit A," and made a part hereof.

2. The plaintiff duly performed all the conditions thereof on his part.

3. The defendant entered upon the performance of the work under said contract, and laid the foundations of the said house, and commenced the erection of the first story thereof; but has neglected to finish the said building pursuant to said contract, and has left the same with the foundations laid, and the walls of the first story partly up, and although the time for the completion of said building expired before this action, he refuses to complete the same.

4. The plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, made an agreement with one \_\_\_\_\_ whereby he agreed to let, and said \_\_\_\_\_ agreed to hire, the said building for one year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the yearly rent of \_\_\_\_\_ dollars, of which the defendant had due notice at the time of making said contract.

5. By reason of the defendant's failure to complete the contract aforesaid upon his part, the plaintiff has been unable to complete said house so as to give said \_\_\_\_\_



occupancy thereof, and has been thereby deprived of the profits of said lease, and has been otherwise greatly injured, to his damage in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 176**

### **Complaint in Action Against Roofing Contractor for Unworkmanlike Job**

[Caption and introductory paragraph]

1. On \_\_\_\_\_, 20\_\_\_\_\_, plaintiffs were the owners of premises known as No. \_\_\_\_\_ Street in the City of \_\_\_\_\_, and plaintiffs were then engaged in rebuilding and remodeling the dwelling house on said premises.

2. The defendant was then doing business under the name and style of \_\_\_\_\_ Company and engaged in business as a roofing contractor, and also in building, erecting and equipping gutters, downspouts and flashings, and held himself out to the public as one possessed of ordinary skill and ability in said business.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, defendant entered into a contract with plaintiffs to install upon the dwelling house on said premises a tile roof with gutters, downspouts and flashings. A copy of said contract, marked "Exhibit A" is hereto annexed and made a part of this complaint.

4. Plaintiffs have duly performed all the conditions of said contract on their part.

5. The defendant entered upon the performance of said contract but he carelessly, negligently, and improperly erected, installed, built and equipped the said roof and the gutters, downspouts and flashings, and carelessly and negligently selected inferior, unsuitable and defective material and performed his services in such a careless, negligent and unworkmanlike manner that the said roof and the gutter, downspouts, and flashings were inadequate for the purpose for which

they were intended and used, in that they leaked in a great many places and permitted large quantities of water to seep through said leaks, holes and openings upon, through and into the walls and ceiling of the said dwelling house, and as a result the plaster, stucco and decoration on the walls and ceilings were damaged and destroyed, and the plaintiffs were required to and did expend and will in the future be required to expend large sums of money in having the same repaired and replaced.

6. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiffs notified defendant that he had not done the work aforesaid in a proper workmanlike manner, and notified him of the defects and faults of said work, and demanded that he remedy and correct the same, but defendant failed and refused and still fails and refuses to do so.

7. By reason of the foregoing, plaintiffs have been damaged in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 177**

### **Particular Allegations in Complaint as to Modification of Building Contract**

Thereafter, and before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly performed all the conditions thereof on his part, except that at the request of the defendant he covered the roof of the building in the above contract mentioned with slate instead of shingles, for which the defendant promised to pay a reasonable sum in addition to the price named in said contract; and at the like request he omitted to put blinds upon the rear of the building, on the agreement with the defendant that a reasonable deduction should be made from the price named in said contract for such omission; and by the consent of the defendant the time for completing said work was extended for one month after the day named in said contract to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, on which day the whole of said work was completed by the plaintiff.

The sum of \_\_\_\_\_ dollars is a reasonable payment to be made in addition to the price named in said contract, for covering said roof with slate instead of shingles.

The sum of \_\_\_\_\_ dollars is a reasonable deduction to be made from the price named in said contract for the omission to put blinds upon said building.

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, payment of the sum of \_\_\_\_\_ dollars, being the balance due on said contract after making such allowance and such deduction, was duly demanded of the defendant by the plaintiff, but no part thereof has been paid except \_\_\_\_\_.

### **Form 178**

#### **Particular Allegations in Complaint in Action by Contractor for Value of Extra Work**

While plaintiff was so engaged, defendant requested and ordered of the plaintiff certain extra and additional work to be done, which was not provided for by the said contract, said additional work and the reasonable value of the labor and material used in connection therewith being itemized as follows: \_\_\_\_\_. Plaintiff duly performed said extra work and defendant promised and agreed to pay the reasonable value thereof.

### **Form 179**

#### **Particular Allegations in Complaint Based on Guaranty of Work**

The defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a valuable consideration, guaranteed in writing the tile roof applied on the plaintiff's residence against any defects in materials or workmanship for a period of five years and further guaranteed that should any leaks develop in said roofing same would be repaired without charge. A copy of said guaranty, marked "Exhibit A," is hereto attached and made a part of this complaint.

[Allege defects or leakage, demand upon the defendant that he repair the same, and his failure to comply.]

## **Form 180**

### **Particular Allegations in Complaint to Recover Claim for Extras and Damage Caused by Owner's Delay**

Defendant hindered, delayed, embarrassed and interfered with plaintiff and with the work being carried on by plaintiff; prevented plaintiff from going on and finishing the same in a reasonable and proper manner; suspended the entire work under said contracts from time to time, forced plaintiff to keep its working forces and various employees idle for long periods of time; compelled it to rent space for the storing of completed trim, woodwork and materials; to procure additional insurance on trim and materials; to pay wages of carpenters, painters and others, largely in excess of the wages that would have been necessary to have been paid had plaintiff been allowed to complete its work within a reasonable time; put plaintiff to a large additional cost of putting hardware on said trim and woodwork instead of \_\_\_\_\_; largely increased the cost to plaintiff of the labor and materials used in the manufacture of said trim and woodwork; caused plaintiff the loss of the use of a large part of the capital invested in its business; caused plaintiff a large additional expense because of door bucks not being properly set and grounded, and sliding door pockets being too small in the said apartment house; for extra work in making patterns for trim, on account of plasterers not following grounds first put on; for putting on glass plaques throughout the building; for extra work on account of inability to do work by reason of the failure of defendant to prepare whole floors at one time ready for trim, and by reason of the orders of defendant to finish certain apartments out of the regular order; all to the loss and damages of plaintiff in the sum of \_\_\_\_\_ dollars, the particulars of which are stated as to each item in the account hereto annexed and marked "Exhibit A."

## **Form 181**

### **Allegation in Complaint by Contractor as to Unreasonable Refusal of Architect to Give Certificate**

Plaintiff has duly performed all the conditions of such contract on his part except that he has not obtained the certificate of the architect as to the completion of the work; after plaintiff had fully completed said work in accordance with the terms of said agreement, he requested said architect to make and deliver to him his certificate thereof, but said architect unreasonably refused and still unreasonably refuses so to do.

### **Form 182**

#### **Complaint in Action by Assignee for Sum Due on Contract**

[Caption and introductory paragraph]

1. Heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, A entered into an original written contract and various supplemental contracts with B, wherein A agreed to furnish the labor and materials for the trim and interior woodwork supplied to and erected in the \_\_\_\_\_ Hotel, in \_\_\_\_\_ City, as provided in said contracts and the plans and specifications forming a part thereof; for which said labor and materials B agreed to pay A the sum of \_\_\_\_\_ dollars. No part of said sum of \_\_\_\_\_ dollars has been paid to A, except the sum of \_\_\_\_\_ dollars; and there is now due and unpaid under the said contract and the contracts supplemental thereto the sum of \_\_\_\_\_ dollars.

2. A afterwards duly performed all of the terms and conditions of the said contract of \_\_\_\_\_, 20\_\_\_\_\_, and the said contracts supplemental thereto, on its part to be done and performed; and the same was fully completed on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. Within thirty days thereafter, to wit, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,

A was entitled to have and receive from B, upon the said contract for the said labor performed and materials furnished, the sum of \_\_\_\_\_ dollars, but no part thereof has been paid.

3. Heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, A duly assigned to the plaintiff herein all of its right, title and interest under the said contracts with B, and the moneys due and unpaid thereunder.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 183**

#### **Complaint in Action for Sum Due on Municipal Contract**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly made and entered into a contract in writing with the defendant, the City of \_\_\_\_\_, acting by and through \_\_\_\_\_ thereunto duly authorized by law, wherein and whereby for certain prices to be paid and considerations therein contained plaintiff agreed to perform certain work and furnish certain materials for the construction of the portions of \_\_\_\_\_, all as more particularly set out in said contract, and to perform the said work and furnish the materials required all in accordance with and in conformity to the terms of said contract and the specifications and plans made a part of said contract.

2. In and under the terms of the said contract defendant promised and agreed to pay to plaintiff the following prices for the work and materials furnished by him under said contract, to wit:  
\_\_\_\_\_.

3. After the execution and delivery of said contract, and as soon as permitted by defendant, plaintiff proceeded to carry out and perform the terms and conditions of said contract, and has duly performed all the terms and conditions of said contract on his part to be performed, and has substantially completed the entire work under said contract, and the same has been accepted by defendant.

4. It is provided in said contract as follows: \_\_\_\_\_ [provision as to certificate of city engineer as to performance of contract, etc.].

5. After the complete performance of the said contract on the part of the plaintiff, the Engineer of the Board of \_\_\_\_\_ referred to in said contract and the provision above set out herein, duly certified in writing to the Board of \_\_\_\_\_ from actual measurements the whole amount of the work done by plaintiff and the value of such work under and in accordance with the terms of the said contract.

6. Thereafter a certificate of the said completion and acceptance of the said work under said contract, duly signed by the chief engineer under said contract, and duly approved of and adopted by the said board of \_\_\_\_\_ as aforesaid, was duly filed in the office of the comptroller of the City of \_\_\_\_\_ and more than \_\_\_\_\_ days have expired since such filing.

7. In accordance with the terms of the said certificate of the said chief engineer and the said approval and acceptance by the said Board of \_\_\_\_\_, filed as aforesaid, there has been earned under said contract the sum of \_\_\_\_\_ dollars.

8. No part of the said sum of \_\_\_\_\_ dollars has been paid, excepting the sum of \_\_\_\_\_ dollars, and there is now due and unpaid on account of said contract, in accordance with the terms of said certificate and resolution of acceptance and approval by the said Board of \_\_\_\_\_, the sum of \_\_\_\_\_ dollars with interest from \_\_\_\_\_, 20\_\_\_\_\_.

9. More than thirty days have elapsed since the claim here sued upon in this action was duly presented to the comptroller of the City of \_\_\_\_\_ for settlement and adjustment, but no part of said claim has been adjusted, settled or paid, and settlement and adjustment thereof has been refused.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 184**

**Complaint in Action on Contract with Public Corporation**

[Caption and introductory paragraph]

1. That the defendant at all the times hereinafter mentioned was and still is a municipal corporation organized and existing under the laws of the state of New York, and in particular under an act entitled, <sup>1</sup>, passed \_\_\_\_\_.

2. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, plaintiff entered into a contract with the Board of Water Commissioners of the said village of \_\_\_\_\_, New York, acting for and as agents of defendant, a copy of which contract is hereto attached marked Schedule A, and made a part of this complaint.

3. That thereafter plaintiff entered upon the performance of the said contract and duly performed all of the conditions of said contract on his part to be performed, except excavating for and backfilling trenches in \_\_\_\_\_ Avenue, such work having been stopped by order of the said Board of Water Commissioners of the said village of \_\_\_\_\_, although plaintiff was ready and willing at all times to perform the same, and thereupon became entitled to and there was due and owing to him from the said defendant under the terms and conditions of the said contract the sum of \_\_\_\_\_ dollars.

4. That no part of said sum has been paid, except the sum of \_\_\_\_\_ dollars, and there is now due and owing to the plaintiff from the defendant the sum of \_\_\_\_\_ dollars.

5. That thereafter plaintiff presented to the Board of Water Commissioners of the said village of \_\_\_\_\_ a written claim for said sum which remained due and owing to him,



and the said Board of Water Commissioners unreasonably refused to audit and allow same, and unreasonably cancelled said contract and declared it to be null and void.

6. That thereafter plaintiff presented to the Board of Trustees of the said village of \_\_\_\_\_ a written verified claim for the amount above set forth and the Board of Trustees unreasonably refused to pay same.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 185**

### **Complaint in Action Against City to Recover Amount Improperly Withheld as Liquidated Damages for Delay in Completing Contract**

[Caption and introductory paragraph]

1. The plaintiff is a domestic corporation duly organized and existing under the laws of the State of New York and having its principal place of business in the City of \_\_\_\_\_, County of \_\_\_\_\_ and State of New York and the defendant is a municipality duly organized under the Laws of the State of New York.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly made and entered into a contract with the defendant through \_\_\_\_\_, whereby the plaintiff agreed to furnish at its own proper cost and expense and in conformity to the specifications in said contract contained, all the necessary labor and materials necessary and proper for the purpose and in a good, substantial and workmanlike manner to construct and complete in place the steelwork of a certain bridge, in accordance with the drawings and specifications for the work to said contract annexed, a copy of which said contract is hereto annexed marked "Schedule A," and by reference made a part hereof. In and by the said contract, defendant agreed to pay plaintiff the sum of \_\_\_\_\_ dollars in full compensation for furnishing all materials and labor and for performing and completing all the work which was necessary and proper to be furnished or performed, in order to complete the

entire work in said contract described and specified and in said specifications and drawings described and shown, and including all expenses for machinery, tools, materials and labor requisite for the full completion of the work to the satisfaction of the commissioners, as in said contract provided.

3. In and by the said contract, plaintiff further agreed that it would so conduct the work that the same should be completed within \_\_\_\_\_ months after service of notice that all necessary preliminary work had been completed, or within the period for which the time to complete the same was extended if it should be extended by the said commissioners, as in said contract provided, including the removal of all plaintiff's materials, tools, etc., as provided in said specifications.

4. One of the conditions upon which plaintiff entered into the contract, and one of the obligations of the defendant to the plaintiff, was that the defendant should do or cause to be done the work preliminary to that to be done by the plaintiff under the contract, in orderly sequence, so that, before the commencement of work by plaintiff, the other contractors who preceded the plaintiff in the work upon the said bridge should have completed their part of the work and removed their workmen, implements, machinery and other appurtenances for doing the work so as to permit the plaintiff to commence and proceed with its work, and before requiring the plaintiff to commence its work upon the said bridge, the defendant would have the work preliminary to that to be done by the plaintiff so prepared as to permit the plaintiff, upon the receipt of the notice hereinbefore referred to, to proceed with its work under the contract freely and in accordance therewith and with safety, advantage and economy.

5. In and by said contract, it was agreed by and between the parties thereto, that the chief engineer of the \_\_\_\_\_ commissioners should in all cases for the purpose of partial payment and also for the purpose of final payment, where the amount to be paid depended upon the amount or quantity, determine the amount or quantity of the several kinds of work, which were to be paid for under said contract; that he should determine all questions in relation to said work and construction thereof and in case any question should arise between the

parties to said contract touching the same, his estimate and decision should be a condition precedent to the right of the party of the second part to receive any money under said contract; that whenever in the opinion of the engineer the plaintiff should have completely performed said contract, on its part to be performed, the said engineer should so certify in writing to said commissioners and his certificate should state, from actual measurement, the whole amount of the work done by the party of the second part and also the value of said work, under the terms of the said contract, and the amount or sum that the contractor was entitled to receive therefor, and that on the expiration of \_\_\_\_\_ days after acceptance of the work herein agreed to be done by plaintiff, the said commissioners should direct to be paid to plaintiff, in cash, the amount remaining after deducting from the amount or value contained and stated in the last-mentioned certificate such sums as should theretofore have been paid to the plaintiff under any of the provisions in said contract contained.

6. In and by the said contract, the plaintiff further agreed that the defendant should be and it was thereby authorized to deduct and retain out of all the moneys which might be due to the plaintiff, under said contract, as liquidated damages, so called, and not by way of penalty, the sum of \_\_\_\_\_ dollars for each and every working day the time consumed in the execution of the work might exceed the time stipulated for its completion or such stipulated time to which the same might be extended by said commissioners, as aforesaid.

7. [Set forth all the preliminary steps required to permit the municipality to enter into the contract as] the council of the defendant city duly resolved on the \_\_\_\_\_ to authorize \_\_\_\_\_ to execute the aforesaid contract and the comptroller of the defendant, City of \_\_\_\_\_, duly endorsed upon the said contract a written certificate that there remained unexpended and unapplied a balance of the appropriation provided for by the sale of \_\_\_\_\_ bonds applicable to the said contract, sufficient to pay the estimated expenses of executing the same, to wit \_\_\_\_\_ dollars.

8. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the commissioners gave plaintiff notice that all necessary preliminary work on said bridge had been completed and required plaintiff to commence work under its said contract.

9. One of the conditions upon which the plaintiff entered into the contract and one of the obligations from the defendant to the plaintiff, was that, before the plaintiff should be required to commence its work under the contract, the defendant should cause to be built the abutments of said bridge, and to have the said abutments completed and the contractors who should build the same and their workmen through and away, and the plant, machinery, implements and other appurtenances of the work used by said contractors removed, and the space about the foot of the abutments free and clear to permit the plaintiff to place advantageously its plant, machinery, implements, and material necessary and proper for its work, and its workmen to have room for freely, safely, advantageously and economically doing their work.

10. At the time of giving the said notice of \_\_\_\_\_, 20\_\_\_\_\_, the preliminary work on said bridge and abutments necessary to be done by the defendant before the plaintiff could commence and proceed with its work freely and in accordance with the contract, and with safety, advantage and economy, as hereinbefore stated, had not been done, and it was impossible for the plaintiff at that time, therefore, to commence and proceed with its work freely and in accordance with the contract and with safety, advantage and economy. On \_\_\_\_\_, 20\_\_\_\_\_, and afterward for a long period of time, to wit, until on or about the \_\_\_\_\_, the abutments were not ready so as to permit the plaintiff to prosecute its work freely and in accordance with the contract and with safety, advantage and economy. On the contrary, other contractors and their workmen were still employed about the abutments.

11. Upon receipt of said notice of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff protested that such notice was not in accordance with the terms of the contract or the conditions upon which the plaintiff entered into the contract; that the plaintiff should not be required to proceed with its work under the contract; and that the “\_\_\_\_\_ months” of

the contract ought not, by said notice, to be deemed to have been set running, or the plaintiff herein be put in jeopardy of sustaining the penalty of \_\_\_\_\_ dollars a day.

12. The defendant by its engineer nevertheless required the plaintiff to proceed with its said work with all possible dispatch notwithstanding the failure of the defendant to comply with the terms and conditions before mentioned upon which the plaintiff entered into the contract in that it had failed to do the preliminary work hereinbefore referred to.

13. The plaintiff thereupon, not waiving any rights thereby, or intending so to do, but on the contrary protesting as hereinbefore stated, commenced with as large a force as the conditions at the bridge would allow and so continued, sometimes stopping of necessity, until the conditions at the bridge were such as to permit the plaintiff to prosecute its work, under its said contract, with safety, advantage and economy, which was about \_\_\_\_\_, 20\_\_\_\_\_, and whenever it could and as often as possible, it increased the number of men engaged upon the work.

14. By reason of the failure of the defendant to complete the preliminary work necessary and proper to be done before the plaintiff could commence and prosecute its work under the contract freely and in accordance therewith, and with safety, advantage and economy, as hereinbefore stated, and by reason of the incomplete condition of the work upon the bridge abutments, the plaintiff was wrongfully hindered, delayed and interfered with by the defendant in the commencement and prosecution of its work under the contract.

15. By reason of such interference with the work of the plaintiff by the defendant, and the delay to the plaintiff's work thereby occasioned, the plaintiff was prevented from completing the work within the time provided for in the contract, and as extended by the said commissioners as hereinafter stated, and the time limit provided in the contract became thereby abrogated. The plaintiff completed its work under the contract within a reasonable time after such obstruction to and interference with its work ceased.

16. Before the plaintiff could proceed with the erection of any steelwork, it was necessary to have certain barges. As one of the conditions upon which the plaintiff entered into the contract, and one of the obligations of the defendant to the plaintiff, the defendant was to provide the same. The defendant failed to provide such barges on or before \_\_\_\_\_, on or before which date the plaintiff was ready to commence the erection of steel, and therefore to use the said barges, and did not furnish the plaintiff suitable and proper barges until on or about \_\_\_\_\_, 20\_\_\_\_\_. The defendant thereby wrongfully and unlawfully delayed the plaintiff in the performance of the contract from \_\_\_\_\_, 20\_\_\_\_\_, and made it impossible for the plaintiff to complete its work under the contract within the time prescribed by the contract, and as extended by the commissioners, as hereinafter stated.

17. The defendant by the said commissioners wrongfully claimed that the \_\_\_\_\_ months, within which the plaintiff was to complete its work under the said contract, commenced to run \_\_\_\_\_, and expired \_\_\_\_\_; on or about said latter date, the defendant by said commissioners requested that the plaintiff apply for an extension of time to complete the work under the contract; the plaintiff thereupon stated to said commissioners that it would be impossible to complete the work before the end of \_\_\_\_\_. Said commissioners, nevertheless, passed a resolution, extending the plaintiff's time to complete the work under said contract for \_\_\_\_\_ months from \_\_\_\_\_. Immediately upon being notified of the passage of such resolution, the plaintiff protested against such extension being limited to \_\_\_\_\_ months and reiterated its previous statement that the work could not be completed before the end of \_\_\_\_\_, and refused to accept the said \_\_\_\_\_ months' extension.

18. The plaintiff completed its work in accordance with the terms of the contract and in strict conformity to the specifications in said contract contained and the drawings thereto attached, within a reasonable time, after suitable and proper barges were provided by the defendant; and

upon the completion of said work by the plaintiff on or about \_\_\_\_\_,  
20\_\_\_\_\_ the defendant accepted the same and since that date has had the sole,  
exclusive, full and complete use, possession and enjoyment thereof.

19. Plaintiff fully and duly performed all the other terms, conditions and covenants of the contract, on its part to be performed.

20. Notwithstanding plaintiff fully performed said contract and completed its work thereunder as aforesaid, the engineer's final certificate mentioned in the contract wrongfully undertakes to deduct from the amount due plaintiff \_\_\_\_\_ dollars, being \_\_\_\_\_ dollars per diem for \_\_\_\_\_ days' alleged overtime, and the engineer wrongfully refuses to give plaintiff a final certificate for the full and true amount due it on the alleged sole ground that the plaintiff failed to complete its work within the time provided for such completion by said contract, and as extended by the commissioners as hereinbefore set forth.

21. Upon the expiration of thirty days after the completion of the said work by the plaintiff and acceptance thereof by the defendant, there became due from the defendant to the plaintiff, in accordance with the terms of the said contract, the sum of \_\_\_\_\_ dollars, and no part thereof, except the sum of \_\_\_\_\_ dollars, has been paid, although often duly demanded.

22. On or about \_\_\_\_\_, 22\_\_\_\_\_, the plaintiff caused to be presented to the comptroller of the City of \_\_\_\_\_, pursuant to law, a claim against the defendant for said balance of \_\_\_\_\_ dollars, with interest from \_\_\_\_\_, duly verified by the plaintiff; more than \_\_\_\_\_ days have elapsed since the presentation of said claim to said comptroller, and said comptroller has neglected and refused to make any adjustment or payment of said claim or any part thereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Complaint in Action for Damages From Failure to Perform Contract for Excavating Within Time Agreed, Thereby Delaying Other Work**

[Caption and introductory paragraph]

FOR A FIRST CAUSE OF ACTION

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant entered into an agreement with the plaintiff whereby he agreed to make or to cause to be made the necessary excavation for building purposes, of earth and rock from the premises of the City of \_\_\_\_\_, situate on the \_\_\_\_\_ side of \_\_\_\_\_ between \_\_\_\_\_ and \_\_\_\_\_ streets, according to the plans and surveys for said work, upon the terms hereinafter set forth, to provide at least \_\_\_\_\_ trucks per day, until all earth and rock should have been excavated, to work at least \_\_\_\_\_ drills simultaneously while excavating rock, to work night and day and generally to use the utmost diligence and despatch so as to complete said contract at the earliest time possible, to use due diligence in the blasting of said rock in the course of said excavation and to be personally responsible for all damage which might thereafter accrue by reason of such excavation. Said contract consists of several written instruments bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, copies of which said written instruments, marked "A," "B," and "C" respectively, are hereto annexed and made a part of this complaint. The price of said excavation fixed by said agreement was \_\_\_\_\_ cents per cubic yard of earth and \_\_\_\_\_ cents per cubic yard of rock actually and necessarily excavated in the course of said work.

2. The defendant thereafter undertook the work of excavating said premises, but failed to perform said contract or agreement in all respects upon his part in that he did not use due diligence in the prosecution of said work, but delayed the same, did not at all times provide a sufficiency of materials and workmen, did not conduct said work during the nighttime, did not excavate the uniform depth agreed upon, did not perform said work as rapidly as possible, and



caused the blasting of rock to be done in a negligent, improper and dangerous manner and thereby caused substantial damage to the adjoining premises.

3. By reason of the aforesaid delay, default and negligence of the defendant, plaintiff was obliged to employ other workmen to complete said excavation and was obliged to make good the damage caused by the negligent blasting aforesaid to the damage of the plaintiff in the sum of \_\_\_\_\_ dollars. \_\_\_\_\_ dollars of said sum of \_\_\_\_\_ dollars was paid by the plaintiff at the request of the defendant to prevent litigation on account of the damage caused by the negligent blasting done by the defendant on said premises, as follows:  
\_\_\_\_\_.

4. The plaintiff duly performed all the terms and conditions of said agreement or contract on his part.

#### FOR A SECOND CAUSE OF ACTION

5. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant entered into a further agreement with the plaintiff to make the additional excavations for the swimming pool and for the boilers to be erected upon said premises, at the same prices per cubic yard of earth and rock actually and necessarily excavated as were fixed by the contract or agreement above set forth and to furnish additional workmen so that there should be no delay in completing said agreement and the agreement hereinafter set forth. A copy of said agreement of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, is hereto annexed, marked "D" and made a part of this amended complaint.

6. The defendant thereafter undertook the work provided for by said agreement, but failed to perform said agreement in all respects on his part, according to the tenor thereof, in that he caused such additional excavations to be made in a negligent and improper manner, failed to provide a sufficiency of materials and workmen, failed to complete said work within the time limit fixed by the said agreement and delayed other contractors upon said premises to the damage of the plaintiff in the sum of \_\_\_\_\_ dollars.

7. The plaintiff duly performed all the terms and conditions of said agreement or contract on his part.

#### FOR A THIRD CAUSE OF ACTION

Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 7 of this complaint, inclusive, with the same force and effect as if here set forth in full, and further alleges as follows.

8. Plaintiff has caused accurate surveys of said premises to be made by a competent surveyor and has caused accurate calculations based on such surveys to be made for the purpose of determining the exact respective amounts of earth and rock actually excavated by the defendant and the total amount earned by the defendant for the work performed by him under all of said written agreements at the price per cubic yard of earth and rock excavated which is fixed by said agreements does not exceed the sum of \_\_\_\_\_ dollars.

By reason of erroneous certifications made to the plaintiff, the plaintiff inadvertently paid to the defendant from time to time sums largely in excess of the amount actually due to the defendant for the said work; said sums so paid to the defendant by the plaintiff amount in the aggregate to the sum of \_\_\_\_\_ dollars; the excess of said sum of \_\_\_\_\_ dollars paid to the defendant aforesaid, over and above said sum earned by defendant as aforesaid, amounts to the sum of \_\_\_\_\_ dollars, which sum became and was due and payable to the plaintiff from the defendant on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and payment thereof was demanded and refused.

#### FOR A FOURTH SEPARATE AND DISTINCT

#### CAUSE OF ACTION

9. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and at the special instance and request of the defendant, the plaintiff entered into a certain other and further agreement with the defendant, in consideration of the plaintiff paying to him in advance, the sum of \_\_\_\_\_ dollars, by the provisions of which agreement the defendant

agreed to complete all of the work covered by his various prior agreements with this plaintiff within twenty days thereafter and to provide additional employees and equipment for that purpose, and to do and perform certain other things more particularly specified in said agreement, a copy of which is hereto annexed and marked "Exhibit F."

10. Thereupon and in consideration of said agreement of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff paid to the defendant, the sum of \_\_\_\_\_ dollars, and performed all the conditions and covenants in said agreement contained on his part to be kept and performed; but the defendant failed and neglected to keep and perform the terms of said agreement of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in that he failed and neglected to provide additional employees and equipment as agreed, and wholly failed to complete all of the work on said premises including blasting and drilling, digging, cutting of rock and the removing from the premises of all of the same, within twenty days from the date of the said agreement, and he utterly failed and neglected to complete the said work at all.

11. By reason of the said delay of the defendant in completing the terms of the said agreement, the plaintiff's work, the steel contractors and all the other contractors upon the said building were hindered and delayed and the construction and completion of the said building was greatly hindered and delayed.

12. By reason of such default on the part of the defendant, and as a result of the plaintiff's contractors being unable by reason of such delay to complete the said building for a long period of time after the same should have been completed, the plaintiff has been damaged in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 187**

**Complaint in Action on Guaranty of Performance by Subcontractor**

[Caption and introductory paragraph] (P) 1. That the plaintiffs, \_\_\_\_\_ and \_\_\_\_\_, at all times hereinafter mentioned were and now are a duly organized copartnership carrying on business as engineers and contractors, under the firm name of \_\_\_\_\_, in various parts of the United States and elsewhere.

2. That the defendant, the \_\_\_\_\_ Company, at all times hereinafter mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, having its chief office and principal place of business in the City of Scranton, Pennsylvania, and was duly authorized to carry on business in the State of New York as a surety company.

3. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiffs entered into a certain contract with \_\_\_\_\_ Company of Philadelphia, wherein and whereby said \_\_\_\_\_ Company agreed to well and sufficiently furnish and provide all the work and material necessary or required to fully do, perform and complete all structural steel erecting in and connected with \_\_\_\_\_ Co. grain elevator, situate in \_\_\_\_\_ Street, in \_\_\_\_\_, N.Y., consisting of working house, train shed, galleries and roof over concrete tank, steel hopper bottom in concrete tank and marine tower in connection therewith, for certain compensation, as shown and agreed upon in said contract, which said contract is here specifically referred to and a copy thereof is hereto annexed, marked Schedule "A," and made a part of this complaint.

4. That to secure the performance by said \_\_\_\_\_ Co. of the terms and conditions of said contract on its part to be performed, and for a valuable consideration to the defendant in hand paid, the defendant did execute and deliver to the plaintiffs its certain bond or obligation in writing, sealed with its seal, a copy of which is hereto annexed, marked Schedule "B," and made a part of this complaint.

5. That said \_\_\_\_\_ Company failed to fulfil the terms and conditions of said contract of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, but

abandoned said construction in an incomplete condition, whereby the plaintiffs were caused great delay and damage, and were forced to and did expend sums of money, and work, labor and services completing said work as in said contract specified, and in so completing said work said plaintiffs expended a sum exceeding the sum of \$\_\_\_\_\_ in excess of the sum remaining unpaid to the said \_\_\_\_\_ Co. upon said contract of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to wit, the sum of \_\_\_\_\_ in excess of the sum remaining unpaid to said \_\_\_\_\_ Co., upon said contract as aforesaid.

6. That the defendant although duly notified of the default of said \_\_\_\_\_ did not itself undertake the completion of said contract of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

7. That the plaintiffs duly performed and fulfilled each and every condition of said contract of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to be by them performed.

8. That the plaintiffs duly performed and fulfilled each and every condition of said bond of \_\_\_\_\_, 20\_\_\_\_\_, to be by them performed.

9. That by reason of the premises there is due and owing the plaintiffs from the defendant the sum of \$\_\_\_\_\_, together with interest thereon. That the same has been demanded, but said sum has not been paid nor any part thereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 188**

### **Complaint in Action Against Roofing and Waterproofing Contractor for Breach of Contract**

[Caption and introductory paragraph]

1. At all the times herein mentioned the plaintiffs were and are residents of the County of \_\_\_\_\_, State of New York.

2. Upon information and belief, at all the times herein mentioned, the defendant, \_\_\_\_\_ WATERPROOFING CO., INC. (“\_\_\_\_\_”) is a domestic corporation.

3. Upon information and belief, at all the times herein mentioned, the defendant \_\_\_\_\_ had a principal place of business in the County of \_\_\_\_\_, State of New York.

4. Upon information and belief, at all the times herein mentioned, the defendant \_\_\_\_\_ was in the business of roofing and waterproofing.

5. On or about \_\_\_\_\_, 20\_\_\_\_\_ the plaintiff and the defendant entered into an agreement for the defendant to provide certain waterproofing and roofing work at the premises of the plaintiff. The parties also executed certain other letter agreements and contracts and change orders for work at the premises of the plaintiff (all of the above referred to herein as the “contract”).

6. Pursuant to that contract, the defendant undertook obligations as set forth therein, including, among others:

(a) To employ only skilled labor;

(b) To do all work in a good and workmanlike manner;

(c) That all materials supplied are to be of new and of first class quality;

7. Pursuant to said contract, among other things, the defendant warranted that “all work and materials” were in “full and complete accordance with the contract and that all work and materials are free from any and all defects and imperfections and fully suitable for the use and purpose for which each and every part is intended.”

8. Pursuant to the said contract, among other things, the defendant warranted that “all work and materials” were in “full and complete accordance with the contract and suitable for the use and purposes for which each and every part is intended.”

9. Pursuant to said contract, \_\_\_\_\_ agreed, "should any defect develop or appear, the Contractor shall promptly, upon demand, fully correct substitute and make good any such defective materials or workmanship without any cost to the owner. . . ."

10. Pursuant to the contract, the warranty period commenced on the date the Owner certified all contract work was completed and continued in force for two years.

11. \_\_\_\_\_ did not perform the work pursuant to the contract and specifications annexed to the contract.

12. \_\_\_\_\_ did not properly perform all the work required by the contract.

13. \_\_\_\_\_ did not comply with the terms of the warrant and/or guaranty.

14. \_\_\_\_\_ agreed, by letter, to perform certain work after the conclusion of work under the aforesaid contract and further agreed to do said work at no additional cost to \_\_\_\_\_.

15. The work performed by \_\_\_\_\_ failed, had defects and imperfections and was not done pursuant to the requirements of the contract and the change orders, letters or contract additions.

16. \_\_\_\_\_ breached its contract(s), representations, guaranties, warranties and undertakings to \_\_\_\_\_ by, among other things, failing to perform the work as required by the contract; failing to complete the work as required by the contract; substituting materials not allowed under the contract; not providing materials, supplies, labor and work as required and/or allowed under the contract; failing to correct defects, work and/or punch list work as required and/or allowed under the contract; by doing work not in accordance with the contract and the specifications therein; in not providing good and workmanlike labor and materials and work and in not doing the work in a good and workmanlike manner; in not supplying materials of new and/or of first class quality; in not supplying only skilled labor; in providing defective materials and/or workmanship; in doing work that was not free from all defects and imperfections and was not fully suitable for the use and purposes for which each and every part was intended; in not installing the roof so that it would not leak; in installing a

roof that was not sealed in a waterproof manner; in not complying with the contract and the specifications thereof; in doing said work improperly and incorrectly and not in accordance with the agreed to contract and/or specifications; in not completing said work pursuant to the contract; in not repairing same as required under the warranty and contract and in being otherwise in breach of the terms and provisions of the contract.

17. The work to be performed by the defendant was not so performed in accordance with the terms and conditions of the contract.

18. By reason of \_\_\_\_\_'s breach of and default under the contract, the plaintiff sustained various damages to the premises and to apartments therein.

19. By reason of \_\_\_\_\_'s breach of and default under the contract, letters and agreement and failure to comply with the warranty and pursuant to the contract correct the deficiencies and breaches as to its work, the plaintiff has been required to expend money for repair, renovation, new roofs, engineering fees, attorney's fees and the like.

20. By reason of the foregoing, the plaintiff has been injured and damaged in the sum of \$ \_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 189**

### **Same: Affidavit in Support of Assessment of Damages**

\_\_\_\_\_, being duly sworn, deposes and states:

1. I am President of ..... Park Corp., the Plaintiff herein and as such am fully familiar with the facts and circumstances of this matter. In making this affidavit, I am not only making same based on personal knowledge, but have reviewed the books and records of the Plaintiff. I make this affidavit in support of the assessment of damages herein.

2. The original contract was entered into between the plaintiff and the defendant for certain waterproofing and roofing work and restoration of flashing. Specifically, the area and scope of work were to be (1) the removal of all coating from the entire inside parapet wall from the coping



stone down to the flashing level, wire brushing or scraping and coating with Thoroseal; (2) installation of scaffolding for testing and removal of all loose, hollow or disintegrated mortar joints, cleaning, tooling and repointing with a cement mortar and cemented with Thoroseal; (3) manufacturing and fabricating aluminum hoods to the existing louvers; (4) the removal of the existing roof above the stairwell bulkheads to the concrete deck with the installation of a new roof over the stairwell bulkheads of 15 lb. asphalt saturated felt and a full layer of roof cement and one layer of 65 lb rubberoid and building up of all flashings with new 3 ply builtup flashing; (5) the flashing of the main roof of each building with the freeing of all base flashing, cutting back defective flashing; installation of new base flashing and (6) the wire brushing of all coping stones which were then to be covered with Thoroseal. All cross joints of the coping stones were to be cut out, cleaned and caulked with a polysulfide sealing compound.

3. The job was performed negligently, carelessly and imprudently and not in conformity with the requirements of the contract. Shortly after, among other defects, leaks appeared in approximately 72 separate places in the 10 buildings of the plaintiff. We retained engineers to review the work and we were provided with reports which confirmed the failure of \_\_\_\_\_ to adequately perform the work as well as failing to provide work and materials that were “fully suitable for the use and purposes for which each and every part is intended,” i.e., to waterproof the roof and parapets and prevent the flow of water into the apartments and buildings below. Work was not only performed negligently, but was not at all performed in accordance with the contract’s requirements.

4. The work that \_\_\_\_\_ was to perform as to the parapets was essentially the removal of all coating from the entire inside parapet wall from the coping stone down to the flashing level, wire brushing or scraping and coating with Thoroseal. \_\_\_\_\_ did not do this work properly and in fact, the work that they did as to the parapets not only was useless, but aggravated the situation. As our engineer stated shortly afterwards, “this coating is in an advanced state of failure and serious damages to the underlying masonry have been sustained.” Thus, we sustained additional damages to our buildings. In addition, the “Thoroseal” coating did not adhere to the parapets, probably as a result of the failure to remove the original

coating material as called for in the contract. This is only part of the failure of \_\_\_\_\_'s work which resulted not only in no value to what they did regarding the parapets, but additional damages to our property. At this time, for the purpose of this motion we are only seeking a return of the monies spent for the parapet and will withhold any claim for damages. However, in the event for some reason, the default is vacated, we shall pursue the balance of our claim at that time for the additional damages to our property as well as for the additional parapet work that had to be performed. The portion of this contract with \_\_\_\_\_ that related to the Parapets was identified in the contract as Area #1 and we were charged 00,000.00. (See Exhibit A, \_\_\_\_\_ contract, page \_\_\_\_\_ of the specifications showing the prices for the work). We thereafter had to bid out the corrective and repair work to a different contractor, \_\_\_\_\_ Waterproofing and Restoration Corp. On a contract was entered into with \_\_\_\_\_ for parapet/copings work in the sum of 80,000.00. Thus, we had to do all the work that \_\_\_\_\_ was to have performed regarding the parapets and copings, plus additional work, and at a substantially higher price. (Exhibit B) We should be reimbursed for the sum of 00,000.00 that we paid \_\_\_\_\_ for work that was not performed pursuant to the contract (in addition to the additional 80,000.00 that we had to incur, but as to which we are not making a claim at this time and understand that if we receive the monies requested herein that will finish this matter).

5. Because of the continuing problems that were associated with the roof, we immediately contracted with ..... Restoration, Inc. to perform emergency repair work. This work was necessary due to the failure of the work performed by \_\_\_\_\_ and the resultant leaks into various apartments. The cost of this initial repair work was 7,801.25. (Exhibit C)

6. We retained an engineer to continue to review the other work, performed by \_\_\_\_\_. That engineer reported to us that there were the following deficiencies in addition to those associated with the water penetration of the apartment interiors: (1) plaster deterioration on the stair bulkhead plaster walls; (2) inadequate repair and/or

restoration work in the bulkhead walls allowing the continued penetration of water; (3) the failure by \_\_\_\_\_ to properly or at all apply a protective finish to the stair bulkhead walls; (4) bubbling in the roofing material installed on the main roof which contained water, and “fishmouths, blisters and ridging” throughout the roof; (5) rotting through the roof sheathing requiring replacement; (6) inadequate installation of base flashings resulting in large quantities of water under the flashings necessitating removal and replacement of base flashings; (7) improper covering of parapet walls which prevented them from being properly turned down over the base flashings; (7a) the counterflashings were not properly turned down allowing water to be wind driven under them and over the type of the base flashings into the interior construction - flexibility needed; (8) destruction of original insulation by the water trapped between the \_\_\_\_\_ installed materials and the original roof membrane; (9) the failure of \_\_\_\_\_ to remove the accumulation of materials previously applied to the inner parapet wall surface resulting in the protective material applied peeling off; (10) lack of pointing of masonry on exterior parapet wall surfaces below the through wall flashings; (11) parapet masonry spalling or completely losing the mortar joints.

7. In addition to the above, our engineer also advised us that a review of the site showed that the roof work done by \_\_\_\_\_ was deteriorating with base flashings badly alligatored. At that time approximately 25% of the roof had failed. The pointing work done by \_\_\_\_\_ was improperly performed - joints had not been cut out to a minimum depth of ½ “, repointed with a mortarproof mortar and tooled to a neat finish. In many areas a caulking material was improperly substituted. The replacement roofing provided by \_\_\_\_\_ over the superstructures had failed because, among other things, \_\_\_\_\_ improperly used roofing cement to seal the joints between the adjacent terra cotta coping tiles and the joints were open and leaking. As to the repairs to the base flashings provided by \_\_\_\_\_, they were exhibiting failures and the engineer found that large areas of original base flashings that were to have been repaired by \_\_\_\_\_ had not been repaired at all. The areas that were supposedly

repaired by \_\_\_\_\_ exhibited serious defects. Pitch pockets for various roof penetrations were not properly filled and were also leaking.

8. \_\_\_\_\_ also failed to comply with the contract requirements that all foreign materials be removed from the parapets before the Thoroseal products were applied. The engineer concluded that the contract requirements were not fulfilled by \_\_\_\_\_ and the quality of work was deficient.

9. The work that was to be done regarding the bulkheads was not done pursuant to the contract. One of the contract items was corrective pointing of bulkheads and chimneys. \_\_\_\_\_ only did this work to the elevator bulkheads, not the stairway bulkheads. As this work was priced out at 4,750.00 and as \_\_\_\_\_ only did approximately one half of this work, we overpaid 2,375.00 for work that was not done properly.

10. Our engineer advised us that \_\_\_\_\_ did not properly perform the base flashing work. We had paid 5,000.00 for this work and estimate that approximately 20% of this work was not completed, thus sustaining damages in the sum of ,000.00 for work not performed.

11. Thereafter, we retained several different contractors to perform corrective temporary repair work to the roof and the individual apartments. This work was done by

\_\_\_\_\_ Waterproofing (Bills annexed): ,546.52

\_\_\_\_\_ Roofing: (Bills annexed): ,476.00

12. In addition, we had to pay to repair the various leaks to the apartments that had been damaged. The figures we have at this time are in the sum of 50.00. Although we believe that these figures are in actuality substantially higher since there were scores of apartments that had substantial water problems, these are the only bills that we have been able to secure at this time and thus will only make that claim.

13. We also had to retain two engineers to evaluate the conditions left by \_\_\_\_\_ and advise us as to what remedial steps had to be taken to cure the damage that \_\_\_\_\_ had performed. The cost of these engineers was a direct result of \_\_\_\_\_'s breach of the contract. The first engineer charged

,436.72 and the second engineer charged ,800.00, which also included a portion of the supervision of the additional repair and renovation work, totaling 1,236.72.

14. Thus, we have damages claimed, for the purpose of this inquest, in the sum of 58,255.49 together with interest, costs and disbursements.

Wherefore, we respectfully request that the Court issue a Judgment against \_\_\_\_\_ Waterproofing Co., Inc. in the sum of 58,255.49 together with interest, costs and disbursements.

\_\_\_\_\_  
[Jurat]

## **Form 190**

### **Complaint By Builder In Action For Unpaid Labor, Materials, and Services Where Builder Filed Mechanics' Lien Against Improved Property**

[Caption and introductory paragraph]

#### **AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT**

1. That at all times hereinafter mentioned plaintiff was and still is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York.

2. That upon information and belief, the defendant, \_\_\_\_\_, is now and at all times hereinafter mentioned is a domestic corporation organized and existing under the laws of the State of New York.

3. That at all times hereinafter mentioned, the defendant, \_\_\_\_\_ was and still is the owner of and in possession of certain lands and premises in the City of \_\_\_\_\_, State of New York, County of \_\_\_\_\_, more particularly bounded and described as follows:

[set forth property description]

4. That heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff and the defendant entered into an agreement in writing wherein and whereby plaintiff agreed to do certain work and furnish certain materials for the construction of a single family residence on the property of the said defendant hereinbefore described, and the defendant promised to pay to the plaintiff therefor, in the manner set forth in the said contract, the sum of \$ \_\_\_\_\_; that a copy of said contract is hereto annexed, marked Exhibit "A" and made part of this complaint.

5. That thereafter the plaintiff entered into and performed all of the terms and conditions of the said agreement.

6. That the first item of work was performed and the first item of material was furnished by the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the last item of work was performed and the last item of material was furnished on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

7. That the work, labor and services so performed by the plaintiff and the materials so furnished by the plaintiff were performed and furnished for the improvement of the real property hereinbefore described and were performed and furnished with the knowledge and consent and at the request of the defendant, \_\_\_\_\_.

8. That at the time of the filing of the lien hereinafter set forth, there was and still is justly due, owing and unpaid by the defendant, \_\_\_\_\_, to the plaintiff the sum of \$ \_\_\_\_\_, with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

9. That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and within four months after the final performance of the work and the final furnishing of the material dating from the last item of work performed and materials furnished, plaintiff caused to be filed in the Office of the Clerk of the County of \_\_\_\_\_, that being the county where the property hereinbefore described is situated, a notice of lien in writing, which notice did state the name and residence of the lienor and its business address and principal place of business; the name and address of the lienor's attorney; the name of the owner of the real property against

whose interest therein a lien is claimed and the interest of the owner so far as known to lienor; the name of the person by whom the lienor was employed and to whom it furnished the materials and with whom the contract was made; the labor performed and materials furnished, and the agreed price and value thereof; the amount unpaid to the lienor for such labor and materials; the time when the first and last items of work were performed and materials were furnished; the property subject to the lien, with a description thereof sufficient for identification together with its location by street and number which said notice of lien was duly verified by the plaintiff to the effect that the statements therein contained were true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believed it to be true.

10. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said notice of lien was duly docketed in the said Clerk's office in the Lien Docket kept for the said purpose and thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff caused a copy of the said notice of lien to be duly personally served upon the defendant, \_\_\_\_\_, and by registered mail, return receipt requested, upon the defendant, \_\_\_\_\_.

11. That the said lien has not been paid, waived, canceled or discharged.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 191**

### **Complaint By Subcontractor Against Construction Company Alleging Breach of Modification Agreement**

[Caption and introductory paragraph]

1. Plaintiff is a domestic corporation.

2. Upon information and belief defendant \_\_\_\_\_ Construction Co., Inc is a domestic corporation.

3. Upon information and belief, defendant \_\_\_\_\_ Insurance Company of New York is a domestic corporation.

4. Upon information and belief, defendant \_\_\_\_\_ Insurance Company is a Pennsylvania corporation.

5. Upon information and belief, defendant \_\_\_\_\_ Insurance Company of New York is a domestic corporation.

6. Upon on information and belief, defendant \_\_\_\_\_ Insurance Company is a Kansas corporation.

7. Upon information and belief, defendant \_\_\_\_\_ Reinsurance Corporation is a Kansas corporation.

8. Upon information and belief, the said defendants \_\_\_\_\_ Insurance Company of New York, \_\_\_\_\_ Insurance Company, \_\_\_\_\_ Insurance Company of New York, \_\_\_\_\_ Insurance Company and \_\_\_\_\_ Reinsurance Corporation are each duly licensed to carry on the business of sureties in the State of New York.

9. Upon information and belief, defendant \_\_\_\_\_ Construction Co. entered into a prime contract with the City of New York known as Contract No. \_\_\_\_\_ for construction of the \_\_\_\_\_ Precinct Stations and Service Station No. \_\_\_\_\_, \_\_\_\_\_, New York (hereinafter referred to as "Project").

10. Upon information and belief, the aforementioned defendants, as sureties, executed a certain payment bond on behalf of \_\_\_\_\_ Construction Co., as principal. The said bond provides, inter alia, as follows:

The conditions of this obligation are such that if the Principal, his or its representatives or assigns and other Subcontractors to whom work under this Contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for

a. Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Work under said Contract, and any amendment or extension thereof or



addition thereto, whether such persons be agents, servants or employees of the Principal or of any such Subcontractor, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the Project regardless of any contractual relationship between the Principal or such Subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly at the site of the project; and

b. Materials and supplies (whether incorporated in the permanent structure or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any subcontractor at or in the vicinity of the site of the Project in the prosecution of the Work under said Contract and any amendment or extension thereof or addition thereto; then this obligation shall be void, otherwise to remain in full force and effect.

11. Said payment bond further provides:

a. All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other persons as party plaintiff.

12. On or about \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_  
defendant \_\_\_\_\_ Construction Co., as contractor, and plaintiff, as  
subcontractor, entered into three (3) separate Purchase Order-Subcontracts ("Subcontracts")  
wherein and whereby in consideration of sums to be paid to plaintiff by  
\_\_\_\_\_ Construction Co. as in said purchase order subcontractor plaintiff  
agreed to furnish certain labor and materials for the construction work at the Project. Said  
Subcontracts are in the following amounts:

P.O. Subcontract Price

\_\_\_\_\_ 70,000.00

\_\_\_\_\_ 42,000.00

\_\_\_\_\_ 60,000.00

13. During the course of performance of the work under said Subcontract, a dispute arose between plaintiff and \_\_\_\_\_ Construction Co.

14. Thereafter, Plaintiff entered into a Modification Agreement dated \_\_\_\_\_, 20\_\_\_\_\_, a copy of which is attached hereto as Exhibit "1" and made a part hereof. Said agreement modifies the rights and obligations of the parties under the aforesaid Subcontracts.

15. Pursuant to said Modification Agreement, \_\_\_\_\_ Construction Co. was obligated, inter alia, to pay to plaintiff the sum of 0,000 on or before \_\_\_\_\_, 20\_\_\_\_\_.

16. Plaintiff has duly performed all of the terms and conditions of said Modification Agreement on its part to be performed.

17. Although past due and demanded, \_\_\_\_\_ Construction Co. has failed and refused to pay said sum of 0,000.00 to plaintiff, in breach of \_\_\_\_\_ Construction Co.'s obligation thereunder, and to \_\_\_\_\_'s damage in the sum of 0,000.00.

18. Plaintiff is a person entitled to sue under the aforesaid payment demand.

[Demand for judgment, endorsement, address, telephone number and verification]

## **Form 192**

### **Complaint by Payee Against Maker of Check**

[Caption and introductory paragraph]

1. On \_\_\_\_\_, 20\_\_\_\_\_, the defendant duly drew and delivered to the plaintiff, for a valuable consideration, a check of which the following is a copy: \_\_\_\_\_ [insert copy of check].

2. Said check was duly endorsed by the plaintiff and was duly presented to the said \_\_\_\_\_ Bank for payment on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and said bank refused payment thereof.

3. Notice of such presentation of said check and the refusal of the said bank to pay the same was duly given to the defendant.

4. Plaintiff is the owner and holder of said check, no part of which has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 193**

#### **Complaint by Endorsee Against Maker of Check**

[Caption and introductory paragraph]

1. On \_\_\_\_\_, 20\_\_\_\_\_, the defendant, for a valuable consideration, drew and delivered to \_\_\_\_\_, a check of which the following is a copy: \_\_\_\_\_ [insert copy of check].

2. Thereafter, the said \_\_\_\_\_ duly endorsed the said check and delivered the same, so endorsed, to the plaintiff for value.

3. Thereafter said check was duly endorsed by the plaintiff and was duly presented to said \_\_\_\_\_ bank for payment on or about \_\_\_\_\_, 20\_\_\_\_\_, and said bank refused payment thereof.

4. Notice of such presentation of said check and of the refusal of the said bank to pay the same was duly given to the defendant.

5. Plaintiff is the owner and holder of said check, no part of which has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 194**

### **Allegation Where Payment of Check Is Stopped by Drawer**

After the delivery of said check, and on \_\_\_\_\_, 20\_\_\_\_\_, the defendant ordered and directed the drawee bank named therein not to pay the same, and said bank refused for such reason to pay it.

### **Form 195**

### **Allegation Excusing Presentment of Check Because of Insolvency of Bank**

At the time said check was delivered as aforesaid the said bank was insolvent and had stopped payment, which facts the defendant well knew [as the plaintiff is informed and believes] and of which the plaintiff was ignorant.

### **Form 196**

### **Complaint in Action by Endorsee Against Endorser of Check**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant duly endorsed and delivered to the plaintiff, for a valuable consideration, a check dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, drawn by \_\_\_\_\_, on the \_\_\_\_\_ Bank, directing said bank to pay to the order of the defendant, \_\_\_\_\_, the sum of \_\_\_\_\_ dollars.

2. The plaintiff duly endorsed said check and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, duly presented the same to the said \_\_\_\_\_ Bank, on which the said check was drawn, and payment was then and there demanded but said \_\_\_\_\_ Bank refused payment thereof; thereupon said check was duly protested for nonpayment and notice of such demand, refusal and protest was duly given to the defendant and demand was duly made on him for the payment of said sum and no part thereof has been paid and the plaintiff is still the owner and holder of said check.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 197**

### **Complaint in Action by Endorsee Against Maker and Endorser of Check**

[Caption and introductory paragraph]

1. On \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, the defendant \_\_\_\_\_ drew and delivered to the defendant \_\_\_\_\_ a check of which the following is a copy: \_\_\_\_\_ [insert copy of check].

2. Thereupon said defendant \_\_\_\_\_ [name of payee] duly endorsed the said check in \_\_\_\_\_ and delivered it, so endorsed, to the plaintiff for value.

3. Said check was then duly endorsed by the plaintiff and was thereafter duly presented to the said bank for payment but was not paid, whereupon it was duly protested for nonpayment, and due notice of such presentment, nonpayment and protest was given to each of the defendants.

4. Plaintiff is the owner and holder of the said check, no part of which has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 198**

### **Complaint by Depositor Against Bank for Paying Checks on Unauthorized Endorsement**

[Caption and introductory paragraph]

1. At all times herein mentioned the defendant was and now is a domestic corporation, organized and existing under the Banking Law of the State of New York, and engaged in business as a bank, and duly authorized to do so.

2. Prior to \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff opened a bank account with, and became a depositor of the defendant, and from time to time deposited various sums of

money with the defendant under the customary and ordinary rules and regulations applicable to banking institutions.

3. The defendant promised and agreed among other things to repay said moneys on demand, to the order of the plaintiff, who has duly performed all the terms and conditions of said agreement on his part.

4. On the date aforesaid the balance in said account to the credit of the plaintiff was in excess of \_\_\_\_\_ dollars.

5. On said date plaintiff drew his check upon the defendant in the amount of \_\_\_\_\_ dollars to the order of the \_\_\_\_\_ Corp., a domestic corporation, and delivered the same to said corporation.

6. On information and belief, said check thereafter came into the possession of one \_\_\_\_\_, who endorsed the same as follows: “\_\_\_\_\_ Corp., by \_\_\_\_\_, Manager”; and said check, so endorsed, was thereafter presented to the defendant, which paid the same and charged the amount so paid against the plaintiff’s account.

7. The said \_\_\_\_\_ was wholly unauthorized by the said \_\_\_\_\_ Corp. to endorse said check in its name or to receive the proceeds thereof, and said check was never endorsed or presented for payment by the said \_\_\_\_\_ Corp., or by anyone authorized to act for it, and defendant has not paid the amount of the said check to the said \_\_\_\_\_ Corp., the payee therein named, or its order.

8. Thereafter and as soon as knowledge of the facts alleged in the preceding paragraph came to the plaintiff, plaintiff duly gave notice thereof to the defendant, and duly demanded of the defendant that it repay to him the sum so charged to his account, but the defendant failed and refused to do so, and no part of said sum has been paid to the plaintiff or credited to his account by the defendant.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 199**

### **Complaint by Depositor Against Bank for Paying Checks on Forged Endorsement**

[Caption and introductory paragraph]

1. At all times herein mentioned, plaintiff was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York.

2. The defendant, at all times hereinafter mentioned, was and still is a national banking corporation, organized and existing under the Laws of the United States, conducting its business as such and doing a banking business in the City of \_\_\_\_\_, State of New York.

3. At all times herein mentioned plaintiff had an account as depositor with the defendant bank and had on deposit with said bank, subject to the payment of checks of the plaintiff, a large sum of money in excess of the amount of the check hereinafter mentioned.

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff drew its certain check to the order of one \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, upon the defendant, and in and by such check directed the defendant to pay said sum to the order of the said \_\_\_\_\_, said check bearing No. \_\_\_\_\_.

5. Thereafter and prior to the commencement of this action, the name of the said \_\_\_\_\_, payee as aforesaid, was forged upon said check, and said check with the endorsement so forged was, on or about \_\_\_\_\_, 20\_\_\_\_\_, unlawfully paid by the defendant to a person or persons not entitled to receive the proceeds of the same. Said check was paid by the defendant from and out of the funds of the plaintiff then on deposit with the defendant.

6. The name of \_\_\_\_\_, payee as aforesaid, was written upon said check without the authority, acquiescence, knowledge or consent of the said payee or of the plaintiff.

7. The plaintiff has heretofore and prior to the commencement of this action made due and timely demand upon the defendant for the return of the money paid by the defendant as hereinbefore set forth, which said demand was refused, and defendant still refuses to return or pay said sum to the plaintiff, and there is now due and owing from the defendant to the plaintiff the sum of \_\_\_\_\_ dollars, with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 200**

### **Complaint by Drawee Bank Against Bank Which Cashed Check on Forged Endorsement**

[Caption and introductory paragraph]

1. Plaintiff and defendant are domestic corporations, organized and existing under the Banking Law of the State of New York, and duly authorized to engage in the business of banking.

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ was a depositor having a checking account with the plaintiff, and on that date said \_\_\_\_\_ drew a check directing the plaintiff to pay to the order of \_\_\_\_\_ the sum of \_\_\_\_\_ dollars.

3. Thereafter said check came into the possession of the defendant with the name \_\_\_\_\_ [name of payee] written upon the back of said check, and the defendant thereafter endorsed the same and presented it to the plaintiff for payment and received payment thereof from the plaintiff.

4. The said defendant did not receive said check from the payee therein named, and the said endorsement upon said check was not the endorsement of the payee therein named,



\_\_\_\_\_ and said check was not endorsed by the payee therein, \_\_\_\_\_, but in fact the supposed or pretended endorsement upon said check of the said payee was and is a forgery and in fact the said \_\_\_\_\_ bank had no valid or legal title to the said check when it presented the same to the plaintiff for payment as aforesaid.

5. Immediately upon its discovery of the fact of the forgery of the name of the payee upon the back of said check, and that the supposed or pretended endorsement upon the same was not the endorsement of the payee named in said check, it gave due notice of the fact of such forgery to the defendant, and demanded the return to the plaintiff of the said sum of \_\_\_\_\_ dollars so paid on said check to the defendant, but that the defendant refused and still does refuse to pay the plaintiff the said sum of money or any part thereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 201**

### **Complaint in Action by Depositor Against Bank for Wrongful Refusal to Pay Check**

[Caption and introductory paragraph]

1. The defendant, \_\_\_\_\_ bank, is a national banking corporation duly organized under the laws of the United States and conducts its business as such banking corporation at No. \_\_\_\_\_ Street in the City of \_\_\_\_\_.

2. At all the times hereinafter mentioned the plaintiff was a depositor in said defendant bank and the defendant agreed at all times to pay out the amount so deposited by the plaintiff in accordance with checks drawn by the plaintiff on the said bank when duly presented.

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff drew a check in the sum of \_\_\_\_\_ dollars wherein and whereby he directed the defendant to pay to

the order of \_\_\_\_\_, said sum of \_\_\_\_\_ dollars, and delivered said check to said \_\_\_\_\_.

4. At the time of the delivery of said check to said \_\_\_\_\_, and when the same was presented to said bank as hereinafter alleged, this plaintiff had on deposit with the defendant a sum in excess of \_\_\_\_\_ dollars and the defendant was justly indebted to plaintiff in said amount.

5. On information and belief on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said check duly endorsed by the said \_\_\_\_\_ was presented to the defendant bank for payment, and although the plaintiff at said time had on deposit with the defendant a sum largely in excess of the amount of said check, said defendant wrongfully refused to pay the same, whereupon said check was protested for dishonor and nonpayment and the said check was returned to plaintiff who paid the same.

6. Defendant bank at the time of refusing to pay said check, marked, or caused to be marked upon the face thereof in conspicuous characters, the letters "N. G.", which letters or characters when written upon the face of a check by a banker, mean "not good" and that the drawer thereof has not a sufficient sum on deposit to his credit to warrant the bank in the payment thereof and said letters and characters were so understood by the said \_\_\_\_\_, the payee of said check, when the same was returned to him from said defendant bank; and said check when so returned to said \_\_\_\_\_ had attached thereto a slip of paper in which the words "insufficient funds" were underscored, meaning thereby that this plaintiff did not have sufficient funds in said bank to meet said check and said words were so understood by said \_\_\_\_\_.

7. Said writings by defendant, so intended and so understood, were false and defamatory, and by reason thereof plaintiff has been and still is greatly injured in his good name, reputation and credit [if it be the case, add "and has sustained a great loss of business and profits"].

[Demand for judgment, endorsement, address, telephone number, and verification.]

Note: if any specific damage resulted directly from the dishonor of the check, it should be particularly alleged.

## **Form 202**

### **Complaint Against Bank Which Refused to Pay Certified Check**

[Caption and introductory paragraph]

1. The defendant is a domestic banking corporation duly organized and existing under and by virtue of the laws of the State of New York [or “the defendant is a national bank, duly organized and existing under and by virtue of the laws of the United States”] and conducts a banking business at No. \_\_\_\_\_ street, in the City of \_\_\_\_\_.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ duly made his check in writing bearing date on that day wherein and whereby he directed and ordered the defendant to pay to this plaintiff or order the sum of \_\_\_\_\_ dollars and the said \_\_\_\_\_ duly delivered said check to this plaintiff for value.

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant in writing at the request of this plaintiff duly accepted said check and certified the same.

4. Thereafter the said check was duly endorsed by the plaintiff and as so endorsed was duly presented to the defendant for payment and payment was refused and no part thereof has been paid.

5. Payment is still the owner and holder of said check.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 203**

## **Complaint Against Bank for Failure to Give Prompt Notice of Protest**

[Caption and introductory paragraph]

1. That the plaintiffs are co-partners, doing business under the firm name and style of \_\_\_\_\_, and having their principal place of business at \_\_\_\_\_.

2. That the defendant is a domestic banking corporation, having its principal place of business at \_\_\_\_\_.

3. That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for a good and valuable consideration, \_\_\_\_\_ executed and delivered to the plaintiffs its check, a copy of which is as follows:

[Reproduce check]

4. That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiffs duly endorsed said check as follows:

[Give endorsement] and attached to said check its invoice number \_\_\_\_\_ covering \_\_\_\_\_ [identify merchandise, as, for example, automobile].

5. That on \_\_\_\_\_, the said bank duly endorsed and transmitted said check, with said invoice attached thereto, to the Federal Reserve Bank of New York, New York City, together with instructions to protest said check and to provide notice of nonpayment thereof if said check was not paid upon presentment of the defendant.

6. That on \_\_\_\_\_, the Federal Reserve Bank of New York duly endorsed and forwarded said check, with invoice attached, to the defendant, together with instructions to the defendant to protest said check and provide notice of nonpayment thereof in the event said check was not paid upon presentment to the defendant.

7. That the defendant failed to provide notice of nonpayment of said check and did not protest the same until \_\_\_\_\_, which said notice of protest was received by the

plaintiffs on \_\_\_\_\_, the defendant giving as reason for protest “No Instructions to Pay”.

8. That no part of said check has been paid.

9. That by reason of the defendant’s failure to protest said check according to law and provide notice of non-payment there as instructed, and by reason of the negligence on the part of the defendant in failing to protest said check until \_\_\_\_\_, to which said negligence the plaintiffs contributed no part whatsoever, the plaintiffs \_\_\_\_\_ [allege facts showing injury to plaintiffs from the delay in protesting the check, such as loss of rights against drawer or endorser, insolvency of drawer, that drawer became unamenable to court process during the delay, or other facts showing loss of some right of action or impairment of some remedy, or other change of position to plaintiffs’ injury], and the plaintiffs were damaged thereby in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification KR.]

## **Form 204**

### **Complaint Against Bank on Certificate of Deposit**

[Caption and introductory paragraph]

1. The defendant is a banking corporation duly organized and existing under and by virtue of the laws of the State of New York [or “of the United States”] and conducts a banking business at No. \_\_\_\_\_ Street, in the City of \_\_\_\_\_.

2. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant duly made a certificate of deposit dated on that day wherein and whereby the defendant agreed to pay to the order of the plaintiff upon the return of said certificate of deposit, duly endorsed, the sum of \_\_\_\_\_ dollars, and thereupon for value received duly delivered the said certificate of deposit to this plaintiff.

3. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly endorsed said certificate of deposit and presented the same thus endorsed to the defendant for payment, and the defendant failed and refused to pay the same, and no part thereof has been paid and the plaintiff is still the owner and holder thereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 205**

### **Complaint by Depositor Against Bank to Recover Deposit**

[Caption and introductory paragraph]

1. [Allege defendant's corporate existence.]

2. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, plaintiff deposited various sums in a checking account with the defendant, which the defendant agreed to repay to plaintiff or his order on demand, and on said date the balance in said account to the credit of the plaintiff was the sum of \_\_\_\_\_ dollars.

3. On said date plaintiff duly demanded that defendant repay to him said balance to his credit in said account, but defendant refused and still refuses to repay the same.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 206**

### **Complaint in Action on Guaranty of Future Debts**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant duly entered into an agreement in writing with the plaintiffs herein, in and by which he guaranteed the payment of any bills that A might contract with the plaintiffs from said date until \_\_\_\_\_, 20\_\_\_\_\_, to the extent of \_\_\_\_\_ dollars.

2. Plaintiffs thereafter, in pursuance of said agreement, sold and delivered to A goods, wares and merchandise between about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at agreed prices amounting in the aggregate to the sum of \_\_\_\_\_ dollars.

3. The said A is entitled to a credit for payments heretofore made upon the above-mentioned purchases of \_\_\_\_\_ dollars, leaving a balance due and owing thereon to said plaintiffs of \_\_\_\_\_ dollars, with interest, no part of which has been paid, although payment thereof has been duly demanded.

4. Plaintiffs have duly performed all the conditions of said agreement on their part and have duly notified the defendant from time to time of the amount of purchases made by A and duly demanded from said defendant prior to the commencement of this action the payment of said sum of \_\_\_\_\_ dollars, but the defendant has wholly neglected and refused to pay said sum.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 207**

### **Complaint in Action on Guaranty for Payment for Goods Sold, Given as Inducement to Such Sale**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant requested the plaintiff to sell to \_\_\_\_\_ Corp., of which defendant was president, a certain \_\_\_\_\_ machine for the price of \_\_\_\_\_ dollars, payable \_\_\_\_\_ days after delivery.

2. In order to induce plaintiff to sell said machine to said \_\_\_\_\_ Corp., defendant guaranteed to plaintiff in writing that said \_\_\_\_\_ Corp. would pay

the agreed price of said machine within \_\_\_\_\_ days after the delivery thereof.

3. In reliance on said guaranty, plaintiff sold said machine to the \_\_\_\_\_ Corp. for the price above stated, and delivered the same on or about \_\_\_\_\_, 20\_\_\_\_\_.

4. More than \_\_\_\_\_ days have expired since such delivery and plaintiff has duly performed all the conditions of said contract of guaranty on his part, but no part of the said price has been paid, either by the said \_\_\_\_\_ Corp. or by the defendant, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 208**

### **Complaint in Action on Guaranty of Payment Under Contract for Personal Services**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and one \_\_\_\_\_ entered into a certain contract whereby plaintiff was to render to said \_\_\_\_\_ certain services more fully set forth in said contract, and whereby the said \_\_\_\_\_ agreed to pay plaintiff for such services the sum of \_\_\_\_\_ dollars. A copy of said contract is hereto annexed and made a part of this complaint.

2. To induce plaintiff to enter into said contract with the said \_\_\_\_\_, and prior to plaintiff's execution thereof, defendant executed and delivered to plaintiff a written agreement whereby he undertook to pay to plaintiff all sums which might become due to plaintiff from the said \_\_\_\_\_ pursuant to the said contract mentioned and described in paragraph 1 hereof. A copy of the contract so executed by the defendant is hereto annexed and made a part of this complaint.



3. In reliance on said contract by the defendant, plaintiff entered upon the performance of the services to be performed by him for the said \_\_\_\_\_, but on or about \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ notified plaintiff that he no longer desired plaintiff to perform said services and refused to permit plaintiff to continue.

4. Plaintiff on his part has duly performed all the conditions of his said contract with the said \_\_\_\_\_ except as prevented by the said \_\_\_\_\_ as aforesaid.

5. Plaintiff has duly performed all the conditions of his said contract with the defendant.

6. By reason of the facts aforesaid there is now due and owing to the plaintiff under his said contract with the said \_\_\_\_\_ the sum of \_\_\_\_\_ dollars, no part of which has been paid, although payment thereof has been duly demanded, both of the said \_\_\_\_\_ and of the defendant herein.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 209**

### **Complaint in Action on Guaranty of Payment of a Pre-existing Debt**

[Caption and introductory paragraph]

1. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one \_\_\_\_\_ [name primary debtor] was indebted to the plaintiff in the sum of \_\_\_\_\_ dollars, which sum was then due and payable [or “to become due and payable on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_”], with interest from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

2. The defendant on said day made, subscribed and delivered to the plaintiff a certain agreement in writing, for a valuable consideration recited therein, whereby he promised and

agreed to be answerable for the payment of said debt and for value received guaranteed the same, a copy of which agreement is hereto annexed marked "Exhibit A," and made a part of this complaint.

3. Neither said \_\_\_\_\_ [name original debtor] nor the defendant has paid said debt or any part thereof.

4. The plaintiff has duly performed all the conditions of said agreement, on his part to be performed.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 210**

### **Complaint in Action on Guaranty of Payment of Loans**

[Caption and introductory paragraph]

1. The defendant, on or about \_\_\_\_\_, 20\_\_\_\_\_, executed and delivered to the plaintiff, for a valuable consideration, his certain contract of guaranty, a copy of which is hereto annexed and made a part of this complaint, by which contract the defendant promised and agreed to pay to the plaintiff any liability or indebtedness up to the amount of \_\_\_\_\_ dollars, then due and owing to the plaintiff by \_\_\_\_\_.

2. Prior to said date the plaintiff had made various loans to the said \_\_\_\_\_, in the total amount of \_\_\_\_\_ dollars, which amount was due and owing to the plaintiff at the time of the execution and delivery by the defendant of his said contract of guaranty.

3. Plaintiff has duly performed all the conditions of said contract on his part, but no part of the said sum of \_\_\_\_\_ dollars has been paid, either by the said \_\_\_\_\_ or by the defendant, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number and verification.]

## Form 211

### Complaint in Action on Guaranty of Payment of Promissory Note

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, one \_\_\_\_\_ made and delivered his promissory note, in writing, bearing date on that day, whereby he promised, for value received, to pay the plaintiff or his order [or "bearer"], \_\_\_\_\_ after date the sum of \_\_\_\_\_ dollars, with interest from date until paid, at the rate of \_\_\_\_\_ per cent per annum.

2. Defendant at the same time, for a valuable consideration, at \_\_\_\_\_, guaranteed the payment of the said note by writing thereon the words following, to wit: \_\_\_\_\_, and subscribed his name, and delivered the same so guaranteed to the plaintiff, who is still the lawful owner and holder thereof.

3. A copy of said note and guaranty is hereto attached and made a part hereof.

4. Although said note became due before the commencement of this action, the said maker has not, nor has the defendant, paid the same nor any part thereof.

5. There is now due upon the same and upon said guaranty from the defendant to the plaintiff the sum of \_\_\_\_\_ dollars and interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## Form 212

### Complaint in Action by Bank on Guaranty of Future Loans to Corporation

[Caption and introductory paragraph]

1. The plaintiff is a domestic banking corporation duly created and existing under the laws of the State of New York.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant made and delivered to plaintiff an instrument duly executed by him, and bearing date \_\_\_\_\_, 20\_\_\_\_\_, whereby, for a good and valuable consideration he guaranteed and promised to be answerable to plaintiff for the payment of loans by it to \_\_\_\_\_ Corp. to the extent of \_\_\_\_\_ dollars, a copy of which said guaranty is hereto annexed, marked "Exhibit A," and made a part of this complaint.

3. The plaintiff thereafter and on the faith of said guaranty, loaned and advanced to said \_\_\_\_\_ Corp. at its special instance and request, sums of money amounting to \_\_\_\_\_ dollars, which sums said \_\_\_\_\_ Corp. promised and agreed to return and repay to plaintiff when due.

4. Said sums so loaned to said \_\_\_\_\_ Corp., as aforesaid, amounting to \_\_\_\_\_ dollars, became due and payable to the plaintiff from the said \_\_\_\_\_ Corp., on \_\_\_\_\_, 20\_\_\_\_\_; payment of the same was on said \_\_\_\_\_, 20\_\_\_\_\_ duly demanded of said \_\_\_\_\_ Corp.; but the same was not paid by it nor by defendant, nor was any part thereof, and the same is still due and owing to the plaintiff, of all of which due notice was given the defendant.

5. Plaintiff on its part has duly performed all the conditions of the said agreement mentioned and described in paragraph 2 hereof.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 213**

**Complaint in Action by Bank on Guaranty of Existing and Future Indebtedness of a Corporation**

[Caption and introductory paragraph]

1. At the times hereinafter mentioned the plaintiff was a domestic corporation organized under the laws of the United States relating to banking and engaged in the business of banking.

2. During the same period of time \_\_\_\_\_, Inc., was a domestic corporation duly organized under the laws of the State of New York and was doing business at \_\_\_\_\_.

3. Upon the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for the purpose of securing the plaintiff for the indebtedness then and theretofore owing to it by the said \_\_\_\_\_, Inc., upon its own or its customers' paper; and for the purpose of securing payment to it of all indebtedness and liability of every kind of the said \_\_\_\_\_, Inc., to it that should arise thereafter, defendant, for a valuable consideration, executed and acknowledged and delivered to this plaintiff a written contract whereby the defendant did covenant and agree to and with plaintiff that he would guarantee and warrant unto the plaintiff the payment at maturity of each and all of the checks, notes, drafts, bills of exchange and other obligations in writing of every name and kind, made, signed, drawn, accepted or endorsed by the said \_\_\_\_\_, Inc., which the plaintiff then had or which it might thereafter have, hold, purchase or obtain within one year from the date thereof to an aggregate amount not exceeding \_\_\_\_\_ dollars, and interest thereon; and further covenanting and agreeing that the defendant would pay to the plaintiff upon demand each and every of the said obligations in case of default of payment of the same at maturity.

A copy of the said contract is hereto annexed and made a part of this complaint and marked "Schedule A."

4. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_, Inc., made in writing and executed and delivered under its corporate seal and signed and attested by its president and treasurer, \_\_\_\_\_ of its corporate bonds of the denomination of \_\_\_\_\_

dollars each, in and by each of which it promised to pay, for value received, to the bearer thereof, the sum of \_\_\_\_\_ dollars on \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, with interest at the rate of six per cent per annum payable semiannually at said bank on the first day of June and December in each and every year; the said bonds were so issued and were sold and delivered by the said \_\_\_\_\_, Inc., to various persons who purchased the same for a legal, proper and valuable consideration and in or about the month of July in the year 20\_\_\_\_\_, \_\_\_\_\_ of said bonds of the denomination of \_\_\_\_\_ dollars each and numbered respectively \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, were sold and delivered by the then owners of the same to plaintiff who thereupon became the lawful owner and holder of the said bonds and has since continued to be such lawful owner and holder of the same; no part of the said bonds has been paid and no part of the interest thereon has been paid to this plaintiff since \_\_\_\_\_, 20\_\_\_\_\_, but the whole amount of the said \_\_\_\_\_ bonds and the interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, is still due and owing from the said obligor to plaintiff.

5. Demand has been duly made upon the defendant for said sum.

6. The said bonds so issued by the said \_\_\_\_\_, Inc., and which became the property of this plaintiff in \_\_\_\_\_, 20\_\_\_\_\_, are a part of the obligations in writing which are referred to and which are covered by the said contract of guaranty given by the defendant herein as aforesaid, and plaintiff has duly performed all the conditions of said contract on its part.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 214**

### **Complaint by FDIC as Assignee of Insolvent Bank's Receiver Against Estate of Guarantor of Loans to Corporation**

[Caption and introductory paragraph]

1. Federal Deposit Insurance Corporation (hereinafter called "FDIC") is an agency of the United States Government organized and existing under an Act of Congress.

2. \_\_\_\_\_ [name of insolvent bank] was heretofore declared insolvent by the Comptroller of the Currency and FDIC was appointed Receiver thereof by the Comptroller of the Currency.

3. FDIC, in its capacity as Receiver, had exclusive dominion and control of certain of the assets of \_\_\_\_\_ [bank].

4. FDIC, as such Receiver, acting with the approval of the United States District Court for the \_\_\_\_\_ District of New York, heretofore assigned all of the Receiver's right, title and interest in and to the note and guaranty hereinafter described, to plaintiff in its corporate capacity, and FDIC is the owner and holder thereof.

5. On information and belief, defendant \_\_\_\_\_ [name of executor] resides in \_\_\_\_\_ County, New York.

6. On information and belief, \_\_\_\_\_ [name of deceased guarantor] died on or about \_\_\_\_\_, 20\_\_\_\_ [date of death], and on or about \_\_\_\_\_, 20\_\_\_\_ [date of appointment] defendant \_\_\_\_\_ [name of executor] was appointed Executor of the Estate of \_\_\_\_\_, deceased, by the \_\_\_\_\_ County Surrogate's Court [or as the case may be].

7. On information and belief, \_\_\_\_\_ [name of deceased guarantor] on or about \_\_\_\_\_, for a valuable consideration, executed and delivered to \_\_\_\_\_ [bank] his written guaranty wherein, among other things, he absolutely and unconditionally guaranteed payment of the obligations of

\_\_\_\_\_ [name of primary debtor] to said bank. A copy of said guaranty is attached as Exhibit A.

8. On information and belief, \_\_\_\_\_ [primary debtor] executed its promissory note payable to \_\_\_\_\_ [bank] for value received, promising to pay the sum of \$\_\_\_\_\_ with interest thereon discounted [if applicable] at the rate of \_\_\_\_\_ percent per annum. A copy of said note is attached hereto as Exhibit B.

9. [If applicable:] On information and belief, the aforesaid promissory note was a renewal of a promissory note of \_\_\_\_\_ [primary debtor] dated \_\_\_\_\_, 20\_\_\_\_\_ in the amount of \$\_\_\_\_\_.

10. [If applicable:] On information and belief, in said note it was provided that after maturity interest should be payable at a rate \_\_\_\_\_ per cent per annum in excess of the interest or discount rate in effect at maturity and that if the note were referred to an attorney for collection, there should be due and payable an attorney fee of \_\_\_\_\_ percent of all sums due on the note and all costs and expenses of any action.

11. [If applicable:] On information and belief, the written guaranty referred to herein provides that whenever an attorney is used to obtain payment under or otherwise enforce the guaranty, whether by suit or by any other means whatsoever, an attorney fee of \_\_\_\_\_ percent of the principal and interest then due shall be payable by each guarantor.

12. No part of said note has been paid although duly demanded.

13. On information and belief, there is currently due and owing to plaintiff from defendant the sum of \$\_\_\_\_\_ with interest thereon at the rate of \_\_\_\_\_ per cent per annum from \_\_\_\_\_, 20\_\_\_\_\_ [date], together with [if applicable] attorney fees in the sum of \$\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number and verification. Attach exhibits.]



**Form 215**

**Complaint in Action Against Guarantor of Collection of Debt**

[Caption and introductory paragraph]

1. Between the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, both dates inclusive, plaintiffs sold and delivered to one \_\_\_\_\_, who was transacting business in the City of \_\_\_\_\_, goods, wares and merchandise, consisting of \_\_\_\_\_, well and reasonably worth the sum of \_\_\_\_\_ dollars, and at that agreed price.

2. Said goods, wares and merchandise were so sold and delivered to the said \_\_\_\_\_ pursuant to a contract therefor, entered into, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and on or about the said \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant, in consideration of the delivery of said \_\_\_\_\_ by the plaintiffs to the said \_\_\_\_\_ and for value received, guaranteed in writing the collection of the amounts to become due on said contract.

3. The said \_\_\_\_\_ omitted and refused to pay for the said goods, wares and merchandise, or any part thereof, and thereafter and subsequent to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, an action was duly commenced by the plaintiffs against the said \_\_\_\_\_ in the New York Supreme Court for the County of \_\_\_\_\_ for the collection of the said sum of money, and such proceedings were had therein, that after a trial of the issues duly had, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, a judgment was duly entered in said action against the said \_\_\_\_\_ for the sum of \_\_\_\_\_ dollars, the amount of verdict found by the jury, and for the further sum of \_\_\_\_\_ dollars, costs, as taxed, amounting in all to the sum of \_\_\_\_\_ dollars.

4. The defendant, \_\_\_\_\_, had due notice of the pendency of said action, and was duly notified to appear and participate in the defense thereof, if any defense there were, and he was in fact present at the trial thereof.

5. After the recovery of the judgment aforesaid, an execution was duly issued out of the New York Supreme Court to the sheriff of the County of \_\_\_\_\_, in which county the defendant in said action then resided and still resides, directing him to levy and collect the amount of the said judgment, and said execution has been by the said sheriff duly returned wholly unsatisfied, and said judgment remains wholly unpaid and no payment has been made on account of said goods, wares and merchandise.

6. Payment has been duly demanded of defendant but he has paid no part of said sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 216**

### **Complaint in Action on Guaranty of Collection of Promissory Note**

[Caption and introductory paragraph]

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, one \_\_\_\_\_ made his certain promissory note, in writing, bearing date that day whereby, for value received, he promised to pay to the plaintiff or his order [or "bearer"] one year after date, the sum of \_\_\_\_\_ dollars with interest after date till paid, at the rate of \_\_\_\_\_ per cent per annum.

2. Defendant thereupon for a valuable consideration, on [the same day] guaranteed the collection of the said note by writing thereon the words: "For value received, I guarantee the collection of the within note, and the costs thereof," and subscribing his name thereto, and the same so guaranteed was delivered to the plaintiff, who is now the lawful owner and holder thereof.

3. The said note became due and payable, as therein stated, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and was not paid nor has yet been paid, nor any part thereof.

4. A copy thereof is attached hereto, marked "Exhibit A," and made a part hereof.

5. At maturity the plaintiff commenced and prosecuted an action with all due diligence against the said maker of said note. In the \_\_\_\_\_ court for \_\_\_\_\_ County, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, judgment was entered for this plaintiff against said \_\_\_\_\_ [maker] for the sum of \_\_\_\_\_ dollars, being the amount due upon said note for principal and interest, and \_\_\_\_\_ dollars and \_\_\_\_\_ cents, costs.

6. Thereafter, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff caused an execution to be duly issued out of said \_\_\_\_\_ court, in which said judgment was rendered, to the sheriff of \_\_\_\_\_ County, where said \_\_\_\_\_ then resided and now resides.

7. Thereafter, said execution was duly returned wholly unsatisfied.

8. Payment thereof has been duly demanded of defendant but he has paid no part of said sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 217**

### **Complaint in Action on Guaranty Bond**

[Caption and introductory paragraph]

1. That at all the times hereinafter mentioned, and before the commencement of this action, the plaintiff was and is a banking corporation duly organized and existing under the laws of New York, including the banking laws of said state.

2. That at all the said times the defendant was and is a corporation duly organized and existing under the laws of New York, and having a place of business within the county of New York.

3. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the city of New York, one \_\_\_\_\_ duly executed and delivered to the plaintiff for value received his certain promissory note in writing wherein and whereby he did promise to pay to the plaintiff above named, four months after said date, \_\_\_\_\_ dollars. That prior to the delivery of the said note and its negotiation by the said plaintiff it, the plaintiff, had declined to take said note without additional and collateral security therefor, and for the faithful payment to the plaintiff of said \_\_\_\_\_ dollars by the said \_\_\_\_\_.

4. That on the occasion of the delivery aforestated of said note, the said \_\_\_\_\_, solely as an inducement to the plaintiff to negotiate the said promissory note for him, caused to be deposited with the plaintiff as security for the amount of said note a certain bond, which bond is hereinafter referred to, and also a certified check for \_\_\_\_\_ dollars, whereupon the plaintiff did duly negotiate the said note for the said \_\_\_\_\_.

5. That afterward the said note at maturity was duly presented for payment and was dishonored, and the same was duly protested, all before the commencement of this action.

6. That no part of the said note for \_\_\_\_\_ dollars was paid by the said \_\_\_\_\_ excepting the proceeds of the said certified check, viz.: \_\_\_\_\_ dollars, leaving a balance unpaid by the said \_\_\_\_\_ on said note of \_\_\_\_\_ dollars with interest.

7. That upon the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at the city of New York, and concurrently with the delivery aforesaid of said

promissory note, the defendant above named as its own act and deed duly executed and sealed, and duly delivered to the plaintiff its certain several bond or obligation in writing a true copy whereof marked Schedule A is hereto annexed and made a part of this complaint. And plaintiff avers that the note mentioned in the said bond is identical with and none other than the note mentioned in paragraph 3 hereof; and that the said bond was accepted by the plaintiff from the defendant upon the conditions therein expressed, and none other.

8. That the said \_\_\_\_\_, before the commencement of this action, wholly failed to discharge and pay the said indebtedness of \_\_\_\_\_ dollars under the said note, excepting the amount of said certified check for \_\_\_\_\_ dollars, and plaintiff alleges that solely thereby there has been a breach of the condition mentioned in said bond, all before the commencement of this action.

9. That before the commencement of this action every condition was fulfilled, and all things happened, and all times elapsed necessary to entitle the plaintiff to maintain this action for recovery on said bond of the amount of said note therein mentioned and interest and costs of protest, less by the said \_\_\_\_\_ dollars, yet the defendant has wholly failed to pay the same or any part thereof, although duly demanded before the commencement of this action, and that no part of the amount secured by said bond has been paid by or on behalf of either party to said bond or by any person, excepting the amount of said certified check.

10. That plaintiff claims from the defendant a competent part of the amount of the said bond to cover said \_\_\_\_\_ dollars and costs of protest and also interest to the date of judgment herein.

11. That solely by reason of the premises the plaintiff has been damaged \_\_\_\_\_ dollars, including an amount to cover interest already accrued and to accrue and costs of protest of said note, to its damage in the sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Complaint in Action by Owner Against Contractor on Contract of Indemnity Against Liability**

[Caption and introductory paragraph]

1. At all times herein mentioned the defendant was and now is a domestic corporation.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff and defendant entered into a contract whereby the defendant agreed to construct certain \_\_\_\_\_ in and adjacent to premises of the plaintiff at No. \_\_\_\_\_ Street in the City of \_\_\_\_\_, and whereby defendant further agreed to indemnify plaintiff against all liability which plaintiff might incur to any person claiming to have suffered personal injury or property damage arising out of any acts or omissions of the defendant in the course of such construction pursuant to said contract. A copy of said contract is hereto annexed, marked "Exhibit A", and made a part of this complaint.

3. Thereafter an action was commenced against this plaintiff in the Supreme Court, County of \_\_\_\_\_, by one \_\_\_\_\_, alleging that she had sustained personal injuries arising out of acts and omissions of the defendant in the course of such construction, namely the acts of the defendant in making an excavation immediately adjacent to the sidewalk commonly used by pedestrians on the south side of \_\_\_\_\_ Street in the City of \_\_\_\_\_, and the defendant's omission in failing to properly guard and light said excavation.

4. Thereafter such proceedings were had in said action that said \_\_\_\_\_ recovered a judgment against the plaintiff in the sum of \_\_\_\_\_ dollars, which judgment was duly entered in the office of the Clerk of the County of \_\_\_\_\_ on or about \_\_\_\_\_, 20\_\_\_\_\_.

5. In the defense of said action plaintiff necessarily incurred an expense of \_\_\_\_\_ dollars for counsel fees and incidental disbursements.

6. When said action was commenced, and on or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly notified defendant thereof and requested defendant to undertake the defense of said action, but defendant failed and refused to do so.

7. Plaintiff has duly performed all of the conditions of said contract on his part.

8. By reason of the facts aforesaid, there is now due and owing to the plaintiff from the defendant the sum of \_\_\_\_\_ dollars pursuant to the contract mentioned and described in paragraph 2 of this complaint.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 219**

### **Complaint in Action by Accommodation Endorser Against Maker of Note, on Agreement to Indemnify Against a Loss**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant made, executed and delivered his promissory note to \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, a copy of which is hereto annexed, marked "Exhibit A", and made a part of this complaint.

2. Before the delivery of said note to the payee, and at the request of the defendant, plaintiff endorsed the same as an accommodation endorser.

3. To induce the plaintiff to so endorse said note, defendant then agreed that he would indemnify the plaintiff against any and all loss which plaintiff might sustain by such endorsement.

4. Upon the maturity of said note the same was not paid by the defendant, and plaintiff was compelled to pay the same, and thereby suffered a loss of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 220**

**Complaint in Action by Surety Company for Indemnity Against Bonded Employee**

[Caption and introductory paragraph]

1. At all times herein mentioned plaintiff was and now is a domestic corporation, duly authorized to engage in business in the State of New York as a surety company.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, at defendant's request, plaintiff executed and delivered to \_\_\_\_\_ its bond or undertaking in the sum of \_\_\_\_\_ dollars, whereby plaintiff bound itself to pay any loss sustained by the one \_\_\_\_\_ through any larceny, embezzlement, forgery or conversion committed by the defendant while in the employ of the said \_\_\_\_\_. A copy of said bond is hereto annexed, marked "Exhibit A", and made a part of this complaint.

3. In consideration of plaintiff's execution and delivery of said bond, defendant executed and delivered to plaintiff, on or about \_\_\_\_\_, 20\_\_\_\_\_, a certain contract whereby he agreed to indemnify plaintiff against any and all loss which it might sustain under said bond, and further agreed that any payment by plaintiff to the said \_\_\_\_\_ in satisfaction of plaintiff's liability under said bond should be deemed conclusive evidence of defendant's liability to plaintiff for the amount so paid. A copy of said contract, marked "Exhibit B", is hereto annexed and made a part of this complaint.

4. Thereafter, and on or about \_\_\_\_\_, 20\_\_\_\_\_, by reason of defendant's conversion of certain monies of said \_\_\_\_\_ in the amount of \_\_\_\_\_ dollars, plaintiff was compelled to and did pay said amount to the said \_\_\_\_\_ in satisfaction of its liability under said bond.

5. By reason of the facts aforesaid, there is now due and owing from defendant to plaintiff said sum of \_\_\_\_\_ dollars, no part of which has been paid although payment thereof has been duly demanded.



[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 221**

**Complaint in Action for Indemnity by Owner Against Lessee**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff leased to defendant certain premises known as \_\_\_\_\_ for a period of \_\_\_\_\_ years, to be used by defendant as a \_\_\_\_\_.

2. Thereafter defendant requested plaintiff's permission to install on the exterior of the building on said premises a certain advertising sign, and as an inducement to plaintiff to grant such permission defendant agreed to indemnify plaintiff against any and all liability which plaintiff might sustain or incur through the installation or maintenance of said sign, or in any manner relating thereto. A copy of said agreement, marked "Exhibit A", is hereto annexed and made a part of this complaint.

3. Pursuant to the said request by defendant, and in reliance upon said agreement, plaintiff granted such permission and said advertising sign was thereafter installed by defendant on the exterior of the building on the premises above mentioned, and overhanging the sidewalk on the south side of \_\_\_\_\_ Street in the City of \_\_\_\_\_.

4. Thereafter an action was commenced against plaintiff in the Supreme Court, County of \_\_\_\_\_, by one \_\_\_\_\_, alleging that she had sustained personal injuries resulting from the collapse of said sign installed by defendant, and in said action said \_\_\_\_\_ recovered judgment against the plaintiff in the sum of \_\_\_\_\_ dollars.

5. When said action was commenced, and on or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff duly notified defendant thereof and requested defendant to defend the said action, but defendant failed and refused to do so.

6. In the defense of said action plaintiff necessarily incurred expense of \_\_\_\_\_ Dollars for counsel fees and incidental disbursements.

7. Defendant has failed to indemnify plaintiff against the liabilities incurred by plaintiff as aforesaid arising out of defendant's installation of said advertising sign, and no part of the said judgment or the said expenses incurred by the plaintiff has been paid by defendant, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 222**

### **Complaint in Action by Principal Against Surety to Recover Funds Deposited With Surety as Indemnity**

[Caption and introductory paragraph]

1. On information and belief, defendant is a domestic corporation, engaged in business as a surety company.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, at plaintiff's request, defendant executed and delivered to the city clerk of the City of \_\_\_\_\_ its bond in the sum of \_\_\_\_\_ dollars in the form required for the issuance of a license to the plaintiff to engage in business as a \_\_\_\_\_ in said city.

3. On the same date plaintiff and defendant entered into an agreement, a copy of which, marked "Exhibit A", is hereto annexed and made a part of this complaint.

4. Pursuant to said agreement plaintiff deposited with the defendant on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the sum of \_\_\_\_\_ dollars as indemnity against any loss which defendant might sustain by reason of its execution of said bond.

5. Thereafter a license was issued to the plaintiff by the City of \_\_\_\_\_ to engage in business as a \_\_\_\_\_ and plaintiff engaged in such business at premises known as No. \_\_\_\_\_ Street in said city from \_\_\_\_\_, 20\_\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_\_, on or about which date he terminated said business and surrendered said license.

6. During the time aforesaid plaintiff complied in all respects with all laws and ordinances of the City of \_\_\_\_\_ governing the said business; he became liable for no fines or penalties; and there are not at present undetermined, in any court, any civil or criminal actions or proceedings arising out of, affecting, or in any way relating to the said business carried on by the plaintiff as aforesaid.

7. Plaintiff has duly performed on his part all conditions of the said contract mentioned and described in paragraph 3 hereof, but defendant has failed to return to plaintiff the sum deposited by him with the defendant as aforesaid, or any part thereof, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 223**

### **Allegations of Cross Complaint by Municipal Corporation Against Impleaded Defendant for Indemnity Against Judgment for Personal Injuries Recovered by Contractor's Employee**

[Caption and introductory paragraph]

1. At all times mentioned in the complaint the defendant city of \_\_\_\_\_ was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the state of New York.

2. Upon information and belief at all times mentioned in the complaint the impleaded defendant \_\_\_\_\_ corporation was and still is a corporation organized and doing business by virtue of the laws of the state of New York.

3. Heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff above named commenced an action in this court against the city of \_\_\_\_\_ and another to recover damages for alleged personal injuries to the plaintiff as alleged in the complaint, the contents of which complaint the defendant, city of \_\_\_\_\_, begs leave to refer to upon the trial of this action as if the same were set forth herein more particularly at length.

4. Heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant, City of \_\_\_\_\_, by the Department of Sanitation duly entered into a contract in writing with the impleaded defendant \_\_\_\_\_ corporation for the privilege of clearing and/or removing from certain Department land fills such articles and materials (except ashes and garbage) as the contractor may desire, wherein and whereby the said \_\_\_\_\_ corporation agreed to and with the defendant city of \_\_\_\_\_ to save the city of \_\_\_\_\_ free and harmless from any and all damages arising from each and every act of omission and commission mentioned in the complaint, reference being made to the said contract for greater particularity.

5. It was provided in said contract hereinbefore mentioned as follows: [quote indemnity provisions of contract].

If the plaintiff sustained the injuries and damages as alleged in the complaint, they were suffered or sustained within the provisions of said contract and the terms and conditions hereinbefore mentioned, and any and all damages that may be awarded to the plaintiff herein are to be paid solely by the said \_\_\_\_\_ corporation.

6. By reason of this suit and action and the matters and things set forth in this complaint this defendant city of \_\_\_\_\_ has been put to costs and expenses none of which have been paid by said \_\_\_\_\_ corporation.

WHEREFORE the defendant city of \_\_\_\_\_ demands judgment dismissing the complaint herein as to it, with costs, and further demands that under the Civil Practice Law and Rules the ultimate rights of this defendant city of \_\_\_\_\_ and the impleaded defendant \_\_\_\_\_ corporation as between themselves be determined and that the defendant city of \_\_\_\_\_ have judgment over and against the impleaded defendant \_\_\_\_\_ corporation for any sum which shall or may be recovered herein by the plaintiff against this defendant city of \_\_\_\_\_ together with the costs and disbursements of this action and for any expenses incurred in defense thereof.

#### **Form 224**

#### **Complaint in Action on Contract to Indemnify Manufacturer Against Vendee's Failure to Accept and Pay for Goods Ordered**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, the \_\_\_\_\_ Corp. ordered of the plaintiff a certain \_\_\_\_\_ to be manufactured pursuant to specifications of the said \_\_\_\_\_ Corp., and to be delivered not later than \_\_\_\_\_, 20\_\_\_\_\_.

2. To induce the plaintiff to accept said order and enter into a contract with said \_\_\_\_\_ Corp. for the manufacture and delivery of such \_\_\_\_\_, the defendant agreed to indemnify the plaintiff against all loss which plaintiff might sustain by reason of the failure of the said \_\_\_\_\_ Corp. to accept or pay for such \_\_\_\_\_. A copy of said agreement, marked "Exhibit A", is hereto annexed and made a part of this complaint.

3. In reliance on said agreement by defendant, plaintiff accepted said order by the said \_\_\_\_\_ Corp. and entered into a contract with said corporation for the manufacture and delivery of said \_\_\_\_\_, for which the said corporation agreed to pay the plaintiff the sum of \_\_\_\_\_ dollars.

4. Plaintiff duly performed on its part all the conditions of its said contract with the said \_\_\_\_\_ Corp., and manufactured the said \_\_\_\_\_ in accordance with the specifications of the said \_\_\_\_\_ Corp., and on or about \_\_\_\_\_, 20\_\_\_\_\_, duly tendered delivery thereof to said \_\_\_\_\_ Corp., but said \_\_\_\_\_ Corp. refused to accept delivery thereof or to pay for the same.

5. Thereafter and on or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff sold the said \_\_\_\_\_ for the sum of \_\_\_\_\_ dollars, that being the highest price plaintiff was able to obtain for the same after all diligent efforts to obtain the best price possible.

6. Plaintiff has duly performed on his part all the conditions of said contract mentioned and described in paragraph 2 of this complaint.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 225**

### **Complaint in Action on Contract to Indemnify Plaintiff Against Loss on Sale of Stock Purchased by Plaintiff at Defendant's Request**

[Caption and introductory paragraph]

1. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant requested the plaintiff to purchase from one \_\_\_\_\_, \_\_\_\_\_ shares of the common stock of \_\_\_\_\_, Inc., to prevent the same being sold to other stockholders of said corporation hostile to plaintiff, who was also a stockholder thereof.

2. At the time said request was made of the plaintiff, the defendant promised the plaintiff among other inducements, that if plaintiff complied with said requests, defendant would, in consideration of said complaints, pay to the plaintiff one-half of the losses in excess of \_\_\_\_\_ dollars, that plaintiff might sustain in the disposal or sale of said common stock so purchased by him, the limit of said indemnity by defendant to be \_\_\_\_\_ dollars.

3. In compliance with said request and in consideration of said promise, plaintiff purchased on \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ shares of the said common stock from the said \_\_\_\_\_.

4. Thereafter said shares were sold and disposed of by the plaintiff at a loss of \_\_\_\_\_ dollars.

5. Although plaintiff has demanded of defendant the payment of said \_\_\_\_\_ dollars, the amount payable under said agreement, no part thereof has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 226**

### **Complaint by City for Indemnity Against Judgment in Favor of Pedestrian Injured in Excavation Made by Defendant**

[Caption and introductory paragraph]

1. The plaintiff is a municipal corporation of the State of \_\_\_\_\_, organized and incorporated under chapter \_\_\_\_\_ of the Laws of \_\_\_\_\_ and the several acts of the legislature of said State amendatory thereof and supplementary thereto, and at all the times hereinafter stated was possessed of all the powers, rights and privileges and subject to all the duties, obligations and liabilities by said acts and by the laws of the land conferred and imposed.

2. The defendant is and was at the times hereinafter stated a corporation duly incorporated under the laws of \_\_\_\_\_, and located and doing business at \_\_\_\_\_, \_\_\_\_\_, and authorized to purchase, hold and convey real estate as should be necessary for its accommodation in the transaction of its business.

3. In the year 20\_\_\_\_\_, the defendant was the owner of a plot of ground situate on the \_\_\_\_\_ [insert description] of the Village of \_\_\_\_\_, and during the summer and autumn of that year defendant caused to be erected thereon a \_\_\_\_\_ building for its accommodation in the transaction of its business; said \_\_\_\_\_ street was and is one of the public streets of said village; in the course of the erection of said building and in carrying out and completing the plans thereof the defendant caused an excavation to be made in \_\_\_\_\_ street along said lot and in that part of said street occupied by the sidewalk thereon to the depth of \_\_\_\_\_ feet and to the width of \_\_\_\_\_ feet from the street line of said lot; it was the duty of defendant to cause said excavation to be covered and guarded and to have suitable barriers and warnings to prevent passers-by on said street from falling therein; the defendant neglected and failed to perform such duty and such excavation was wrongfully and negligently suffered and permitted to be and remain uncovered and without any proper or suitable guards, barriers or warnings to prevent passers-by or over said street from falling therein, so that on the evening of \_\_\_\_\_, 20\_\_\_\_\_, one A, while exercising reasonable care and prudence in walking along said street fell into this excavation and thereby received great bodily injury and was made and has been ever since and still remains sore, sick and disabled and has ever since suffered great pain and has been put to great expense in trying to be cured of such injuries.

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, said A duly commenced an action against this plaintiff in the \_\_\_\_\_ Court of the State of \_\_\_\_\_ to recover damages for such injuries. An answer was interposed to



such action by said village, and the action came on for trial and was tried in \_\_\_\_\_ county before Hon. \_\_\_\_\_ and a jury on \_\_\_\_\_, 20\_\_\_\_\_, and said A recovered a judgment therein of \_\_\_\_\_ dollars, damages and costs, which judgment was duly entered in the office of the clerk of \_\_\_\_\_ county on \_\_\_\_\_, 20\_\_\_\_\_. An appeal was duly taken from said judgment to the Appellate Division, \_\_\_\_\_ Judicial Department, and such judgment was by said court affirmed and judgment for \_\_\_\_\_ dollars, costs on such affirmance, duly entered in the office of the clerk of the county of \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_. An appeal from said judgment was thereupon taken to the Court of Appeals and such judgment was by said Court of Appeals duly affirmed and judgment of affirmance and for \_\_\_\_\_ dollars, costs, duly entered in the office of the clerk of the County of \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_, in favor of such respondent and against said appellant. On \_\_\_\_\_, 20\_\_\_\_\_, this plaintiff was forced to pay and did pay to said A the whole amount of said several judgments with the interest accrued thereon to said date, being the sum of \_\_\_\_\_ dollars, and in addition to said sum so paid plaintiff had on and prior to that date expended the sum of \_\_\_\_\_ dollars for its necessary disbursements in the defense of said action.

5. The defendant in this action had actual notice and knowledge of such action against this plaintiff from its commencement to its final termination; defendant knew or should have known that the damages therein claimed were caused by the wrongful and negligent acts of the defendant engaged in erecting said building and that the defendant was liable over to this plaintiff for any sum recovered therein and that it was the right of defendant to intervene in said action and assume the defense thereof; the defendant did not intervene therein and has not paid to this plaintiff any part of the amounts so paid on said judgments or in the defense of said action and thereby a cause of action has accrued in favor of this plaintiff and against the defendant for the amounts so paid by this plaintiff on account of said action.

6. Previous to the commencement of this action payment of the damages awarded by the verdict of the jury in said action, as well as of the several amounts hereinbefore stated as paid, with interest from the time of their respective payments, was duly demanded from the defendant but no part thereof has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 227**

#### **Particular Allegations as to Judgment Obtained Against Party Indemnified**

The plaintiff under a judgment duly rendered against him on or about \_\_\_\_\_, 20\_\_\_\_\_, in an action brought in the \_\_\_\_\_ court for \_\_\_\_\_ County, for \_\_\_\_\_ [state the nature of the action], was compelled to pay and on or about \_\_\_\_\_, 20\_\_\_\_\_, did pay the sum of \_\_\_\_\_ dollars in discharge and satisfaction of said judgment, and plaintiff incurred also necessary costs and expenses and counsel fees in said action to the amount of \_\_\_\_\_ dollars which he was compelled to and did pay.

### **Form 228**

#### **Particular Allegations as to Notice to Defendant of Action Brought Against Plaintiff**

Plaintiff duly notified the defendant of the commencement of said action and requested him to defend the same, but the defendant failed and refused to do so.

### **Form 229**

#### **Introductory Allegation in Action Against Insurance Company**

Upon information and belief, at all the times hereinafter mentioned, the defendant was and still is a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and duly authorized to carry out on the business of

\_\_\_\_\_ [particular kind of] insurance in the State of New York, and at all times hereinafter mentioned was engaged in carrying on such business in the City of \_\_\_\_\_.

### **Form 230**

#### **Particular Allegation as to Compliance by Plaintiff with Conditions Precedent in Policy**

Plaintiff has duly performed all the conditions of the said policy on his part.

— or —

Plaintiff and the said \_\_\_\_\_ [the insured] have duly performed all the conditions of the said policy on their part.

### **Form 231**

#### **Particular Allegations as to Payment of Premiums Other Than First Premium**

Said policy of insurance was continued in force by the payment of each annual premium of \_\_\_\_\_ dollars by the said \_\_\_\_\_ to defendant and by the receipt of the same and the issuance of the regular receipt therefor and a certificate, duly countersigned by a duly authorized representative of the company, each year, continuing said policy in force by defendant up to noon \_\_\_\_\_, 20\_\_\_\_\_.

### **Form 232**

#### **Complaint in Action by Insured on Accident Policy**

[Caption and introductory paragraph]

1. Upon information and belief, at all times herein mentioned, the defendant was and still is a domestic corporation duly authorized to carry on the business of selling policies of accident insurance in the State of New York.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, in consideration of a premium of \_\_\_\_\_ dollars paid by plaintiff, defendant executed and delivered to plaintiff its policy of insurance No. \_\_\_\_\_, by the terms of which defendant insured the plaintiff for the period of one year from noon, standard time, of the day that said policy was dated, against bodily injury suffered through accidental means, and defendant in said policy did promise and agree that, upon total disability of the plaintiff resulting from such injuries during the period covered by said policy, it would pay him the sum of \_\_\_\_\_ dollars per week during the continuance of such total disability, not exceeding \_\_\_\_\_ weeks in all. A copy of said policy, marked "Exhibit A", is hereto annexed and made a part of this complaint.

3. On or about \_\_\_\_\_, 20\_\_\_\_\_, and while said policy was in full force and effect, the plaintiff received a bodily injury suffered through accidental means, namely, through a collision of automobiles in one of which plaintiff was a passenger, and resulting directly, independently and exclusively of all other causes in immediate, continuous, and total disability that prevented the plaintiff from performing any and every kind of duty pertaining to his occupation from \_\_\_\_\_, 20\_\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_\_.

4. Thereafter and as soon as was reasonably possible, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, written notice of said accident was given to the defendant at its home office in \_\_\_\_\_, together with full particulars thereof and the full name and address of the plaintiff, and affirmative proofs in writing of total disability and the duration of said total disability were filed with the defendant within \_\_\_\_\_ months of the termination of the period of total disability for which claim is made.

5. More than \_\_\_\_\_ months have elapsed since the date of filing said final proofs at the home office of the defendant and \_\_\_\_\_ months have not elapsed from the date specified in said policy of insurance for filing said final proofs.

6. Plaintiff has duly performed and complied with all the conditions of said policy of insurance on his part.

7. By reason of said total disability from \_\_\_\_\_, 20\_\_\_\_\_, to \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff became duly entitled, under the terms of said policy, to receive from the defendant the sum of \_\_\_\_\_ dollars for each and every week in said mentioned period amounting in all to the sum of \_\_\_\_\_ dollars, the payment of which sum immediately became due and payable and for which payment claim and demand were duly made and which sum or any sum the defendant declined and refused to pay.

[Demand for judgment, endorsement, address, telephone number, and verification.]

### **Form 233**

#### **Complaint in Action on Accident Policy Where Accident Resulted in Death**

[Caption and introductory paragraph]

1. [Allege incorporation of defendant and authorization to engage in insurance business.]

2. On information and belief, heretofore and on or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant, in consideration of the payment to it by \_\_\_\_\_, then of \_\_\_\_\_, \_\_\_\_\_ County, New York, of a premium of \_\_\_\_\_ dollars, made, executed and delivered to said \_\_\_\_\_ its policy of insurance, a copy of which is annexed hereto and marked "Exhibit A" and is hereby made a part of this complaint.

3. On information and belief, thereafter and on or about \_\_\_\_\_, 20\_\_\_\_\_, for and in consideration of a further payment of the sum of \_\_\_\_\_ dollars to defendant, the defendant duly continued in force said policy of insurance from noon of \_\_\_\_\_, 20\_\_\_\_\_, to noon of \_\_\_\_\_, 20\_\_\_\_\_, subject to all the terms, provisions and statements of said policy.

4. On information and belief, on or about \_\_\_\_\_, 20\_\_\_\_\_, and by endorsement of that date, the residence or post-office address of said \_\_\_\_\_ contained in the schedule of warranties forming a part of said policy, was changed to No. \_\_\_\_\_ street, City of \_\_\_\_\_. A copy of said endorsement is annexed hereto and marked "Exhibit B" and is hereby made a part of this complaint.

5. The plaintiff was on or about \_\_\_\_\_, 20\_\_\_\_\_, married to said \_\_\_\_\_, and was at all times thereafter down to the death of said \_\_\_\_\_ his wife, and by endorsement dated \_\_\_\_\_, 20\_\_\_\_\_, was, from said \_\_\_\_\_, 20\_\_\_\_\_, and is, the person named in said policy as beneficiary thereunder and the person to whom any sum payable for loss of life is payable under the terms thereof. A copy of said endorsement is annexed hereto and marked "Exhibit C" and is hereby made a part of this complaint.

6. On information and belief, on \_\_\_\_\_, 20\_\_\_\_\_, and while said policy of insurance was in full force and effect, said \_\_\_\_\_ sustained bodily injuries by an accidental fall into \_\_\_\_\_ street from the window of his office in the \_\_\_\_\_ Building, No. \_\_\_\_\_ street, in the City of \_\_\_\_\_, which resulted directly, independently and exclusively of all other causes, in the death of said \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_.

7. On information and belief, thereafter and as soon as reasonably possible and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, written notice of said accident, containing full particulars thereof, and the full name and address of said \_\_\_\_\_, was given to the defendant at its home office in \_\_\_\_\_; thereafter and on or about \_\_\_\_\_, 20\_\_\_\_\_, and within two months from the death of said \_\_\_\_\_ and more than \_\_\_\_\_ months before the commencement of this action,

affirmative proofs in writing of said accident and of the death of said \_\_\_\_\_ were duly filed with the defendant, and the defendant received and retained said written notice and affirmative proofs in writing without objection and as and for the notice and affirmative proofs required by said policy, and the defendant has required no further or other notice or proofs.

8. More than \_\_\_\_\_ months have elapsed, and had elapsed before this action was commenced, since the date of filing final proofs at defendant's home office and \_\_\_\_\_ months have not elapsed, and had not elapsed when this action was commenced, from the date specified in said policy for final proofs.

9. The said \_\_\_\_\_ in his lifetime, and plaintiff since his death, have each duly performed all the conditions of said policy of insurance on their part.

10. Due and sufficient demand has been made upon the defendant for payment under said policy; no part of the amount due thereunder has been paid, and there is now due and owing to the plaintiff from the defendant thereunder the sum of \_\_\_\_\_ dollars, together with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 234**

### **Complaint in Action on Accident Policy Where Accident Resulted in Death of Insured; Another Form**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant and authority to engage in insurance business.]

2. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant, for a good and valuable consideration, executed and delivered to \_\_\_\_\_ who was the husband of plaintiff, a policy of insurance wherein and

whereby the said defendant did insure the said \_\_\_\_\_ for the term of one year from twelve o'clock noon standard time, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and did thereby and therein promise and agree that in the event of bodily injuries effected directly and independently of all other causes, through external, violent and accidental means resulting in the death of said \_\_\_\_\_, to pay the principal sum of \_\_\_\_\_ dollars to the beneficiary named therein, to wit: to \_\_\_\_\_, the plaintiff therein.

3. It was further provided in said policy of insurance that for each consecutive full year's renewal of said policy, if the premium should be paid annually in advance, there should be added to the principal sum the sum of ten per centum of said principal sum until there were five full annual accumulations added to said policy.

4. Said policy of accident insurance was duly renewed by the payment of premiums annually, in advance, for four consecutive years, to wit: \_\_\_\_\_, whereby the sum of \_\_\_\_\_ dollars for each of said years was added to the principal sum of said policy, making the total principal of said policy the sum of \_\_\_\_\_ dollars, and by reason of said renewals the said policy was and remained in full force and effect at the date of the death of \_\_\_\_\_, as hereinafter mentioned.

5. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ received bodily injuries effected solely, directly and independently of all other causes, through external, violent and accidental means which said injuries directly and independent of all other causes, resulted in the death of said \_\_\_\_\_ within \_\_\_\_\_ days of the date of the said accident, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

6. The plaintiff, the beneficiary named in said policy, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, gave due notice in writing to the defendant at its home office in \_\_\_\_\_ of the said accident, and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, gave like notice to the defendant of the death of the said



\_\_\_\_\_ and within \_\_\_\_\_ months of the date of the death of the said \_\_\_\_\_, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly sent to the defendant written proof of the said accident and death on blanks furnished by the defendant, and the plaintiff has duly performed all the conditions of said policy on her part to be performed.

7. More than \_\_\_\_\_ months have elapsed since the receipt by the defendant of the said proofs of said accident and death of said \_\_\_\_\_ at the home office of the defendant.

8. Demand has been duly made for the payment of the said sum of \_\_\_\_\_ dollars which became due to the plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and no part thereof has been paid.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 235**

### **Particular Allegations as to Terms of Policy of Accident Insurance Where Not Set Out in Haec Verba**

On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant entered into a written agreement or contract to insure \_\_\_\_\_, the husband of plaintiff, for the benefit of plaintiff, and did on said \_\_\_\_\_, 20\_\_\_\_\_, issue and deliver to the said \_\_\_\_\_, its policy of insurance containing such agreement, being No. \_\_\_\_\_, dated on said date, whereby, in consideration of the policy fee or premium of \_\_\_\_\_ dollars, then duly paid by the said \_\_\_\_\_ to the defendant, agreed to and did insure the person of the said \_\_\_\_\_ against bodily injuries sustained by him during the term of one year from noon, standard time, of the date of said policy through accidental means and resulting directly, independently and exclusively of all other causes, among other things, in death, and against blood poisoning resulting directly from any bodily injury which was provided to be

included in the term "bodily injury"; it being provided in said policy and agreement that if the insured within ninety days from the date of the accident, irrespective of disability, suffered death, the defendant would pay the beneficiary \_\_\_\_\_ dollars and for the period between the date of the accident and the date of death an additional sum of \_\_\_\_\_ dollars a week.

Said agreement was entered into and put in binding force by the issuance and delivery of said policy to the said \_\_\_\_\_.

### **Form 236**

#### **Particular Allegations as to the Accident**

On or about \_\_\_\_\_, 20\_\_\_\_\_, while said insurance policy was in full force and effect, plaintiff received serious bodily injuries caused solely and exclusively by external, violent and accidental means which did, independently of all other causes and immediately following the receipt thereof, wholly and continuously disable and prevent the assured from performing any and all duties pertaining to any business for the period of \_\_\_\_\_ consecutive months; which said injuries did also immediately after the expiration of said term of total disability immediately, wholly and continuously disable and prevent plaintiff from performing one or more important daily duties pertaining to his occupation as a \_\_\_\_\_ for the period of \_\_\_\_\_ consecutive months; said injuries were caused and occasioned on \_\_\_\_\_, 20\_\_\_\_\_, by plaintiff being struck a violent blow by a lever which was caused and occasioned by the breaking of a chain attached to said lever, whereby the bones in plaintiff's leg were broken and he was badly bruised.

### **Form 237**

#### **Complaint in Action on Fire Insurance Policy**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant and authorization to engage in insurance business.]

2. At all the times hereinafter mentioned the plaintiff was and now is in possession of and the owner of and seized in fee, of certain real estate in the town of \_\_\_\_\_, \_\_\_\_\_ County, New York, known as the \_\_\_\_\_ Farm and all the buildings and improvements hereinafter mentioned.

3. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant herein duly issued and delivered to plaintiff at \_\_\_\_\_, its policy of insurance No. \_\_\_\_\_, being a standard form of fire insurance policy, wherein and whereby the defendant, in consideration of the sum of \_\_\_\_\_ dollars, premium paid by the plaintiff to the defendant, did insure said plaintiff against loss or damage by fire in the amount not exceeding \_\_\_\_\_ dollars for the term of \_\_\_\_\_ years, from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, as follows:

The sum of \_\_\_\_\_ dollars on the two-story shingle roof, frame building with additions, foundations and all permanent fixtures while occupied as a private residence.

The sum of \_\_\_\_\_ dollars on Barn, No. 1, on diagram in said policy, including sheds and additions attached.

The sum of \_\_\_\_\_ dollars on farm produce and feed while therein and in stacks within one hundred feet of said barn.

The sum of \_\_\_\_\_ dollars on farming tools and utensils, including mower and reaper.

The sum of \_\_\_\_\_ dollars on automobiles, trucks, tractors, wagons, carriages, sleighs, and harnesses.

The sum of \_\_\_\_\_ dollars on pine, shingles and lumber in said barn.

4. Defendant in and by said policy of insurance did promise and agree to make good unto the plaintiff for such loss and damage, not exceeding in amount the sum insured as aforesaid, as should happen by fire as therein and herein specified, during the term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, noon, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, noon, such loss to be paid within sixty days after notice and proof of loss should be furnished to the defendant.

5. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and while said policy of insurance was in full force and effect, barn No. 1 and the farm produce, farm tools, automobiles, trucks, tractors, wagons, carriages, sleighs, harnesses, and the pine, shingles and lumber in said barn were totally destroyed by said fire. Said fire did not occur by any of the causes excepted by said policy.

6. The true and actual value of barn No. 1 so insured at the time of the fire aforesaid, was at least the sum of \_\_\_\_\_ dollars; the true and actual cash value of the contents of said barn so insured at the time of the destruction thereof was at least the sum of \_\_\_\_\_ dollars; the total loss sustained by the plaintiff by reason of such destruction as aforesaid was more than the sum of \_\_\_\_\_ dollars, the amount of said policy in force at the time of such destruction.

7. At the time said policy of insurance was issued as aforesaid and up to and including the time of such loss this plaintiff was the true and lawful owner of the personal property covered and insured in and by said policy of insurance, and no other person or party had any interest in the said premises and property or any part thereof.

8. There was no other insurance upon said property or any portion thereof at the time of such destruction.

9. Heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, due notice was given to the defendant of said fire and said loss, and on or

about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff delivered to the defendant due notice and proof of said loss as aforesaid, in accordance with the terms and conditions of said policy and the plaintiff has fully and duly performed all the conditions of said policy on his part to be performed.

10. More than sixty days have elapsed since the delivery to the defendant of said proof of loss and demand has been made upon the defendant for the sum of \_\_\_\_\_ dollars for such loss as aforesaid.

11. This action was commenced within \_\_\_\_\_ months from the time of said fire.

12. Defendant has paid to plaintiff no part of said sum of \_\_\_\_\_ dollars.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 238**

### **Complaint in Action on Fire Insurance Policy Including Mortgagee Clause**

[Caption and introductory paragraph]

1. Upon information and belief, at all times hereinafter mentioned defendant was and now is a domestic insurance corporation duly organized and existing under and by virtue of the laws of the State of New York and duly authorized to carry on the business of fire insurance.

2. In and by a certain policy of insurance numbered \_\_\_\_\_ in the standard form of the State of New York, duly executed by its president and secretary and duly countersigned by the agent of the defendant at \_\_\_\_\_, New York on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and duly delivered to the plaintiff, the defendant, in consideration of the sum of \$\_\_\_\_\_ and \_\_\_\_\_ cents, then paid to it by the plaintiff duly insured the plaintiff, with loss payable to the \_\_\_\_\_ Building Loan and Savings Association and

\_\_\_\_\_, the mortgagees as their interests may appear, against all direct loss or damage by fire to an amount not exceeding \_\_\_\_\_ on the [here describe insured property] being situate on a private road on the south side of the \_\_\_\_\_ highway in the Village of \_\_\_\_\_, Town of \_\_\_\_\_ and County of \_\_\_\_\_, New York.

3. In and by the terms of said policy of insurance defendant promised and agreed to make good to plaintiff and the aforementioned mortgagees all such loss and damage not exceeding the sum of \$\_\_\_\_\_ as should be caused by fire to the said real property during the term of three years from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

4. At the time of the issuance of said policy of insurance and down to and including the date of the fire hereinafter mentioned, plaintiff was the absolute owner of the property referred to in said policy and destroyed as hereinafter mentioned, save for a mortgage to \_\_\_\_\_ Building and Loan Association with balance due of \$\_\_\_\_\_ and a second mortgage due to \_\_\_\_\_ with a balance of \$\_\_\_\_\_.

5. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, while said policy of insurance was in full force and effect, the property covered by said policy and described therein was destroyed or damaged by fire occurring from a cause insured against by said policy.

6. The true and actual cash value of the buildings destroyed in said policy just prior to its destruction or damage by said fire was at least the sum of \$\_\_\_\_\_ and the plaintiff's direct loss and damage by reason of the destruction or damage of said property by the fire was at least the sum of \$\_\_\_\_\_.

7. Immediately upon the occurrence of said fire the plaintiff duly gave notice of loss to the defendant and the plaintiff has duly performed all the conditions provided by said policy to be

performed on his part save for such conditions for the performance of which it was necessary for defendant and its authorized agents and adjusters to co-operate; and such further conditions were in fact duly waived by the defendant in that defendant, its authorized agents and adjusters failed to co-operate, particularly in failing to name an authorized appraiser to adjust the loss with plaintiff's appraiser and further in prolonging unduly and unreasonably the examination of the plaintiff under oath in regard to the loss.

8. More than \_\_\_\_\_ days have elapsed before the commencement of this action since the filing by plaintiff of formal proof of loss and breach by defendant of the condition aforesaid, and this action was commenced within \_\_\_\_\_ months from the time of said fire.

9. Defendant has paid to plaintiff no part of the said sum of \$\_\_\_\_\_ with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 239**

### **Complaint in Action on Fire Insurance Policy; Another Form**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant] and authority to engage in insurance business.

[Caption and introductory paragraph]

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, at the City of \_\_\_\_\_, in consideration of the payment by the plaintiff to the defendant of the premium of \_\_\_\_\_ dollars, the defendant by its agent duly authorized thereto, made its policy of insurance in writing, a copy of which is hereunto annexed as a part of the complaint and marked "Exhibit A," and thereby insured the plaintiff against loss or damage by fire to the amount of \_\_\_\_\_ dollars, upon the following described property, \_\_\_\_\_.

3. At the time of making said insurance and from then until the fire hereinafter mentioned, the plaintiff was the owner of said property, and its true and actual cash value was not less than \_\_\_\_\_ dollars at the time the said property was destroyed as hereinafter specified.

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ p.m., said property was totally destroyed by fire which did not happen by any of the causes excepted in said policy.

5. The plaintiff duly performed all the conditions of said policy of insurance on his part and within sixty days after the fire, to wit, on or about \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_, gave defendant due notice and proof of the fire and loss aforesaid and duly demanded payment of the said sum of \_\_\_\_\_ dollars, and more than sixty days have elapsed since such due notice and proof of loss were received by defendant.

6. No part of said sum has been paid and the said sum is now due thereon from defendant to plaintiff.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 240**

### **Complaint in Action on Fire Insurance Binder Where Renewal Policy not yet Issued at Time of Loss**

[Caption and introductory paragraph]

1. That the plaintiff is a corporation duly organized under the laws of the state of \_\_\_\_\_ and doing business in the city of \_\_\_\_\_, state of \_\_\_\_\_.



2. That the defendant is a domestic corporation, organized under the laws of the state of \_\_\_\_\_, and was at all the times hereinafter mentioned and still is engaged in the business of fire insurance within the states of \_\_\_\_\_, \_\_\_\_\_ and elsewhere, and has a place of doing business in the city of \_\_\_\_\_, county of \_\_\_\_\_ and state of New York.

3. That at the times hereinafter mentioned, down to the time of their destruction by fire, as hereinafter set forth, the plaintiff was the owner of certain fixtures and other personal property in a building then occupied by the plaintiff and known as \_\_\_\_\_.

4. That in and by its certain policy No. \_\_\_\_\_, duly executed on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and delivered to plaintiff, the defendant did insure plaintiff against loss or damage by fire to the amount of \_\_\_\_\_ dollars on the following property:

“On store and office furniture, fixtures and furnishings, counters, shelving, showcases, tables, mirrors, partitions, cash carrier system, and appurtenances, gas and electric light fixtures, chandeliers, globes, lamps and wiring, sewing machines, cash registers, typewriters, office supplies, stationery, advertising material and all other furniture, fixtures, furnishings, tools, implements and appliances, used in the furnishing and equipment of similar establishments, including awnings and signs, and flags in or on the buildings described herein, all while contained in the five-story and basement brick, metal-roofed buildings situate and known as \_\_\_\_\_.”

5. That the said defendant, in and by its said policy of insurance, did promise and agree to make good unto said plaintiff all such loss or damage not exceeding in amount the sum insured as aforesaid as should happen by fire as therein specified, during the term of one year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and to be paid within sixty days after notice and proof thereof.

6. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the defendant by its agents, duly authorized thereto, executed and delivered to plaintiff its certificate of renewal in all respects agreeing to renew said policy of insurance for one year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

7. That on or about the \_\_\_\_\_ day of \_\_\_\_\_ the defendant, by its agents, duly authorized thereto, executed and delivered to plaintiff its certificate of renewal of said policy, said certificate being known as \_\_\_\_\_ of Policy \_\_\_\_\_.

8. That said certificate of renewal was promised and delivered to plaintiff in consideration of its agreement to pay defendant the premium therefor, viz., \_\_\_\_\_ dollars.

9. That plaintiff duly tendered the amount of the said premium to defendant.

10. That the defendant refused to receive the said premium, on the ground that it was not liable on said contract of insurance.

11. That this plaintiff has ever since remained and still is ready and willing to pay the defendant said premium but the defendant has heretofore refused to receive the same.

12. That this plaintiff now brings the said sum of \_\_\_\_\_ dollars into this court to be paid to the defendant if it will accept the same.

13. That said binder was to the effect that the defendant insured the plaintiff on its store and office furniture, fixtures and furnishings, counters, shelving, showcases, tables, mirrors, partitions, cash carrier system and appurtenances, gas and electric light fixtures, chandeliers, globes, lamps and wiring, sewing machines, cash registers, typewriters, office supplies, stationery, advertising material and all other furniture, fixtures, furnishings, tools, implements and appliances, used in the furnishing and equipment of similar establishments, including awnings and signs and flags, in or on buildings described therein, all while contained in the five-

story and basement brick, metal-roofed building, situate and known as Nos. \_\_\_\_\_ to \_\_\_\_\_; for one year from \_\_\_\_\_ in the amount of \_\_\_\_\_ dollars, subject to the conditions of policies of insurance issued by defendant, and to be void upon delivery of the policy to take the place of the aforesaid binder.

14. That the conditions of policies issued by the defendant are those provided for in what is known as the Insurance Law as provided for by Chapter \_\_\_\_\_ of the Laws of \_\_\_\_\_ of the state of New York and the acts amendatory thereof.

15. That in and by said binder of insurance the defendant did insure plaintiff against loss or damage by fire to the amount of \_\_\_\_\_ dollars, on its property as aforesaid.

16. That the said defendant, in and by the said binder of insurance did promise and agree to make good unto said plaintiff all such loss and damage not exceeding the amount of the sum insured as aforesaid as should happen by fire during the term of one year from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and to be paid within sixty days after notice and proof thereof.

17. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the property so insured and mentioned in said binder of insurance was partially destroyed and largely damaged by fire.

18. That said fire did not occur from any one of the causes excepted in the said binder of insurance or in the policies issued by the defendant.

19. That the said binder or contract of insurance was in full force and effect on said \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and at the time of the said fire.

20. That the said fire occurred before any policy to take the place of said binder of insurance had been delivered to plaintiff.

21. That the true and actual cash value of the said property so insured at the time of the destruction thereof and damage thereto was at least the sum of \_\_\_\_\_ dollars and that the loss sustained by plaintiff from such fire was at least the sum of \_\_\_\_\_ dollars and that the loss sustained by plaintiff from such fire was at least the sum of \_\_\_\_\_ dollars.

22. That plaintiff had insurance on the property insured under the binder or contract of insurance herein referred to aggregating the sum of \_\_\_\_\_ dollars, in addition to the amount of said binder or contract of insurance issued by defendant upon said property.

23. That plaintiff has duly performed all the conditions of said binder or contract of insurance aforesaid and of the policies of insurance issued by said \_\_\_\_\_ on its part to be performed, and that more than sixty days have elapsed since the delivery by plaintiff to defendant of due notice and due proof of loss.

24. That the amount due from the defendant to the plaintiff under its said binder or contract of insurance is at least the sum of \_\_\_\_\_ dollars.

25. That the defendant has failed to pay said sum of \_\_\_\_\_ dollars or any part thereof, although payment thereof has been duly demanded from defendant.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 241**

### **Complaint in Action by Owner and Mortgagee to Reform Fire Insurance Policy as to the Name of the Insured and to Recover for Loss**

[Caption and introductory paragraph]

1. On information and belief the defendant is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to carry on the business of fire insurance in the State of New York.

2. At all times herein mentioned plaintiff \_\_\_\_\_ was and now is the owner of certain premises known as No. \_\_\_\_\_ Street in the City of \_\_\_\_\_, State of New York.

3. At all times herein mentioned the plaintiff \_\_\_\_\_ was and now is the owner and holder of a mortgage upon the said premises, upon which there is now due the sum of \_\_\_\_\_ dollars principal, with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

4. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant, in consideration of a premium of \_\_\_\_\_ dollars then paid by the plaintiff \_\_\_\_\_, agreed to execute and deliver a policy of fire insurance in standard form insuring said plaintiff against loss by fire to the building and the premises above mentioned, and with a New York Standard Mortgagee Clause, under which loss should be payable to the plaintiff \_\_\_\_\_ as his interest might appear.

5. On or about the same date, the defendant executed and delivered to the plaintiff \_\_\_\_\_ a certain policy of insurance, a copy of which, marked "Exhibit A," is hereto annexed and made a part of this complaint.

6. In said policy the plaintiff \_\_\_\_\_ was named as owner of the insured premises instead of the plaintiff \_\_\_\_\_, and on information and belief the plaintiff \_\_\_\_\_ was so named as owner by error of the defendant.

7. Plaintiffs failed to notice that the said plaintiff \_\_\_\_\_ was named in said policy as owner of the insured premises until after the fire hereinafter alleged.

8. On \_\_\_\_\_, 20\_\_\_\_\_, the said policy had not expired, but was in full force and effect, and on the said date the building on the premises above mentioned was totally destroyed by fire and its actual cash value was then in excess of the sum of \_\_\_\_\_ dollars.

9. On or about <sup>2</sup>, 20\_\_\_\_\_, the plaintiff \_\_\_\_\_ gave the defendant due notice of said loss by fire and thereafter duly filed with the defendant proof of such loss, and the plaintiff \_\_\_\_\_ has duly performed on her part all the conditions of said agreement described in paragraph 4 hereof and all conditions of the said policy to be performed by the insured. More than \_\_\_\_\_ days have expired since proof of loss was filed with defendant as aforesaid.

10. The defendant has failed and refused to perform said agreement mentioned in paragraph 4 hereof, in that it has refused to issue to the plaintiffs or either of them a policy of insurance in accordance with said agreement, naming the plaintiff \_\_\_\_\_ as owner of the insured premises, and defendant has further failed and refused to perform the said policy of insurance heretofore issued by it, in that it has failed and refused to pay the amount due thereunder to the plaintiffs or either of them.

Wherefore the plaintiffs demand judgment:

a. That the said policy of insurance described in paragraph 5 hereof be reformed so that the name of the plaintiff \_\_\_\_\_ be substituted therein as the owner of the insured premises and that a New York Standard Mortgagee Clause be included therein under which loss shall be payable to the plaintiff \_\_\_\_\_ as his interest may appear.

b. That the plaintiffs have judgment against the defendant in the sum of \_\_\_\_\_ dollars with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_, together with the costs and disbursements of this action.

c. For such other and further relief as may be just and equitable.

[Endorsement, address, telephone number, and verification.]

**Form 242**

**Complaint in Action on Fire Insurance Policy by Assignee of Mortgagee**

[Caption and introductory paragraph]

1. That at the times hereinafter mentioned the defendant was and still is a domestic corporation organized and existing under the laws of the state of New York, and having an office for the transaction of business in the borough of Manhattan, city and county of New York.

2. That on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ the defendant duly made, issued and delivered its certain policy of insurance No. \_\_\_\_\_ wherein and whereby, in consideration of the premium duly paid therefor and by it received and ever since retained, it insured \_\_\_\_\_ for the term of three years from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at noon against all direct loss or damage by fire, to the extent of \_\_\_\_\_ dollars on the brick and stone tin-roof and coped building and addition, situate at No. \_\_\_\_\_ Avenue A, New York City.

3. That at the time of the issuance of said policy, and for some time theretofore \_\_\_\_\_ was the owner of the premises described in said policy and the assured therein named; that by the mortgage clause attached to said policy the loss or damage, if any, to the premises therein described was payable to \_\_\_\_\_ mortgagee, as interest may appear, and said policy provided that the insurance as to the interest of the said mortgagee therein shall not be invalidated by any act or neglect of the mortgagor or owner of property described therein, nor by any change in the title or ownership of the property.

4. That within the period covered by said policy of insurance, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, a loss by fire occurred to the premises described in said policy, whereby the same was damaged and that the said fire did not occur from any of the causes excepted in the said policy of insurance.

5. That the actual cash value of the property described in said policy and destroyed by fire was at the time of said fire about the sum of \_\_\_\_\_ dollars and that the damage thereto by said fire was the sum of \_\_\_\_\_ dollars; that the total amount of insurance thereon

insuring the interest of said \_\_\_\_\_ as mortgagee was the sum of \_\_\_\_\_ dollars and that there was other insurance upon said property aggregating about \_\_\_\_\_ dollars and that the defendant's proportion of said loss is about \_\_\_\_\_ dollars.

6. That at the time of the issuance of said policy and at the time of the fire the said \_\_\_\_\_ was the owner of a bond secured by a mortgage on said premises for \_\_\_\_\_ dollars, which was unpaid, and that prior to the commencement of this action said \_\_\_\_\_ duly assigned to the plaintiff the aforesaid claim and cause of action against the defendant under its policy as aforesaid, by reason of the fire hereinabove referred to; and that the plaintiff is now the lawful owner of said claim and cause of action.

7. That plaintiff and said owner have duly performed all the conditions of the said policy on their or either of their parts to be performed.

8. That said \_\_\_\_\_ and the plaintiff have made due demand of the defendant for the payment of the sum of \_\_\_\_\_ dollars, but that the defendant has refused to pay the same, and that there is due and owing by the defendant to the plaintiff the aforesaid sum, with interest from the \_\_\_\_\_ day of \_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 243**

### **Allegations in Action by Owner and Mortgagee Where Policy Contains Standard Mortgagee Clause**

[The following allegations should be included in the complaint, in addition to the allegations necessary in an action by the owner alone.]

At all times herein mentioned the plaintiff \_\_\_\_\_ was the holder of a mortgage on the property described in said policy, securing an indebtedness which at the



present time amounts to \_\_\_\_\_ dollars principal with interest thereon at the rate of \_\_\_\_\_ % per annum from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and which contains a covenant requiring the plaintiff \_\_\_\_\_ [owner] to keep the said premises insured against damage by fire for the benefit of the plaintiff \_\_\_\_\_ [mortgagee]. The said policy contained an endorsement or rider in the form of the New York standard mortgagee clause providing that the loss, if any, should be payable to the plaintiff \_\_\_\_\_ [mortgagee], as mortgagee, as his interest might appear, and the plaintiff \_\_\_\_\_ [owner] caused said policy to be issued in such form in compliance with said covenant in said mortgage.

#### **Form 244**

##### **Particular Allegations Where Insured Has Other Insurance**

Under the terms of said policy, other insurance concurrent therewith was permissible. Plaintiff had other fire insurance upon said property at the time of said fire, and the aggregate thereof, including the insurance by defendant, was the sum of \_\_\_\_\_ dollars; the amount or proportion due and payable by defendant under its said policy of insurance for and on account of said loss so sustained by plaintiffs, as aforesaid, is \_\_\_\_\_ dollars.

#### **Form 245**

##### **Particular Allegations as to Waiver of Condition of Ownership of Land in Fee**

Upon information and belief the defendant was duly informed by said \_\_\_\_\_, prior to issuing said policy, that the building insured thereby was situated on land not owned in fee simple by the insured, and the defendant waived the said condition in the policy with reference thereto, and issued said policy and accepted the premium therefor with full knowledge that plaintiff did not own said land in fee simple.

#### **Form 246**

### **Particular Allegations as to Excuse of Plaintiff for Failure to Make Proof of Loss**

The reason that plaintiff failed to give immediate notice in writing to defendant of said loss, and failed to render to the defendant within sixty days from the date of said fire proofs of loss, signed and sworn to by plaintiff, was, that the said \_\_\_\_\_ acting as the agent and on behalf of defendant immediately after said fire, refused to deliver to plaintiff said policy of insurance No. \_\_\_\_\_ and refused to inform the plaintiff the name of the insurance company in which he had written said insurance policy, or the name and address of the insurance company for which he was acting when he informed plaintiff that he would insure said property as hereinbefore alleged. Although plaintiff made diligent effort to do so, he failed to obtain said information until on or about \_\_\_\_\_, 20\_\_\_\_\_. By reason of the said acts and conduct of the defendant and of its agent, the said \_\_\_\_\_, the defendant waived the stipulations contained in said insurance policy, which provided, that if fire occurred, the insured should give the insurance company immediate notice in writing of the loss, and that a statement of proofs of loss, signed and sworn to by the insured should be rendered to or furnished to the insurance company within sixty days after the fire, and that no action upon said policy of insurance should be sustained unless commenced within twelve months of the date of the fire.

### **Form 247**

### **Particular Allegations Where Loss Made Payable to Mortgagee Who Refuses to Join in Action on Policy**

Under and by the terms of the said policy, the loss, if any, was made payable to, \_\_\_\_\_, as mortgagee, as his interest might appear. Before the commencement of this action the said, \_\_\_\_\_, refused to join with the plaintiff in this action and in consequence thereof the plaintiff has made said, \_\_\_\_\_, a defendant herein.

### **Form 248**

**Complaint for Reformation of and Recovery on Fire Policy; Mistake in Description and Location of Property**

[Caption and introductory paragraph]

1. At all of the times hereinafter mentioned defendant \_\_\_\_\_ was and still is a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in \_\_\_\_\_, and duly authorized to insure against loss by fire in the state of New York.

2. Plaintiff, at all times hereinafter mentioned, was the unconditional and sole owner in fee simple of the premises located and being at \_\_\_\_\_, in the state of New York, on which was erected a [composition roof frame] building used as a dwelling and garage.

3. Defendant at all of the times herein mentioned maintained an office for the transaction of its business in \_\_\_\_\_, and at all of the times herein mentioned \_\_\_\_\_ was its agent in charge thereof and was duly authorized by defendant to contract for and issue its policies of fire insurance.

4. On \_\_\_\_\_, 20\_\_\_\_\_, defendant, by said agent, entered into a contract with plaintiff to insure plaintiff in the sum of \$\_\_\_\_\_ at current rates, against all loss by damage by fire to said building belonging to plaintiff on said premises, said insurance to begin at the expiration of the insurance policy then on said property, to wit, \_\_\_\_\_, 20\_\_\_\_\_.

5. Defendant, by said agent, prior to \_\_\_\_\_, 20\_\_\_\_\_, had viewed and inspected the premises and the building thereon and was fully advised as to the risk and hazard for which plaintiff sought fire insurance.

6. On \_\_\_\_\_, 20\_\_\_\_\_, in pursuance of plaintiff's contract with defendant, defendant by and through its agent in \_\_\_\_\_, issued its policy of fire insurance of that date, Number \_\_\_\_\_ to plaintiff in the sum of

\$\_\_\_\_\_ being in the form as prescribed by statute; said insurance beginning \_\_\_\_\_, 20\_\_\_\_\_, and ending \_\_\_\_\_, 20\_\_\_\_\_; and plaintiff duly paid defendant the premium demanded therefor, to wit, the sum of \$\_\_\_\_\_.

7. Plaintiff, depending upon defendant and its agent to issue its policy of fire insurance as contracted for, received from said company's agent policy No. \_\_\_\_\_, and paid the premium therefor, but did not examine or read the same, and filed the policy of insurance with his papers.

8. On \_\_\_\_\_, 20\_\_\_\_\_, plaintiff on examination of said fire insurance policy first discovered that said policy of fire insurance was not as contracted for with defendant in this, to wit: that the location of said premises were described as \_\_\_\_\_, and the building thereon was described as \_\_\_\_\_ ["a composition roof frame building and its additions (if any) connected and in contact therewith, while occupied only for dwelling house purposes,"] when the policy of fire insurance contracted for was to cover ["The composition roof frame building located at \_\_\_\_\_, used as a garage and dwelling."]. That there is no street or avenue in \_\_\_\_\_, known as "\_\_\_\_\_" so far as plaintiff is informed and believes, and the description of the property and the location thereof, as aforesaid, were clerical errors on the part of defendant.

9. Plaintiff immediately after discovering said clerical errors in said policy, informed defendant thereof and defendant thereupon on \_\_\_\_\_, 20\_\_\_\_\_ denied all liability on said policy of insurance because of said clerical errors and because the proper rate was not charged for the insurance as written. Plaintiff therefore has not demanded that defendant correct the same, as it would be useless to do so.

10. Plaintiff paid defendant for said policy of insurance the sum demanded therefor, to wit, \$\_\_\_\_\_. Plaintiff is not advised as to whether or not said sum is a fair and adequate compensation for the risk and hazard contracted by said defendant. If there was a clerical error

in figuring the premium on said policy and said rate and sum is inadequate, plaintiff is ready and willing to pay such additional sum for said insurance as may be adequate, fair and reasonable.

11. On \_\_\_\_\_, 20\_\_\_\_\_, a fire occurred on said premises, damaging the building hereinbefore mentioned in the sum of \$\_\_\_\_\_; and said fire was not occasioned by any fault of plaintiff.

12. Plaintiff without delay gave written notice of said loss, and on \_\_\_\_\_, 20\_\_\_\_\_, said defendant gave written notice to plaintiff that it denied all liability for said loss, because the building was not located or occupied for the purposes stated in the policy, and that the proper rate was not charged for the insurance as written.

13. On \_\_\_\_\_, 20\_\_\_\_\_, plaintiff made out and delivered to defendant a full and complete statement and proof of loss on a blank furnished by defendant, signed and sworn to by him as provided in said policy and demanded payment therefor in the sum of \$\_\_\_\_\_.

14. On \_\_\_\_\_, 20\_\_\_\_\_, defendant returned said proof of loss and denied all liability therefor, but did not state any disagreement as to the amount of loss claimed to have been suffered by plaintiff.

WHEREFORE plaintiff prays that said policy of insurance be reformed so as to describe the building on said premises as \_\_\_\_\_ located at \_\_\_\_\_, and that the court find and decree that plaintiff recover his loss from defendant in the sum of \$\_\_\_\_\_ with interest, and for such other and further relief as plaintiff may be entitled in law and equity.

[Endorsement, address, telephone number, and verification.]

**Form 249**

**Complaint in Action on Life Insurance Policy by the Beneficiary**

[Caption and introductory paragraph]

1. On information and belief, the defendant is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to engage in the business of life insurance in the State of New York.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, defendant executed and delivered to \_\_\_\_\_, plaintiff's husband, its policy of insurance No. \_\_\_\_\_, dated that day, whereby in consideration of premiums of \_\_\_\_\_ dollars to be paid to the defendant annually, the defendant agreed to pay to the plaintiff the sum of \_\_\_\_\_ dollars, within \_\_\_\_\_ days after due proof of death of the said \_\_\_\_\_ and upon surrender of said policy.

3. Thereafter and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_, the said \_\_\_\_\_ died.

4. The said \_\_\_\_\_ had duly paid all the premiums becoming due upon the said policy prior to his death, and said policy was in full force and effect at the time of his death.

5. Within \_\_\_\_\_ days after the death of the said \_\_\_\_\_, and more than \_\_\_\_\_ days prior to the commencement of this action, plaintiff duly delivered to the defendant proof of the death of the said \_\_\_\_\_ and surrendered the policy to the defendant, which accepted and retained said policy and proof of death.

6. The plaintiff and the said \_\_\_\_\_ have duly performed all the conditions of said policy of insurance on their part.

7. No part of the said sum of \_\_\_\_\_ dollars has been paid to the plaintiff by the defendant, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

**Form 250**

**Complaint in Action on Life Insurance Policy by Administrator of Insured**

[Caption and introductory paragraph]

1. On information and belief, the defendant is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to engage in the business of life insurance of the State of New York.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant executed and delivered to \_\_\_\_\_ its policy of insurance, No. \_\_\_\_\_, dated that day, whereby in consideration of premiums of \_\_\_\_\_ dollars to be paid to the defendant by the said <sup>7</sup> quarterly, the defendant promised and agreed to pay to the executor or administrator of the estate of the said \_\_\_\_\_, the sum of \_\_\_\_\_ dollars immediately upon receipt of due proof of death of the said \_\_\_\_\_ and upon surrender of the said policy.

3. The said \_\_\_\_\_ died intestate, a resident of the county of \_\_\_\_\_, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff was duly appointed administrator of the goods, chattels and credits of the said \_\_\_\_\_, deceased, by order of the surrogate of the said county of \_\_\_\_\_, and plaintiff duly qualified as such administrator and ever since has been and now is acting as such administrator.

4. The said \_\_\_\_\_ had duly paid all the premiums becoming due upon the said policy prior to his death, and said policy was in full force and effect at the time of his death.

5. Within \_\_\_\_\_ days after the death of the said \_\_\_\_\_, and more than \_\_\_\_\_ days prior to the commencement of this action plaintiff duly delivered to the defendant proof of the death of the

said \_\_\_\_\_ and surrendered the policy to the defendant, which accepted and retained said policy and proof of death.

6. The plaintiff and the said \_\_\_\_\_ have duly performed all the conditions of said policy of insurance on their part.

7. No part of the said sum of \_\_\_\_\_ dollars has been paid to the plaintiff by the defendant, although payment thereof has been duly demanded.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 251**

### **Complaint by Life Insurance Beneficiary Against Estate of Insured, Seeking Reimbursement for Indebtedness Collected From Proceeds of Pledged Policies**

[Caption and introductory paragraph]

1. That heretofore and on or about \_\_\_\_\_, one \_\_\_\_\_ died in the County of \_\_\_\_\_, City of \_\_\_\_\_ State of New York, leaving a Last Will and Testament which was thereafter and on or about the \_\_\_\_\_, duly admitted to probate by the Surrogate of the County of \_\_\_\_\_ and Letters Testamentary thereon were on or about the \_\_\_\_\_, duly issued by the said Surrogate to the above named defendant and the said defendant thereupon duly qualified and thereafter acted and is still acting as such Executor.

2. Upon information and belief, that on or about the \_\_\_\_\_ there was duly issued by the \_\_\_\_\_ Insurance Company to the said \_\_\_\_\_ deceased, a certain policy of life insurance No. \_\_\_\_\_ in the amount of \_\_\_\_\_ Dollars \_\_\_\_\_ the same being the face amount of said policy, and that said policy



of life insurance was in full force and effect at the time of the death of the said \_\_\_\_\_ [insured].

3. Upon information and belief, that in and by the said policy of life insurance the said \_\_\_\_\_ Insurance Company agreed, among other things, as follows:  
\_\_\_\_\_ [payment provision of policy].

4. Upon information and belief, that on or about \_\_\_\_\_ the said insured borrowed from the \_\_\_\_\_ bank a sum of money repayable with interest thereon in accordance with the terms of a promissory note then executed and delivered by the said insured to the said bank.

5. Upon information and belief, that at the time of the making of the said loan the said insured assigned, delivered and transferred and set over to the said bank the said policy of life insurance as collateral security for the repayment of said indebtedness and any future indebtedness of the said insured to the said bank.

6. Upon information and belief, that in and by the said assignment it was provided, among other things, that the assignee was to have the sole right to collect from the insurer the net proceeds of the policy when it became a claim and to apply the same to the principal of and interest on liabilities due from said insured. A true copy of said assignment is hereto annexed and made a part hereof.

7. Upon information and belief, that thereafter changes of beneficiary designation were made at the request of said insured from time to time and on or about \_\_\_\_\_ at the request of said insured the beneficiary under said policy of life insurance was changed in accordance with an endorsement made thereto so as to designate plaintiff as beneficiary thereof, subject to the prior assignment to the said bank.

8. Upon information and belief, that no change of beneficiary was thereafter made.

9. Upon information and belief, that at the time of the making of said loan on or about \_\_\_\_\_ and also at the time of requesting said several changes of beneficiary and at all other times theretofore and thereafter during his lifetime, it was the intention of said insured that the primary obligation to repay the said loan to the said bank should be borne by his Estate and that the funds of his Estate should be the primary source from which said debt should be paid and that the beneficiaries of said policy of insurance so designated by the said insured should receive the full amount of said policy of insurance undiminished by the amount of said debt owing to the said bank.

10. Upon information and belief, that said promissory note given by the said insured to the said bank was renewed from time to time and at the date of death of said insured said bank was the owner and holder of said promissory note and there was due to said bank thereon from said insured the sum of \_\_\_\_\_ Dollars with interest thereon at the rate of \_\_\_\_\_ percent \_\_\_\_\_ per annum in accordance with the terms of the last renewal promissory note dated \_\_\_\_\_.

11. Upon information and belief, that the aforesaid policy of life insurance was in force and effect at the date of death of said insured, deceased.

12. Upon information and belief, that on or about \_\_\_\_\_ upon demand by the said bank the said insurance company paid to the said bank out of the proceeds of the said policy of life insurance the total amount of \_\_\_\_\_ Dollars in full payment of said promissory note, together with interest to the date of said payment.

13. That after the death of said insured, the plaintiff, duly presented his claim to the said insurance company for the amount of said insurance and thereafter received from the said insurance company upon said claim the sum of \_\_\_\_\_ Dollars representing the balance of the total face amount of said policy of life insurance after the deduction of the sum of \_\_\_\_\_ Dollars paid by the said insurance company to the said bank as aforesaid.

14. That the plaintiff herein has made due demand upon the defendant for the repayment to him of the said sum of \_\_\_\_\_ Dollars deducted from the proceeds of the aforementioned policy of life insurance in order to pay to said bank the amount due on said promissory note, all as aforesaid, but the defendant has failed, neglected and refused and still fails, neglects and refuses to pay the same or any part thereof, claiming that the Estate of \_\_\_\_\_ [insured] deceased, is not liable therefor.

15. That on or about \_\_\_\_\_, plaintiff duly presented his claim in writing to the defendant for the said sum of \_\_\_\_\_ Dollars but that the defendant on or about \_\_\_\_\_ rejected the same.

16. That by reason of all of the foregoing there is now due and owing from the defendant to the plaintiff upon this cause of action the sum of \_\_\_\_\_ Dollars representing the portion of said total sum of \_\_\_\_\_ Dollars deducted as aforesaid from the proceeds of the said policy of life insurance and paid as aforesaid by the said insurance company to the said bank.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 252**

### **Complaint in Action to Establish Equitable Interest of One Who Has Paid Premiums at Request of Beneficiary Who Predeceased Insured**

[Caption and introductory paragraph]

1. That \_\_\_\_\_ was, at all the times hereinafter mentioned, a resident of the state of New York; that said \_\_\_\_\_ died on or about the \_\_\_\_\_ day of \_\_\_\_\_ in the state of New York, leaving a last will and testament in and by which these plaintiffs and one \_\_\_\_\_ were constituted and appointed trustees thereunder of all the trusts in and by said will created; that said will was duly admitted to probate as and for the last will and testament of said \_\_\_\_\_ by a decree of

the surrogate's court of \_\_\_\_\_ County in the state of New York, on or about the \_\_\_\_\_ day of \_\_\_\_\_ and that letters testamentary thereon were thereupon duly issued to \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, the executors therein named; that said executors thereupon duly qualified, and thereafter at all the times herein mentioned acted as such; that thereafter these plaintiffs and said \_\_\_\_\_ duly qualified as such trustees, and thereafter prior to the death of said \_\_\_\_\_ acted as such; that said \_\_\_\_\_ died, and that since the death of said \_\_\_\_\_ these plaintiffs have been acting as such surviving trustees under said will; that these plaintiffs are, and were at all the times hereinafter mentioned, residents of the state of New York.

2. Upon information and belief that the defendant, The \_\_\_\_\_ Insurance Company, was at all the times hereinafter mentioned, and now is, a foreign corporation organized and existing under and by virtue of the laws of the state of New Jersey, and carrying on the business of life insurance, and having its principal place of business at \_\_\_\_\_ in the state of New Jersey; that said last-mentioned defendant at all the times hereinafter mentioned was and now is duly authorized, pursuant to the laws of the state of New York, to transact business within this state; and was and now is engaged in, and has an office for the transaction of, the business of life insurance within this state, and that said defendant, pursuant to the statute in such case made and provided, has duly appointed the superintendent of insurance of this state to be its true and lawful attorney in and for this state upon whom all legal process in any action or proceeding against it may be served with the same effect as if it was a domestic corporation.

3. Upon information and belief that the defendants, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ are residents of the state of California; that the defendant \_\_\_\_\_ is a resident of the state of Iowa; that the defendant \_\_\_\_\_, is a resident of the state of Missouri; and that the defendant \_\_\_\_\_, is a resident of the state of Colorado.

4. Upon information and belief that heretofore and on or about the \_\_\_\_\_ day of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ dollars to it paid on that day by \_\_\_\_\_ and other good and valuable consideration, the defendant \_\_\_\_\_ duly executed and delivered within the state of New York to said \_\_\_\_\_ a certain policy of insurance dated \_\_\_\_\_ and numbered \_\_\_\_\_ wherein and whereby said defendant, in consideration of said sum of \_\_\_\_\_ dollars to it paid by said \_\_\_\_\_ and in consideration of the annual premium of \_\_\_\_\_ dollars to be paid on the \_\_\_\_\_ day of \_\_\_\_\_ in every year during the continuance of said policy, did insure the life of \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, state of New York, in the amount of \_\_\_\_\_ dollars for the term of his life; that in and by said policy said defendant did promise and agree to and with said \_\_\_\_\_ well and truly to pay, or cause to be paid, the sum of said insurance, to wit: \_\_\_\_\_ dollars, to the said \_\_\_\_\_ or her assigns, within ninety days after due notice and proof of the death of the said \_\_\_\_\_; and that said policy further provided that in case the said [beneficiary] should die before the decease of the said [insured] then the amount of said insurance should be payable to his children, or to their guardian if under age, within ninety days after due notice and proof of interest, and of the death of the said \_\_\_\_\_, deducting therefrom all indebtedness of the party to the company; and that said policy further provided that in case the said \_\_\_\_\_ should not pay the said annual premiums on or before the several days therein mentioned for the payment thereof, then, and in every such case, the said company should not be liable to the payment of the sum insured, or any part thereof, and said policy should cease and determine, and that thereupon all previous payments made thereupon, and all profits, should be forfeited to the company.

5. Upon information and belief that at the time of the execution and delivery of said policy as aforesaid, said \_\_\_\_\_ was the wife of said \_\_\_\_\_ and that said \_\_\_\_\_ and \_\_\_\_\_ were at the time of the

delivery of said policy as aforesaid, and at the time of the assignment thereof to \_\_\_\_\_ as herein set forth, and for a long time thereafter, residents and citizens of the state of New York.

6. That plaintiff and said insured have duly performed all the conditions of said policy on their or either of their parts to be performed; and that said policy was in full force and effect at the time of the death of said \_\_\_\_\_ as hereinafter set forth.

7. Upon information and belief that after the delivery of said policy said \_\_\_\_\_ and said \_\_\_\_\_ became and where unable to pay the moneys due upon the annual premium which became due thereon on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and that thereupon said \_\_\_\_\_ requested one \_\_\_\_\_ to advance to her, and to pay the amount due upon said premium in order to preserve said policy and keep the same in force; that said \_\_\_\_\_ in consideration and upon the faith of the assignment hereinafter set forth thereupon agreed to and at the request, and for the use and benefit of said \_\_\_\_\_ and the children of \_\_\_\_\_ and in order to preserve said policy and keep the same in force and effect, did pay the said moneys due on said premium upon said policy due \_\_\_\_\_ to wit: the sum of \_\_\_\_\_ dollars; that at the same time, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in consideration of the said payment of the said premium, and the payment which he might thereafter make of other premiums thereon, said \_\_\_\_\_, with the full knowledge and consent of her said husband, duly assigned, transferred and set over unto said \_\_\_\_\_, by a written assignment dated \_\_\_\_\_, 20\_\_\_\_\_, the said policy of insurance, and all sum or sums of money, interest, benefit and advantage whatsoever, then due, or thereafter to arise or to be had or made by virtue thereof, to have and to hold unto the said \_\_\_\_\_ until he should receive full payment of the said sum of \_\_\_\_\_ dollars and interest from \_\_\_\_\_ day of \_\_\_\_\_ and all

sums of money he might thereafter pay for costs, trouble or expenses in and about the renewal or payment of premiums in said policy, and then said transfer to be null; to which assignment said defendant, \_\_\_\_\_, duly assented.

8. Upon information and belief that said \_\_\_\_\_, said \_\_\_\_\_ and \_\_\_\_\_, their children, did not, nor did either or any of them thereafter pay any or any part of the premiums which from time to time thereafter became due upon said policy, but that they were and continued to be unable and neglected and refused at all times thereafter to pay said premiums or any part thereof as the same became due; and said \_\_\_\_\_, the executors of the will of said \_\_\_\_\_ hereinafter mentioned, and the trustees under the last will and testament of said \_\_\_\_\_, deceased, and their survivors, hereinafter mentioned, were thereafter obliged to and did pay to said defendant company the amounts due on all premiums which became due upon said policy from time to time as hereinafter set forth in order to keep the said policy in force, and to protect their interests therein and their rights thereunder.

9. Upon information and belief, that said \_\_\_\_\_ thereafter continued to and did pay the moneys due upon all the annual premiums upon said policy as the same became due during his lifetime; that the moneys so paid by him upon said premiums, and the times of payment thereof, were as follows, to wit:

10. That in and by said last will and testament of \_\_\_\_\_, deceased, hereinbefore mentioned, said policy of insurance, the interest of said \_\_\_\_\_ therein, said indebtedness to \_\_\_\_\_ and all claims of said \_\_\_\_\_ arising out of said assignment and the payment of said premiums were given and bequeathed to \_\_\_\_\_ as trustees under said will.

11. That thereafter, and on the \_\_\_\_\_ day of \_\_\_\_\_ the said executors of the last will and testament of \_\_\_\_\_, deceased, hereinbefore mentioned,

duly paid to the defendant, \_\_\_\_\_, the moneys due upon the annual premium upon said policy then due, to wit: the sum of \_\_\_\_\_ dollars.

12. That thereafter, and on or about the \_\_\_\_\_ day of \_\_\_\_\_ pursuant to a decree of the surrogate's court of \_\_\_\_\_ County, in the state of New York, duly made and entered on said day pursuant to the provisions of said will, said executors of the last will and testament of \_\_\_\_\_, deceased, duly assigned by an instrument in writing, said policy of insurance and all the indebtedness of said \_\_\_\_\_ to said \_\_\_\_\_ and to said executors, and all claims and rights of said \_\_\_\_\_ and said executors, and all claims and rights of said \_\_\_\_\_ and said executors, arising out of the payment made as hereinbefore set forth, of said premiums on said policy to \_\_\_\_\_ as trustees under said last will and testament, to which assignment said defendant has duly assented.

13. That thereafter, and until the death of said \_\_\_\_\_ as herein set forth, said trustees, and these plaintiffs as their survivors, continued to and did pay the moneys due upon all the annual premiums upon said policy as the same became due; and that the moneys so paid by said trustees, and by these plaintiffs upon said premiums, and the times of payment thereof, are as follows, to wit:

14. Upon information and belief that all of the payments so made upon premiums upon said policy by \_\_\_\_\_, by said executors of the last will and testament of \_\_\_\_\_, deceased, and by said trustees under the last will and testament of \_\_\_\_\_, deceased, and these plaintiffs as their survivors, as hereinbefore set forth, were so made upon the faith of the assignment of said policy to \_\_\_\_\_ and at the request, and for the use and benefit of said \_\_\_\_\_, and the children of



\_\_\_\_\_, and with their knowledge, approval and consent and in order to preserve said policy and keep the same in force and to protect and preserve the interest and the lien of said \_\_\_\_\_, and his said executors and trustees therein.

15. That before the commencement of this action and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, as surviving executors of the last will and testament of \_\_\_\_\_, deceased, by an instrument in writing, duly assigned, transferred and set over unto these plaintiffs, as such surviving trustees pursuant to said will, and pursuant to the decree of the surrogate's court of \_\_\_\_\_ County, all right, title, interest, claim, demand and lien, legal or equitable, into or upon any right of action to recover the proceeds, or any part of the proceeds of, and any all sum or sums of money, interest, benefit and advantage whatsoever then due, or thereafter to arise, or to be had or made by virtue of said policy of insurance, which said executors had by virtue of, or arising out of, said assignment of said policy to said \_\_\_\_\_ and the payment of premiums thereon by said \_\_\_\_\_, and by the executors of his said will, whether under said assignment or as assignee, or assignees, or otherwise, and all rights, claims, and demands of every name and nature which said executors had to the proceeds of said policy, or any part thereof, and to all sums of money due, or to grow due, thereon; to which assignment said defendant \_\_\_\_\_ duly assented.

16. Upon information and belief that said \_\_\_\_\_ died on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_; and that said \_\_\_\_\_ died thereafter, and on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_; that the defendants,

\_\_\_\_\_, are the only children of said \_\_\_\_\_.

17. Upon information and belief that these plaintiffs and \_\_\_\_\_ and their said children either by their own acts, or as herein set forth by the acts of these plaintiffs and their assignors, have duly performed, satisfied and complied with all the conditions, stipulations and requirements of said policy to be kept and performed by them; that due proof of the interest of these plaintiffs in said policy has been duly given to said defendant, \_\_\_\_\_; that due notice and proof of death of said \_\_\_\_\_ and of the interest of said children in said policy was given to said defendant, \_\_\_\_\_, more than ninety days since, to wit: on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and that in and by the notice and proof of claim filed by said children, said defendants claim the entire amount payable on said policy, and claim that they are legally entitled thereto as the children of said \_\_\_\_\_.

18. Upon information and belief that all said sums of moneys so advanced and paid out as aforesaid by said <sup>1</sup>\_\_\_\_\_, his executors and trustees, are now due and owing to these plaintiffs, with interest on each of said sums from the time of payment thereof, and that no part thereof has been paid; and that said policy was delivered to said \_\_\_\_\_ at the time of the assignment thereof to him, and has since been in the possession of said \_\_\_\_\_, and of said trustees, and these plaintiffs, as such surviving trustees, continuously within the state of New York, and that said policy is now in the possession of these plaintiffs within the state.

19. Upon information and belief that these plaintiffs are now the holders and lawful owners of said policy of insurance as security for the payment of the moneys paid upon the said premiums thereon as aforesaid, by said \_\_\_\_\_, by said

executors, and by said trustees, with interest thereon from the times of payment thereof, and as hereinbefore set forth, and that these plaintiffs have an equitable lien upon said policy, and all sums of money due, or to grow due thereon, for the payment of said sums of money paid by \_\_\_\_\_, said executors, and said trustees, upon said premiums with interest thereon as aforesaid, and are legally and equitably entitled to said policy, and to all sums of money due, or to grow due thereon, or by virtue thereof.

20. Upon information and belief that after the making and delivery of the assignment of said policy to \_\_\_\_\_ as aforesaid and after the year \_\_\_\_\_ said \_\_\_\_\_ ratified and confirmed said assignment to \_\_\_\_\_, and her said husband \_\_\_\_\_ duly consented thereto.

21. Upon information and belief that the amount payable upon said policy from said defendant \_\_\_\_\_ is the sum of \_\_\_\_\_ dollars, and that no part thereof has been paid.

WHEREFORE, plaintiffs demand judgment ascertaining and determining their interests in said policy, and their rights thereunder, and establishing that they have an equitable lien upon said policy and the moneys due or to grow due thereon to the extent of and as security for the repayment to them of all moneys paid out by \_\_\_\_\_, by the said executors of his said will, and by the said trustees thereunder and by these plaintiffs as such surviving trustees, upon premiums upon said policy as hereinbefore set forth, together with interest thereon from the times of payment thereof, and determining that they are legally and equitably entitled to the said policy of insurance, and to all sum or sums of money payable, or to become payable thereon, or by virtue thereof, as against said defendants and each and every one of them; and further demanding judgment against the defendant, \_\_\_\_\_ Insurance Company, for the sum of \_\_\_\_\_ dollars with interest from the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, together with the costs of this action; and for such other or further relief as may to the court seem just and equitable.

[Endorsement, address, telephone number, and verification.]

### **Form 253**

#### **Particular Allegations as to Assignment of Policy to Plaintiff**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ [insured] duly assigned, transferred and set over all his right, title and interest in the said policy of insurance to plaintiff, and that thereafter a duplicate of the said assignment was delivered to the defendant company and accepted by it.

### **Form 254**

#### **Particular Allegations as to Change of Beneficiary in Life Insurance Policy**

On or about \_\_\_\_\_, 20\_\_\_\_\_, upon the application of the said \_\_\_\_\_ [the insured; in a proper case add: "with the written consent of the said \_\_\_\_\_, the former beneficiary under said policy"] said policy was changed to provide that the sum payable thereunder upon the death of the insured should be payable by the defendant to the plaintiff herein.

### **Form 255**

#### **Particular Allegations as to Waiver of Proofs of Death**

After the death of the said \_\_\_\_\_, and on or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff, by her duly authorized attorney, duly notified defendant thereof and requested the defendant to furnish to her proper blanks, so that the plaintiff might present to the defendant proof of the death of the said \_\_\_\_\_ in the form desired by defendant and offered to give the defendant full and complete information regarding the illness of the said \_\_\_\_\_ and

the cause, circumstances and exact time of his death, but the defendant refused and declined, and still refuses and declines to provide the plaintiff with any blanks upon which proof of death may be filled out, and refused and still refuses to tell the plaintiff what further information regarding the death of the said \_\_\_\_\_ it desires, if any.

#### **Form 256**

#### **Particular Allegations Where Proof of Death Was Delayed Because Plaintiff Had No Knowledge Thereof**

Plaintiff had no knowledge of the death of the said \_\_\_\_\_ until on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and thereafter plaintiff made and delivered to the defendant proof of his death on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

#### **Form 257**

#### **Complaint in Action by Beneficiary on Benefit Certificate in Fraternal Order**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant.]

2. Prior to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, one A was duly elected and admitted a member of \_\_\_\_\_, located in \_\_\_\_\_, \_\_\_\_\_, and thereafter the defendant made, executed and delivered to the said A a certificate in writing, a copy of which is annexed hereto and made a part hereof and marked "Exhibit A," and upon the delivery of the said certificate to the said A the same was immediately accepted in writing by said A.

3. The said A during his lifetime fully complied with and duly performed all the provisions and conditions in said certificate on his part to be performed.

4. On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, said A died, and, at the time of his death, was in good standing in the defendant.

5. Thereafter the plaintiff duly performed all the conditions of said certificate on her part to be performed, and duly gave to the defendant due notice and proof of the death of said A as aforesaid.

6. The \_\_\_\_\_ fund of the defendant, mentioned in said certificate, awarded to the plaintiff, the sum of \_\_\_\_\_ dollars, after making and collection of the assessment to be made by defendant as provided in said certificate, or would have amounted to said sum if such assessment had been made.

7. Said certificate had not been surrendered by said A, nor another certificate issued at his request, in accordance with the laws of the defendant order; the said A had not been suspended or expelled from said defendant order; by reason of the premises this plaintiff became entitled to receive from the defendant on the death of the said A, the sum of \_\_\_\_\_ dollars.

8. Payment of said sum has been duly demanded of the defendant, but said defendant has not paid the same.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 258**

### **Complaint in Action by Executor of Beneficiary of Benefit Certificate**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant.]

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant, for a good and valuable consideration, and among other things in consideration of the application made therefor, and the payment of a premium made thereon, did issue to \_\_\_\_\_, deceased, then residing in the City of \_\_\_\_\_, New York, a policy or

certificate, numbered \_\_\_\_\_, whereby defendant promised to pay out of its benefit fund a sum of money not exceeding \_\_\_\_\_ dollars upon the death of said \_\_\_\_\_, to the beneficiary named in said certificate or policy of insurance. It was also promised and agreed by defendant, in its said policy, certificate or contract of insurance, that in the event of the death of the beneficiary named therein prior to the death of said \_\_\_\_\_, hereinafter called the assured, the benefits provided for in said policy or contract of insurance, would, upon the death of assured, become payable to the legal representatives of the deceased beneficiary.

3. The beneficiary named in said policy of life insurance was \_\_\_\_\_, then residing in the City of \_\_\_\_\_, New York.

4. The assured died at the Village of \_\_\_\_\_, \_\_\_\_\_ County, New York, on \_\_\_\_\_, 20\_\_\_\_\_. The beneficiary, \_\_\_\_\_, died prior to the death of assured, to wit, on or about \_\_\_\_\_, 20\_\_\_\_\_.

5. The said \_\_\_\_\_, the deceased beneficiary, left a last will and testament, in which plaintiff was named as executor. Thereafter and on \_\_\_\_\_, 20\_\_\_\_\_, said last will and testament was duly admitted to probate by the surrogate's court of the County of \_\_\_\_\_, New York, and letters testamentary were duly issued thereon to plaintiff, who at the time of the commencement of this action was, and is now, the sole executor of said last will and testament.

6. The assured, said beneficiary and plaintiff, have each and all of them, fully and duly complied with and performed all the terms and conditions of said policy, which either or all of them have been required to perform, and have made all payments which the defendant lawfully required to be made under said policy or contract as entered into between assured and defendant.

7. On or about \_\_\_\_\_, 20\_\_\_\_\_, plaintiff gave defendant due notice and proof of the death of assured, and made claim and due demand for the payment of

said sum of \_\_\_\_\_ dollars, with interest, and plaintiff has duly performed all the conditions of said policy or contract of insurance with regard to making proof of loss and claim and demand.

8. No part of the sum so demanded and assured has been paid, and there is now due and owing to the plaintiff from the defendant, the sum of \_\_\_\_\_ dollars, with interest from \_\_\_\_\_, 20\_\_\_\_\_.

[Demand for judgment, endorsement, address, telephone number, and verification.]

## **Form 259**

### **Particular Allegations as to Waiver of Payment of Assessment on Precise Due Date**

In and by said contract or benefit certificate it was understood and agreed by and between the said \_\_\_\_\_ [deceased] and the defendant that the failure of the said \_\_\_\_\_ to pay any one of the assessments, provided for by the constitution and by-laws of the defendant, within the time prescribed by a notice requesting such payment should be presumptive evidence only of his intention to determine his connection with the defendant and his rights and interests under such contract or benefit certificate, and that such presumption could be rebutted by proof of the actual facts existing, and upon proof to the defendant of what the real intention of the said \_\_\_\_\_ was, and by giving to the defendant or its officers valid reasons for any such failure on his part to pay any such assessment within the time limited by any such notice, which reasons when so produced to the defendant, or its officers, they were, by the terms of said contract or benefit certificate, bound to receive and accept as a total contradiction of the presumptive intention of said \_\_\_\_\_ to terminate his connection with the defendant during his lifetime; and it was by said contract or benefit certificate further understood and agreed by and between defendant and the said \_\_\_\_\_ that in case anything should happen to prevent the payment of any assessment under said contract or benefit certificate on the day on which same was requested or called for by any notice from the defendant as aforesaid, then,



and in that event, the said contract or benefit certificate, should not become void, but should continue in full force and effect for a reasonable time thereafter, in order that valid reasons for such nonpayment of any assessment might be presented to the defendant or its officers, and in order that such assessment might be paid.

The said \_\_\_\_\_ duly paid all such assessments due on account of or arising out of such contract or benefit certificate down to \_\_\_\_\_, 20\_\_\_\_\_. Thereafter and on or about \_\_\_\_\_, 20\_\_\_\_\_, defendant sent to said \_\_\_\_\_ a certain paper called a Monthly Bulletin, which paper contained a so-called notice of assessment. The said paper was never received by the said \_\_\_\_\_, but such paper was delivered at his house on or about \_\_\_\_\_, 20\_\_\_\_\_. The so-called notice of assessment contained in the said paper was entirely indefinite and insufficient and was not addressed to the said \_\_\_\_\_ and did not comply with the statutes of the State of New York in such case made and provided, and was of no force and effect.

The said so-called notice was a mere blank printed form directing some unnamed person to pay some unnamed amount for some unnamed purpose on or before \_\_\_\_\_, 20\_\_\_\_\_; for several days prior thereto and on the said \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ was ill, and on that day he became delirious, unconscious, incompetent and totally unable to conduct any business or affairs whatsoever, and he so continued delirious, unconscious and incompetent continuously until on or about \_\_\_\_\_, 20\_\_\_\_\_, when he died as aforesaid. Prior to the death of said \_\_\_\_\_ he did not intend and had no desire of terminating his connections with the defendant and had no intention of losing or resigning said contract or benefit certificate or any of his rights or interests thereunder, or the right or interest of any other person whomsoever growing thereout, of allowing the said contract or benefit certificate to lapse or become void, but, on the contrary, from the time when said contract or benefit certificate was issued to him until his death he intended to keep the same in force and binding upon the

defendant. Before \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ did not pay the assessment referred to by the so-called notice to the defendant notwithstanding that he fully intended to do so and had made a requisite and proper arrangement to that end, but that upon said \_\_\_\_\_, 20\_\_\_\_\_, he was by the act of God rendered wholly unconscious and incapacitated from attending to his affairs, and his sudden illness prevented him from paying such assessment within the time set by said so-called notice, or of following out his said intention to pay the said assessment as aforesaid, or of giving any instructions to anyone for the payment of the same, or of providing in any way for such payment, and under the circumstances as aforesaid valid reasons existed excusing the said \_\_\_\_\_ from any compliance with the said so-called notice as to payment of said assessment on or before \_\_\_\_\_, 20\_\_\_\_\_, or prior to his death.

During the lifetime of said \_\_\_\_\_, neither the said \_\_\_\_\_ [beneficiary] nor any other person connected with or related in any way in business or otherwise to said \_\_\_\_\_ had any knowledge whatever of the terms of said contract or benefit certificate, or of the so-called notice of said assessment hereinbefore mentioned, called for \_\_\_\_\_, 20\_\_\_\_\_, as aforesaid, or of the nonpayment thereof until after the death of the said \_\_\_\_\_.

Immediately on becoming aware of the terms of said contract or benefit certificate and of the nonpayment of said last mentioned assessment as above stated, and within a reasonable time after the same became payable under the terms of said notice before mentioned, that is to say, on or about \_\_\_\_\_, 20\_\_\_\_\_, the said \_\_\_\_\_ [beneficiary] duly caused the amount of said assessment with interest to such last mentioned day to be tendered to the defendant, and at the same time presented to it and its officers valid reasons for the nonpayment of such assessment by said \_\_\_\_\_ on or before \_\_\_\_\_, 20\_\_\_\_\_, or during his lifetime, and thereupon the defendant became and was bound to accept such reasons for the nonpayment of said

assessment as valid, and to receive said assessment and interest under said notice, in accordance with the terms and provisions of said contract or benefit certificate, but the defendant and its officers wrongfully and unlawfully refused to receive the amount of said assessment and reasons; and wrongfully and unlawfully refused to recognize the validity of such contract or benefit certificate at the time of the death of the said \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_\_, as hereinbefore stated.

Upon being furnished by the said \_\_\_\_\_ within a reasonable time after the said \_\_\_\_\_, 20\_\_\_\_\_, with proof of the facts and circumstances existing as valid reasons why said \_\_\_\_\_ did not pay said assessment before such date or during his lifetime, it was the duty and immediately became obligatory upon the defendant and its officers to accept the payment of such assessment arrearage so tendered as aforesaid and to reinstate such contract or benefit certificate in behalf of said \_\_\_\_\_ as of \_\_\_\_\_, 20\_\_\_\_\_, and to declare and treat such contract or benefit certificate as valid and binding and in full force and effect at the time of the death of said \_\_\_\_\_.

Notwithstanding such valid reasons presented as aforesaid by plaintiff to defendant and its officers, and notwithstanding the proper tender of said assessment with interest thereon to defendant by plaintiff on or about \_\_\_\_\_, 20\_\_\_\_\_, as aforesaid, the defendant, although thereunto duly requested, has refused and still does refuse to reinstate the said \_\_\_\_\_ [insured] and said contract or benefit certificate as of \_\_\_\_\_, 20\_\_\_\_\_, or otherwise, or to declare and treat said contract or benefit certificate as valid or binding, but on the contrary wrongfully and unlawfully refuses to pay the amount due thereon and wrongfully and unlawfully claims that said contract or benefit certificate lapsed and became void during the lifetime of said \_\_\_\_\_ by reason of the fact that the defendant did not receive said assessment from said \_\_\_\_\_ on or before said \_\_\_\_\_, 20\_\_\_\_\_.

By reason of the premises the plaintiff has become and now is entitled to have it adjudged and decreed that the defendant was bound to accept said assessment arrearage and to reinstate said \_\_\_\_\_ and said contract or benefit certificate in behalf of said \_\_\_\_\_ as of \_\_\_\_\_, 20\_\_\_\_\_, and that said contract or benefit certificate was valid and binding upon the defendant and in full force, effect and virtue at the time of the death of said \_\_\_\_\_ and that there is now due and owing thereunder to the plaintiff the sum of \_\_\_\_\_ dollars, with interest thereon from \_\_\_\_\_, 20\_\_\_\_\_.

## **Form 260**

### **Complaint in Action to Set Aside Expulsion From Voluntary Benefit Association**

[Caption and introductory paragraph]

1. Plaintiff now is, and at all times hereinafter mentioned was, a resident of the City of \_\_\_\_\_, \_\_\_\_\_ County, New York, and the cause of action hereinafter stated arose within the State of New York.

2. The defendant is a duly organized foreign insurance corporation, incorporated under the laws of the State of \_\_\_\_\_, for the purpose of carrying on a fraternal and mutual benefit association, and other purposes. The defendant has a duly organized branch of said association located in the city of \_\_\_\_\_, New York, known as Tent No. \_\_\_\_\_.

3. In or about the month of \_\_\_\_\_, 20\_\_\_\_\_, the defendant duly issued to the plaintiff its certificate of insurance No. \_\_\_\_\_ for the sum of \_\_\_\_\_ dollars which was duly signed by the \_\_\_\_\_ of the defendant and duly countersigned by the \_\_\_\_\_ of Tent No. \_\_\_\_\_, and delivered to the plaintiff.

4. Previous to the issuance of said certificate to the plaintiff, he duly became a member of the defendant and of Tent No. \_\_\_\_\_, and complied, and ever since has continued to comply with the rules and regulations of said society, and at all the times herein mentioned remained a member in good standing and paid all its assessments, dues and charges against him, which were duly received by the defendant, including those for the month of \_\_\_\_\_, 20\_\_\_\_\_.

5. Under and pursuant to said certificate and the laws and rules of the defendant at the time of the issuance thereof to the plaintiff, he became obligated to and did pay to the defendant \_\_\_\_\_ dollars per month assessments, and \_\_\_\_\_ dollars per year dues, with the right on the part of the defendant to make such additional assessments as might be required sufficient to pay the death and disability claims as they accrued, upon notice thereof to the members as provided by the laws of the order.

6. Thereafter, the annual dues of Tent No. \_\_\_\_\_ were wrongfully and unlawfully raised from \_\_\_\_\_ dollars to \_\_\_\_\_ dollars per year.

7. At no time since the plaintiff became a member of the defendant has he been charged more than \_\_\_\_\_ dollars per month and \_\_\_\_\_ dollars per year dues, amounting to \_\_\_\_\_ dollars per annum; no other assessments of any name or nature have been made against the plaintiff by the defendant, and no notice of the same has ever been received by him.

8. Under and pursuant to said certificate the plaintiff became entitled to all rights, benefits and privileges of membership in said society and that at his death one assessment on the membership, not exceeding in amount the sum of \_\_\_\_\_ dollars, was agreed to be paid to his wife, \_\_\_\_\_, as his beneficiary.

9. In or about the month of \_\_\_\_\_, 20\_\_\_\_\_, the defendant violated its agreement with the plaintiff, and wrongfully and unlawfully attempted to and did change the contract existing between them, to take effect \_\_\_\_\_,

20\_\_\_\_\_, whereby it attempted to compel the plaintiff to pay a regular monthly assessment of \_\_\_\_\_ dollars instead of \_\_\_\_\_ dollars, and \_\_\_\_\_ dollars per year dues, making the total yearly expenses of said certificate the sum of \_\_\_\_\_ dollars instead of \_\_\_\_\_ dollars per annum, and reserving the right at any time when the amount of the life benefit fund was not sufficient to pay the death and total and permanent disability claims as they accrued, to levy such additional assessments as may be required to meet such obligations.

10. No notice of any nature was served upon the plaintiff that such change would be made. Said proposed change was not published in the official organ of the defendant until after all delegates to the \_\_\_\_\_ Convention had been elected. The increase in dues affects only those who are over \_\_\_\_\_ years of age; and the delegates of said convention were not elected in accordance with the provisions of the constitution and by-laws of the society. The attempted change in said contract of insurance was made by the defendant wrongfully and unlawfully, and without any authority to do so; without the consent of the plaintiff; contrary to said contract of insurance; contrary to law, and the said increase of \_\_\_\_\_ dollars per month for assessments, and the increase of \_\_\_\_\_ dollars per year dues is illegal, unlawful and void. The same is not the sum agreed upon between the plaintiff and defendant as the monthly and yearly expense of said insurance, is greatly in excess of plaintiff's obligations under the contract, and plaintiff refused, and still refuses to pay the same. By reason thereof the plaintiff has been unlawfully suspended from membership in said society, and such certificate of insurance has been unlawfully declared lapsed, forfeited and canceled by reason of his failure to pay said pretended assessment.

11. On or about \_\_\_\_\_, 20\_\_\_\_\_, the plaintiff duly tendered to the defendant the sum of \_\_\_\_\_ dollars as dues, assessments and charges for the month of \_\_\_\_\_, 20\_\_\_\_\_, which the defendant then refused, and still refuses to accept, and it refuses to accept a less sum than \_\_\_\_\_ dollars.

12. Said tender has been, and still is kept good, and the plaintiff now offers to pay the same and each and every legal assessment that may be levied against him under and pursuant to said agreement.

Wherefore, plaintiff demands judgment against the defendant that said certificate of insurance be restored and continued in full force; that the suspension of plaintiff be removed; that he be reinstated as a member of the defendant in good standing; that his dues and assessments and the contract with the defendant be continued as originally agreed upon; that the defendant be enjoined and restrained from changing said contract, or the dues and assessments thereunder, that he be restored to all the rights and privileges and benefits under and pursuant to his contract with defendant and the rules and laws of the society at the time of his initiation and for such other and further relief in the premises as to the court may seem just and equitable, besides the costs of the action.

[Endorsement, address, telephone number, and verification.]

## **Form 261**

### **Complaint in Action to Recover Under Double Indemnity Provision of Policy**

[Caption and introductory paragraph]

1. On information and belief, defendant is a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to engage in the business of life insurance in the State of New York.

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, defendant executed and delivered to \_\_\_\_\_, plaintiff's husband, its policy of insurance No. \_\_\_\_\_, dated that day, whereby in consideration of premiums of \_\_\_\_\_ dollars to be paid to the defendant annually, the defendant agreed to pay to the plaintiff the sum of \_\_\_\_\_ dollars, within \_\_\_\_\_ days after due proof of death of the said \_\_\_\_\_ and upon surrender of said policy.

3. Said policy of insurance contained the following provision: "Upon receipt at the home office of the company of due proof of death of the insured resulting directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means, not caused or contributed to by bodily or mental infirmities, the company will pay in addition to any other sums due under the policy an accidental death benefit equal to the amount of life insurance then payable at death."

4. On \_\_\_\_\_, 20\_\_\_\_\_, said \_\_\_\_\_ died as a result, directly and independently of all other causes, of bodily injuries, effected solely through external, violent and accidental means, to wit, by being struck by a hanging sign falling from a building, while said \_\_\_\_\_ was walking on the street in front of said building.

or

4. On \_\_\_\_\_, 20\_\_\_\_\_ said \_\_\_\_\_ died as a direct result of a violent physical assault inflicted upon him on \_\_\_\_\_, 20\_\_\_\_\_.

5. \_\_\_\_\_ had duly paid all the premiums due on said policy prior to his death, and said policy was in full force and effect at the time of his death.

6. Within \_\_\_\_\_ days after the death of said \_\_\_\_\_, and more than \_\_\_\_\_ days prior to the commencement of this action, plaintiff duly delivered to the defendant proof of the death of said \_\_\_\_\_, and surrendered the policy to defendant, which accepted and retained said policy and proof of death.

7. Defendant has heretofore paid plaintiff the face amount of said policy, to wit, \$\_\_\_\_\_, but has refused to pay plaintiff the sum of \$\_\_\_\_\_, under the double indemnity provision of said policy.



[Demand for judgment, endorsement, address, telephone number and verification]

**Form 262**

**Complaint in Action on Burglary Policy**

[Caption and introductory paragraph]

1. [Allege corporate existence of defendant and authorization to engage in insurance business.]

2. On or about \_\_\_\_\_, 20\_\_\_\_\_, defendant, for a valuable consideration, duly executed and delivered to the plaintiff a certain policy of insurance, bearing policy number \_\_\_\_\_ and duly signed by its officers and agents thereunto duly authorized at the City of \_\_\_\_\_.

3. In and by said agreement or policy of insurance, the defendant agreed to and did insure the plaintiff for the term of \_\_\_\_\_ months, beginning on \_\_\_\_\_, 20\_\_\_\_\_, against loss by burglary of any personal property, including jewelry and precious stones in the premises occupied by the plaintiff at No. \_\_\_\_\_ Street, City of \_\_\_\_\_, and did promise and agree to make good and indemnify the plaintiff against any loss or damage not exceeding the sum of \_\_\_\_\_ dollars, that should or might happen to or be sustained by the plaintiff during the aforesaid period, through burglary of any of the aforesaid property occasioned by its felonious abstraction from the interior of the said premises.

4. Thereafter and on or about \_\_\_\_\_, 20\_\_\_\_\_, the defendant, for a valuable consideration, renewed the said policy or contract of insurance for an additional \_\_\_\_\_ months commencing on \_\_\_\_\_, 20\_\_\_\_\_.

5. At all the times hereinafter mentioned, the plaintiff was the owner of a diamond stone of the value of \_\_\_\_\_ dollars; such diamond stone was situated in the interior of the aforesaid premises, which premises were actually occupied by the plaintiff at such times.

6. While such contract or policy of insurance was in full force and effect and between \_\_\_\_\_, 20\_\_\_\_\_, and \_\_\_\_\_, 20\_\_\_\_\_, both dates inclusive, a burglary was committed in the premises aforesaid described in said policy, and the aforesaid diamond stone was feloniously abstracted from the interior of said premises.

7. By reason of the said burglary and felonious abstraction, plaintiff has sustained a direct loss in the sum of \_\_\_\_\_ dollars.

8. Plaintiff has duly performed all the conditions, provisions and terms of said agreement or policy of insurance on its part to be performed.

9. The plaintiff duly notified the defendant of the aforesaid burglary and felonious abstraction of the said property in the premises of the plaintiff and the loss sustained; the plaintiff has duly complied with all the provisions of the policy relating to the giving of notice of such burglary, and has duly given all the other notices required to be given under the terms of such policy or agreement.

10. More than ninety days have elapsed since the plaintiff furnished to the defendant full and complete particulars of the loss sustained by him as aforesaid and said loss was sustained within the last \_\_\_\_\_ months.

11. At the time of the making of the said agreement or policy of insurance and from then and until and at the time that the aforesaid burglary and felonious abstraction and loss took place, there was no other insurance upon the aforesaid property for and on behalf of the plaintiff.

12. The defendant has failed and refused to pay to plaintiff the amount of the aforesaid loss of \_\_\_\_\_ dollars, although payment thereof has been duly demanded, prior to the commencement of this action.

[Demand for judgment, endorsement, address, telephone number, and verification.]

§ 3011. Kinds of pleadings.

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