

SMALL CLAIMS COURT (NEBRASKA)



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SMALL CLAIMS COURT

Small claims court provides a prompt and inexpensive way to resolve minor disputes. Legal procedures are held to a minimum and lawyers may not participate. Small claims court is limited to civil (non-criminal) actions involving disputes over amounts of money owed, damage to property, or seeking the return of personal property. Judgments in small claims court may not exceed \$2,700.

SMALL CLAIMS COURT GLOSSARY

- **Continuance:** Postponement of a hearing to a later date.
- **Defendant:** The person who is being sued.
- **Execution:** An order by the court directing the sheriff to seize the judgment debtor's property, sell it, and apply the money to the judgment against the debtor.
- **Garnishment:** A proceeding to obtain property, wages or money owed to the judgment debtor by a third person and apply it to the amount owed the judgment creditor.
- **Judgment:** The official decision or order of the court.

- **Judgment Creditor:** The person for whom the judgment is entered; the person who wins the lawsuit.
- **Judgment Debtor:** The person against whom the judgment is entered; the person who loses the lawsuit.
- **Plaintiff:** The person who files a lawsuit.

BEGINNING A SMALL CLAIM

To start a small claim proceeding, you must file a claim form with the clerk of the county court. The form is available at the county court or at <http://court.nol.org/publications/claimform.pdf> (you must have Adobe Acrobat installed on your computer; it is downloadable for free at <http://www.adobe.com/products/acrobat/readstep2.html>). You may complete the form at the court or you may take it with you and have a lawyer or anyone else help you complete it (for online help in completing the form, go to <http://cdp3t0c1.cdp.state.ne.us/jfc>).

The claim form requires a brief statement of the reasons the plaintiff (the person filing the claim) believes that money is owed or that property should be returned. The defendant (the person being sued) must be properly served with a copy of the claim. The plaintiff must know the defendant's proper name and

whether the defendant is an individual, a corporation, a partnership or other legal entity.

If the plaintiff fails to properly identify the defendant or fails to obtain proper service upon the defendant, the claim may be dismissed and the filing fees forfeited. The plaintiff must also provide the best information as to the defendant's address and must decide whether to have the sheriff serve the notice of the small claim on the defendant or to have it served by certified mail.

The claim form must be signed before a judge, a clerk, deputy or assistant clerk of the county court, a notary public, or other person authorized by law to take acknowledgments. It may be filed in person or by mail and must be accompanied by the appropriate fees to the court. The total fees for filing a claim are about \$23.00. This is subject to change, and court personnel can inform you of the correct amount. The plaintiff can recover these costs as part of the judgment if the case is successful.

You must file small claims actions in the county where the defendant or defendant's agent resides or is doing business or in the county in which the cause of action arose. If you file in the wrong court, your case will be dismissed and you will lose the filing fees and prepaid costs.

Additionally, claims filed in Small Claims Court are subject to the same statute of limitations restrictions that would apply if the claim was filed in regular county court. A statute of limitations is a law basically stating you must file a lawsuit within a certain time after your injury (or discovery of your injury in some circumstances), or your lawsuit will be barred. The statute of limitations is different for every type of claim. An attorney can advise you on the statute of limitations that applies to your

particular claim. However, the best rule of thumb is to file your lawsuit as soon as you are injured or discover you have been injured; this will help you avoid the possibility of having your suit dismissed because you waited too long to file.

PARTIES IN SMALL CLAIMS ACTIONS

An individual, partnership, limited liability corporation (LLC), corporation, union, association or any other kind of organization or entity can be a plaintiff or a defendant in a small claims action.

An individual who is a party to a small claims action must represent himself or herself. A partnership can be represented by a partner or an employee. An LLC shall be represented by a member, a manager, or one of its employees. A corporation may be represented by an officer or employee of the corporation. A union, association, or other organization may be represented by a member or an employee. You may not be represented by a lawyer in small claims court.

You may not file a claim assigned to you by someone else.

Only an individual who is directly involved with the transaction may pursue a small claims action. The exceptions to this rule are a personal representative of an estate, a guardian or conservator may pursue a claim.

Small claims suits are generally limited to no more than ten (10) claims in any calendar year, and no more than two (2) claims may be filed within any calendar week.

COUNTERCLAIMS AND SETOFFS

When the defendant receives notice of the small claims filing, he or she may file a "counterclaim" or "setoff" with the court. A ***counterclaim*** is a statement by the defendant

that he or she is owed money or property by the plaintiff. A *setoff* is an admission by the defendant that he or she owes some money to the plaintiff, but that the plaintiff also owes the defendant money.

If the defendant wishes to file a counterclaim or setoff, the clerk of the county court can provide the proper forms. The defendant must provide a concise statement of why the money is owed by the plaintiff. The defendant must file the counterclaim or setoff with the court and have notice served on the plaintiff at least two days prior to the time of trial. If a setoff or counterclaim exceeds the jurisdictional limits, the court shall cause the entire matter to be transferred to the regular county court.

TRANSFER OF CASES FROM SMALL CLAIMS COURT

A defendant in a small claims court action may remove the case from small claims court and have it considered as a regular civil case on the county court docket. The defendant or defendant's attorney must request the transfer at least two days before the hearing time and must pay the difference in fees between the small claims court and the regular docket of county court. When this is completed, the case is automatically transferred by the court; the law does not permit the plaintiff to object to the transfer. After the transfer, both the defendant and the plaintiff may have a lawyer represent them during the trial. A defendant desiring a jury trial must ask for a jury trial at the time the transfer is requested.

PREPARING YOUR CASE

It is the obligation of the plaintiff on the original claim and the obligation of the defendant on the counterclaim or setoff to persuade the judge that his/her position and claim is valid. Both parties may bring evidence

in the form of documents or witnesses to support their side.

You may simply ask your witness to appear in court and testify. If the person is reluctant or if you are unsure whether the witness will attend the hearing, you may make a written request to the court for a subpoena, which will then be served on the proposed witness and will compel the witness to attend the trial. A witness fee and sheriff's fees for the service of the subpoena must be paid by the party who wants the witness to testify. If the fee is not paid, the witness is not required to attend the trial and testify. The cost of these fees will be made a part of the court's judgment.

The following are examples of evidence you may wish to consider in certain cases:

- If your case involves poor workmanship, bring in a witness who is knowledgeable about the type of work in question, who does not have a direct interest in your case, and who can testify as to the standards of proper workmanship.
- In auto accident cases, copies of the police accident report, repair bills or written estimates and photographs of the damages of the accident scene may be helpful.
- In cases concerning personal injury, medical bills and photographs of the injured party may be beneficial to the court.
- In landlord/tenant disputes, a copy of the lease, if there is one, as well as receipts or canceled checks for rent or deposits, and anything else in writing pertaining to the case should be produced. If there is a question as to damages or the condition of the apartment, witnesses and

photographs should be considered as well as repair bills and estimates.

- In cases involving faulty merchandise, any warranties or guarantees that may be applicable should be presented.

HOW THE CASE IS HANDLED

Shortly before the time set for your case, advise the county court staff that you are present and ready for trial. They will direct you to the proper courtroom. Although trials in small claims court are generally informal, remember that you are in a court of law and all participants are expected to conduct themselves in a courteous manner. If discourteous conduct or arguments continue after a warning by the judge, the individual may be held in contempt of court and may be fined or jailed.

The plaintiff's evidence is presented first and then the defendant's evidence is presented. Present your case in a brief, orderly fashion. If you wish, you may write it out in advance and read it to the court.

Limit your testimony and evidence to issues directly concerning the case. If the judge asks questions, answer carefully and accurately. Do not argue with the judge, interrupt the other party or witnesses, or make personal attacks on any person. The judge will either decide the case at the end of the trial or will take the case under advisement and inform you later of the decision.

SETTLEMENT OF CASES

In most cases, neither party is one hundred percent right or wrong. You are encouraged to try to settle your case before trial. If a settlement is agreed to, the parties should notify the court prior to the time set for trial and the case will be dismissed or a judgment entered according to your agreement. For the

protection of all participants, the notice of settlement and request for dismissal should be in writing. Filing fees are not refundable.

DEFAULT JUDGMENT

If the defendant chooses not to appear at the time and place set for hearing and does not request or receive a continuance, the court may, after hearing the plaintiff's evidence, award a default judgment to the plaintiff without the defendant being present.

A judgment rendered against a defendant in his or her absence may not be set aside but may only be appealed.

CONTINUANCES

A continuance (moving the trial to a later date) will be allowed only for good reason. The local court staff can advise you about their policy concerning continuances. Generally, the closer to trial date a continuance is requested the more compelling a reason must be for the court to consider the application.

APPEALS

If either party is dissatisfied with the decision of the court, the case can be appealed. The appealing party must comply with the following within 30 days after the entry of judgment:

- File a notice of appeal with the clerk of the county court;
- Pay the clerk of the county court the docket fee for filing cases in the district court; and
- Deposit with the clerk of the county court a cash bond or a surety bond approved by the court in the amount of \$50.00.

You will also have to pay for photocopying the county court file that is to be filed with the district court.

The person who appeals may prevent the other side from collecting their judgment until the appeal has been decided, but it is not done automatically by filing an appeal. To do so, an additional bond called a “supersedeas bond” must be filed with the clerk of the county court within 30 days after the entry of judgment. In cases involving a money judgment, the supersedeas bond must be in the amount of the judgment, plus costs and estimated interest. In cases involving a judgment for personal property, the bond shall be in an amount at least double the value of the property. If no supersedeas bond is filed, the party who won in small claims court may start the collection process as soon as the judgment is entered, even though an appeal is pending.

The appeal will be heard by the district court as a new case and will be retried. This means you will again introduce evidence through witnesses and documents. Both sides may choose to be represented by an attorney during the entire appeal process. Costs of the appeal generally will be charged against the losing party.

COLLECTING YOUR MONEY

Being awarded a judgment does not guarantee that you will ever collect money. ***The court is not responsible for collecting the judgment.*** If the judgment debtor (the losing party) does not voluntarily pay the judgment to the judgment creditor (the winning party), the judgment creditor may attempt to collect the judgment through the court process. Voluntary payments from the judgment debtor may be accepted any time.

The clerk of the court has forms available to assist the judgment creditor in collecting the judgment by garnishing wages and bank accounts or execution against the property of the judgment debtor. When the forms are completed, it is the duty of the party seeking enforcement of the judgment to make arrangements with the sheriff’s office for service of these papers and to complete the garnishment or execution procedures. If the case is appealed and the supersedeas bond has been filed, you must wait until the appeal is decided before attempting to collect on the judgment.

If the judgment debtor makes payments to you directly, you should notify the court when payments are completed. Your court may allow the judgment debtor to make payments through the county court.

GARNISHMENTS

A garnishment is a proceeding whereby the judgment creditor (the person who wins the lawsuit and is now owed a judgment) seeks to obtain funds which are property of the judgment debtor (a defendant who lost the lawsuit and has had a judgment entered against him or her) but which are being held by a third party. For example, an employer may be holding wages belonging to the debtor. A garnishment served upon the debtor’s employer may result in the lesser of the following amount being paid into court and distributed to the creditor:

- 25% of the debtor’s disposable income for the week; or
- 15% of his disposable earnings for the week if the debtor is a head of a family; or

- the amount by which the disposable income for a week exceeds 30 times the federal minimum hourly wage. A garnishment of a bank account results in the total amount of the account up to the amount of judgment and costs being paid into court for distribution to the creditor.

Forms for garnishments are available from the clerk of the county court; however, you must know the place of employment or bank with which the debtor does business. If the employer or bank is located in a different county, the judgment must first be transferred to a court in that county.

EXECUTIONS

An execution is a court order directing the sheriff to seize the debtor's property. The creditor must determine exactly what property the debtor owns and describe it clearly so the sheriff knows what to look for. Ownership of motor vehicles and certain other types of personal property can be determined at the county clerk's office. The county assessor and register of deeds office can also be used to locate other personal property and real estate owned by the debtor.

Any property seized for sale to satisfy the judgment is taken subject to the rights of any liens (claims) against that property. The lienholder will be paid before the judgment creditor. For example, if the debtor owns a car but has a bank loan outstanding and is using the car as collateral for the loan, the bank will be paid first with the proceeds of any forced sale of the car.

County court judgments do not operate as a lien against real estate. If the debtor owns real estate, a certified copy of the county court judgment may be filed in the district court of the county in which the real estate is located.

The judgment then becomes a lien on the judgment debtor's real estate.

After an execution is served and property is seized, the sheriff will advertise a time and place for the sale of that property. The proceeds of the sale will be applied to the expenses of the sale first and then to the judgment.

When you begin a garnishment or execution you will have to pay fees to the county court that will be added to the original judgment.

Both garnishments and executions are risky for the judgment creditor. Unless the property or debt sought to be garnished is readily apparent, you should talk to a civilian attorney before trying to enforce your judgment. A civilian attorney may prepare and file the necessary papers to collect your judgment. A wrongful execution or garnishment may result in a lawsuit being filed by the debtor or some other offended party. The amount of that suit could be significantly greater than the original judgment. If you have any doubts about collecting your judgment, consult a civilian attorney.

INFORMATION FOR THE JUDGMENT DEBTOR

Some of your property is exempt by law from either garnishment or execution. You shall have exempt from forced sale on execution: (1) the sum of \$2,500 in personal property (except wages); (2) the immediate personal possessions of you and your family; (3) all necessary wearing apparel; (4) \$1,500 in household furnishings, goods, computers, appliances, books or musical instruments held primarily for personal, family, or household use; (5) \$2,400 in implements, tools, or professional books or supplies for use in your principal trade or business to include one motor vehicle used for

trade or business and; (6) prescribed health aids for you and your family. Wages in excess of the limits previously discussed under garnishments are protected by law. Also, some income such as social security payments is totally exempt from garnishment.

If your wages or accounts are garnished or an execution is entered against your property, consult a civilian attorney who can advise you how to protect yourself. It is your responsibility to notify the court of claimed exemptions, and these exemptions must be claimed to prevent the property being applied against the judgment.

If a judgment has been entered against you from a claim that involved a motor vehicle accident, you must make sure the person who sued you notifies the court when you have paid that judgment in full. If the court is not notified within 90 days after judgment is entered that you have satisfied the judgment, the law requires that the clerk of the court send a copy of the judgment to the department of motor vehicles. The director of motor vehicles will then suspend your driving privileges and revoke your automobile registration until the court has proof the judgment has been paid.

***The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.**

BANKRUPTCY

If you have a claim against an individual but are aware that the claim is listed as a debt in a bankruptcy proceeding, you are prohibited by federal law from pursuing your claim in small claims court or pursuing collection on a judgment. Parties who knowingly pursue a claim listed in bankruptcy may be held in contempt by the federal bankruptcy court.

A defendant in bankruptcy who receives notice that he or she is being sued or that collection efforts are being made on a judgment previously entered should notify the court. The defendant must then provide proper documentation showing the existence of the bankruptcy proceedings and that this claim is included. The court will then stay all proceedings related to the case until the bankruptcy case has been dismissed. The clerk of the court has available a copy of the Nebraska Supreme Court rule on Bankruptcy.