

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT
SMALL CLAIMS DIVISION
1 West Superior St.
Fort Wayne, IN 46802
Telephone: (260) 449-7157

INSTRUCTIONS FOR FILING A SMALL CLAIMS SUIT

When filing a Small Claim in the Small Claims Division of the Allen Superior Court, remember:

1. Any corporation must have an attorney to either file or defend any claim in Small Claims in an amount more than \$1,500.00. A sole proprietor or a partner in a partnership may appear and file or defend claims for any amount up to the \$6,000.00 jurisdictional limit. A corporation, partnership, or sole proprietorship may designate a full-time employee to appear and file or defend a claim in Small Claims, if the amount requested does not exceed \$1,500.00, by completing a proper authorization form available from the Clerk.
2. You must file your claim in the county where the transaction or incident occurred, where the obligation was incurred, or where the defendant resides or is employed.
3. At the time you file your claim, you will be required to pay court costs. The defendant may be ordered to repay this money to you if you win, but not if you lose.
4. You must know the correct name, address and telephone number of the defendant. Be sure you are suing the person responsible for your claim.
5. You cannot request more than \$6,000.00. If you are entitled to more than \$6,000.00 you automatically give up your right to the amount more than \$6,000.00 if you file your claim in the Small Claims Division of the Allen Superior Court.
6. The number of copies which need to be filed depends on the type of service you select. Certified mail requires that the original be filed with the Clerk, as well as one copy for each defendant. If you choose Sheriff service, you will need to file one copy with the Clerk, in addition to three (3) copies for each defendant. If you require an additional copy for your records, you may add that also.
7. If you are suing on an account or contract, you must give the Clerk one copy of that document for the court records and, also, one copy for each defendant. Keep the original for yourself. If you do not have a copy of the contract, it will not prevent you from filing a claim.
8. State your claim clearly and briefly. You will have an opportunity to explain your claim more fully in Court.
9. Claim only those precise money damages that you believe you can prove in Court.
10. If the defendant requests and is granted a jury trial, all formal rules will apply at the trial. An additional fee of \$70.00 will be charged. In such case, it would be advisable for you to contact an attorney.
11. The defendant may believe he or she has a claim against you and may file a counterclaim with the Court. Both claims will be decided at the same trial, if the amount of the counterclaim does not exceed \$6,000.00. You will be notified of the counterclaim at least ten (10) days before trial. If you do not receive this notice at least seven (7) days before trial, you may request a continuance.
12. You will be notified of the date, time and place of trial. Be sure to arrive on time. If you are not there when your case is called, it may be dismissed.
13. If you are unable to attend the trial on the date set, you may ask the Court for a continuance. Except for proven extraordinary circumstances, you are entitled to only one continuance, so use it only if you have a good reason, and only if it is absolutely necessary. All continuances must be requested in person and more than seven (7) days prior to the date and time set for trial.
14. Be prepared to prove your case and bring all your evidence and witnesses with you when you come to Court. At the trial simply tell your side of the story. There are no technical or formal rules to follow. The Judge may ask questions of you or the defendant.
15. You will be notified of the Judge's ruling in your case either immediately after your trial or within ninety (90) days after the trial.
16. The decision of the Court may be appealed to the Indiana Court of Appeals. However, you will lose your right to appeal unless you take specific written action in the Court within thirty (30) days after the judgment is entered. Consultation with an attorney is highly recommended if an appeal is desired, as the rules governing such appeals are complicated and strictly enforced, unlike trials in Small Claims Court. If you do not consult an attorney, you may ask the Court only for procedural assistance, as the Court cannot provide legal advice.
17. If you need legal advice, you must consult an attorney.

COLLECTING YOUR SMALL CLAIMS JUDGMENT

What is a judgment?

The judgment entered by the Court is a legal determination that another person owes you a certain sum of money and court costs.

Your judgment is a lien on any real property in this county owned by the debtor now or in the future, for a period of 10 years. For it to be a lien on real property in another county in this state, a certified copy of the judgment must be recorded in that county. Collecting the judgment is your responsibility. The length of time it will take to collect depends upon both your diligence and the debtor's ability to pay. In referring to your case for any reason, it is important that you have your COURT CASE NUMBER.

How do I collect on my judgment?

If payment is not made within 10 days after judgment, you have several legal methods of collection.

1. PROCEEDINGS SUPPLEMENTAL:

When a Proceeding Supplemental is filed, the debtor is questioned under oath about his or her ability to pay (income, assets, liabilities, family size, etc.) If you know that the debtor has a job and know the address of the employer, you may file Interrogatories with the Clerk to be issued to the employer when you file the Proceeding Supplemental. The Court can determine from the answers to the Interrogatories whether the debtor is garnishable. At the hearing, you will have the opportunity to ask the debtor, or inform the Court, about the debtor's ability to pay. The Court may also choose to order any of the following at the hearing:

- the debtor to pay the judgment in full or in installments;
- the debtor to supply the Court with current information regarding employment status and address;
- the debtor to reappear sometime in the future to provide additional information;
- a garnishment or the debtor's earnings;
- execution against the debtor's personal property.

At any time in the future that the debtor fails to follow a Court order, or if you have reason to believe his or her ability to pay has improved, you may ask that the debtor be ordered to reappear.

2. GARNISHMENT:

The law regulates the amount and the kinds of income that can be garnished. As a rule of thumb, the first \$217.50 of weekly take-home pay is exempt, and the maximum that can be taken out each week is one-fourth of the disposable income. Only one garnishment can be deducted at one time; it is important to "get in line" because garnishment orders are paid in the order that they are received by the employer. If the debtor changes jobs, you will have to ask for a new garnishment order.

3. EXECUTION AGAINST PERSONAL PROPERTY:

The personal property of the debtor can be attached and sold at execution. This means of collection is strictly controlled by statute and subject to many exemptions. For that reason, it is advisable that you consult with an attorney if you think execution against personal property might be worthwhile.

4. IF THE DEBTOR DIES:

If the debtor dies before the judgment is paid, you may attempt to collect what is owed by filing a claim against the debtor's estate within three (3) months. Estate claims are filed in the Clerk's Central Services Division, Room 201, Allen County Courthouse.

5. IF THE DEBTOR FILES BANKRUPTCY:

If it is shown to the Court that the debtor has filed bankruptcy and your judgment is listed in the bankruptcy petition, the Court is required by the Federal law to stop collection proceedings. In that case, your only remedy is in Bankruptcy Court.

When are judgment payments available?

If the judgment debtor or employer makes a payment to the Clerk by check, the Clerk's Office must hold that payment until it clears the bank. If cash, money order, or a certified or cashier's check is used for payment, the money can be released on the next business day.

How do I release my judgment?

After a judgment has been paid in full, it must be released in the Clerk's Office, even if the monies were paid directly to the judgment creditor (rather than through the Clerk's Office). A judgment release form is available in the Clerk's Office. This document releases the judgment, including court costs, as fully paid and satisfied.