
A Guide to Small Claims

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What Is Small Claims Court?

Small Claims Court is a special division of Justice Court. Small Claims Court is designed to help parties who do not have attorneys resolve their disputes quickly and inexpensively. Claims in Small Claims Court **must be \$10,000.00 or less, and judges can award only monetary damages.** This means that judges in Small Claims Court can only order the other party to pay money. They cannot order the other party to perform an action, such as returning property or ceasing to play loud music.

Generally, parties in Small Claims Court represent themselves without an attorney. This is sometimes called “appearing *pro se*” or being “self-represented.” Attorneys are allowed in Small Claims Court. However, the winning party in a small claims case cannot collect attorney’s fees from the losing party. Therefore, a party who hires an attorney will bear the burden of paying that attorney. Because parties generally represent themselves in Small Claims Court, the procedures and rules of evidence are more relaxed than in ordinary Justice Court.

What Should I Consider Before I File a Small Claims Suit?

Rushing down to the courthouse to file a lawsuit should not be your first step. Although there are many advantages to Small Claims Court, it is not always the best solution to every problem. Even though the rules are more relaxed and the procedures are less complex, filing a small claims case will take some effort. A good deal of planning and even some legal research may be necessary. Before you file a small claims case, evaluate your answers to the following questions:

- Do I have a good case?
- Am I willing to invest the necessary time and energy?
- Am I asking for money only or for some other remedy?
- Is my claim for \$10,000.00 or less?
- Have I attempted to settle or mediate?
- Can I locate the party I want to sue?
- Can I prove my case?
- Has the time to file my claim expired? (See box above)
- If I win, will I be able to collect?

What is a statute of limitations?

A statute of limitation is a law setting a time limit on when you can file your case. If you wait to file your case until after the statute of limitations has run out, your case must be dismissed.

In Nevada, most statutes of limitations are found in NRS 11.190. Claims for:

- Breach of a written contract must be filed within six years;
- Breach of an oral contract or deceptive trade practices must be filed in four years;
- Injuries to personal property or claims for fraud must be filed within three years;
- Injuries to a person must be filed in two years.

If you are not sure whether the time for your claim has expired, check NRS 11.190 and research the applicable statute at the law library.

Where Can I Find Forms and Help with Filing my Small Claims Case?

To help parties in small claims cases better represent themselves, the courts have created standardized small claims forms to address most situations. These forms are available, for free, through the Douglas County Justice Courts' websites or the Nevada Civil Law Self-Help Center website, www.civillawselfhelpcenter.org/, where you can also find general information about small claims procedures and practices.

A Word of Warning...

There are businesses that will try to sell you court forms. Usually these forms are the same forms that are available for free on the court or self-help website. In other cases, these forms may be outdated or may not be accepted by the court. Before you pay for forms, check to see if they are already available online or at the Self-Help Center

Free Small Claims Ask-A-Lawyer Program

Volunteer Attorneys for Rural Nevadans (VARN) and Nevada Legal Services (NLS) have volunteer attorneys available for people seeking legal advice with their small claims matter. These programs allow for a free fifteen-minute consultation with an attorney. Contact the program for the next available legal aid clinic:

Nevada Legal Services
775-284-3491 or 775-883-0404
www.nlslaw.net

Volunteer Attorneys for Rural Nevadans
775-883-8270
www.varn.org

How Do I File my Small Claims Case?

Step One: Identify the Right Defendant(s)

Identifying and suing the right "defendant" (the person or company you are suing) is one of the most important steps in your case. You can sue more than one person for a claim about the same incident or contract. But each defendant must have some independent and actual interest in the subject matter of your suit and must be somehow at least arguably responsible for the damages you have suffered.

Broadly speaking, in an action for breach of a contract, the defendant will usually be the person or business with whom you contracted. In a case alleging some type of personal injury or damage to property, the defendant will typically be the individual or business who actually caused the injury or damage. There are, however, any number of legal theories that could apply in your case that would operate to either increase or decrease the number of potential defendants. If you have any doubt about who to name as a defendant, you may need to perform some basic factual investigation and research the law applicable to your case.

Sometimes it can be tricky to locate a defendant. Using a basic internet search engine often yields helpful results. There are also government records you can search to locate a defendant. The County Assessor's office provides property records online. You can use the assessor's records to discover who owns a particular piece of land. If you are suing a landlord, the assessor's office is a valuable tool because you must make sure you are suing the actual owners of the rental property.

The County Recorder's office keeps records involving real property, marriages, divorces, deaths, and births. These records might provide an address for your defendant. Some of these records may require a fee to

view them. Others are not available online in their entirety, and you will have to go to the recorder's office to view them.

Court records can also be a useful way to locate a defendant. If you know a person's name, you can search the court's records to see if that person has recent traffic violations or has been named as a party in a case in one of the Justice Courts or in the District Court. You can go to the courthouse in person and get copies of court records, which may have an address listed.

Suing a business can be a little more complicated than suing a person. Sometimes a business is owned by an individual, and sometimes a business is owned by corporate entity. If the business is a corporation, you will generally have to name the corporation in your lawsuit. If a business is owned by an individual, you will have to name both the individual and the business (e.g., "Jane Smith d.b.a. ABC Antiques," which signifies Jane Smith "doing business as" ABC Antiques).

Make sure you have the name for a business listed correctly in your lawsuit. You might know a business as "ABC Antiques," but its legal name might actually be "Fine Antiques, Inc. doing business as ABC Antiques." When a business uses a name other than its own, it must file something called a "Fictitious Firm Name Certificate" with the county. To find out if a business uses a fictitious name, contact the County Clerk. The Nevada Secretary of State's office has a searchable database of businesses operating in Nevada at nvsos.gov/sosentitysearch/.

Step Two: Determine the Exact Amount of Your Claim

You must determine the exact amount of money you are seeking to recover. This may seem obvious, but in some circumstances it might not be that simple.

For example, if you are basing the amount of your claim on the estimated cost to repair something, obtain three estimates so that the judge can determine the proper amount you should be paid. If you are basing the amount of your claim on the estimated cost to replace something, the judge might only consider the current value of the lost or destroyed item, and not the replacement cost, so you might need estimates for both. Some money might not be recoverable at all, such as money for time off work to go to court, parking, babysitting services, and the like.

You might be entitled to extra damages, called "statutory damages," in some instances. Statutory damages are damages specified by a particular statute or regulation. If you are requesting statutory damages, include a copy of the statute with your other evidence. You might want to consult with an attorney or do some research at the law library to see if there is a statute that applies to your claim.

The judge can always award you less than you requested, but never more. If your claim is for more than \$10,000, you can waive the amount above \$10,000. You cannot split one large claim into two smaller claims in order to file multiple cases in Small Claims Court.

Step Three: Make a Demand for Payment

The law requires you to make a demand for payment of the amount claimed by writing a letter to the Defendant requesting payment and sending same by Certified Mail, Return Receipt Requested. If the demand letter was refused or unclaimed, the Plaintiff may proceed with the Small Claim filing. However, the Plaintiff must wait **fifteen (15) days** for a reply before proceeding.

When filing the Complaint, you must provide to the court a copy of the letter you sent and the return mail receipt, or the original envelope marked "refused or undeliverable."

Your letter should state the exact amount of money you are seeking and why you believe you are entitled to it. You might want to include a concise review of the facts. Your letter should be polite and professional, with the goal of encouraging the defendant to resolve the dispute amicably. You should end your letter by informing the defendant that you will pursue the matter in Small Claims Court if it is not resolved.

Keep copies of your letters, any correspondence you receive from the defendant, the certified mail receipt, and the return receipt postcard.

Sample Letter

<p>Jane Doe 123 Elm Street Minderville, Nevada 8941X (7775) 555-5555</p>
<p>January 1, 2019</p>
<p>Owen Bucks 456 Oak Lane Minderville, Nevada 8941X</p>
<p>Dear Mr. Bucks:</p>
<p>This letter is a demand for payment in the amount of \$1,300.00. You borrowed \$1,500.00 from me on February 23, 2018 and agreed to repay me \$200 per month, but have only made one payment.</p>
<p>I would like to try and resolve this, and I am willing to begin accepting monthly payments again.</p>
<p>Please call me within 15 days to work something out. Otherwise, I will file a claim in Small Claims Court. I will request reimbursement for the costs I will incur as a result of having to file a court action.</p>
<p>Sincerely, <i>Jane Doe</i></p>
<p>Sent certified mail, return receipt</p>

Step Four: Filing Your Complaint

You must file your Complaint with the Justice Court in the township where:

- The defendant currently lives, works, or does business; or
- The township where the defendant lived, worked, or did business at the time of the incident for which you are suing; or
- The township where the injury to the person or property happened; or
- the township where the obligation under a contract was supposed to be performed or is supposed to be performed.

When filing the Complaint with the court, you will need:

- The original Complaint and two copies;

- The demand letter;
- The return receipt postcard from sending the demand letter;
- A Civil Cover Sheet;
- The correct filing fee made out to the Justice Court; and

The filing fee can be paid by cash, VISA®, MASTERCARD®, ATM and debit cards, money order, or cashier's check. Current filing fees are:

- \$71.00 for claims between \$0.00 – \$1,000.00
- \$91.00 for claims between \$1,000.01 – \$2,500.00
- \$111.00 for claims between \$2,500.01 – \$5,000.00
- \$151.00 for claims between \$5,000.01 – \$7,500.00
- \$201.00 for claims between \$7,500.01 – \$10,000.00

If you are unable to pay the filing fee, you can file a fee waiver, also called an “Application to Proceed *In Forma Pauperis*.”

As you proceed with your claim, keep the following in mind:

- Maintain records of all of the costs incurred for postage, filing, and serving your Complaint. You can recover some of these costs if you win.
- If your address changes from the one listed on your Complaint, notify the court of your new address or you may not receive a copy of the judge’s decision.

Where Do I file?

You must file in the Justice Court for the **township** where the defendant in the case currently lives, works, or does business; or the **township** where the defendant lived, worked, or did business at the time of the incident for which you are suing; or the township where the injury to the person or property happened; or the **township** where the obligation under a contract was supposed to be performed or is supposed to be performed.

Step Five: Serving Your Complaint

After you file your Complaint, a copy of the Complaint must be served to each defendant by a licensed process server or a law enforcement agency. This is called “service of process.” It is good practice to serve the defendant immediately after filing the Complaint.

If the defendant can be located within Douglas County, then Service of Process shall be performed by the Douglas County Sheriff. Their office can advise you as to the service fee they will collect. Fees will be collected for each attempt to serve, without refund. After a dialed attempt, you may be required to provide updated address information to the Sheriff. The court is not involved with the service. Please contact the Sheriff regarding questions related to the Service of Process.

If the defendant cannot be located within Douglas County, then it is your responsibility to ensure that the defendant is served. Service of process must be completed by a person who is NOT a party in the lawsuit (i.e. not you) and who is over the age of 18. Service of process can also be performed by the County Sheriff, or a private process server. If you use the Sheriff of another county (like Carson City), you will need to provide them with several copies of your Complaint and their required filing fee.

A Proof of Service form must be completed by the person who serves the Complaint, which should be

provided to you. You are responsible for filing the proof of service with the court no later than 10 days before the mediation.

If the court is not satisfied that the defendant was served, your case will not be heard. If service is incorrect for any reason, your case could be dismissed or continued. If proof of service is not timely filed, your case could be dismissed or continued.

How Long Do I Have to Serve a Defendant?

You must serve the defendant and file the Proof of Service with the court at least ten business days before the mediation date you received when you filed your case. If you cannot serve your defendant before that date, you'll need to ask the court for more time.

How Do I Serve an Individual?

Each defendant named in your case must be personally served with their own copy of the Complaint, even if they live at the same address (and a separate Proof of Service must be filed for each defendant). "Personal service" means that the defendant must be handed a copy of the Complaint. The only exception to this rule is if the Complaint is served at the defendant's home. A process server can leave the Complaint at defendant's home address with any suitable adult. However, the Complaint must be given to a person and cannot simply be left in the doorway.

You might want to research the Nevada Revised Statutes to determine whether there is any alternative method of service allowed in your type of case. For example:

- If your case involves damages or loss you suffered as the result of the defendant's use of a motor vehicle in Nevada, you may be able to serve the defendant through the Nevada Department of Motor Vehicles.
- If your defendant lives in a guard-gated community, you may be able to serve the defendant by leaving a copy of the Complaint with the guard.
- In a case against a landlord, you may be able to serve your Complaint on the property manager or the party who entered into the rental agreement on the landlord's behalf (when there is no other agent designated in the lease).

What if I Cannot Serve the Defendant?

If you have made several failed attempts to serve your defendant, you can ask the court for permission to serve the defendant by certified mail. To obtain the court's permission, you must file a Motion for Service of Small Claims Complaint by Certified Mail form. Be prepared to provide proof of all of the ways the process server attempted to serve the defendant personally. Service by publication is rarely, if ever, ordered in small claims cases.

How Do I Serve a Business?

If you are suing a corporation or other business, you generally must serve a person called the "registered agent." All corporations, limited partnerships (LPs), and limited liability companies (LLCs) are required by law to designate an agent to accept service of lawsuits; and must provide the name and address of this agent to the Nevada Secretary of State's office. You can find a company's registered agent by using the Business Entity Search on the Secretary of State's webpage at

nvsos.gov/sosentitysearch/CorpSearch.aspx.

If a business has designated a registered agent, you can serve your lawsuit on the business by arranging for a copy of the Complaint to be delivered to the registered agent. A Sheriff, or process server can serve

the registered agent personally (by handing it to him or her) or by leaving a copy of the Complaint with a person of suitable age and discretion at the address listed on the Secretary of State's website. Bear in mind that the registered agent is not a party to the lawsuit. The registered agent is simply the entity that accepts the paperwork on behalf of the business. Do not name the registered agent as a defendant in your lawsuit.

Sometimes businesses change their registered agent, but do not update their information with the Secretary of State's office. In such a case, you might have several alternatives for service. For instance, a corporation incorporated in Nevada can also be served by personal service on the corporation's president, secretary, cashier, or managing agent. (JCRCP 4(d)(1).) If the corporation is incorporated outside the State of Nevada, a lawsuit can be served on the foreign corporation's managing agent, cashier, or secretary if they are within Nevada. (JCRCP 4(d)(2).)

If a corporation, LP, or LLC has not complied with the requirement to provide an agent who will accept lawsuits, and there is no other person you can serve, you might be able to serve the business by mailing a copy to the Nevada Secretary of State, posting another copy in the office of the court clerk in the court where you filed your suit, and mailing copies of the Complaint to any corporate representatives located out of state. (JCRCP 4(d).) However, before you do this, you will need to get permission from the court by submitting an affidavit to the court explaining everything that you did to try to serve the corporation or partnership and why serving the Secretary of State's office is your only viable alternative.

The rules on serving businesses and other entities can be complicated. If you are not sure how to serve your opposing party you can check the rules on service in Rule 4 of the Justice Court Rules of Civil Procedure. You should also look at Chapter 14 of the Nevada Revised Statutes, which provides information on serving other entities, including government agencies.

Generally, a domestic corporation that has gone out of business can be sued up to two years after the corporation dissolves. If you are planning on suing a corporation that has gone out of business, read NRS 78.585 to make sure you are fulfilling all the appropriate requirements.

If You Have Been Served with a Small Claims Complaint

When you are served with a small claims complaint, you will see a date, location, and time on your paperwork for your court trial or mediation. You will have to go to court on that date. If you do not show up at the court or do not file something, the plaintiff can obtain a default judgment against you. This means that the court will order you to pay the plaintiff money even though you did not attend a trial.

Even if you do not think you have a defense – a valid reason for not paying – you should still attend the trial. You should never ignore a Summons! If you believe you have a defense, you should do research, prepare your case, organize your evidence, and practice presenting your case just like the plaintiff. If you are unsure whether you have a legal defense, you might want to consult with an attorney or do your own legal research.

If you absolutely cannot make that court date for some reason, you should file a Motion to Continue. You should file your motion as soon as possible. Keep in mind that the court does not have to change your trial date.

If you believe the plaintiff owes you money, you can file a Counterclaim form. Just as if you were the plaintiff, you must complete the Counterclaim form, make two copies, and file it with the clerk of the Justice Court where plaintiff initially filed the Complaint against you. The fee for filing a Counterclaim in Las Vegas is \$71.00. If you are unable to pay the filing fee, you can file a fee waiver, also called an "Application to Proceed In Forma Pauperis."

You must then serve the Counterclaim by mailing it to the plaintiff, certified with return receipt. You must also file and serve your Memorandum of Costs. Service must be completed at least ten days before the scheduled trial.

Mediation

When a Complaint is filed, a Summons and Order to Appear (Mandatory Mediation) will be issued. This document must be served with the Complaint. This document will contain the mediation date/time and instructions for appearance for the mediation.

What Is Mediation?

Mediation is a process in which the parties meet with a neutral third party to try and reach a mutually agreeable solution. Mediation is conducted by trained mediators, volunteer attorneys, or retired judges at the East Fork Justice Court. Mediation is free and confidential. Nothing that is said or done in mediation is admissible, or can be considered, by the small claims judge at trial.

Mediation starts with all the parties meeting in one room. Each party has a chance to share their view of the dispute without interruption. After the initial meeting, each party has a private session with the mediator to talk about possible ways to solve the dispute. The mediator will then bring the parties back together to talk about mutually agreeable solutions.

Mediators are not judges. They will not decide which party is right or wrong. Nor will they decide whether one party is telling the truth. They will not advise the parties on how to proceed. The mediator is only there to facilitate a respectful environment to help the parties look at their goals and options so they can find a solution that leaves everyone satisfied.

One of the advantages of mediation is that you can reach agreements that include provisions that cannot be ordered in Small Claims Court. Small claims judges can only award money, but a mediation agreement can include other types of relief (for example, the return of a pet, the repair of a car) tailored to the needs of the individual participants.

Do I Have to Make an Agreement During Mediation?

No. Although attendance at mediation is mandatory, it is not mandatory that you make an agreement during the mediation.

What Happens if I Do Reach an Agreement with the Opposing Party?

If you do reach an agreement with the opposing party, the mediator will write up the agreement for you on a Court form. Both parties will sign the written agreement, and it will be filed with the Court. That agreement then becomes a written contract and can be enforced by both parties.

If one party breaches the agreement, the other party can obtain a judgment without having to go to a hearing by notifying the court of the default in a written motion. Both parties should be aware that if they sign an agreement in mediation and then breach the agreement, they will not have an opportunity to contest the underlying issue in court. Moreover, parties should be wary of signing a mediation agreement that imposes a monetary penalty on them for breaching the agreement.

What Happens if I Do Not Reach an Agreement During Mediation?

If you do not reach an agreement during mediation, you can proceed with your lawsuit. There is no penalty

for failing to reach an agreement. Your matter will be set for trial and you will get a notice of the date by mail.

Preparing For Your Trial

What Should Be Filed Before my Trial?

The three documents that should be filed in your case before your trial date are the (1) complaint, (2) Proof of Service, and (3) the Memorandum of Costs. The Memorandum of Costs is a list of all the costs you have paid so far in the case. Both the Proof of Service and the Memorandum of Costs should be filed at least 10 days before your trial date. You should file them as soon as possible.

Can I Change my Court Date?

If you can't make an assigned trial date, or if you are unable to serve at least ten days before the trial date, or if you are the plaintiff and the court date expired, you can file the Small Claims Motion to Continue or Request to Reset Hearing. You must mail a copy to the other party. You should file your motion as soon as possible. Keep in mind that the court does not have to change your trial date.

What Do I Do if I Need Information from the Other Party or a Witness to Come Testify for Me?

A witness can be the difference between winning and losing your case. It is usually a good idea to interview your witness before the trial to avoid any surprises. You should not, however, try to change your witness's story.

If you are not sure whether a witness will voluntarily appear at the trial, you might consider issuing a subpoena. If you decide it is necessary, you should complete, file, and have the Subpoena form served as soon as possible before the trial. Your Affidavit of Service of the Complaint form must be filed before the Court will issue a subpoena. If you subpoena a witness, you must pay the witness a fee of \$25.00 per day and mileage reimbursement. You can attach a check (made out to the witness) to the subpoena for when it is served. You must also pay the Sheriff, or private process server a fee to serve the subpoena, usually around \$17.00 plus \$2.00 per mile.

The Subpoena form is for either a regular subpoena or a subpoena duces tecum. A regular subpoena requires the witness to appear at the trial. A subpoena duces tecum requires the witness to appear and bring certain evidence or documents. Because there is no discovery process in Small Claims Court, a subpoena duces tecum is the only way you can require your opposing party to bring documents you may want to court.

When completing the form, make sure the trial date is correct. If the trial date changes, you will have to issue a new subpoena and have the new subpoena served.

Arranging For a Court Interpreter

If you or a witness will require the assistance of an interpreter, you should bring one with you; or you can contact the Court Clerk to make arrangements for an interpreter to be present on your court date. An interpreter cannot be your spouse, be related to you, be biased for or against one of the parties, or otherwise interested in the outcome of the mediation or trial. Generally, an interpreter must be court approved. If you use an interpreter arranged by the Court, you may be required to pay a fee for the service.

Organizing Your Case and Evidence

Even though you have been preparing and waiting for your trial date for months, your trial will only last up to an hour. Since you have such a short time, it is important to be prepared and be organized.

Before the trial, prepare a brief outline to refer to during the trial. Your outline should include the necessary facts and details about your case. Do not include unnecessary details, history, or be repetitious. Explain why you believe you are entitled to the money you have requested and refer to any applicable laws upon which you are relying. And remember, it is up to you to prove your case.

Preparing your evidence for the trial is just as important as preparing your thoughts. Bring the original and two copies of any document you wish to submit as evidence (any contract, check, photograph, police report, receipt, letter, estimate, and the like). If submitted as evidence, the Court will keep your original. If you have several documents, put them in a binder with tabs and prepare a table of contents listing each document and its corresponding tab. This will enable you and the judge to find your documents quickly when you go to court.

Once you are done with your research, preparing your outline, and organizing your evidence, practice presenting your case. It may be especially helpful if you practice presenting your case to someone who is not familiar with it. If something is confusing or does not make sense, you will know.

Your Day in Court

Arrive early! The last thing you want to happen after all of the work you have done preparing for your day in court is to be late. Check in at the Court Clerk's window.

Dress conservatively. You are not required to wear a suit, but you should refrain from wearing shorts, flip-flops, tank tops, halter-tops, or shirts that show your midriff. You must remove hats and sunglasses before entering the courtroom.

Your trial will take place in a courtroom with many other people who have a trial at the same time. Be polite and pay attention while waiting for your case to be called. Refrain from talking, chewing gum, listening to music, and shuffling your papers. Be sure that your phone is turned off. If you must leave the courtroom, do so as quietly as possible. Respect the court personnel, and other litigants.

If the plaintiff is not present, the judge can dismiss the case. If the defendant is not present, the plaintiff can be awarded a default judgment for the full amount sought in the Complaint. The plaintiff should be prepared to prove up the amount of the default judgment.

When your case is called, proceed to the appropriate table for "plaintiff" or "defendant" at the front of the courtroom.

How Will my Trial Proceed?

The plaintiff present his case first, and then the defendant. Throughout the trial, the judge will probably ask each party questions about the facts of the case or evidence. If the judge asks for your evidence, hand it to the bailiff. Do not approach the judge unless instructed to do so. Always address the judge as "Your Honor" or "Judge" and never interrupt or talk over the judge.

Even if you believe your opponent is not telling the truth, you should remain calm and polite. Do not interrupt your opponent, talk to your opponent, or raise your hand to get the judge's attention. Instead, write down your point and wait for the judge to address you about your opponent's statement and provide evidence to

the contrary.

At the end of the trial, the judge may issue a decision right away or take the case “under advisement.” When the judge takes a case under advisement, it means that the decision is pending while the judge considers the facts, reviews all the evidence, or researches questions of law. The court will mail you a copy of the judgment.

How to Appeal

Both the plaintiff and the defendant have five business days (plus three days if the decision was mailed to you) to object or appeal the judge’s decision. The court’s decision will not be binding or enforceable until the appeal period has expired.

If you disagree with the decision of the Justice of the Peace and you want a higher court to look at that decision, you will need to file an Appeal. To file an Appeal, you must pay the following fees:

- \$142.00 District Court filing fee. This must be paid by cashier’s check or money order, made out to District Court
- \$25.00 Justice Court Notice of Appeal & Appeal Bond fee
- \$25.00 Justice Court Transcript & Transmittal on Appeal fee
- \$50.00 Justice Court certified copy of the court recording fee (You will be required to have the recording transcribed by a certified court reporter, at your own expense, and file the certified transcript with the District Court.)

The Justice Court fees can be paid by cash, VISA®, MASTERCARD®, ATM and debit cards, money order, or cashier’s check.

In order to file an Appeal, you will need to complete and file several forms including the Notice of Appeal, Statement of Evidence or Proceedings, and Statement of Points.

If a defendant is appealing and wants to also stay the execution of the judgment (in other words, prevent the opposing party from collecting the judgment), he must post the entire amount of the judgment, including costs and interest, unless the court orders otherwise.

Your appeal will be heard by a district court judge, who will base his decision on the facts and evidence presented at the original trial. You will not have the opportunity to submit additional evidence or arguments that were not presented in Small Claims Court.

Executing the Judgment

How Do I Collect my Money?

The good news is that you won your case and the court has entered a judgment against the other party. The bad news is that collecting your judgment may not be easy. The party who won and is entitled to collect the money awarded to him by the court is called the “judgment creditor.” The party who lost and owes money to the judgment creditor is called the “judgment debtor.” It is up to the judgment creditor – not the court – to collect from the judgment debtor.

If a judgment debtor does not voluntarily pay the judgment, the judgment creditor can seek to collect the money from the judgment debtor involuntarily. This is called “executing the judgment.”

By filing appropriate forms with the court, a judgment creditor can execute upon a judgment debtor's wages, real property, bank account, or cash box.

The first form is the Writ of Execution, which is a routine court order that authorizes the Sheriff to take certain property belonging to the judgment debtor. A Notice of Execution, Instructions to the Sheriff, and a Writ of Garnishment (if appropriate) must also be completed. These documents must be typed and signed.

The Writ of Execution must be filed with the court clerk and then be served by the Sheriff. The judgment creditor must pay the court and the Sheriff certain fees up front including:

- \$25.00 to the court to file the Writ of Execution;
- \$18.00 to the Sheriff for bank account or wage garnishment, plus \$2.00 per mile (as determined by the Sheriff);
- \$9.00 to the Sheriff for car, cash box, or property lien levy, plus \$2.00 per mile, and \$300.00 for storage and impound fees (for vehicles); and
- \$5.00 to the employer or bank, made payable to the employer or bank.

A Writ of Execution against the debtor's wages will remain in effect for 180 days. Wages are collected each payday for 180 days, unless the judgment is paid in full. If attaching the contents of a cash drawer or bank account, the execution is a one-time action, and must be re-filed until the judgment is paid in full or satisfied.

What Kind of Property Can I Collect to Satisfy the Debt?

Garnishment

You might be able to get a court order called a Writ of Garnishment to obtain a portion of the defendant's wages. In order to garnish wages, you must know the name and address of the employer of the person you have the judgment against. You cannot obtain more than 18% of the defendant's check if the defendant makes less than \$770 per week, 25% of the defendant's check if the defendant makes more than \$770 per week, or 50 times the minimum wage (currently \$362.50 per week), whichever is higher.

Attachment

If garnishment is unavailable, you can seek a different kind of court order called a Writ of Attachment to obtain some of the defendant's property. If possible it is best to attach cash. To attach money in a bank account you need to know the defendant's bank name, address, and, ideally, the account number. (Hint: find someone who wrote a check to the business to look on the back of the canceled check.) If the business has a cash register, you can execute against any cash on the property. You'll need the business' name and location.

Record a Lien via Abstract of Judgment

If the defendant owns a home or other real estate, you can record your judgment as a lien against the property. To do so, you must first submit an Abstract of Judgment form to the court. After the judge signs the Abstract of Judgment, a certified copy of the Abstract of Judgment can then be recorded with the County Recorder in the county where the defendant owns property. Once recorded, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in that County, that the judgment debtor currently owns or that he acquires before the lien expires. The lien continues for six years (unless the judgment is satisfied), and you can re-record the lien if you renew your judgment. When the property is sold or foreclosed upon, you should receive your money.

Bonds/Recovery Funds

Occasionally there may be a bond or recovery fund from which you can collect your judgment.

Manufactured Housing

Consumers victimized by dealers, servicemen, installers, manufacturers, and other persons licensed by the Division of Manufactured Housing can collect from a recovery fund maintained by the Division under NRS 489.4971. If you are unable to collect the judgment, go back to the court and request the judge to order that the judgment be paid from the recovery fund. Note: you should first file a complaint with the Manufactured Housing Division at (775) 684-2940.

Vocational Schools

If your judgment is against a vocational school that is closed, some schools are required to post a bond or set up a recovery fund. Students should call the State Division of Post Secondary Education at (702) 486-7330. (NRS 394.553 and 394.480.)

Contractors

Some licensed contractors may have a bond to make a claim against. Call the Contractors Board at 775-688-1141 to see if there is a bond posted.

Car Dealerships, Body Shops, and Emission Shops

These types of businesses are required to post bonds. To make a claim call the Division of Enforcement of the Department of Motor Vehicles at (775) 684-4790. The Division will tell you the name, address, and phone number of the bonding company, who will explain the procedures for filing a claim.

Collection agencies, Escrow Companies, and Money Order businesses

These types of businesses must post bonds. For collection agencies call the State of Nevada Division of Financial Institutions at (702) 486-4120.

Education, Research and Recovery Fund (ERRF)

This bond is available to consumers who have won a case against a licensed real estate broker or salesperson for fraud, misrepresentation or deceit. The procedure to request payment from the bond can be found at <http://red.nv.gov/> or by calling (775) 684-1900. (NRS 645.8494)

Certain other types of entities are required to post bonds. For example, employers on construction jobs (NRS 338 and 608150), Employment agencies (NRS 611), and Nursing Homes all must post bonds.

What Property Can't a Judgment Creditor Collect?

There are rules about what a judgment creditor can and cannot take from a judgment debtor. Property that cannot be taken is called "exempt." The complete list of exemptions is contained in NRS 21.090. Some examples of exempt property include:

- 75% of a judgment debtor's wages or 82% of a judgment debtor's wages if he makes less than \$770 per week (or 50 times the federal minimum wages, whichever is greater);
- Judgment debtor's primary residence, not to exceed \$605,000 equity;
- Necessary household goods not to exceed \$12,000;
- \$2,000.00 in a bank account if the money comes from electronic government payments of exempt income;
- \$400.00 in non-exempt income in a bank account;
- One vehicle with equity not to exceed \$15,000;
- Certain payments and benefits such as Social Security, veterans' benefits, unemployment, public benefits, and child support.

If exempt property has been taken from a judgment debtor, he has ten business days to file a Claim of Exemption and request the return of his property. The procedure for claiming exempt property is included in the Notice of Execution. If the judgment debtor files a Claim of Exemption, you should receive a copy of the Claim of Exemption in the mail. If you dispute the judgment debtor's claimed exemptions, you have eight days to file a request for a hearing with the court, at which the validity of the exemptions will be resolved.

How Can I Find the Information I Need to Collect the Money from my Debtor?

If a judgment creditor has tried to locate a judgment debtor's assets and has been unsuccessful, he can ask the court for an order requiring the judgment debtor to appear in court and answer questions under oath about his property.

You ask the court to set an examination by filing a Motion and Order for Examination of Judgment Debtor form. You should include with your order a list of documents you would like the debtor to bring such as bank account statements, tax returns, paystubs, vehicle titles, and real property records.

Before the examination of the judgment debtor, the judgment creditor should prepare a list of questions about the judgment debtor's assets. Sample questions can include:

- Debtor's full name, maiden name, and any former names
- Date of birth
- Social Security number
- Driver's license number
- Current address and telephone numbers
- Any previous addresses
- Spouse's name, if married
- Employer's name, address, telephone number, and current salary
- Previous employers
- Other sources of income
- Location and title information for all real estate, automobiles, boats, recreational vehicles, and mobile homes
- Location and type of bank account, money market accounts, safe deposit box, stocks, bonds, securities
- Income tax information

Other Post-Judgment Considerations

Renewing Your Judgment

A judgment is valid for six years, but can be renewed if it has not been paid in full. The judgment creditor must file a Declaration for Renewal of Judgment form within ninety days before the judgment expires. A copy of the filed declaration must be mailed by certified mail, return receipt requested, to the judgment debtor within three days of it being filed.

If the judgment was recorded, it may be renewed by recording the declaration at the County Recorder's office within three days of filing it with the court.

Satisfaction of Judgment

When a judgment debtor pays a judgment in full, or satisfies it, the judgment creditor must file a Satisfaction of Judgment form with the court. It is important for the judgment creditor to file a Satisfaction of Judgment for a number of reasons. First, he has an obligation to notify the court that the judgment has been paid. Second, an unsatisfied judgment has a negative impact on a judgment debtor's credit report and credit score.

If a judgment creditor fails to file a Satisfaction of Judgment, the judgment debtor can file a Motion for Satisfaction of Judgment form. The court will review the file and determine whether or not it will issue an order deeming the judgment satisfied.

Case Checklist

Before You Decide to File

- You can prove your case
- You have determined the exact amount of your claim. It is \$10,000.00 or less
- You have considered the cost of filing your claim
- The defendant is not judgment proof
- The time for filing has not expired
- You have identified the right defendant
- You know where the defendant is
- Should you hire an attorney?
- You have made a demand for payment

Filing Your Complaint

- Complete your complaint form, civil coversheet and memorandum of costs
- Make two copies of each form
- Obtain the filing fee or you have filled out the fee waiver form (*In Forma Pauperis*)
- File the complaint in the township where the defendant currently lives, works, or does business; or the township where the defendant lived, worked, or did business at the time of the incident for which you are suing; or the township where the injury to the person or property happened; or the township where the obligation under a contract was supposed to be performed or is supposed to be performed
- You have provided a current address and Service of Process fees to the Process Server
- Proof of service form has been completed and filed with the court for each defendant

Preparing for Your Trial

- You have interviewed your witnesses
- You have subpoenaed witnesses that may not appear for court voluntarily (including the statutory fees)
- You have filed a subpoena *duces tecum* to compel witnesses to bring evidence to court they may not bring voluntarily (including the statutory fees)
- You have arranged for a court interpreter if necessary
- You have organized your evidence
- You have made two copies of your evidence
- You have organized and practiced your presentation to the judge

Small Claims Court Glossary

Appeal: To seek review (from a lower court's decision) by a higher court.

Bond: An amount of money required to insure payment of a debt if certain circumstances occur (such as an appeal to a higher court) or a certain time lapses.

Breach of Contract: Violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.

Complaint: The initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim and the demand for relief.

Counterclaim: A claim for relief asserted against an opposing party after an original claim has been made; especially a defendant's claim in opposition to or countering the plaintiff's claim.

Examination of judgment debtor: An order that requires the judgment debtor to appear in court, answer questions under oath and provide evidence about their property.

Injunction: A court order commanding or preventing an action.

Judgment creditor: A person having a legal right to enforce execution of a judgment for a specific sum of money.

Judgment debtor: A person against whom a money judgment has been entered but not yet satisfied.

Lien: A legal right or interest that a creditor has in another's property which usually lasts until the debt or duty that is secured is satisfied.

Mediation: A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.

Resident Agent: A person authorized to accept service of process for another entity, especially a corporation in a particular jurisdiction.

Service of Process: The formal delivery of a writ, summons, or other legal process.

Subpoena: A writ or order commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.

Subpoena Duces Tecum: A subpoena ordering the witness to appear in court and to bring specified documents, records or things.

Summons: A writ or process commencing the plaintiff's action and requiring a person to appear in court and answer questions.

Writ of Execution: A court ordered writ authorizing an executive officer to carry a judgment into effect.

Writ of Garnishment: A court ordered writ authorizing an executive officer to seize a judgment debtor's property (usually wages or bank account) for the purpose of paying a debt.