Before you file in Small Claims Court, read all the sections of the Citizen's Guide for Small Claims Court pamphlet, particularly those sections dealing with how to collect your money once you have a judgment.

ASK YOURSELF:

- Does the defendant have the money to pay you?
- Will the defendant voluntarily pay the judgment?
- Are you willing to spend additional time and money to force the defendant to pay the judgment and the costs?

REMEMBER:

Step 1: Winning the judgment

Step 2: Collecting the money. You will have to take steps to force payment if it is not voluntarily made. The court will not initiate such action on its own.

Jill Fankhauser
Clerk of Courts
Portage County Municipal Court

SMALL CLAIMS COURT

A CITIZENS GUIDE

Tenth Edition

Published by the Ohio Judicial Conference in cooperation with the Ohio State Bar Foundation.

This pamphlet is for informational purposes only. It does not constitute legal advice and should not be relied upon as legal advice. For specific legal advice, consult with an attorney.

Every effort has been made to present accurate and up-to-date information. However, procedures in small claims court vary from court to court, and laws and rules change over time. Be sure to obtain the current local rules that govern the small claims court that is hearing or may be hearing your case.

This pamphlet represents the collective work of several writers and editors. The original version was published by the Ohio State Bar Foundation in 1994. Subsequent editions have been reviewed by judges, magistrates, clerks, and court administrators from many Ohio courts, and have benefited from editing and proofing by staff at both the Ohio State Bar Foundation and the Ohio State Bar Association.

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Contents

Introduction....2
What is small claims court....2
What cases can a small claims court handle?....3
Who can sue or be sued in small claims court?....4
Where do I file my claim?....5
How do I file my claim?....5
How much does it cost?....7
How long does it take?....8
I've been sued! What do I do?....8
What is mediation?....11
What if the claim is settled before the hearing?....12
How do I prepare my case?....12
What if I do not appear at the hearing?....15
What do I do at the hearing?....15
What if I disagree with the judgment?....16
What about payment?....17
How do I get my money?....18
How can I get help to enforce my judgment?....19
How can I find property to garnish or attach?....20
How can I obtain a judgment lien? What does it do?....21
What if I need help paying the judgment?....22
Where can I get more information?....24
Some points to remember....25

Introduction

This pamphlet describes small claims court in Ohio. It is designed to help those who plan to sue someone in small claims court or who are parties to a case in small claims court.

While every effort has been made to present accurate information about small claims court in Ohio, you should also contact the court that may or will hear your case. It is possible that some laws have changed since this pamphlet was updated, and there are variations among different small claims courts. You need to know about local rules, procedures, and costs. Hopefully this pamphlet will give you a good idea about how small claims court works and what questions to ask your local court.

Also keep in mind that everyone has the right to hire an attorney, including you and the other parties in your small claims case. While it is generally an advantage to be represented by an attorney, you will need to weigh that advantage against the cost. A brief consultation with an attorney may well be worth the cost.

What is small claims court?

Ohio law requires that each county and municipal court establish a small claims division, generally known as small claims court. (See chapter 1925 of the Ohio Revised Code.) The purpose of the small claims court is to resolve minor disputes fairly, quickly, and inexpensively.

The procedures in small claims court are simpler than in other court cases. Hearings are informal; there is no jury; cases are decided either by the municipal court or county court judge, or by a "magistrate" (a qualified attorney appointed by the judge); court costs are lower than in other cases. Some small claims courts hold evening sessions, and small claims courts in large metropolitan areas may have neighborhood offices.

The relative simplicity of small claims court makes it easier for people to handle their cases without attorneys. However, anyone who wishes to may bring an attorney to small claims court.

What cases can a small claims court handle?

Small claims cases are like other lawsuits, except that the amounts involved are generally too small to make the expense of regular court proceedings worthwhile.

A small claims court can resolve many common disputes that involve modest amounts of money. Typical small claims court cases include claims by tenants to recover security deposits, claims by landlords for unpaid rent or damage to their property, claims by buyers for damages from defective merchandise, claims by business people and trades people for unpaid bills, claims by car owners for damage sustained in minor accidents, and claims by employees, babysitters, maids, and handypersons for unpaid wages.

There are limits on claims that can be resolved in small claims court:

1. The claims must be for money only. Small claims court cannot issue restraining orders, protection orders or injunctions, cannot grant divorces, and cannot order someone to return property. Small claims court can only resolve claims that ask for money.
2. A claim cannot exceed $6,000 (not including any interest and court costs claimed). The claim itself can be for at most $6,000, and counter- or cross-claims that may be filed can only be for $6,000 (each) or less.
3. Regardless of the amount of money involved, a small claims court cannot handle certain types of lawsuits: lawsuits based on libel, slander, and malicious prosecution, lawsuits seeking punitive or exemplary damages, or lawsuits brought by an assignee or agent (such as a lawsuit brought by an insurance company on behalf of a policy holder; however, government entities can bring certain lawsuits through an agent).

4. Small claims court cannot resolve claims against the agencies of the State of Ohio or against the United States government and its agencies.

If you have questions about whether your case fits these criteria, you may need legal advice from an attorney. Court staff may be able to answer questions about 1 and 2, but any doubts about issue 3 need to be resolved with legal advice.

Cases that initially fit the small claims criteria may be **transferred out of small claims court:**

- If a case starts with a claim for $6,000 or less but then comes to include claims that exceed $6,000, the case will be transferred to the civil division of municipal or county court.

- If one of the parties to a case requests it, a case may be transferred to the civil division of the municipal or county court.

Who can sue or be sued in small claims court?

In general, anyone 18 years or older can sue or be sued in small claims court. A minor under the age of 18 may file a lawsuit through a parent or guardian.

Corporations, certain partnerships, and limited liability companies may sue and be sued in small claims court. **If you are an officer or an employee of such an organization and are involved in a small claims court case on your organization's behalf, you should seek the advice of an attorney before you file any document with the court.** You may present evidence concerning your side in a dispute, but you may not engage in advocacy, such as questioning of witnesses in court or the presentation of arguments. If you advocate in court on behalf of your organization, you may violate rules about the unauthorized practice of law-even if all you do is fill out forms and file papers. To avoid such a violation, contact an attorney to find out what you may and may not do on your organization's behalf. Please note that court staff cannot advise you on this issue.

When you **file against a business**, you must determine whether it is a sole proprietorship, a partnership, or a corporation. To find out, contact the Ohio Secretary of State's office -call 614-466-2655 or visit www.sos.state.oh.us. You might also find out from the county auditor, who maintains records of vendor's licenses, or from the county recorder, who may have records about partnerships.

Where do I file my claim?

Your claim must be filed in the small claims division of a municipal court or county court that has jurisdiction in your case.

To determine which court has jurisdiction, you use one of two criteria:

1. A small claims court has jurisdiction if the transaction or incident on which your claim is based took place in that court's territory.
2. Regardless of where the transaction or incident took place, a small claims court also has jurisdiction if the defendant (the person or organization sued) - or any one defendant, if there is more than one - lives or has his or her or its principal place of business in the court's territory.

This means that more than one court may have jurisdiction in your case. If so, you can choose which of those courts to file in.

Check the territorial boundaries of each court that may have jurisdiction. You can do this by calling each court that may have jurisdiction and asking whether the locations of 1 and 2 above are within the court's jurisdiction. File your claim with a court that has jurisdiction.

How do I file my claim?

You begin a lawsuit on a small claim by filing a formal statement of claim with the small claims court. Your statement must contain a description of the nature and amount of your claim.

Before you file the formal claim, it is a good idea (but not required) to make a last effort to settle the dispute. You can do this by sending the potential defendant(s) a letter by certified mail, return receipt requested. Your letter can be elaborate or simple. At a minimum, your letter should summarize the basic facts of your claim and state the amount of money you want. After reading your letter, the defendant might pay the claim or offer a sensible compromise.

If you decide to go ahead with a small claims lawsuit, contact the municipal court or county court that has jurisdiction. Ask about the court's business hours, the cost of filing a small claims court case, and whether there are any other local requirements for filing a small claims case. Remember that court staff cannot give legal advice or in any way assess the claim you intend to file. But they may and can explain what you need to bring with you to file a claim.

If your claim cannot be filed in that court, ask for the name, address, and telephone number of the proper court and contact that court.

When you go to the court to file your case, you need to bring at least the following information:

1. The full name (and business name, if applicable), address, and telephone number of the defendant;
2. A list of the evidence you have that supports your claim. Some courts ask that you file your evidence with your claim but others do not - ask before you arrive at court to file, and keep copies of anything you file;
3. The names and addresses of all of your witnesses; and
4. Enough cash to pay the filing fee.

Your court may ask for additional information or items - be sure to ask before you arrive to file your claim.

In most courts you make your claim by completing a form designated for small claims. Be sure to fill in the form completely. Use clear language. Write or print legibly. State the nature, circumstances, and amount of your claim as briefly as possible.

Pay special attention to several points:

- When you state the **amount of your claim**, consider whether you want interest on any judgment and reimbursement for all court costs. If you do, be sure your complaint asks for damages, interest on your damages, and reimbursement of all court costs, including those incurred in enforcing a judgment (i.e., in getting payment from the other party). Note that Ohio law does not permit you to recover wages for time lost for preparing or filing your case or for appearing in court.
- Find out whether the **defendant is on active military duty**: federal law provides some protection for those who are on active duty, and the court will ask about the defendant's military status.
- The court must officially notify the defendant that he or she is being sued, and **it is your responsibility to provide an address where the defendant can be reached.** The official notice must be delivered to - or "served on" - the defendant(s). The usual way to accomplish service is certified mail to the defendant's home or business address. The return receipt, signed by anyone 16 years of age or older, will provide proof of service. The case can then proceed. However, if the certified letter is returned undelivered, the case cannot proceed. If that happens, check with court staff about other ways to accomplish service.

How much does it cost?

Each court has established a filing fee. Call the court and ask what the fee is. If you plan to subpoena a witness, ask for information about the costs required.

If you cannot afford these fees, you may file an affidavit of indigency with the court and ask that your fees be waived. Court staff can provide you with instructions for how to file such an affidavit. The court will let you know whether your affidavit was accepted. If the court is satisfied that you cannot afford these fees, you may file without fees. But if the court is not satisfied, you will need to pay the fees.

Generally, you may be able to recover all of your out-of-pocket court fees, together with interest, if you win your case. Be sure to ask for reimbursement of your court costs along with your demand for recovery of your damages and interest.

How long does it take?

When you file a case, the court is required to set an initial hearing date that is no sooner than 15 days after the filing date and no later than 40 days after the filing date. Subsequent developments may delay that date somewhat, but in general you can estimate that your case will be heard within 40 days.

I've been sued! What do I do?

If someone has filed a small claim against you, the court will send you official notice. The notice and its attachments will give you important information: the name and address of the plaintiff, the basis and amount of the claim, the name and address of the court in which the claim was filed, and the date and time you must appear in court to resolve the claim.

The official notice from the court will also tell you how to respond to the plaintiff's claim. Of course, the nature of your response depends on what you think about the claim that is being made. But whatever you think, be sure to carefully follow the instructions from the court about how to file the response you believe is appropriate.

Some courts require that you respond to the claim against you in writing; others do not. If the official notice leaves you in doubt, contact the court to find out. Even if the court does not require a written response, it is always wise to prepare a written summary.

Whether or not you file a written statement, and whether or not you concede the claim against you, **you must appear at the hearing on the date and time stated in the official notice.** Of course, if

the claim is fully settled and formally dismissed, the hearing will be cancelled. See "What if the claim is settled before the hearing?" on page 12.

Below are general options for responding to a claim filed against you. The instructions provided with the court's official notice that you have been sued might require that you respond in a different way. **If there is a conflict between the suggestion below and the official notice, follow the instructions that accompany the official notice.**

Depending on what you believe about the claim made against you, you have several options:

- **If you believe the plaintiff's claim is fair**, you may pay the plaintiff the full amount of the claim, plus court costs, and that will be the end of the matter. See "What if the claim is settled before the hearing?" on page 12.
- **If you believe part of the plaintiff's claim is fair**, you may admit that part of the claim and deny the rest.
- **If you believe the plaintiff's claim is completely unfair**, you may deny that you owe anything.
- **If you believe the plaintiff actually owes you money,** you may answer with a claim of your own called a "counterclaim."
- **If the plaintiff has named multiple defendants and you have a claim against one of those defendants**, you may file a claim against that defendant, a "cross-claim."
- **If the plaintiff's claim does not include some parties that are necessary to resolve the lawsuit**, you may ask the court to bring in such other persons or entities by making a "third-party claim."

If you want to file counterclaims, cross-claims, and third-party claims, ask the court about how to file them. There are several issues to consider:

- **Your claims:** you must explain why you believe each claim is justified and be prepared to present evidence. Remember that court staff may not assess whether your claims are good, but they can provide forms and explain the procedure for filing your claim(s).
- **Amounts:** if you believe the plaintiff or some other defendant(s) owe you money, you should consider asking for your damages, interest on your damages, and all court costs, including those incurred in enforcing a judgment on the counter- or cross-claim.
- **Third parties:** if you believe any additional party or parties should be brought into the claim because they are liable for all or part of the claim - either along with you or instead of you - you need to file a third-party claim. Be sure to state the complete name and address of each additional party who would be brought into the claim, and your reasons why that party, or parties, should be brought into the claim.
- **Deadlines:** counter- and cross-claims must be filed with the court in which the original claim was filed and at least seven days prior to the date of the hearing on plaintiff's original claim. Ask the court about deadlines for third-party claims.
- **Official notice:** all parties must be officially notified about all claims in which they are involved - all claims must be "served on" them. Be sure to ask court staff how any counter- or cross- or third party claims you file are served on or sent to all other parties. The court may send the counterclaim and/or cross-claim to all parties, **or may require you to send them and present proof that the parties did receive them**. (For example, you may be required to serve parties by certified mail and present return receipts as proof.)

However you wish to respond, make sure you do so as soon as possible. Unless the instructions that accompany the official notice specify another requirement, and unless your response includes any of the additional claims above, the last day it should get to the court is the last work day before the date that the official notice says you

must appear at a hearing to defend the claim. This means that if, for example, a hearing is scheduled for Monday, August 6, you should get your response to the court by Friday, August 3. Be sure to call the court if you have problems submitting the response on time.

Finally, remember an important formality: all your communications about the case must clearly show the case number that appears on the notice you received from the court. If your response does not include this number, the clerk may not be able to file your response in the proper case file and the suit may be delayed or the judge may not know your position.

Some procedures vary from court to court. Be sure to read and follow the instructions that accompany the official notice from the court. And if you have doubts about procedures and deadlines, contact the court and ask.

What is mediation?

In nearly all of the larger courts, and in many of the small courts as well, the court will make available a mediator to assist you and the other party to try to work out a settlement. The mediator is not a judge and will not decide your case or give you legal advice.

A mediation hearing is a court-supervised conference where the plaintiff and defendant are given an opportunity to discuss all aspects of their dispute and to settle it without having a formal court hearing about the legal claim. Mediation hearings are confidential. If the mediation fails and the case proceeds to a formal court hearing, the information revealed in the mediation may not be used in court.

Take full advantage of the opportunity to participate in a mediation hearing! Mediation hearings are less formal than court hearings and can consider a broader range of issues surrounding the legal claim: it may be the only chance you have to air all of your concerns, to hear the concerns of the other party, and to come to an agreement that concerns issues other than the money one party may owe another.

Through mediation, you may arrive at a solution that better suits your needs than a court-imposed judgment.

Mediation is generally available at several stages of the case: you may be able to have a court mediation hearing before you file the case, and you may be able to schedule a mediation up to and including the day of the court hearing. Some courts require you to appear at a mediation hearing. Check the local rules of your court, and ask if you are uncertain.

What if the claim is settled before the hearing?

If you have filed a small claim, and the defendant pays you an agreed upon amount to settle your claim, you should notify the court in writing. Be sure to ask the court whether you need to fill out a specific form or can write your own statement noting that your claim has been settled. Your written notice of settlement will be made part of the record and your case will then be dismissed.

Note that the court will not return any fees or other court costs that you have paid. Any settlement you agree to with the defendant should be made with consideration given to these fees.

If you have been sued, and you have made an agreement with the plaintiff that you believe settles the entire claim, ask for written confirmation from the plaintiff and for a copy of the notice of settlement as filed with the court. If you have not received a notice from the court that your case has been dismissed before the scheduled hearing date of your case, contact the court to make sure that your case has indeed been completely settled and dismissed.

How do I prepare my case?

Whether you are the plaintiff or the defendant, your job at the formal hearing (trial) is to give the judge the facts and convince the judge that he or she should decide in your favor.

Before the hearing, collect your evidence, contact your witnesses, and make a written outline of your case.

Your **evidence** may include:

- √ your testimony,
- √ the testimony of witnesses,
- √ written items such as sales receipts, contracts, leases, warranties, promissory notes, IOUs, memos, notes, letters, postal return receipts, unclaimed letter notices, etc.,
- √ items relevant to the case - for example, a piece of faulty merchandise on which your claim or defense is based,
- √ photos or diagrams, perhaps of the damage to some item or of the scene of the incident.

In summary, anything that can support your case may be useful as evidence.

However: **check with your court about any local rules concerning evidence.** Many courts do not allow affidavits - written statements from someone concerning some facts of the case - but require all witnesses to appear in person. Many courts require you to bring several copies of any written items, photos, etc. It is your responsibility to make sure that the evidence you intend to present will be acceptable in court.

Certain kinds of witness testimony may be especially useful as evidence. For example, when poor or incomplete workmanship is an important question, a professional repair-person could be a good witness. Useful witnesses may also include friends, neighbors, or bystanders who are familiar with some aspect of the incident or transaction.

It is necessary and appropriate to **talk to your witnesses** before the hearing. You have to ask them what they know, and if they will come and testify. When you talk to witnesses, tell them to testify truthfully. Remember that your witnesses may also need to answer questions from the other party. Shortly before the hearing, contact your witnesses again to make sure they agree to testify and confirm the time and place of the hearing.

If a witness will not voluntarily testify, you can ask the court to order the witness to testify. Such an order is called a subpoena. Ask the court how to request a subpoena - you need to know about deadlines (ask well in advance of the hearing date!), about service (how to make sure the witness will receive the official notice of the subpoena), and about any additional costs to you for the subpoena.

How much evidence is enough? There is no easy answer. In some cases, your testimony alone may be enough, but it is likely you will need other testimony or other evidence. One way to consider how much evidence is needed is to assume that you are the judge and that you do not know the facts of the case, and then ask yourself, "What evidence would a party in this case need to present to convince me that the facts require a decision in his, her, or its favor?"

More important than the quantity of evidence is the **quality** of your evidence. Your witnesses should be believable - they should be persons who have direct knowledge of the facts they testify to and who are trustworthy individuals. Items like receipts, contracts, pictures and other things should be clear and understandable, and there should be no room for doubt that they are what you claim they are. Remember that the other party may present witnesses and evidence that conflict with yours. You want to ensure that your case is supported by the best testimony and evidence.

When you have gathered your evidence, including your own testimony and the testimony of other witnesses, **write an outline** of the points you wish to make to support your claim or defense. List your evidence and witnesses in the order you wish to present them. A good way to present your version of the incident or transaction is in the sequence it actually happened, just like you would tell a story. In this way, the separate bits of testimony and other evidence will fit together as a complete, understandable account of the incident or transaction.

What if I do not appear at the hearing?

If you fail to appear you may immediately lose, regardless of how well supported your claim or defense might be.

If a party does not appear at a hearing, and that party has not given the judge a good reason, the judge can and quite possibly will decide the case in favor of the party attending the scheduled hearing.

If you cannot attend the hearing on the date the court has scheduled, contact the court as soon as you know you cannot attend. Most courts require that you submit a request to postpone the hearing in writing - either in person or via fax. Another hearing date may be scheduled. If you are prevented from attending at the last minute, or if you will be late, call the court and explain the situation.

What do I do at the hearing?

The hearing is your day in court - your opportunity to present your claim, defense, counterclaim, cross-claim, or third-party claim. Whether you win or lose, you are assured of a fair hearing. Both you and the other party will have an opportunity to present your case and your evidence to the court.

Bring your evidence and witnesses with you. Bring enough copies of your documents, pictures, etc. Make sure your witnesses appear in person - most courts do not accept written statements from witnesses and will not allow witnesses to appear by phone. (One exception may be cost estimates; if it is relevant in your case, ask the court whether written statements of costs are acceptable as evidence.)

Your case is likely to be one of many small claims cases scheduled for an extended session. Wait your turn, and respond when your case is called.

The plaintiff goes first. The judge will ask the plaintiff to give his, her, or its version of the case. After the plaintiff is finished, the judge will ask the defendant for his, her, or its version of the case.

Be brief and stick to the facts. Use the outline you wrote when you prepared your case. Emphasize the points in your favor, and explain the points against you. The judge may interrupt you with questions. Answer the questions directly, politely, and to the best of your knowledge.

Be polite - not just to the judge, but also to all witnesses and to the other party. Whatever happens, control your temper. Good manners, a calm attitude, and an orderly presentation promote a fair and efficient hearing and make a positive impression.

You will probably be nervous. Relax, be yourself, and present your case in the way that comes most easily to you. The judge knows you are not a lawyer and will make allowances. Listen carefully to what the judge says or asks and respond accordingly.

After hearing both sides, the judge (or magistrate) will make his or her decision. The judge may state his or her decision at the end of the hearing, or may state that the claim is "heard and submitted" and issue a written decision at a later date. Be sure to ask the court how you will be notified of the decision.

What if I disagree with the judgment?

If you disagree with the judgment in your case, it may be possible for you to continue the process. The practices and deadlines in this area vary from court to court, so you need to ask the court how to proceed.

You can ask the judge or magistrate to reconsider your case. Ask the court how to file for reconsideration.

If a magistrate heard your case, you may file written objections within 14 days of the filing of the magistrate's decision. Your objections will be reviewed by a judge of the court according to the procedures established in that court. The judge may affirm and adopt the magistrate's report, or modify and enter a judgment, or order a new trial. Ask the court how to file objections to a magistrate's decision.

If a judge decided your case, you may appeal to the court of appeals that has jurisdiction over the municipal or county court that heard your case. It is very unusual for small claims to be appealed, but appeals are possible. Ask your court how to file an appeal.

If you are considering filing objections or an appeal, you need to be aware of three things:

1. **Fees**. You may have to pay additional filing fees - in some cases for objections to a magistrate's decision, and in all cases for an appeal to a higher court.
2. **Record**. Generally, your small claims court hearing will have been recorded - perhaps on audio tape or perhaps some other way. If you file objections or an appeal, you may have to pay the costs for a court reporter to produce a written transcript from the recording.
3. **Costs and complexity.** The appeals process is complex and can be costly. Before you begin it, you should consult with an attorney about the merits of your legal claim.

What about payment?

If the judgment in your case means that the other party owes you money, continue on to the next section to learn about how to collect the money.

If the judgment in your case means that you owe money to the other party, contact the person or entity that won and attempt to negotiate the amount and terms of payment. When you pay, ask for a written receipt that states clearly that you and the other party are settling the judgment in full.

If you cannot afford to pay the entire judgment immediately, you can ask the judge for permission to pay in installments. If your money problems are really serious, there are some alternatives available that are summarized in "What if I need help paying the judgment ?" on page 22.

How do I get my money?

You yourself must take action to force payment of your judgment. The court will not get your money for you. However, if you take the required steps, including paying the relevant court costs, the court will help you enforce your judgment (get your money). This section will describe your collection options, and the next several sections will explain how to get the court's help.

The best way to collect on a judgment is voluntary payment by the judgment debtor (the person who must pay under the judgment). If the judgement debtor does not voluntarily pay, you can get help from the court in one of three ways: you can garnish the judgment debtor's personal earnings or bank account, obtain a "judgment lien" against the judgment debtor's real estate, or attach and sell off some of the judgment debtor's personal property.

Voluntary payment. If possible, make arrangements with the judgment debtor to pay the judgment, either all at once or in installments. The court may order that payment be made by a certain date or in installments.

Garnishment. If the judgment debtor will not pay voluntarily, the usual method of forcing payment is garnishment. In garnishment, the court orders the judgment debtor's employer or bank to satisfy the judgment by paying from the judgment debtor's earnings or bank account to the court, which in turn pays the money to the judgment creditor (the person who is owed the money under the judgment).

There are limitations on how much the employer or bank can pay the court. First, the amount cannot exceed the judgment. Second, a bank can pay only the money in the account. Third, if the source of the funds in the bank account can be directly traced to social security payments or to certain pension or public-assistance payments, these funds cannot be garnished. Fourth, in general, an employer cannot pay more than 25% of the judgment debtor's net earnings.

It is possible that the judgment debtor whose wages you seek to garnish has other judgments pending. If so, garnishments will become effective in the order the debtor's employer receives them. A garnishment, once in effect, will remain in effect for at least six months, or until the debt is paid, whichever occurs first. Thus, you may have to "wait your turn," so to speak, for your garnishment to take effect.

Judgment Lien. Also, you may obtain a judgment lien on any real estate the judgment debtor may own or acquire. A judgment lien does not automatically force the payment of money, but it gives you a security interest - like a mortgage - in the judgment debtor's real property. See "How can I obtain a judgment lien? What does it do?" on page 21.

Attachment. Another method of forcing payment is attachment. Under attachment, the court orders some of the judgment debtor's personal property (for example, a car worth more than a certain amount, a boat, a large screen television, a valuable collection or something else) seized and sold to pay the judgment. Attachment is more complicated and time-consuming than garnishment, and often more costly as well. If you are considering this option, you may need to consult an attorney.

To initiate garnishment, attachment or judgment lien, you will need the court's help.

How can I get help to enforce my judgment?

You can get help to enforce your judgment by contacting the court that issued the judgment in your favor or by contacting an attorney.

If you have obtained a judgment in a small claims court, the court will help you enforce your judgment - but only *after* you have paid the court costs. However, while you have to pay these costs up front, if you asked for court costs when you stated your claim (or counterclaim, cross-claim, or third-party claim), you may only be reimbursed for such costs if the proceedings to enforce your judgment are successful.

After you have paid the court costs, the court will explain the necessary procedures, give you the proper forms, and help you institute a garnishment, attachment, or other proceeding to collect your judgment.

If it is necessary to take court action to collect your judgment, you will need both patience and persistence. The law allows judgment debtors to keep certain items or assets (or portions of assets) so that judgment debtors have the basics with which to support themselves. Creditors cannot take these exempt items or assets.

How can I find property to garnish or attach?

The easiest way to find the judgment debtor's property is to have the court order the judgment debtor to answer a standard questionnaire about his, her, or its property and finances.

Wait 30 days after you obtain your judgment. If, in that time, the judgment has not been paid, and no arrangements have been made to pay it, go to the court that issued the judgment and ask for a "debtor's examination" of the judgment debtor. Under a debtor's examination, the court orders the judgment debtor to identify his, her, or its assets, liabilities, and earnings.

Some courts ask you to start the process by sending a 15-day demand letter to the judgment debtor. Courts will have instructions for how to do this, and may have forms as well.

Some courts conduct debtor's examination hearings, which you may attend, while others send a form to the judgment debtor. If the judgment debtor fails to appear or to submit the information in writing, he, she or it may be found in contempt of court and fined or jailed, or both. The debtor's examination will provide the information you need to take action to enforce your judgment. The information will reveal, for example, where the defendant works and lives, where his, her, or its bank accounts are, whether he, she, or it owns real estate, etc.

How can I obtain a judgment lien? What does it do?

You can get a judgment lien by filing a "certificate of judgment" with the clerk of the common pleas court in any county where the judgment debtor owns real estate.

1. Obtain a certificate of judgment from the court that heard your case. You will pay a modest fee for preparation of the certificate.
2. Using the information from the debtor's examination (see previous section), determine where the judgment debtor owns real estate. The county auditor may also have information that will help you with this.
3. Contact the clerk of the common pleas court in the county where the judgment debtor owns real estate, and inquire about how to file the certificate with that court. You will have to pay another modest fee to file the certificate.
4. If the judgment debtor owns real estate in more than one county, you can file certificates of judgment in all those counties. If you wish to file certificates of judgment in multiple counties, be sure to obtain sufficient certificates of judgment from the clerk of court that heard your case. Usually, a certificate is filed in the county where the judgment debtor lives and, therefore, presumably owns a home.

When filed, the certificate of judgment imposes a lien on the judgment debtor's real estate that is located in the county where the certificate is filed.

A judgment lien based on a certificate of judgment automatically expires after 5 years. If the judgment debtor still has not paid at that time, you can renew the judgment lien by getting a new certificate of judgment.

A judgment lien by itself does not get your money. You have to foreclose the lien to get your money-just like foreclosing a mortgage. Foreclosing a lien is a complicated procedure; in general, it will require the services of an attorney.

Nevertheless, a judgment lien is still useful. If the judgment debtor wants to sell or refinance the real estate that is subject to your lien, he, she, or it will have to pay your judgment in order to give clear title to a buyer.

If your judgment is paid in full, including court costs and interest, if any, it is your duty to see that the judgment lien is cancelled. If your judgment is paid in connection with the private sale of the real estate subject to your lien, the buyer's lender, if any, may file the required notice of cancellation for you.

What if I need help paying the judgment?

If you are in serious financial trouble, because of lawsuits or other reasons, you have several options: trusteeship, debt scheduling agreement, wage earner plan, or bankruptcy. However, if this is your situation, you should get professional help. Court staff may know where you can turn for free help with resolving financial trouble. The following summary is merely a starting point.

If you fail to pay the judgment against you, you may receive a "15-day demand," also called "Notice of Court Proceeding to Collect Debt." This is sent to you by the person who won the judgment against you, and it is his or her first step in asking the court for help to collect the money. The notice will include brief explanations of trusteeships and debt scheduling agreements.

Trusteeship is an arrangement made through the municipal or county court where you live (or where you work, if you do not live in Ohio). A trusteeship arranges for part of your earnings to be regularly divided and applied to your liquidated debts (debts where the final amount is known) until these debts are paid.

√ To be eligible for a trusteeship, you must have received a 15-day demand or notice of collection, which is the first step in garnishment.

√ You may need to pay a fee for the trusteeship, usually a percentage of the amount to be administered.

√ If you enter a trusteeship, garnishment will be stopped and your creditors will generally be held off as long as you faithfully follow the trusteeship plan. However, certain creditors can object to the establishment of a trusteeship.

√ A trusteeship does not prevent creditors from taking certain actions. For example, creditors can continue to obtain judgments, and can, pursuant to court order, attach and sell property that is not exempt.

A debt scheduling agreement developed through an approved consumer credit counseling service is similar to a trusteeship. In summary, a person who wishes to establish a debt scheduling agreement meets with a representative of an approved consumer credit counseling service to determine if an agreement can be arranged. If an agreement can be arranged, the person-the debtor-deposits the non-essential portion of his or her income with the service, and the service distributes the funds to creditors pursuant to the agreement. Approved consumer credit counseling services do not charge debtors for the services they provide.

√ You are eligible for a debt scheduling agreement regardless of whether or not you have received a 15-day demand.

√ Creditors voluntarily participate in the debt scheduling plan. Once an agreement is established, creditors may not garnish the wages of the debtor as long as the debtor faithfully follows the agreement.

√ Creditors who have accepted the plan may take other legal actions to collect the debt. For example, they may garnish bank accounts, and certain creditors may attach and sell the property that the judgment debtor pledged as security and failed to pay for. But in general, creditors who participate in debt scheduling agreements will not use these and other legal collection devices as long as debtors follow the debt scheduling agreements.

Two further options require you to work with the federal courts:

Wage earner plans are administered by the federal courts. A wage earner plan is similar to a trusteeship in that part of the debtor's earnings is regularly applied to his or her financial obligations until those debts are paid. Under federal law, creditors are held off as long as the debtor follows the plan.

Bankruptcies are also administered by the federal courts. In bankruptcy, the debtor's property is divided among the creditors, and most of the debtor's obligations are completely discharged, even if his or her property is not worth enough to pay all the debts.

Where can I get more information?

While this section offers some sources of additional information, it does not list all possible sources of information. For example, you .can contact a lawyer, the lawyer referral service of a local bar association, or the local legal aid society.

If you need more information or assistance on filing or defending a small claim, collecting a judgment on a small claim, filing for trusteeship, or entering a debt scheduling agreement, contact the small claims court where the claim will be filed, or has been filed.

If you are thinking of filing for a wage earner plan or for bankruptcy, contact a lawyer, the lawyer referral service of a local bar association, or the local legal aid society.

Some points to remember:

Information in this brochure is not a substitute for legal advice from an attorney.

Court staff cannot give you legal advice.

Know the rules and procedures of your court.

Meet all deadlines.

Follow through on your responsibilities.

Keep copies of all documents.

Small claims court can only resolve claims about money.

This guide is for informational purposes only and should not be relied on for legal advice. If you need legal advice, contact an attorney.

This guide presents an overview of rules and procedures for small claims court. The specific rules and procedures in your court may vary from those presented here. Check with your court about local rules.

Updated September 28, 2016

This guide to small claims court has been provided as a public service by the Ohio Judicial Conference, the Ohio State Bar Foundation, and your court. It is printed and distributed to courts by the Ohio Judicial Conference.

65 South Front Street, 4th Floor
Columbus, Ohio 43215-3431
Phone: 614-387-9750 Fax: 614-387-9759
www.ohiojudges.org

JILL FANKHAUSER , CLERK OF COURTS
PORTAGE COUNTY MUNICIPAL COURT

Ravenna Division
203 W. Main St P.O. Box 958
Ravenna OH 44266
Phone (330) 297-3635
(303) 297-3526 (fax)

Kent Division
303 East Main Street
Kent OH 44240
(330) 678-9170
(330) 678-5107 (fax)

www.co.portage.oh.us

Dear Plaintiff:

The filing fee for a small claim complaint is $81.00 for the first defendant and $10.00 for each additional defendant on the same claim. The summons is sent by certified mail. If service is to be done within Portage County, you may also request the bailiff to serve the summons for an additional filing fee of $22.00.

Small claims cases are for money only and the claim cannot be over $6,000.00. You are the plaintiff and the person you are filing against is the defendant. You must have a good address on the person you are filing against, and the person must live in Portage County or the transaction must have taken place in Portage County.

A small claims hearing will be set before the Magistrate in 4-6 weeks after the case is filed and will go forward only if the defendant has been properly served with the summons. When the case is heard, you will bring any proof or witnesses at that time.

If the parties settle before the court hearing, the plaintiff will be responsible to notify the court, in writing, that the case is to be dismissed and the hearing is not necessary.

Please call the court the day of the hearing; or if it is scheduled in the morning, call late afternoon the day before, to be sure the small claim hearing will be going forward. Office hours are 8:00 am – 4:00 pm, Monday through Friday.

If a continuance is requested, it must be done in writing and filed with a $10 filing fee. If it is granted, it is your responsibility to contact the other party to let them know the case will not go forward.

1) **COMPLAINT FILED**: The clerk's office will assist the plaintiff in preparing a small claim complaint.

   If the complaint includes any personal identifiers such as:
   a. social security numbers, except for the last four digits
   b. financial account numbers, including but not limited to debit card, charge card and credit card numbers
   c. employer and employee identification numbers
   d. juvenile's name in an abuse, neglect, or dependency case, except for juvenile's initials or a generic abbreviation such as 'cv' for 'child victim'.

   Please use the attached confidential information form for any of the above information to relieve you from any liabilities based on the Rules of Superintendence 45 (d) (2).

2) **SERVICE**: A copy of the complaint is mailed by the court by certified mail to the defendant. If the certified mail is not delivered, the plaintiff will be notified.

3) **HEARING**: The trial is conducted by the magistrate, both plaintiff and defendant should bring all of their witnesses and documents related to their claim.

4) **DECISION OF THE MAGISTRATE**: The magistrate will decide the case either at the trial or at a later time. A copy of the written decision will be mailed to both the plaintiff and defendant.

5) **RULE 53 (D) (3) (b) (i): OBJECTION TO MAGISTRATE'S DECISION**: If the plaintiff or defendant believes that the magistrate has made a mistake in applying the law to the facts, the objections must be in writing stating the reasons for the objections. The objections must be filed with the court within 14 days after the date of the magistrate's decision. A copy of the objections must be mailed to the other party.

6) **FINAL JUDGMENT**: The judge of the Municipal Court reviews the magistrate's decision and any written objections and makes final judgment.

7) **APPEAL:** The final judgment made by the judge can be appealed to the Court of Appeals. This is a technical procedure with strict time limits. Filing an appeal to the Court of Appeals may require the services of an attorney.

8) **VEHICLE COMPLAINTS**: If the complaint has to do with a motor vehicle, you must be prepared to show the title, in your name, at the time of the hearing.

For more useful information you can log onto the website for the Ohio Judicial Conference:
http://www.ohiojudges.org/citizen-guide-brochures

THE CLERK'S STAFF IS NOT PERMITTED TO GIVE ANY LEGAL ADVICE

PORTAGE COUNTY MUNICIPAL COURT
KENT BRANCH
303 EAST MAIN STREET
KENT OH 44240
330.678.9170

www.co.portage.oh.us

PORTAGE COUNTY MUNICIPAL COURT
RAVENNA BRANCH
203 WEST MAIN STREET PO BOX 958
RAVENNA OH 44266
330.297.3635

SMALL CLAIM COMPLAINT AND STATEMENT OF CLAIM

CASE NO._____

Plaintiff_____
Address_____
_____
_____
Phone No._____ **Fax No.** _____
Email address:_____

Defendant_____
Address_____
_____
_____
PhoneNo._____

-vs-

Plaintiff_____
Address_____
_____
_____
Phone No._____ **Fax No.**_____
Email address:_____

Defendant_____
Address_____
_____
_____
PhoneNo._____

Is the DEFENDANT presently in the military or naval service of the United States: ☐ Yes ☐ No

STATEMENT OF CLAIM (IF ACCOUNT, COPY ATTACHED)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Wherefore Plaintiff prays judgment against Defendant in the sum of $_____, plus interest from the _____day of _____, 20_____, at the rate of _____% and costs

THE STATE OF OHIO)
COUNTY OF _____) **ss.** **AFFIDAVIT OF COMPLAINANT'S CLAIM**

_____ being first duly sworn, on oath states that they are the Plaintiff(s) in the above entitled cause; that the said cause is for the payment of money, that the nature of Plaintiff's demand is as stated, and that there is due to the Plaintiff(s) from the Defendant(s) the amount stated above.

Plaintiff's signature _____

Subscribed and sworn to before me this_____day of_____,20____

_____
Clerk, Deputy Clerk, Notary Public