

Small Claims Cases



in
Vermont

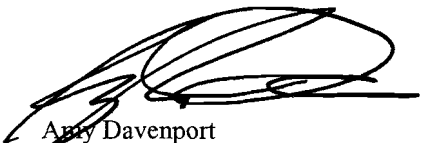
Foreword

"The People's Court"
Small Claims Court in Vermont
How to Use It

This booklet is not intended to be a substitute for a review of the Rules of Small Claims Procedure that are printed in their entirety in this booklet. We suggest a thorough reading of the rules by both plaintiffs and defendants to better understand the small claims process.

The Vermont court system has committed itself to making its small claims court a simple and accessible place for people to resolve their disputes. Efforts have been taken to make small claims procedures simple and easily understood. The judges and court clerks are working hard and continue to work hard to bring cases to trial expeditiously and with minimal delay.

We hope this booklet provides sufficient information to assist you in dealing with, and in understanding, the court. If anyone has ideas that may improve the small claims court, or if you wish to share your experience in small claims court, please feel free to write us.



Amy Davenport
Administrative Judge for Trial Courts



Robert Greemore
State Court Administrator

Glossary

Acknowledgment: The defendant signs an “Acknowledgment of Receipt of Summons and Complaint.” This method of service or “being served” a small claims complaint and summons.

Affidavit: A written statement of facts, made under oath.

Appeal: An appeal is the opportunity to request that a higher court review the law as applied to the case. It is not a new trial on the facts of the case.

Answer: A court document on which the person being sued either admits or denies that money is owed.

Complaint: A court document on which a person filing a lawsuit states who is being sued, why, and for how much.

Default Judgment: An official decision of the court in favor of the “Plaintiff” due to the failure of the “Defendant” to answer the complaint or take some other required step.

Defendant: The person or business that is being sued in court.

Docket Number: A number assigned to a court case by court.

Judgment: An official decision of the court stating who won the case and how much that person won.

Plaintiff: The person or business that files suit in court.

Service, “to be served:” Service means that the defendant has received the summons and complaint in accordance with the rules. The case can then proceed.

Subpoena: A document ordering a witness to appear at a hearing.

Summons: A document, which notifies the defendant that a court suit has been filed against him or her.

Trustee process against earnings: This procedure authorizes the court to order an employer to withhold a reasonable amount of money from the wages to pay a court judgment.

Writ of execution: A court document, addressed to a sheriff, issued after judgment, directing the sheriff to collect money or other goods from the defendant.

What Small Claims Is

Small claims is a people’s court, designed to help people to recover relatively small amounts of money due them without having to hire a lawyer. The procedures are simple, informal, and inexpensive.

Here are a few examples of situations in which you might want to use small claims process:

- If you buy a television or appliance and it breaks down right away, but the dealer refuses to refund your money.
- If you sold goods to someone and that person refuses to pay for them.
- If a customer refuses to pay on an overdue account.
- If someone damages your car, but won’t pay to have the damage repaired and your insurance doesn’t cover it.
- If you do work for someone and that person refuses to pay you.
- If a mechanic fails to repair your car even though you paid the bill.
- If you need to collect past due rent from a tenant.
- If your landlord refuses to return your security deposit and you think you are entitled to have it returned to you.

What Small Claims Is Not

Small claims process is not the proper process in which you seek to evict a tenant, have personal property returned to you due to lack of payment or any other claim in which you, as plaintiff, seek anything more than money damages.

What is different about Small Claims Cases?

- You do not need a lawyer. Of course, if you wish, you may have one.

- The papers you file and the procedures used at the hearing are simple and don't involve many of the legal technicalities used in other courts.
- You can argue your side of the case in your own words and present evidence to back it up.
- By filing a small claims case, you as plaintiff give up your right to a jury trial.

Who can sue in a Small Claims Case?

Anyone at least 18 years old with a claim for money damages, (subject to a jurisdictional limit which shall be discussed later) can sue in a small claims case. The complaint must be your own; you cannot sue on behalf of a friend or relative. If you are under 18, or under guardianship, your parent or guardian can sue on your behalf. Corporations or partnerships may also sue in a small claims case.

Who can be sued in a Small Claims Case?

You can sue any person or business that you think owes you money. You have to sue for money; you cannot sue in a small claims case to have someone do something such as return goods he or she bought from you. Small claims cannot order someone to do anything other than pay you money for your loss (although you might settle the case without having a hearing if the other party agrees to do something that solves the problem).

How much can you sue for?

Only claims for monetary damages not exceeding \$5,000.00 (i.e., claims for the price of goods sold, money lent, rent in arrears, etc.) may file a small claims case.

You can sue for up to \$5,000.00 in small claims process. If you think someone owes you more than \$5,000.00, you can sue in superior court, but the procedure in superior court is more complicated, time-consuming and expensive (you will probably need a lawyer). If your claim is for more than \$5,000.00, but you decide to sue in a small claims case anyway, you will give up your claim to any amount in excess of \$5,000.00 (exclusive of court costs). Even so, it may well be worth your while to choose to file a small claims case because it is less expensive and less complex than superior court.

form must be filled out and filed with the court. Eligibility for relief is governed by Rule 3.1 of the Vermont Rules of Civil Procedure. The court will make a decision based on the application. The decision of the court may be appealed to the presiding judge of the superior court by giving written notice to the court within seven days from the decision.

RULE 12. SATISFACTION OF JUDGMENTS

When a judgment is fully satisfied, the judgment creditor must notify the court within 20 days after receipt of satisfaction, and the court will enter satisfaction of the judgment on the docket. If notification of satisfaction is not entered on the docket within 20 days after receipt of satisfaction, the judgment debtor may move for an order that the judgment be deemed satisfied. There is no filing fee for this motion. Unless the judgment creditor, within 20 days after the mailing to him or her by the court of a notice of the motion, files a written objection with the court, the court will order an entry on the docket of satisfaction of the judgment.

RULE 13. MATTERS NOT COVERED BY THESE RULES

When matters arise that are not covered by these rules, the court will proceed by analogy to any applicable provision of the Vermont Rules of Civil Procedure that is consistent with these rules and with the objective of securing a simple, informal, and inexpensive disposition of the claim.

RULE 14. TITLE

These rules may be known and cited as the Vermont Rules of Small Claims Procedure.

RULE 10. APPEALS

(a) Notice of appeal. Any party may appeal to superior court from a small claims judgment by filing a notice of appeal with the court within 30 days (extended to the next business day of the court if the last day is not a weekday or is a federal or state holiday) from the entry of the judgment. The notice of appeal should contain a statement of the basis of the appeal, but such a statement is not required to initiate the appeal. A form for the notice of appeal is available from the court. The required \$105 filing fee, as specified in a current schedule published by the Court Administrator, must be paid. Upon filing of the notice of appeal, the court shall serve copies of the notice upon all parties to the small claims case.

(b) Stay. During the time for filing a notice of appeal, and pending decision of an appeal if a notice of appeal is filed, the judgment is stayed.

(c) Record on appeal. The record on appeal consists of the docket entries, the case file in the court including exhibits that were admitted at the trial, and the electronic recording or transcript of the trial. If a transcript is needed, the appealing party must order it, on a form available from the court, with a deposit of the estimated cost within 15 days after filing the notice of appeal, and the appealing party must file the completed original transcript with the court when it has been completed.

(d) Appellate hearing. The appeal is limited to questions of law and will be heard by a judge who has not participated in any way in the judgment being appealed.

(e) Further appeal. There is no absolute right to appeal from a decision rendered in an appeal to the superior court. Permission to appeal to the Vermont Supreme Court may be requested pursuant to Rule 6(b) of the Vermont Rules of Appellate Procedure. The request for permission must be filed with the court within 10 days from the entry of the judgment to be appealed from. If a timely request for such permission is not filed with the court, or permission to appeal is denied by the Vermont Supreme Court, the court will notify all parties that the appellate decision of the superior court is final. If permission to appeal is granted by the Vermont Supreme Court, further proceedings are governed by the Vermont Rules of Appellate Procedure.

RULE 11. WAIVER OF COURT COSTS

A plaintiff or defendant may obtain relief from filing fees and other court costs by submitting an application on a form provided by the court. The

A claim in excess of the \$5,000.00 statutory limit may not be split into two or more claims.

The amount you sue for should include both the actual damage done to you or your property plus any additional money lost as a result of the actions of the party you are suing. For example, if someone ran into your car and did \$200.00 worth of damage, and you had to rent a car for \$40.00 while yours was being repaired, you should sue for \$240.00. At the hearing, you must be able to prove all damages and expenses claimed in order to recover this total amount from the other party.

Where you can sue

The small claims process is a special part of the Vermont Superior Court, and you are required to sue in the court in the county where you reside or the county where the defendant resides. Under Rule of Small Claims Procedure 2(b), the Court has the authority to change the location of the case to a place in which either party resides. The following is the location of a small claims division in each county of Vermont:

Vermont Superior Court
Addison Civil Division
7 Mahady Court
Middlebury, VT 05753
(802) 388-7741

Vermont Superior Court
Bennington Civil Division
207 South Street
P.O. Box 4157
Bennington, VT 05201
(802) 447-2700

Vermont Superior Court
Caledonia Civil Division
1126 Main St., Suite 1
St. Johnsbury, VT 05819
(802) 748-6600

Vermont Superior Court
Chittenden Civil Division
P.O. Box 187, 175 Main St.
Burlington, VT 05402
(802) 651-1952

Vermont Superior Court
Essex Civil Division
P.O. Box 75
Guildhall, VT 05905
(802) 676-3910

Vermont Superior Court
Franklin Civil Division
17 Church Street
P.O. Box 808
St. Albans, VT 05478
(802) 524-7993

Vermont Superior Court
Grand Isle Civil Division
Grand Isle Courthouse
P.O. Box 7
North Hero, VT 05474
(802) 372-8350

Vermont Superior Court
Orange Civil Division
5 Court Street
Chelsea, VT 05038
(802) 685-4610

Vermont Superior Court
Rutland Civil Division
83 Center Street
Rutland, VT 05701
(802) 775-0266

Vermont Superior Court
Windham Civil Division
P.O. Box 207
Newfane, VT 05345
(802) 365-7979

Vermont Superior Court
Lamoille Civil Division
154 Main St./P.O. Box 570
Hyde Park, VT 05655
(802) 888-2207

Vermont Superior Court
Orleans Civil Division
247 Main Street
Newport, VT 05855
(802) 334-3344

Vermont Superior Court
Washington Civil Division
65 State St.
Montpelier, VT 05602
(802) 828-5551

Vermont Superior Court
Windsor Civil Division
12 Green Wood/PO Box 458
Woodstock, VT 05091
(802) 457-2121

How to start your suit

1. Choose the proper court. The courts are open daily from 8:00 until 4:30 p.m., Monday through Friday, exclusive of State holidays. You may ask the court to send the forms for you to fill out and return by mail, or you may go to the court in person. Be sure to ask for the small claims staff.

2. You will be asked to fill out a "complaint" on a form provided by the court, which basically asks who, why and for how much you are suing. You will be known as the "plaintiff", and the person or business you are suing as the "defendant". You will be required to provide your name, address, telephone number, and the name(s) and address of the defendant(s). You must provide the exact name(s) and a current address of the defendant(s), because the suit cannot proceed until the defendant(s) has/have received "notice" of the suit.

summons requiring the judgment debtor to appear and present evidence showing why he or she should not be held in contempt of court. The judicial summons will include notice to the judgment debtor that he or she may be represented by legal counsel at the hearing. The judgment creditor must have the judicial summons served on the judgment debtor by a sheriff (or other person authorized to serve process) at the judgment creditor's expense, but no attendance or mileage fee need be paid to the judgment debtor. The return of service must be filed by the judgment creditor with the court no later than the beginning of the hearing.

(c) Hearing. If the judgment debtor fails to appear at the hearing on the motion for civil contempt, the court ordinarily will hold the judgment debtor in contempt. If the judgment debtor does appear at the hearing, the court must make written findings, based on the evidence presented at the hearing, as to whether a further order for payment will be issued or the judgment debtor will be held in contempt.

RULE 9. OTHER ENFORCEMENT OF JUDGMENTS

(a) Trustee process. If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may seek trustee process against earnings or other property subject to trustee process under the procedure prescribed in Rule 4.2 of the Vermont Rules of Civil Procedure. The required \$52.50 filing fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid.

(b) Writ of execution. If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may obtain a writ of execution by filing a written request on a form provided by the court. The judgment creditor must have the writ of execution served by a sheriff or other person authorized to serve process on the judgment debtor at the judgment creditor's expense. The judgment creditor must deliver to the officer or other person levying execution the list of exemptions appearing in Form 34 of the Vermont Rules of Civil Procedure. The officer or other person will serve the list on the judgment debtor with a copy of the writ of execution. The return of service must be filed with the court by the judgment creditor. The required \$52.50 fee for obtaining a writ of execution, as specified in a current schedule published by the Court Administrator, must be paid.

(c) Judgment lien. If a judgment is not paid within 30 days and no appeal is pending, the judgment creditor may purchase a certified copy of the judgment from the court and file it for recording with the town or city clerk of a municipality where the judgment debtor owns real estate.

judgment is overdue for 30 days or longer, the judgment creditor may file a motion for a financial disclosure hearing on a form provided by the court. The required \$52.50 fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid. A motion for financial disclosure may not be filed more often than once in three months.

(b) Service and notice of hearing. Upon receiving such a motion, the court will set a date for hearing and issue a notice of hearing advising the judgment debtor to appear at the hearing to disclose his or her ability to pay the overdue judgment or installment and bring with him or her a completed financial statement on the form supplied with the notice of hearing. The court will serve on all parties by first class mail the notice of hearing and the list of exemptions appearing on Form 34 of the Vermont Rules of Civil Procedure.

(c) Hearing and order. If the judge makes written findings, based on the evidence presented at the hearing, that the judgment has been unpaid for 30 or more days or that an installment has been overdue for 30 or more days, and that the judgment debtor has the present ability to pay the overdue judgment or installment, the court will order the judgment debtor to make such payments as are deemed appropriate. If the judgment debtor fails to appear or fully disclose at the hearing, the court will order full payment forthwith. In its discretion, the court may continue a financial disclosure hearing to a later date or may restrict the frequency of filings of future motions for a financial disclosure hearing.

(d) Service of order. If service of the order resulting from the financial disclosure hearing is not accepted by the judgment debtor after the hearing, the judgment creditor must have the order served on the judgment debtor by a sheriff (or other person authorized to serve process) at the judgment creditor's expense, and the return of service must be filed by the judgment creditor with the court before any motion for contempt is filed.

RULE 8. CIVIL CONTEMPT

(a) Availability. If a judgment debtor fails to comply with a payment order issued as a result of a financial disclosure hearing, the judgment creditor may file a written motion for civil contempt with the court. The required \$52.50 fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid.

(b) Issuance and service of judicial summons. Upon receiving such a motion, the court will set a date for hearing and issue a judicial

3. The complaint form will provide a space for you to explain the nature of your complaint against the defendant, and the amount you are suing for. Generally, a short but complete explanation of what happened and the extent of your loss or damage will be sufficient.

4. You will need to pay a filing fee of \$52.50 for a claim \$1000.00 or less or a fee of \$78.75 for a claim over \$1000.00. Checks or money orders should be made payable to "Superior Court of Vermont". Filing fees and any service costs may be waived if you qualify. That determination is made by the court after review of an application that you may obtain from the court for this purpose. This determination is based upon your income as compared to the Federal Poverty Guidelines.

5. The court will assign your case a docket number. You should keep this number and refer to it whenever you contact the court with a question about your case. The court will mail to the defendant(s) the "summons", which is a notice to the defendant(s) of the suit. The court will also send a copy of the complaint and an answer form to the defendant so that he/she may respond to the complaint.

What happens next?

Upon filing your complaint, a copy is sent to the defendant by first class mail. After approximately thirty days, if the defendant has not responded, the court will send you (the plaintiff) a personal service package to have the defendant personally served by the sheriff to ensure his/her receipt of the complaint.

Within 60 days from the day you file your complaint you should receive a notice from the court indicating what is happening with your case. Depending on the response of the defendant OR if the defendant has not responded at all, one of the following three things will happen:

- Default
- Settlement
- Trial

1. Default

The defendant has 20 days from receipt of the summons in which to fill out and return the answer form. If the defendant either: 1) files an acknowledgment, but fails to file an answer, or 2) fails to answer after being personally served, this constitutes what is known as a "default", and you will be notified of the default by the court. You will also receive instructions on how to fill out a motion and affidavit for default judgment. If you fill out and return the motion and affidavit to the court within 30 days, the judge will issue a default judgment, which means you will have prevailed in your claim (see section on "What you can do to collect your money"). The default judgment cannot be for an amount greater than the original claim. If the motion and affidavit are not returned to the court within 30 days, the case may be dismissed.

2. Settlement

(a) If the defendant does answer, he or she may admit that the money is owed. If the defendant agrees to pay it all at once, the court will issue a judgment of the entire amount. If the defendant offers to make weekly or monthly payments, the court will probably issue an installment judgment, stating the amount per a specific time period that must be paid to you. If you object to this, contact the court and a hearing will be scheduled. At the hearing, the court will determine whether installment payments are appropriate and, if so, in what amount.

If the defendant does not contact you within a short period of time after the entry of judgment to arrange for payment, you should contact the defendant or his or her attorney if defendant is represented by counsel. If the defendant does not pay you according to the terms of the settlement, see the section entitled "What you can do to collect your money".

(b) The defendant may answer by denying the claim. If so, a hearing date will be set. However, at any time before the hearing, the defendant may contact you and offer to settle the case, perhaps for less money than you claimed. If you want to avoid the inconvenience and expense of going through a hearing, it may be worth accepting less than you sued for. Use your own judgment in negotiating with the defendant and try to arrive at a workable compromise.

Rules of Civil Procedure and the Vermont Rules of Evidence. A defendant is deemed to have waived trial by jury on a counterclaim by asserting the counterclaim under these rules.

RULE 6. TRIAL PROCEDURE

(a) **Usual procedure.** Unless a trial by jury has been properly requested, the court will conduct the hearing on the merits of a small claim in a summary manner. Upon motion in a nonjury hearing, participation of a party or testimony of a witness may be allowed by telephone in the judge's discretion. All witnesses will testify under oath and will be examined by the judge with the objective of laying out the evidence pertaining to the contentions reasonably available to the parties. The parties or their attorneys may supplement the judge's examination subject to the judge's authority to protect witnesses against unfair imposition and to avoid needless repetition. The judge shall make findings of fact orally on the record after the close of evidence, state the relevant conclusions of law, and enter a judgment. Alternatively, the judge may take a case under advisement and issue a written decision.

(b) **Evidence.** If the trial is by jury, the Vermont Rules of Evidence apply. If the trial is by court, evidence is admissible if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, and the Vermont Rules of Evidence are inapplicable except for the rules respecting privilege.

(c) **Record.** Trials will be electronically or stenographically recorded. If no appeal is taken within the prescribed time, the record may be discarded or erased.

(d) **Representation.** Any party is entitled, but not required, to be represented by an attorney. The appearance and withdrawal of attorneys is governed by Rule 79.1 of the Vermont Rules of Civil Procedure.

(e) **Form of judgment.** A judgment in favor of the plaintiff on a claim, or in favor of the defendant on a counterclaim, may include a provision allowing payment of the judgment in specified installments and will include the filing fees, costs of service of process, and other court costs incurred by the prevailing party.

RULE 7. FINANCIAL DISCLOSURE HEARING

(a) **Availability.** If a judgment awarded as a lump sum remains unpaid for 30 days after the entry of judgment, or if an installment on a

from the date of the court 's notice. The court will provide forms for the motion and affidavit. The court may dismiss the plaintiff's claim if the motion and affidavit are not filed on time.

(f) Service of default judgment. The court will serve a default judgment on a defendant by first class mail and make a docket entry of such mailing. If the mailing to the defendant is returned to the court because it was undeliverable, the plaintiff will be notified by the court and given the opportunity to have the default judgment served on the defendant by a sheriff (or other person authorized to serve process) at the plaintiff's expense.

(g) Reopening a default judgment. A motion to reopen a default judgment is timely if filed in writing with the court prior to or at the time of the first financial disclosure hearing relating to the default judgment. If no motion for a financial disclosure hearing has been filed, a motion to reopen a default judgment must be filed in writing with the court no later than 90 days after entry of a default judgment, unless the judgment debtor proves to the court that he or she did not have notice of the default judgment. The required \$52.50 fee for filing a motion, as specified in a current schedule published by the Court Administrator, must be paid. A default judgment will not be reopened unless good cause is shown.

RULE 4. MOTIONS

The only motions permitted are (a) a motion for judgment by default, (b) a motion to reopen a default judgment, (c) a motion to extend the time for service of the summons and complaint by a sheriff or other person authorized to serve process, (d) a motion for continuance of trial which will be granted by the court only for good cause, (e) a motion to dismiss for lack of personal jurisdiction over the defendant, (f) a motion to dismiss for lack of subject matter jurisdiction, and (g) any motion necessary to request a procedure available under these rules. Any of these permitted motions must be filed in writing.

RULE 5. LIMITED AVAILABILITY OF JURY TRIAL

(a) To plaintiff. A plaintiff is deemed to have waived trial by jury on any claim in an action brought under these rules.

(b) To defendant. If a defendant files with the court, on or before the deadline for filing a small claims answer, a written request for trial by jury accompanied by an affidavit, reciting specific factual issues requiring resolution and that the affidavit is intended in good faith, and pays the jury fee of \$10.00, the defendant will be entitled to have a trial by jury governed by the Vermont

The defendant may get a lawyer who might call you to discuss the case and offer you a settlement. You may feel that it would be in your best interest to hire a lawyer. This is a personal decision that only you can make, depending on your level of comfort. If you choose not to hire a lawyer, however, you should feel free to negotiate with the defendant's lawyer as you would with the defendant. There is no reason to be intimidated. If there is a trial, the judge will make sure you are not unfairly disadvantaged.

If you reach a settlement with the defendant out of court, be sure to notify the court immediately. Put the settlement agreement in writing and have it signed by you and the defendant so that you will be able to prove that an agreement was reached.

3. Trial

If the defendant contests your claim and makes no acceptable offer to settle the case, the hearing will take place, and the case will be decided by the judge.

Mediation: Mediation services may be available to you in some counties. Mediation is a way of assisting people in resolving their dispute. It's a confidential process where two or more parties choose to meet with an impartial third person (the mediator) to talk about ways to resolve their situation that is agreeable to both sides. The mediator controls the process, helps direct the session, keeps the parties focused on important issues, and searches for areas of agreement. In mediation, the parties have control of the outcome, so mediation more likely results in a solution that is mutually agreeable to both parties instead of the judge imposing the decision. Be sure to ask the court if mediation services are available.

What you should do for your hearing

Even though your hearing will be simple and informal, you must be prepared to prove the truthfulness of your claim, or if you are the defendant, that you are not responsible for the damage or debt the plaintiff is claiming. If you have the time, you may want to sit in on a session of small claims court prior to your own hearing. In this way you can become accustomed to the courtroom and the process. Call the court to find out when there will be a small claims session.

The most important thing you can do before your hearing is to round up all the documents and papers which have anything to do with your case

and find any witnesses who might help your case by coming to the hearing with you.

Documents

In choosing the proper papers to bring to court, the best guide is common sense. **IF YOU BRING DOCUMENTS TO BE SUBMITTED TO THE COURT IN SUPPORT OF YOUR CASE, YOU SHOULD BRING A DUPLICATE SET FOR THE DEFENDANT.** The defendant has the right to see any document filed with the court. In general, you might consider bringing:

- Any written agreements between you and the defendant. (If it is a landlord/tenant case, be sure to bring the lease).
- Any letters that have passed between you and the defendant. Very often the judge will want to know if you made a reasonable effort to settle your dispute before coming to court.
- Any bills, paid or unpaid, and the cancelled checks having to do with your case.
- If your case involves money damages due to faulty repairs (automobile or otherwise), bring any repair bills or written estimates for repair.
- Photographs of damaged property (8" by 10" glossy are the best).

Witnesses

Witnesses may be an important part of proving your case. For example, in cases involving poor workmanship (such as repairs on your car), an experienced and impartial person in the same trade makes an ideal witness to testify on your behalf.

Subpoenas

In most small claims cases, witnesses are friends and relatives who say what happened to you and are willing to come to court and tell it to the judge. Occasionally, a witness will not come to court voluntarily or cannot get permission to leave work. If you have a witness who is important to your case but won't come to the hearing voluntarily, ask the court to issue a "subpoena". There is no charge for the subpoena, but you will have to pay the statutory witness fee of \$30.00 for the witness' appearance in court.

document is attached to the complaint, the plaintiff must supply the court with a copy for the defendant. The court will assign a docket number to the claim and sign the summons to the defendant.

(b) Service of complaint on the defendant. The court will send the summons and complaint with forms for acknowledging receipt of them, and a form for answering the complaint, to the defendant by first class mail at the address provided by the plaintiff. The defendant must sign the acknowledgment of receipt of the summons and complaint and file this acknowledgment with the court within 20 days from the date of mailing by the court. If the acknowledgment is not filed on time, the plaintiff will be notified by the court and will need to have the summons and complaint, with a form for answering the complaint, served by a sheriff (or another person authorized to serve process) at the plaintiff's expense. Alternatively, if the defendant does not reside in the state, the plaintiff will need to have the summons and complaint, with a form for answering the complaint, served pursuant to Rule 4(e) of the Vermont Rules of Civil Procedure at the plaintiff's expense. The return of service from the process server must be filed by the plaintiff with the court within 30 days from the mailing by the court to the plaintiff of notice of the need for service by a process server; this time limit may be extended by the court if an extension is requested in writing by the plaintiff. The court may dismiss the plaintiff's claim if the return of service is not filed within the 30-day time limit, or within a longer time period if an extension is allowed by the court.

(c) Attachment; trustee process. Attachment and trustee process are not available prior to judgment.

(d) Pleading by defendant. If the defendant acknowledges receipt from the court of a summons and complaint, or is served by a process server with a summons and complaint, the defendant then has 20 days in which to fill out and file with the court an answer to the complaint. The court will mail a copy of the answer to the plaintiff. The defendant may include in the answer any counterclaim that the defendant has against the plaintiff, which arises from the same occurrence as the plaintiff's claim, but any judgment on a counterclaim may not exceed the limit for small claims. The required filing fee of \$15.75 for claims of \$500 or less, and \$26.25 for claims over \$500 must be paid.

(e) Default by defendant. If a defendant fails to file a timely answer with the court, the court will notify the plaintiff that he or she must file a motion for default judgment, with an accompanying affidavit, within 30 days

Rules of Small Claims Procedure

RULE 1. SCOPE OF RULES

These rules govern the procedure in the superior courts in all small claims actions brought under chapter 187 of Title 12, Vermont Statutes Annotated. These rules are the only procedural rules governing such actions except to the extent that other rules are expressly adopted by reference. These rules shall be construed to secure the simple, informal, and inexpensive disposition of every action subject to them.

RULE 2. JURISDICTION; PLACE OF SUIT; FILING FEE

(a) Jurisdiction. Actions on claims for money damages not exceeding \$5,000.00 may be brought under these rules, except claims based on defamation. Claims for relief other than money damages may not be brought under these rules. A claim in excess of \$5,000.00 may not be split into two or more claims under these rules.

(b) Place of suit. An action under these rules may be brought in the superior court of the county in which the plaintiff or the defendant resides. On motion by a party or on the judge's initiative, for the convenience of the parties, witnesses, or counsel and in the interest of justice, the judge may order that the place of trial be changed to the superior court of another county in which a party resides.

(c) Judicial bureau decisions. A certified copy of a judgment of the judicial bureau which has become final and requires the payment of a penalty not exceeding \$5,000.00 may be filed under these rules and will be deemed a final small claims judgment. Such a small claims judgment is deemed to have been entered retroactive to the date it was entered in the judicial bureau and is not subject to appeal under these rules.

(d) Filing fee. The required filing fee of \$50 for claims of \$1000 or less, and \$75 for claims over \$1000 must be paid.

(e) Non-transferability. A claim or counterclaim filed in the small claims docket of a superior court may not be transferred to the civil docket of a superior court.

RULE 3. PLEADINGS; SERVICE OF PLEADINGS

(a) Pleading by plaintiff. To bring a small claims action, the plaintiff must file with the court, on a complaint form provided by the court, information identifying the plaintiff and the defendant and a concise statement of the nature and amount of the claim. If any

The subpoena must be delivered to the witness in person by a county deputy sheriff or any other person who is not a party and who is not less than 18 years of age. **Neither the plaintiff nor the defendant can deliver the subpoena to a witness.**

The day of the hearing

A few weeks prior to the hearing, the court will mail you a notice as to the date and time of your small claims hearing. On the day of the hearing, it is a good idea to arrive at the court a little early so that you have a chance to look around and feel comfortable. Arriving early provides an opportunity for you to settle your claim against the defendant without the need of a hearing.

If for some very good reason you cannot get to the court on the date of the hearing, you must request a postponement in writing. In addition, you should call the court as soon as you know this. You must indicate the reason for the request (i.e., illness, witness cannot be there, etc.). The judge will allow a postponement only if you have a good reason.

When you get to the court, it is important that you check in with the court so that the court knows you are in the building.

As mentioned previously, if you find that the other party has retained a lawyer, don't be intimidated. It is the judge, not the lawyer, who will control the hearing. The judge will do most of the questioning of the witnesses and will decide the facts of the case based upon the evidence.

The hearing

When your case is called, both parties will be directed to come forward. The court officer will administer the oath to tell the truth to all parties and witnesses. The judge conducts the hearing. The judge will ask you to tell your side of the story, at which time you should show any proof you feel is necessary. Then the judge will repeat the process with the defendant. The judge will also question any witnesses that you and/or the defendant may have. Finally, the judge may have to ask both of you if you have a final statement or questions to ask the other side. The hearing may take only a few minutes or it may take longer. The judge is primarily concerned with: (A) allowing you and the other party to have your say; and (B) getting the facts so that he or she understands the case.

The judge may announce the decision right away or may take more time to consider the case, in which event you will be notified of the decision by mail.

Some do's and don'ts for your hearing:

- **Be brief.** Give the court all the information it needs but don't be long-winded. The judge will want to hear all of the important facts as briefly as possible. It may be helpful to make an outline of what you want to say for your own use, but you should come prepared to explain your claim against the defendant to the court. This way, you will be sure you haven't left anything out.
- **Don't act like a lawyer.** It won't help your case to act like a lawyer. Small claims court is designed to avoid as much legal talk as possible.
- **Be polite at all times.** Don't interrupt the other party, the judge, or any of the witnesses.

How a decision can be appealed

Either party in a small claims case may appeal to the court by filing a notice of appeal on a form provided by the court, together with the filing fee of \$105.00 within 30 days from the entry of the judgment. An appeal is not a new trial. On appeal, you are not allowed to present new facts nor are you allowed to retry old facts. **ALL APPEALS MUST BE FILED NO LATER THAN 30 DAYS FROM THE DATE THE JUDGMENT IS ENTERED.** You may wish to consult a lawyer before deciding to appeal a judgment because of the complexity of the process.

What you can do to try to collect your money

Once you have a judgment, you should be aware that it does not necessarily follow that the defendant(s) will hand you the money. In the event the judgment is not paid within 30 days and no appeal is pending, the plaintiff is thereafter known as the "Judgment Creditor".

There are four methods of collecting your money. You should be aware, however, that these steps can be complicated and do not always result in getting you your money. All actions requested after judgment require

If you admit that you owe the money, check the applicable box on the answer form and make arrangements with the plaintiff for payment. You will also have to pay the court costs incurred by the plaintiff as set forth on the complaint. If you cannot pay the claim in full, contact the plaintiff and see if you can agree on paying the amount in installments. All the money that you owe should be paid directly to the plaintiff; no money should be sent to the court.

If you dispute the claim because you do not owe the money, mark the applicable box on the answer form. The court will set the matter for hearing, and you will receive a Notice of Hearing in the mail. It is important that you provide the court with a current address.

Remember: Whether you agree or disagree with the plaintiff, you must complete the answer form and return it to the court for filing within 20 days after receiving the summons and complaint. Many cases are lost by default due to the failure of the defendant to file a timely answer.

What to do if you are sued in a small claims case

If you are sued in a small claims case, you should read this booklet so that you fully understand all the procedures.

The first thing that will happen is that you will receive the summons and a copy of the complaint by first class mail with instructions to sign an acknowledgment of receipt of the summons and complaint. You must return the signed acknowledgment to the court by the date specified in the summons. You should return the acknowledgment to the court by the date specified in the summons. Once this has been done, you are considered to have been served a copy of the complaint. If you do not sign and return the acknowledgment, it will be necessary to have a civil service officer serve the summons and complaint on you personally. In that event, you may be required to pay the expense incurred by the plaintiff for service of process.

ONCE YOU HAVE BEEN SERVED, YOU HAVE 20 DAYS FROM THE DATE YOU RECEIVED THE SUMMONS TO ANSWER THE COMPLAINT. A form and instructions for responding to the complaint will be included with the packet.

DO NOT IGNORE THE SUMMONS. If you do not answer the complaint within 20 days from the date of service, you may lose by default and you would have no choice but to pay the plaintiff the full amount of the judgment without having had the opportunity to present your side of the story to the judge. If the claim against you is greater than \$3,500.00, you have the right to request a special assignment of a judicial officer. You should make this request on or before the time of filing your answer. Upon making this request, a superior judge, a district judge, or a member of the Vermont bar will be assigned to hear the action.

DO NOT ASSUME THAT YOUR CASE IS HOPELESS EVEN IF YOU THINK YOU OWE THE MONEY DEMANDED. You may have a good defense. For example, you might owe money on an appliance that broke down the day after you purchased it. You may also have a related claim against the plaintiff, and if that claim is for \$5,000.00 or less, that matter can be decided in a small claims case. This is known as a counterclaim, and you will need to pay a filing fee of \$15.75 if your counterclaim is for \$500.00 or less, or \$26.25 if your claim is for more than \$500.00. Your counterclaim must be filed at the time you file your answer to the plaintiff's complaint.

payment of the filing fee of \$52.50, except the Judgment Lien. Checks or money orders should be made payable to the "Superior Court of Vermont."

- Financial Disclosure

If a payment pursuant to a judgment is overdue for 30 days or longer, you can request the court to hold a financial disclosure hearing. This means that the defendant would be ordered to testify concerning his or her ability to pay the small claims judgment. The request for such a hearing is made on a form provided by the court.

As mentioned previously, there is a filing fee of \$52.50. (Please see Small Claims Procedure Rule 7.)

Civil Contempt: If a defendant fails to comply with a payment order of the court issued as a result of a financial disclosure hearing, the plaintiff has the option of filing a Motion for Contempt. The motion will be set for hearing, and the defendant has the right to attend the hearing. The plaintiff may recover his or her costs from the defendant. Costs do not include attorney's fees, if any. As mentioned previously, there is a filing fee of \$52.50 (Please see Rule of Small Claims Procedure No. 8).

- Trustee Process Against Earnings

If the defendant receives earnings, you may want to ask the court for a form which you can fill out and file called a "Motion for Trustee Process Against Earnings". This procedure authorizes the court to order the defendant's employer to withhold a reasonable amount of money from the defendant's wages and pay that money directly to you. As previously noted, there is a filing fee of \$52.50.

The employer is known as the "trustee". You will need to provide the name and address of the defendant's employer on the form provided by the court. Once the motion has been filed and the fee paid, the court will schedule a hearing. You will then be provided with the original trustee summons and two copies for service on the defendant and the trustee. **IT IS YOUR OBLIGATION TO SEE THAT THE TRUSTEE IS SERVED WITH THE HEARING NOTICE. IN ADDITION, IF THE JUDGMENT IS A DEFAULT JUDGMENT (see Page 6), YOU MUST ALSO SERVE THE DEFENDANT WITH THE HEARING NOTICE.** This can be done by sheriff. You must make arrangements directly with the sheriff's department located in the county in which the trustee/employer is located. The trustee must be served no less than 14 days prior to the hearing date.

YOU MUST PROVIDE PROOF OF SERVICE TO THE COURT.

Costs of service by sheriff may be added to the amount of your claim.

At the hearing, the Court will determine whether the defendant has neglected or refused to pay or make reasonable arrangements to pay the money. The Court's decision will be based on the information provided by you, the defendant and the employer (trustee).

The Court will also determine the amount of the judgment that remains unpaid and the amount of the defendant's weekly disposable earnings. After the hearing, the court may order the employer to withhold a certain amount of the judgment debtor's wages and to send that amount directly to you. Please be advised, however, that there are certain monetary limitations called "exemptions" established by law and this may limit the amount of money that may be subject to withholding.

- **Writ of Execution**

"Execution" is a process to carry the judgment into effect. A "Writ of Execution" is a document that makes evident the debt of the defendant and commands an officer to take the property of the defendant to satisfy the debt. To request a Writ of Execution, you must file a written request with the court. If one is issued, you must then deliver the writ to a sheriff or other person authorized to serve civil papers. Attached to the writ there must be a list of exemptions. Again, you must also pay the filing fee of \$52.50.

The writ is good for only 60 days, so you should give it to the sheriff well before that time expires. Give the sheriff as much information about the defendant as you can to make sure that the sheriff can find the defendant. Leave the original writ and a copy of the writ with the sheriff. You must pay the sheriff in advance the minimum fees required. Please see Small Claims Procedure Rule 9(b).

The sheriff will go to the defendant and demand payment. If the defendant refuses, the sheriff will probably leave empty handed unless the sheriff finds any property that you have identified as property that could be sold at an auction. If you wish, you can ask the sheriff to try again, but you will have to pay the service fees a second time.

- **Judgment Lien**

If the defendant owns real estate, you may want to record a judgment lien against the property. In most cases, a person is entitled to a \$75,000.00 homestead exemption to protect the debtor from losing his/her home.

You have a right to record a judgment lien in the town clerk's office of any town where real property of the debtor is located at any time within eight years from the date the judgment became final. Recording shall consist of filing a copy of the judgment with the date when it became final, certified by the court issuing the judgment. There is a fee of \$5.00 for the certification and an additional fee of \$.25 per page. The certified copy will then be recorded by the town clerk in the land records. The town clerk will also charge a fee set by statute for recording the judgment in the land records.

Satisfaction of judgments

When a judgment has been fully paid, the judgment creditor (plaintiff) **MUST notify the court within twenty (20) days** after receipt of the payment. The court will then enter satisfaction of the judgment on the docket.

If the judgment creditor (plaintiff) fails to notify the court (in writing) of the payment within twenty (20) days, the defendant, as the judgment debtor, may ask the court that the judgment be deemed satisfied (please see Rule of Small Claims Procedure 12). There is no filing fee for this request. The court will notify the judgment creditor of the defendant's request, and unless the judgment creditor notifies the court in writing within twenty (20) days of receipt of the notice, the court will enter satisfaction of the judgment on the docket. If the Plaintiff objects, a hearing will be set.