

State of Vermont Judiciary

A GUIDE TO SMALL
CLAIMS PROCEEDINGS IN
VERMONT



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Foreword

Small Claims in Vermont

This booklet is not intended to be a substitute for a review of the Rules of Small Claims Procedure that are available from the court. We suggest that you read all the rules to better understand the small claims process.

The Vermont court system has tried to make the small claims process a simple way for people to resolve their disputes. We have tried to make the procedures simple and easy to understand. The court works hard to get your case to trial quickly.

We hope this booklet provides sufficient information to assist you in understanding the process. If you have ideas for improving the small claims process, or if you wish to share your small claims case experience, please feel free to write us.

Brian J. Grearson
Chief Superior Judge

Patricia Gabel
State Court Administrator

How To Use This Guide

- READ IT ALL!
- Read it all again.
- Highlight the sections that relate to your case.
- Make sure you have followed the instructions correctly.
- You may find assistance at the Vermont Judiciary website www.vermontjudiciary.org

The Small Claims Court Process

GENERAL INFORMATION

If you are filing a small claims complaint or being sued in small claims court, you should read this entire booklet. The term “plaintiff” means the person who “files” or starts the case, and the term “defendant” means the person being sued. The information in this booklet is important to both sides in the case and should be read carefully by both parties.

The purpose of the small claims court is to provide a simple, speedy, and informal court procedure. Small Claims Court is part of the Civil Division of the Vermont Superior Court. Formal rules of evidence are not always applied at a small claims trial. The plaintiff in a small claims proceeding gives up his/her right to a jury trial. Either side may appeal a decision in small claims court.

There are two places to look to see the law about small claims. One is a statute, and one is a rule. The statute is located in Title 12 of Vermont Statutes Annotated (12 V.S.A. §§ 5531-5541). You can look it up on the internet at www.vermontjudiciary.org. The Vermont Rules of Small Claims Procedure are available on line or at the courthouse.

Court staff cannot give legal advice. However, they may be able to answer some questions about procedure in a small claims case.

If your address changes it is important for you to notify the court clerk’s office in writing. This is because the clerk will mail the notice of trial to the address listed on the small claims complaint. If your address changes and you do not tell the court in writing, you run the risk of not receiving the notice about the trial date. If you do not come to the trial, you may lose the case.

WHEN TO USE THE SMALL CLAIMS COURT PROCESS

The limit for small claims cases is \$5,000.00. If your claim is for more than that, but you decide only to ask for \$5,000, you can still use the small claims court. However, if you do that you cannot later file another case (either in small claims or in the Civil Division) to collect the other part of the claim. You also can’t file two separate cases at the same time for different parts of the same claim.

Even if your claim is for the maximum amount of \$5,000, the judge may also award you interest for the time that the money was due but not paid to you. If you win, you are also entitled to have the losing side reimburse you for the fees you had to pay to the court to file the case, and to the sheriff to serve papers.

A small claims court cannot order anyone to do anything other than to pay money. For example, if you want the judge to order someone to return property to you, that case can’t be filed in Small Claims Court.

FEES & COSTS IN A SMALL CLAIMS CASE

The fee to file a case in small claims is set by the legislature and can be found on the website (www.vermontjudiciary.org) or, you can contact the clerk’s office at your local court. If you win, you are also entitled to have the losing side reimburse you for the fees you had to pay to the court and to the sheriff.

There is no fee to file an “answer” in response to lawsuit. However, if the defendant chooses to file a claim against the plaintiff – called a “counterclaim” —then the defendant must pay a filing fee.

If you cannot afford the cost of filing a small claims case or a counterclaim, you can apply to the court for permission to have some or all of the court fees waived. The clerk will provide an application form that will require some basic financial information about you. If the clerk decides that you are unable to afford the fees, you will be permitted to file without payment.

REPRESENTATION

You may use a lawyer in Small Claims Court or you may represent yourself. If there is more than one plaintiff or more than one defendant, all of them have to come to the trial. **A spouse or other family member may not represent you in court, even if they have a “power of attorney” form.**

CLAIMS BY DEFENDANT AGAINST PLAINTIFF

Counterclaims (requests by a defendant for compensation from a plaintiff) are allowed in a small claims case. If the defendant believes he or she has a claim of his or her own against a plaintiff, then the defendant may file a counterclaim case against the plaintiff. There is a filing fee for the counterclaim.

HOW TO BEGIN

To file a case with the court, the plaintiff must complete and file(1) a Small Claims Complaint form and one copy of it, and (2) one self-addressed stamped envelope with sufficient postage for one Small Claims form and attachments. This form is available at the clerk’s office of the Civil Division as well as on the Vermont Judiciary website (www.vermontjudiciary.org). The clerk may be able to direct you to resources that can assist you in completing the form, but **the clerk cannot give you legal advice.**

The plaintiff should complete the Complaint Form by providing:

- **the exact name and address** of the defendant. If you are filing against a corporation, use its official name and address. You can look this up on the Vermont Secretary of State’s website at <https://www.sec.state.vt.us/corporations.aspx>.
- **a brief statement of the claim** (that is, the nature of the dispute – what caused the dispute, when the dispute occurred, etc.) including the relevant dates;
- **the amount of the money** that is owed by the defendant

If the plaintiff has registered to receive documents from the court by email, the Electronic Registration Number (ERN) should be provided where indicated on the Complaint.

If there is a bill, contract, receipt, invoice, or other short document relating to the dispute, a copy may be attached to the complaint form. Make sure to keep copies of all documents for your own records, and bring an extra set of all documents, including the Complaint, if you want to use them in court as trial exhibits.

WHERE TO FILE THE CASE

You are required to sue in the county where you live or the county where the defendant lives or has its business. Under Rule 2(b) of Small Claims Procedure, 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 Unit, Civil Division
7 Mahady Court
Middlebury, VT 05753
(802) 388-7741

Vermont Superior Court
Bennington Civil Division
207 South Street
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
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
Lamoille Civil Division
154 Main St./P.O. Box 570
Hyde Park, VT 05655
(802) 888-3887

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

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

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

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

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

Vermont Superior Court
Windsor Civil Division
12 The Green
Woodstock, VT 05091
(802) 457-2121

FILING THE CASE

The Small Claims Complaint forms must be mailed or delivered to the Civil Division in the county where you are filing the claim. You need to pay the filing fee when you file your complaint.

In addition, there is a link located on the Judiciary website called “CourtFormsPrep,” <http://www.vtlawhelp.org/cfp/small-claims-court-forms-courtformprep>. If you use this link, it will take you through the step-by-step process of filling out a complaint. You will then need to print the form and either deliver it or mail it in to one of the locations listed above.

WHAT HAPPENS NEXT

An essential part of a small claims case is notifying the defendant about the case. Each defendant must get a copy of the complaint, a summons telling them they are being sued, an instruction sheet for the defendant, and a blank answer form. This is referred to as “service” on the defendant. If the defendant is an individual, that person will need to be served. If the defendant is a corporation, then an officer, director, general agent, or attorney authorized to receive service should be served (see “How to Begin”, Page 4).

After plaintiff files the case, the clerk will then assign a docket number to the case, sign the summons to the defendant, and return the signed summons and file-stamped complaint to the plaintiff. Within seven days after the plaintiff receives the signed summons, the plaintiff must send the summons, complaint along with any attachments, instruction sheet for defendant, and blank answer form to the defendant by first class mail. At the same time, the plaintiff must file with the clerk a certificate of service, which is available on the Judiciary website or at the clerk's office.

If the defendant does not file an answer with the court within 30 days from the date on which the plaintiff mailed the summons and complaint, the plaintiff must have the summons, complaint and any attached documents, with court-approved *answer form* and *instructions to defendant*, served by the sheriff. The Plaintiff must pay a fee to the sheriff for serving the papers on the defendant. After the sheriff serves the defendant, he/she will send a "*return of service*" form to the plaintiff, and the plaintiff must then send it to the court within 60 days from the date the plaintiff mailed the summons and complaint to the defendant, as indicated on the certificate of service previously filed with the court. If the sheriff is unable to serve the defendant, he/she will notify the plaintiff. It is the plaintiff's responsibility to get the defendant served. If the sheriff is unable to serve the defendant, the case may be dismissed. You can ask the Court to extend the time to serve the defendant, by sending the Court a written request, explaining why you need more time. Requests for an additional 30 days to serve the defendant are usually granted.

Once the defendant has been served, the defendant has 30 days from the date he or she received the summons and complaint to file an answer.

Default

The defendant should not ignore the summons and complaint. A defendant should fill out and return the answer form within 30 days from the date of service. If he or she does not do so, the defendant may lose the case without having had the opportunity to present their side of the story to the judge. This means they would have to pay the plaintiff the full amount of the judgment.

If the defendant is properly served but fails to answer the complaint within the required time, this is called a "default." The plaintiff may file a motion for default judgment within 60 days of the date the answer was due. This requires the filing of a motion on a form that can be found on the judiciary website or at the clerk's office, and an affidavit (a sworn statement about how much the defendant owes).. The plaintiff must also mail a copy of the motion and affidavit to the defendant at his/her last known address, and file with the clerk a "certificate of service" showing that the mailing was done. The plaintiff's affidavit cannot ask for more money than what was originally claimed in the complaint. If the plaintiff does not file the motion and affidavit to the court within 60 days, the case may be dismissed.

If the plaintiff plans to collect the judgment, the plaintiff must first serve the default judgment on the defendant by first class mail and file a certificate of service with the court. If the mailing is returned because it was undeliverable, the default judgment must be personally served on the defendant by sheriff or someone otherwise authorized as a process server. Please note that there will be a cost associated with this service that the plaintiff will have to pay. However, this cost can be added to the Judgment either at the post-judgment phase or upon request.

Agreeing to a Judgment

Sometimes a defendant agrees that they owe the money the plaintiff is asking for. The "answer" form has a place for the defendant to say they agree they owe the money. It also has options for agreeing to pay it in 30 days or agreeing to pay it over time.

- If the defendant agrees to pay it all at once, the court will issue a judgment for the entire amount.
- If the defendant offers to make weekly or monthly payments, the court will issue an installment judgment. If the plaintiff objects to the installment judgment, the plaintiff should notify the court in writing immediately and a trial will be scheduled. At the trial, the court will determine whether installment payments are appropriate and, if so, in what amount.

The plaintiff and defendant can agree to settle the case at any time. If the defendant thinks he/she owes less than what the plaintiff is asking for, you should talk to see whether you can agree on the lower amount, or something in between. If you reach an agreement before trial, you need to put it in writing and send it to the court before the trial (or bring it with you to the trial and the trial may be cancelled).

Trial

If the defendant does not agree to a judgment, and no settlement has been reached, a hearing will take place and the case will be decided by a judge.

WHAT YOU SHOULD DO TO PREPARE FOR THE TRIAL

Even though your trial (sometimes called a “merits hearing”) will be simple and informal, you must be prepared to prove your claims or defenses. If you have the time, you may want to sit in on a session of small claims court prior to your own trial. In this way, you can become accustomed to the courtroom and the process. You may call the court to find out when there will be a small claims session.

THE TRIAL IS THE TIME TO BRING ANY DOCUMENTS OR WITNESSES THAT YOU WANT THE JUDGE TO CONSIDER. YOU WILL NOT GET ANOTHER CHANCE TO BRING ADDITIONAL INFORMATION. YOU ARE RESPONSIBLE FOR BRINGING ANY WITNESSES TO TESTIFY ABOUT YOUR CLAIMS.

Documents

In choosing the proper papers to bring to court, the best guide is common sense. **IF YOU BRING DOCUMENTS AND/OR EMAILS TO BE SUBMITTED TO THE COURT IN SUPPORT OF YOUR CASE, YOU SHOULD BRING AN EXTRA SET FOR THE OTHER SIDE.** Both sides have the right to see any document filed with the court. Examples of some documents you might consider bringing:

- Any written agreements between the parties. (For example, if it is a claim arising out of a landlord/tenant case dispute, be sure to bring the lease).
- Any letters between the parties, any bills, paid or unpaid, and any 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.
- Printed photographs and/or emails or text messages relating to your case (the court will not usually look at your cell phone, tablet or other electronic device).

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 person in the same business might be a useful witness. Sworn affidavits or letters are generally not accepted because they cannot be cross-examined.

In many small claims cases, witnesses are friends and relatives who saw what happened to you and are willing to come to court. 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 trial voluntarily, ask the court to issue a "subpoena." There is no charge for the subpoena, but you will have to pay the witness a fee of \$30.00 when the subpoena is served on them plus mileage to and from Court. The subpoena must be delivered by someone who is not a party to the case and who is at least 18 years old.

The Day of the Trial

A few weeks before the trial, the court will mail you a notice telling you the date and time of your small claims trial. On the day of the trial, 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. You may also want to talk to the other party in the hall before coming into court to see whether you can reach an agreement to settle the case. When you arrive at the courtroom, it is important to let the court staff know you are here. **In some courthouses there is more than one courtroom. Make sure you are in the right one.**

BE SURE TO BE ON TIME. IF YOU ARE LATE, YOU MAY LOSE YOUR CASE.

If you have an emergency on the day of the trial and cannot get to court, call the court right away. You can also submit a written request to reschedule if the date is a problem for you, but you should do so as soon as you get the hearing notice rather than waiting to the last minute. You must explain the reason for the request (e.g., illness). The judge will allow a postponement only if you have a good reason.

If you come to court and find out that the other party has a lawyer, don't be intimidated. It is the judge, not the lawyer, who will control the trial. The judge will decide the facts of the case based upon the evidence.

The Trial

When your case is called, you will be asked to move up to the tables in the middle of the courtroom. Everyone who testifies has to take an oath to tell the truth. The judge conducts the trial. The judge will ask each party to tell its side of the story and present any exhibits (documents, photos, etc.). The judge may also question any witnesses that either party may have. Finally, the judge may ask both parties if either has a final statement or questions to ask the other side. The trial may take only a few minutes or it may take longer. It is important to be patient and not to interrupt when other people are talking. The judge will let both parties have a fair opportunity to tell their story.

Some Tips for your Trial:

- **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 position. This way, you will be sure you haven't left anything out.
- **Be polite at all times.** Don't interrupt the other party, the judge, or any of the witnesses. If you disagree with something that is being said, write a note about it so you will remember to mention that when it is your turn.

The Judgment

The judge may announce the decision at the end of the trial, or may take more time to consider the case and send you a written decision in the mail. Whichever way the judge issues the decision, you will get a document called a "judgment" that shows who won and any amounts that are owed by one party to the other. If the Court enters a judgment against you, you have 30 days to pay the judgment or appeal. If the Court enters a judgment against the other party and that party does not pay or appeal within 30 days, you can take steps to collect the judgment which are described below. The person who is ordered to make a payment is called the "debtor," and the person who is supposed to be paid is the "creditor."

Post-Judgment Interest

Whether a judgment issues by default, by agreement or after a trial, the law provides that the winner can also collect interest at the rate of 12 percent per year.

HOW A DECISION CAN BE APPEALED

Within 30 days of the entry of judgment, either party in a small claims case may appeal. A party wishing to appeal must file a Notice of Appeal on a form provided by the court. You must also pay a fee to file an appeal.

An appeal is not a new trial. On appeal, you are not allowed to present new evidence. Instead, a new judge will decide if the first judge made any mistakes. **ALL APPEALS MUST BE FILED WITHIN 30 DAYS FROM THE DATE OF THE JUDGMENT.** If you file your appeal late, or do not pay the filing fee, the appeal will be dismissed. You may wish to talk to a lawyer before deciding to appeal a judgment.

COLLECTING THE JUDGMENT

Once you have a judgment, it does not necessarily mean that the other party will hand you the money. They have 30 days to pay before you can take any other steps to try to collect. Also, if they receive government benefits or can prove to the court that they cannot afford to pay because they do not make enough money, under the law the court cannot enforce the judgment against them. There are also “exemptions” that protect certain property from being used to pay a judgment. A list of the most common exemptions can be found on the Judiciary website (www.vermontjudiciary.org).

If the judgment has not been paid within 30 days, there are additional steps you can take to try to collect your judgment. The two most common are Financial Disclosure and Trustee Process Against Earnings. These are called “post-judgment motions.” There is a filing fee for these motions.

Before any post-judgment action can take place, you must file proof of service of the judgment order on the other party.

Collecting a judgment can be complicated, and does not always result in getting you your money. You may want to talk to a lawyer before proceeding on your own.

1. Financial Disclosure and Contempt

If you have not been paid for 30 days or longer, you can ask for a financial disclosure hearing. This requires the debtor to testify about his or her income and expenses. The judge decides whether the debtor has the ability to pay the judgment. There is a form for asking for this hearing, and there is a filing fee.

If the judge decides at the Financial Disclosure Hearing that the debtor can afford to pay, or the debtor does not come to court, a new payment order may be issued. If the debtor still does not pay after being mailed a copy of that order, the creditor may file a Motion for Contempt. There is a fee for filing the motion. The creditor must also pay the sheriff to serve the contempt motion and hearing notice on the debtor. If the judge finds the debtor in contempt, it will be up to the judge to determine the consequences.

If an order is issued at the Financial Disclosure Hearing and defendant refuses to accept service of the order, plaintiff must then serve the order by first class mail and send a certificate of service to the court.

2. Trustee Process Against Earnings

If the debtor is working, and gets a regular paycheck, the creditor may want to file a Motion for Trustee Process Against Earnings (this is sometimes called “garnishing wages”). The court has a form for you to use to ask for this. If the court grants the motion, it orders the defendant’s employer to withhold an amount of money from the debtor’s wages and pay that money directly to the creditor. There is a filing fee for Motions for Trustee Process.

The employer is known as the “trustee”. The creditor needs to fill in the name and address of the debtor’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. The creditor will then be provided with the original summons and two copies: one for service on the debtor and one for service on the trustee. **THE CREDITOR HAS TO PAY THE SHERIFF TO SERVE THE TRUSTEE WITH THE HEARING NOTICE.** You must arrange 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. **IN ADDITION, IF THE INITIAL JUDGMENT WAS A DEFAULT JUDGMENT (see page 6) THE CREDITOR MUST ALSO PAY THE SHERIFF TO SERVE THE DEBTOR WITH THE HEARING NOTICE.** You must provide proof of service to the court.

If the judge grants your motion at the hearing, you may ask to have the amounts you paid to the court and the sheriff added to what the debtor owes you.

At the hearing, the judge will decide whether the debtor can afford to have money taken out of his/her paycheck to pay the creditor. The court’s decision will be based on the information provided by the creditor, the debtor and the employer (trustee).

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. However, under the law there are certain limitations called "exemptions" that may limit the amount the judge can order.

3. **Filing a Judgment in the Land Records**

Once the 30 days is up, you can pay the court for a certified copy of the judgment and file it in the land records if the other party owns property, but that does not mean you get paid right away. It just means that you may get paid if they sell the property.

SATISFACTION OF JUDGMENTS

When a judgment has been fully paid, the creditor **must notify the court within twenty-one (21) days.** The court then makes a record that the judgment has been satisfied (meaning paid in full).

If the creditor fails to notify the court of the payment within twenty-one (21) days, the debtor may ask the court to record that the judgment has been paid. There is no filing fee for this request. The court will notify the creditor of the debtor’s request. Unless the creditor objects in writing within twenty-one (21) days, the court will record that the judgment has been fully paid. If the creditor objects, a hearing will be set. At the hearing, both parties can explain why they disagree over whether full payment has been made.

Conclusion

We hope this handbook has helped you to understand the Small Claims Court process.

Please let us know if you have any suggestions for improving this notebook or the court procedures.