

Debtors' Rights in a Lawsuit

Introduction

The thought of being sued can be overwhelming. A lawsuit can cause emotional and physical stress. To best protect your rights in the lawsuit, pay attention to all of the information you receive.

This publication should help you understand what happens when you're sued for money. We provide only general information about court proceedings. However, this publication will also help you if you need to represent yourself in a lawsuit.

More information about debt collection and other publications mentioned is available at www.washingtonlawhelp.org. Look under the category "Consumer and Debt" and then "Debt Collection." There you'll find publications such as:

- [Debtors' Rights with Collection Agencies](#)
- [How to Answer a Lawsuit for Debt Collection](#)
- [How to Claim Personal Property Exemptions](#)

Another publication available on the internet at www.washingtonlawhelp.org that might help is [Small Claims Court](#). Look under the category "Consumer and Debt" and then "Small Claims Court" to obtain this publication. This website also has information on many other areas of law, including divorce, child custody, eviction, tenant rights, and many more.

If you're low-income, you can talk to a lawyer and get advice by calling the CLEAR line. CLEAR's number is **1-888-201-1014**.

If you think that you need a lawyer but your local legal services office can't help you, you may be able to find a lawyer who'll charge a reduced fee for your first appointment. Check the yellow pages of your telephone directory under "**Attorneys.**" There may also be a listing for a referral program operated by your local Bar Association.

Am I being sued?

Sometimes debt collectors send multiple pieces of mail and notices. Here's one sure way of knowing if you're being sued by a creditor or a debt collector. If you've received documents called a Summons and a Complaint, **you're being sued**. These documents are generally hand-delivered by a sheriff or a professional delivery service. If you received a Summons and a Complaint, you must take the following steps:

- Read the papers carefully
- Mark down on a calendar all the dates stated in the documents
- If possible, seek legal advice

What court should I appear in?

The Summons and Complaint will tell you what court you're being sued in. Generally, lawsuits for money are filed either in **Superior Court** or in **District Court**. Usually, the amount of money claimed in the lawsuit determines the court that will hear the case. Cases in **Superior Court** can be for any amount (usually over \$75,000). Cases in **District Court** can be up to \$75,000.

There's one exception. The **District Court** has a separate division called "**Small Claims Court**." These are **Small Claims Court's** rules:

- The amount in dispute in the case can only be up to \$5,000.
- **Small Claims Court** can only award monetary damages. They can't award personal property such as cars, equipment, and household furniture or appliances.
- **Small Claims Court** cannot restrain or enjoin a party.
 - *What does this mean?* This means that the court can't stop or prohibit you or the person suing you from taking a particular legal act. This type of action by the court is generally called an injunction. An injunction is a court order commanding or preventing an action.
- You or the person suing you may not have a lawyer present without special permission. You may still consult a lawyer or receive legal advice.

This publication doesn't tell how to represent your case in **Small Claims Court**. For that information and more about **Small Claims Court**, see our publication [Small Claims Court](#).

How do I reply or answer to a Summons and Complaint?

Once you receive a Summons and Complaint, you must file an Answer. An Answer is your response or defense to the statements made by the person suing you in the Complaint. The Summons and Complaint usually contain the following information:

- The **deadline** for filing your Answer is in the Summons
- The **Plaintiff** is the person suing you
- The **Defendant** is the person being sued (you)
- What the **Plaintiff** is claiming or alleging happened
- What the **Plaintiff** is asking for or suing you for
- The **Court** hearing the case

Answering the Complaint can take several steps. If you disagree with what the Plaintiff says, or think that the Plaintiff shouldn't get what's asked for in the Complaint, then you must Answer the Complaint **in writing**.

When Answering the Complaint in writing, your Answer should include:

1. The name of the court (either **Superior** or **District Court**), the name of the Plaintiff and the Defendant, and the court number, if there is one. All of this information must be placed on the top of the Answer. You can find all of this information on the Complaint.

2. A statement saying what you agree with and what you disagree with in the Complaint. If you don't agree with any part of the paragraph, deny the paragraph. Then explain which parts you disagree with, and why.
 - a. Example: "I admit statement one with the Complaint. I deny statement two in the Complaint."
3. If your income is exempt from garnishment (see the following section "What property cannot be taken to pay the Judgment Creditor?"), then you should include a paragraph in your Answer saying so.
 - a. Example: if your only income is Social Security, which is exempt from garnishment by federal law, then you might write in your Answer the following:
 - i. "My income consists only of Social Security which is exempt from garnishment."
 - b. **Note:** This is not a defense to the lawsuit. It does provide the Plaintiff notice that your income is exempt from garnishment. If you lose the lawsuit and the Plaintiff **garnishes** your bank account containing exempt funds, then you may have a lawsuit against the Plaintiff.
 - i. *What is garnishment?* A garnishment is a judicial proceeding started by the creditor to ask the court to order you to turn over property or money to cover a debt with the creditor. For more information, look at sections "What is a Wage Garnishment?" or "Can a Judgment Creditor Garnish My Bank Account?"
4. If you believe the Plaintiff owes you money, explain why in writing (this is a **Counterclaim**)
 - a. *What is a Counterclaim?* A counterclaim is a claim for relief or compensation made against the Plaintiff. Think of it as a counteraction taken by the Defendant against the Plaintiff.
 - b. **Note:** There is a filing fee for a Counterclaim. **Superior Courts** charge \$200.00 for a counterclaim. **District Courts** may charge \$53.00.
5. Your signature, address, telephone number, and the date.
6. You must deliver a copy of your Answer to the Plaintiff's lawyer, or the Plaintiff if s/he doesn't have a lawyer, **within 20 days** after you received the Summons and the Complaint. The Plaintiff's lawyer or the Plaintiff must receive your Answer **within 20 days** after you're served with the Summons and the Complaint. There are two ways to deliver the Answer:
 - a. You can deliver the Answer **in person** to the Plaintiff's lawyer or the Plaintiff. If that person doesn't have a lawyer, get a stamped "received" copy to prove that you delivered a copy.
 - b. You can deliver the Answer using **certified mail**.

7. You must file the **original** Answer in the court where you were sued. You can file the original copy by delivering it to the **Superior Court** or the **District Court** listed on the Complaint.
8. Keep a copy of the Answer for your records.

Please Note: If you don't answer within 20 days, **you'll be in "default."** If you didn't deliver an Answer to the Plaintiff's lawyer or the Plaintiff within the 20-day period, and the court hasn't entered an Order of Default, you should immediately file and serve an Answer as explained above.

What does it mean to default? A default is a failure to answer a Complaint in a timely manner. This means that a Plaintiff can win without further notice to you.

What happens after I file my Answer?

After you've filed and delivered your Answer, the Plaintiff may want to settle the case to avoid going to trial. You also may want to try settlement negotiations with Plaintiff.

There may be a trial if the case doesn't settle. Some lawsuits are resolved by the court by motion or other proceedings. One type of proceeding is called arbitration. Some counties may require mandatory arbitration.

What is Arbitration? Arbitration is a form of dispute resolution that is mediated by a third party who is usually agreed upon by both the Plaintiff and Defendant (you). The decision of the arbitration is legally binding.

There may be other steps before a trial begins, such as motions or pre-trial proceedings like discovery.

At trial, you may ask questions of the Plaintiff and other witnesses. You may also tell your side of the story through your own testimony, your witnesses, and papers that support your case.

If you're going to represent yourself, you should go to the courthouse a couple of days before your trial to watch other cases and to get a firsthand idea of what to expect.

What if I lose at trial?

If you lose at trial, the judge will sign an order stating that you owe money to the Plaintiff. This is called a "**Judgment.**" The Plaintiff who's won a judgment is now called a "**Judgment Creditor.**" If the Plaintiff loses, the judge will sign an order to that effect. If you have a counterclaim and you win on that counterclaim, the judge will sign an order stating that the Plaintiff owes you money. This makes you the "**Judgment Creditor.**"

You, as well as the Plaintiff, have a right to appeal the judge's decision.

The Judgment Creditor has ten years to collect on the judgment, and may renew the judgment for one more ten-year period.

How can a Judgment Creditor collect?

Going through the process and losing a lawsuit can be emotionally and mentally exhausting. However, there's one important fact to remember. You **can't go to jail** for failing or refusing to

pay a judgment (except in rare cases for refusing to pay a child-support judgment the court has found you can afford to pay).

But note: If you're ordered to appear for an examination of your finances and you don't appear, **you can be arrested.** These types of examinations are called "**Supplemental Proceedings.**" For more information, look at the section "What are Supplemental Proceedings?"

The Judgment Creditor can collect by several methods:

- Garnishing your wages or bank account
- The sheriff can sell your personal property (cars, appliances) or real property (house and land)
- You can voluntarily pay the judgment or try to work out a payment plan with the Judgment Creditor

The Judgment Creditor may not:

- Garnish your wages or take your property without a court order
- Come into your home or your garage to take your possessions, unless you voluntarily let the Judgment Creditor in or the Judgment Creditor has a court order allowing the **repossession.** Repossession is the act or an instance of retaking property.

◆ **Note:** If you've purchased a car or other property, and have put that property up as collateral or security for a loan for that purchase, that Creditor may be able to repossess the property without a court order. The Creditor may not repossess if the repossession will cause a "breach of peace." So if you vigorously object to the repossession, the Creditor should stop the repossession action, and go to court instead.

What property cannot be taken to pay the Judgment Creditor?

By law, there are certain kinds of property that generally can't be taken from you by a judgment creditor. We call this "**exempt property.**"

The main exemptions are:

- Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security, Unemployment Compensation, Workers' Compensation, and most pension and retirement benefit;
- Part of your wages: The greater of 30 times the current federal minimum wage, or 75% of your net wages. ("Net wages" means gross pay minus taxes, Social Security, and other mandatory deductions.) Call the Department of Labor to find out the current federal minimum wage, or check this website: <http://www.dol.gov/esa/whd/flsa/>. (Effective July 24, 2009, the minimum wage is \$7.25 an hour.) Then multiply that amount by 30;
- Clothing;
- Household goods, appliances, furniture, provisions and fuel, up to \$2,700 in value for one person, \$5,400 for a married couple;

- Equity in 2 motor vehicles for a married couple up to a combined value of \$5,000;
 - *What is Equity?* Equity is the value of an item, minus what is owed on it, and minus any debts on which it's been listed as collateral
- Equity in a home up to \$125,000;
- Tools and instruments necessary to carry on a trade up to \$5,000 in value;
- Other property not to exceed \$2,000, including no more than \$200 in cash and no more than \$200 in a bank account. Note: this \$200 in a bank account is in **addition** to any money in the bank account that is exempt, such as TANF, SSI, SS, etc.

◆ **Note:** The Judgment Creditor must obtain a court order to garnish or sell your property through the sheriff. If you're going to claim personal property exemptions, read the publication, [How to Claim Personal Property Exemptions](#).

What is a wage garnishment?

A wage garnishment occurs when the Judgment Creditor demands payment of the court award by taking money directly from your paycheck through your employer.

The Judgment Creditor and your employer must do the following to garnish your wages:

1. Send a “**writ of garnishment**” to your employer
 - a. *What is a writ of garnishment?* It's a court order stating that the Judgment Creditor has a right to collect a particular amount of money or property from a third party (example: your employer).
2. Your employer must then file an “Answer” which tells the Judgment Creditor and the court how much of your wages will be garnished and how much you'll receive. Your employer must figure out how much of your wages are exempt and to pay you that amount.
3. The employer must hold the rest for the Judgment Creditor.
4. You should receive a copy of both the “writ of garnishment” and the “Answer.”

The exempt part of your net wages is the greater of 30 times the current federal minimum wage or 75% of your net wages. ("Net wages" means gross pay minus taxes, Social Security, and other mandatory deductions.) Call the Department of Labor to find out the current federal minimum wage, or check this website: <http://www.dol.gov/esa/whd/flsa/>. Then multiply that amount by 30.

◆ **Example:** as of July 24, 2009, the federal minimum wage is \$7.25 an hour. Therefore, if you make less than \$217.50 a week net, all of your wages are exempt. If you make \$400 a week, \$300 is exempt (since \$300 is 75% of your wages, and that amount is more than \$217.50).

Can I be fired because my wages are garnished?

No. It's illegal for an employer to fire you because your wages have been garnished. There's one **exception**: you can be legally fired if your wages are garnished from the same employer for **three different judgments** during a twelve-month period.

Can a Judgment Creditor garnish my bank account?

Maybe. A bank account garnishment is very similar in process to a wage garnishment.

Instead of sending a writ of garnishment to your employer, the Judgment Creditor sends one to your bank. You're not entitled to prior notice of a bank garnishment, so if your account is garnished, you may have checks returned for NSF (not sufficient funds).

However, you're entitled to information about the bank account garnishment. You must receive a copy of:

- The Writ of Garnishment
- Exemption claim form

Note: Funds in a bank account from certain sources are exempt from garnishment. Examples of exempt funds from garnishment are:

- TANF;
- Social Security;
- SSI;
- Most pension and retirement benefits.

Your bank won't claim your exemptions for you. You must claim them yourself. The exemption claim form is included with the court papers for this purpose. The form should include instructions on how to claim exemptions. You should file this form immediately. Remember: you also have the right to claim an automatic \$200 exemption in your bank account.

Can a Judgment Creditor sell my personal property?

Maybe. A Judgment Creditor may obtain a "**Writ of Execution**" from the court telling the sheriff to take your property and sell it with the money going to the Judgment Creditor.

◆ **Note:** You may prevent the sheriff from taking your exempt property by claiming your exemptions.

You should make a list of all personal property (household furniture and appliances, cars, tools and equipment) and put a "*" next to items you claim are exempt.

At the bottom of the list, write:

"I declare under penalty of perjury under the laws of the state of Washington that the foregoing is a list of my household furnishings and appliances (or tools or motor vehicles) and I believe the items I've marked with a '*' are exempt from attachment."

If the sheriff comes to take your property, present the list.

The sheriff can't take your property without further proceeding to determine the value of the items claimed as exempt.

For more information about claiming exemptions and forms, see the publication [How to Claim Personal Property Exemptions](#).

Can a Judgment Creditor sell my real property?

Maybe. A Judgment Creditor may try to have your real property (land, house, and other buildings) sold by the sheriff.

Up to \$125,000 of equity in your home is protected under the homestead law from most Judgment Creditors. If you live on the property claimed as a homestead, the homestead exemption is automatic. You don't need to file anything. If you're claiming a homestead exemption on property that you're not currently living on, you must file a homestead declaration.

The homestead exemption does NOT work against:

- A worker who's worked on your home
- Someone who's provided materials used on your home
- A Lender trying to foreclose a mortgage on your home because you haven't repaid the loan

◆ **Note:** The homestead law applies to a mobile home as well as a house.

What are supplemental proceedings?

When a Judgment Creditor wants to find whether you work, where you keep your money, or what property you own, the Judgment Creditor may get an "Order for Examination of Judgment Debtor."

This will require you to appear in court to answer questions. You must comply with the order by appearing in court or **a warrant will be issued for your arrest**.

When you appear in court, your case will be called by the judge. Usually, the judge will ask you to go to a separate room with the Judgment Creditor's lawyer. The lawyer will then ask you questions about your property. If the lawyer is rude or abusive, you should stop the examination and go back and tell the judge.

You don't have to answer a question if you think the answer would be an admission of a crime. If you think this might be the case, ask the judge for time to talk to a lawyer.

0204EN

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, December 2009.

© 2009 Northwest Justice Project — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)