

# Debtors' Rights in a Lawsuit

---

## Introduction

The thought of being sued can be scary. A lawsuit can cause emotional and physical stress. The best way to protect your rights in the lawsuit is pay attention to **all** the information you get.

Read this publication if someone sues you for money. We provide general information. This publication may help if you need to represent yourself in court.

Find more at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). Look under the category "Consumer and Debt" and then "Debt Collection." You will find publications such as:

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

Another publication available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) that might help is [Small Claims Court](#). Look under the category "Consumer and Debt" and then "Small Claims Court." We also have information in many other areas of law.

## Am I being sued?

Sometimes debt collectors send multiple pieces of mail and notices. There is one sure way to know if they are suing you. **If you have gotten documents called a Summons and a Complaint, you are being sued.** These documents are generally hand-delivered by a sheriff or a professional delivery service.

If you got a Summons and a Complaint, you **must**:

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

## What court should I appear in?

The Summons and Complaint will tell you what court you are being sued in. Generally, lawsuits for money are either in **Superior Court** or in **District Court**.

Usually, the amount of money claimed in the lawsuit determines which court 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 is one exception.** The **District Court** has a separate division called "**Small Claims Court**." Under Small Claims Court's rules:

- The amount at issue in the case can be no more than \$5,000.
- Small Claims Court can only award money damages. **It cannot award personal property** such as cars, equipment, and household furniture or appliances.
- Small Claims Court cannot restrain or enjoin a party.
  - This means the court cannot stop or keep you or the person suing you from taking a particular legal act. We generally call this type of court action 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 talk to a lawyer or get legal advice.

◆ This publication does not explain how to put a case on in Small Claims Court. Our publication called [Small Claims Court](#) has that information.

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

Once you get a Summons and Complaint, you must file an Answer. An Answer is your response or defense to the statements made in the Complaint by the person suing you. The Summons and Complaint usually have 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 (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 the Plaintiff should not get what it asked for in the Complaint, you must answer the Complaint **in writing**.

Your written Answer should have:

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 this information must be on the top of the Answer. (All this information is on the Complaint.)

2. A statement saying what you agree with and disagree with in the Complaint. If you do not agree with any of the paragraph, deny the paragraph. Otherwise, explain which parts you disagree with, and why.
  - a. Example: “I admit statement one in 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?”), put a paragraph in your Answer saying so.
  - a. **Example:** Your only income is Social Security, which federal law exempts from garnishment. You could write the following:
    - i. “My only income is Security, which is exempt from garnishment.”
  - b. 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, you may have a lawsuit against the Plaintiff.
    - i. *What is garnishment?* A garnishment is a court case the creditor starts to ask the court to order you to turn over property or money to cover your

debt. The sections “What is a Wage Garnishment?” and “Can a Judgment Creditor Garnish My Bank Account?” have more information.

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 the Defendant takes against the Plaintiff.
  - b. There is a filing fee for a Counterclaim. **Superior Courts** charge \$200 for a counterclaim. **District Courts** may charge \$53.
5. Your signature, address, phone number, and the date.
6. You must deliver a copy of your Answer to the Plaintiff’s lawyer, or the Plaintiff if s/he does not have a lawyer, **within twenty days** after you got the Summons and the Complaint. The Plaintiff’s lawyer or the Plaintiff must get your Answer **within twenty days** after you are 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 does not have a lawyer, get a stamped “received” copy to prove 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.

If you do not answer within twenty days, **you will be in “default.”** If you did not deliver an Answer to the Plaintiff’s lawyer or the Plaintiff within the twenty-day period, and the court has not entered an Order of Default, immediately file and serve an Answer as explained above.

*What does it mean to default?* A default is a failure to timely answer a Complaint. If you default, Plaintiff can win without further notice to you.

### **I filed my Answer. Now what?**

After you have filed and delivered your Answer, the Plaintiff may want to settle the case to avoid going to trial. You also may want to try negotiating with Plaintiff.

There may be a trial if the case does not settle. Or the court may resolve the case by motion or other proceedings. One type of proceeding is called arbitration. Some counties require mandatory arbitration.

◆ **Arbitration** is a form of dispute resolution. A third party who both the Plaintiff and Defendant (you) agree on usually mediates. 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 are going to represent yourself, go to the courthouse a few days before your trial. Watch other cases so you know what to expect.

### What if I lose at trial?

If you lose at trial, the judge will sign an order stating you owe the Plaintiff money. This is a “**Judgment.**” The Plaintiff who has won a judgment is now 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 it, the judge will sign an order stating the Plaintiff owes you money. This makes you the “**Judgment Creditor.**”

You, as well as the Plaintiff, may 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 hard emotionally and mentally. But remember: You **cannot go to jail** for not paying a judgment (except, rarely, for refusing to pay a child-support judgment the court has found you can afford to pay).

**But:** If you are ordered to appear for an examination of your finances and you do not appear, **you can be arrested.** These types of examinations are called “**Supplemental Proceedings.**” The section “What are Supplemental Proceedings?” has more information.

The Judgment Creditor can collect by:

- 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.

◆ If you have bought 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.” If you vigorously object to the repossession, the Creditor should stop the repossession action, and go to court.

### Can they take any/all my property to pay the Judgment Creditor?

No. By law, there are certain kinds of property that generally a judgment creditor

generally cannot take from you. We call this “**exempt property.**”

The main exemptions are:

- Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security (SS), Unemployment Compensation, Workers’ Compensation, and pension and retirement benefits;
- Part of your wages: The greater of 35 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 2012, the minimum wage is \$7.25 an hour.) Then multiply that amount by 35;
- 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 two 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 is 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 more than \$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, and so on.

Our publication called [Money That Cannot be Taken from You \(“Garnished”\) to Pay Off a Debt](#) has more information.

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

### What is a wage garnishment?

A wage garnishment happens when the Judgment Creditor gets 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 is a court order stating the Judgment Creditor has a right to collect a particular amount of money/property from a third party (**example:** your employer).
2. Your employer must then file an “Answer” telling the Judgment Creditor and the court how much of your wages they will garnish and how much you will get. Your

employer must figure out how much of your wages are exempt and pay you that amount.

3. The employer must hold the rest for the Judgment Creditor.
4. You should get a copy of both the “writ of garnishment” and the “Answer.”

The exempt part of your net wages is the greater of 35 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. Then multiply that amount by 35.

◆ **Example:** Effective 2012, the federal minimum wage is \$7.25 an hour. If you make less than \$253.75 a week net, all of your wages are exempt. If you make \$400 a week, \$300 is exempt. (\$300 is 75% of your wages, and that amount is more than \$253.75.)

### Can I be fired because my wages are garnished?

**No.** It is illegal for an employer to fire you because it has to garnish your wages.

There is one **exception:** your employer can legally fire you if it has to garnish your wages for **three different judgments** during a twelve-month period.

### Can a Judgment Creditor garnish my bank account?

Maybe. A bank account garnishment process is a lot like a wage garnishment.

The Judgment Creditor sends a writ of garnishment to your bank. **You are not entitled to notice of a bank garnishment.** If they garnish your account, you may have checks returned for NSF (not sufficient funds).

You **are** entitled to information about the bank account garnishment. You must get a copy of:

- The Writ of Garnishment
- Exemption claim form

**Note:** Funds in a bank account from certain sources are exempt from garnishment. Here are some exempt funds:

- TANF
- Social Security
- SSI
- All “federally qualified” pension and retirement benefits

Your bank will not 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 right away. **Remember:** you can claim an automatic \$200 exemption in your bank account.

### Can a Judgment Creditor sell my personal property?

Maybe. A Judgment Creditor may get a “**Writ of Execution**” from the court telling the sheriff to take your property and sell it. The Judgment Creditor gets the money from the sale.

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

Make a list of all personal property (household furniture and appliances, cars, tools and equipment). 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 cannot take your property without further proceeding to determine the value of the items claimed as exempt.

◆ Our publication called [How to Claim Personal Property Exemptions](#) has more information and forms you can use.

### Can a Judgment Creditor sell my real property?

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

The homestead law protects up to \$125,000 of equity in your home from most Judgment Creditors. If you live on the property claimed as a homestead, the exemption is automatic. You do not need to file anything. If you are claiming a homestead exemption on property that you are **not** currently living on, you must file a homestead declaration.

The homestead exemption does NOT work against:

- A worker who has worked on your home

- Someone who has provided materials used on your home
- A Lender trying to foreclose a mortgage on your home because you have not repaid the loan

◆ The homestead law protects mobile homes as well as houses.

### What are supplemental proceedings?

A Judgment Creditor may get an “Order for Examination of Judgment Debtor,” “Notice of Supplemental Proceeding” or “Order to Show Cause re: Supplemental Proceedings” if it wants to find out:

- whether you work
- where you keep your money
- what property you own.

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, wait until the judge calls your case. 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 treats you badly, stop the examination. Go back and tell the judge. Examples of when to do this:

- The lawyer is rude
- The lawyer asks questions that do not make sense
- The lawyer is looking for irrelevant info

**You do not 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. Our publication called [Supplemental Proceedings](#) has more information.

### What if I need legal help?

- **Apply online with CLEAR\*Online** - <http://nwjustice.org/get-legal-help>  
or
- **Call CLEAR at 1-888-201-1014**

CLEAR is Washington’s toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays from 9:10 a.m. until 12:25 p.m. CLEAR works with a language line to provide free interpreters as needed to callers. If you are deaf or hard of hearing, call 1-888-201-1014

using your preferred TTY or Video relay service.

- **King County:** Call 211 for information and referral to an appropriate legal services provider Monday through Friday from 8:00 am – 6:00 pm. You may also call (206) 461-3200, or the toll-free number, 1-877-211-WASH (9274). 211 works with a language line to provide callers free interpreters as needed. Deaf and hearing-impaired callers can call 1-800-833-6384 or 711 to get a free relay operator. They will then connect you with 211. You can also get information on legal service providers in King County through 211’s website at [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).
- **Persons 60 and Over:** Persons 60 or over may call CLEAR\*Sr at 1-888-387-7111, regardless of income.

---

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 November 2013.

© 2013 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.)