

CIVIL/SMALL CLAIMS

The most you can collect through a judgment in the General Civil Division is \$25,000 plus costs. To file a civil case in the 88th District Court, the business or person you are suing must do business or live in Alpena County or the action must have occurred in Alpena County. In a civil case, you may be represented by legal counsel.

For costs, please see Fines/Fees/Costs

The court is only a tool that is available to you for settling disputes or establishing and reducing your claims to judgment. You are responsible for locating the parties, determining your course of action, gathering your witnesses and evidence. The necessary forms may be obtained at any court or from any business supply house that carries legal forms, or at: www.courts.michigan.gov/SCAO-forms/small-claims. While the staff of this court will try to help either party to an action, you must understand that:

- Clerks cannot give legal advice.
- The judges, who are attorneys, may not and will not give advice on matters they may have to rule on.
- This court can render money judgments only and has no power to force anyone to do something or to stop doing something.

By having your case tried in the Small Claims Division, you give up the following rights:

- The right to have an attorney.
- The right to appeal to a higher court.
- The right to a jury trial.

The defendant may choose not to give up these rights. He/she can demand before or at the time of hearing that the case be transferred to the General Civil Division.

LANDLORD/TENANT CASES

A tenant can be evicted for various reasons. Some common reasons are failure to pay rent, destruction of property, or failure to follow rules and regulations.

Before a landlord can file a law suit to evict a tenant, the tenant must be served a copy of a notice to quit. A notice to quit is a demand to vacate the property. After the specified time on the notice to quit has passed, a complaint may be filed in district court. There is a fee for filing the complaint. A copy of the complaint and a notice of court hearing must be served on the tenant. If the tenant fails to appear at the court hearing and answer the complaint, a default judgment for possession of the property and money judgment may be entered. Ten days after the default judgment has been entered, the landlord may obtain a document called an Order of Eviction. This authorizes the landlord to evict the tenant and remove the tenant's belongings from the property.

SMALL CLAIMS COURT

Before filing your claim, you should have some idea what your chances are of collecting. A judgment does not mean automatic payment. It simply means you have proven to the satisfaction of the court that the person you sued owes you money. There are often cases where a judgment is not particularly difficult to obtain but the collection of money is difficult if not impossible.

The party you have sued may be penniless or bankrupt; may have gone out of business or left town; may not earn enough for you to garnish wages; or for other reasons it may be impossible to make the defendant pay. Income such as welfare, unemployment, social security, etc. cannot be garnished. If you cannot collect, a judgment in your favor may turn out to be a hollow victory.

A party who sued another party is called the plaintiff. The party being sued is called the defendant. There can be more than one plaintiff or defendant in the same action. An example would be when a husband and wife sue another husband and wife.

IF YOU ARE NOT THE PLAINTIFF AND DO NOT HAVE DIRECT AND PERSONAL KNOWLEDGE OF THE FACTS IN THIS DISPUTE, YOU CANNOT COMPLETE THE FORM FOR THE PLAINTIFF.

The most you can collect through Small Claims Division is \$6,000.00 plus costs. The costs will be added by the magistrate or judge at the time of judgment. To file a claim in the 88th District Court, the business or person you are suing must do business or live in Alpena County, or the action must have occurred in Alpena County.

BEFORE COMING TO THE COURT TO FILL OUT AN AFFIDAVIT OF CLAIM, BE SURE YOU HAVE THE FOLLOWING:

1. The filing fee plus service fee for certified mail, if that's the method of service you choose. Checks/money orders to be made payable to the 88th District Court. Mailing fees are extra and subject to change due to postal increases.
2. Defendant's full and correct name.
3. Defendant's current address.
4. Amount of claim and pertinent dates.
5. Supporting documentation as to the nature of the claim. You may use a second sheet if necessary. At the time of the hearing, you should have copies of all papers to support your claim such as bills of sale, receipts, guarantees, accident reports, leases, promissory notes, repair estimates, photos, etc.

When your claim is filed, a hearing date is set within 30 days. This generally allows enough time for the defendant to receive the notice no later than the required seven days before the hearing date. This is done in one of two ways.

1. A copy is left with him/her personally by a process server or any legally competent adult who is not a party to the suit. If you are not familiar with the laws

governing service you may want to have an experienced process server serve your papers. You or the individual serving the papers must see that service is made according to law.

2. The notice is mailed by certified mail with a return receipt requested. If certified mail is not picked up by the defendant you may want to have a process server try to make service after a new hearing date is scheduled. Unless the court has proof the defendant has received the notice, it cannot proceed with the case.

SETTLEMENT PRIOR TO HEARING

Often the defendant may want to settle out of court before the hearing date. If settlement is made before he/she is served with the summons, you are not entitled to your court costs. If settlement is made after he/she is served, you are entitled to add your court costs. If the claim is paid you should file a voluntary dismissal with the court.

TRIAL DATE

On the date the trial is set, plan to arrive at the court a few minutes early. **YOU MUST BRING ALL PAPERWORK, WITNESSES AND EVIDENCE TO PROVE YOUR CASE. NO ADJOURNMENT WILL BE GRANTED TO PERMIT YOU TO BRING THESE AT A LATER DATE.** One of several things may occur on the scheduled date:

1. The defendant may appear, refuse to submit to the Small Claims Division and request that the case be transferred to the General Civil Division. This is his/her legal right. He/she must then file an answer in writing within 14 days of the transfer and a new date will be set.
2. The defendant may appear, admit liability for your claim and a consent judgment will be entered.
3. The defendant may fail to appear. If he/she has proper service and you can prove to the court you have a proper claim, a default judgment will be entered.
4. The defendant may appear, disagree with the claim, agree to have it heard in Small Claims Division and the trial will be held.

If service has been made and, 1) neither the plaintiff nor the defendant appear, or 2) the defendant appears but the plaintiff does not, the claim will be dismissed by the court.

When your case is called, all parties and all witnesses will be sworn in. The hearing is an informal matter. State your claim as simply as possible. If necessary, refer to the papers or evidence you have brought with you. If you furnished copies for the court file, the magistrate/judge can follow along.

The person you are suing will then have an opportunity to tell the magistrate/judge why he/she feels he/she does not owe you what you claim. After all testimony and evidence has been presented, the magistrate/judge will render a decision.

You must bring a completed judgement for judge's signature if your request is granted.

COLLECTION OF JUDGMENT

It is **your responsibility** to collect a judgment. The Court does not offer/nor aid in collections attempts. Because you have a judgment, you have ways of collecting that you would not have otherwise. Two of these are:

Installment payments: The court encourages the parties to agree among themselves how a judgment is to be paid. If a lump sum payment is not possible, try to reach some agreement on installment payments.

Garnishment: If the defendant will not voluntarily pay the judgment and you know where money is owed to him/her, such as wages, bank accounts, rentals, etc. you may want to file a writ of garnishment to attach this money. A writ of garnishment may not be issued to enforce the judgment until the expiration of 21 days after it was entered. The garnishment is filed against the person or business having possession of the monies. They are referred to as the garnishee defendant. As mentioned previously, income such as welfare, unemployment, social security, etc., cannot be garnished.

Before filing a garnishment for personal wages, you must know where the defendant works; how often he/she is paid, and what day of the week he/she receives his/her check. This will help you decide when the garnishment should be filed and served on the garnishee defendant.

The garnishee defendant has seven days after service of the writ to let you, the court, and the principal defendant know if there are available monies. In the case of wages, you are not entitled to the defendant's entire paycheck; only a portion of it as determined by a federal formula. You may have to garnish several pay checks to satisfy a judgment if no other payments are made. As you are required to sign a sworn affidavit to the truth and correctness of the amount still owing, you must keep accurate records.

WHEN PAYMENT OR JUDGMENT IS COMPLETE, EITHER IN FULL OR TO YOUR SATISFACTION, YOU MUST FILE A SATISFACTION OF JUDGMENT WITH THE COURT.