

Small Claims Handbook

A Citizen's Guide to Handling Small Claims Complaints in Kentucky



Provided by the Kentucky Administrative Office of the Courts
and the Kentucky Office of Attorney General

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Handbook provides guide to small claims procedures



Each year thousands of cases are decided in the Small Claims Division of District Court, which settles disputes involving money or personal property valued at \$2,500 or less.

The Small Claims Division allows individuals to save time and money by handling their small claims cases in an informal legal forum.

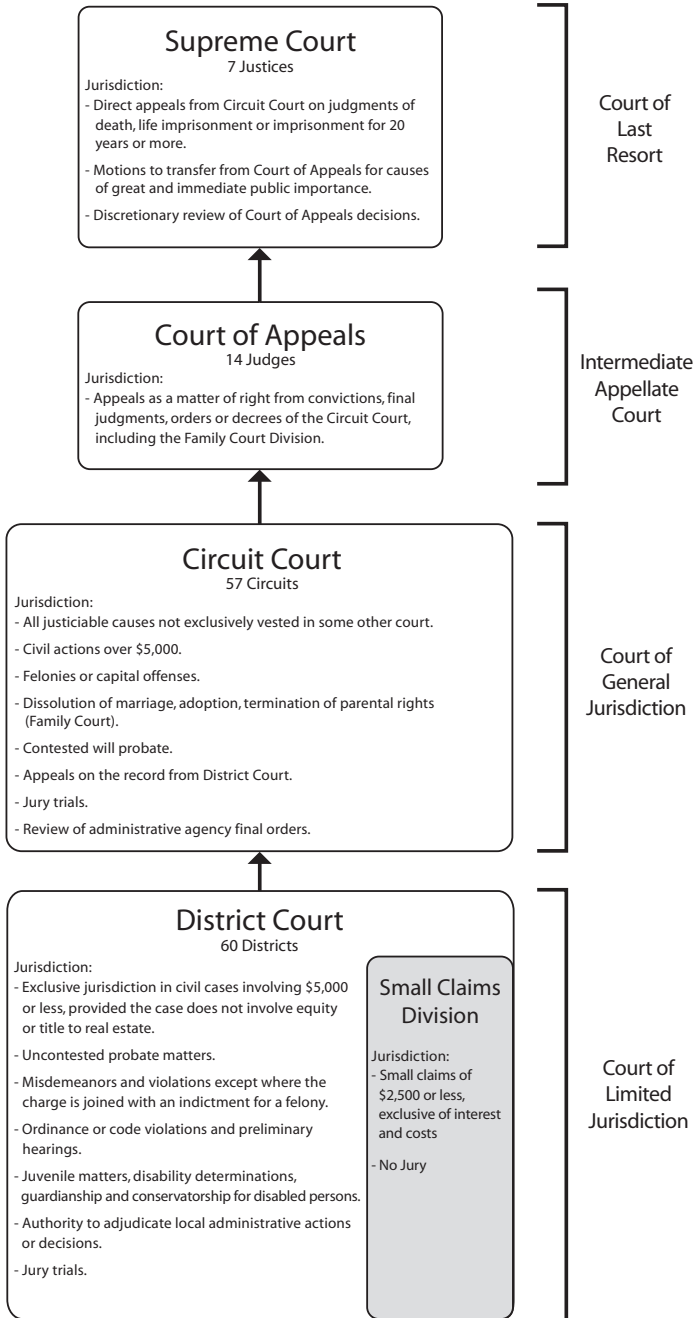
The Kentucky Administrative Office of the Courts is pleased to join the Kentucky Office of Attorney General to provide this handbook to those who would like guidance on how to follow procedures for small claims cases. I believe you will find this to be a valuable resource.

John D. Minton Jr.
Chief Justice of Kentucky

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Kentucky Court System



Introduction

The Kentucky Office of Attorney General is required to prepare an informational pamphlet on the Small Claims Division of District Court. KRS 24A.350(1). The Kentucky Administrative Office of the Courts is pleased to join the OAG in providing this handbook on the small claims process.

The Small Claims Handbook should:

- Help you understand the small claims process.
- Provide step-by-step guidance.

The Small Claims Handbook will not:

- Provide legal advice.
- Make you an authority in small claims or collection procedures.
- Take the place of an attorney. If you choose to represent yourself, you are expected to do the things an attorney is expected to do.

You should read this entire handbook for information concerning the rights and duties of all individuals involved in the small claims process.

How the Office of Circuit Court Clerk Can Help

The Office of Circuit Court Clerk in your county can provide the legal forms necessary to file a small claims case. However, the circuit court clerk cannot give you legal advice.

You can find contact information for all 120 Offices of Circuit Court Clerk at <http://courts.ky.gov/courts/clerks/Pages/default.aspx>.

Attorney Referral

If you need an attorney, the following bar associations can refer you to an attorney in your area.

Kentucky Bar Association
Lawyer Referral Service
502-564-3795 | www.kybar.org

Fayette County Bar Association
Central Kentucky Lawyer Referral Service
859-225-8644 | www.fcba.com

Louisville Bar Association
Kentucky Lawyer Referral Service
502-583-1801 | www.loubar.org

Northern Kentucky Bar Association
Northern Kentucky Lawyer Referral Service
859-781-1300 | www.nkybar.com

Notes:

Small Claims Division

The Small Claims Division of District Court in each Kentucky county settles disputes involving money or personal property valued at \$2,500 or less. The \$2,500 limit does not include interest and court costs. The jurisdiction for the Small Claims Division is found in KRS 24A.230.

The procedures are informal. You may file a claim or defend yourself without an attorney or you may employ an attorney to handle your case if you wish.

In the Small Claims Division, the parties involved in the dispute go to court and tell their sides of the story to the judge. The judge makes a decision based upon the law governing the facts presented. There is no jury in the Small Claims Division.

When to Use the Small Claims Division

Before filing a small claims suit, contact the other party and try to settle your dispute. A settlement out of court will save you both time and money. If a settlement is reached, put all of the terms of your agreement into writing. Sign the agreement and have the other party sign it as well.

If you and the other party cannot settle your differences on your own, consider other ways to resolve your dispute. If your dispute is with a Kentucky-owned and operated business or corporation, you may want to contact the Consumer Protection Division in the Kentucky Office of Attorney General before you pursue a small claims action. However, the Consumer Protection Division cannot seek damages and can mediate only between an individual consumer and a business. It does not mediate business-to-business disputes.

For information on how to file a consumer complaint with the Office of Attorney General, visit <http://ag.ky.gov/family/consumerprotection/complaints/Pages/default.aspx>.

The office has consumer complaint forms to ensure adequate information is contained in your complaint. It is not mandatory that you use these complaint forms, but all complaints must be in writing. To obtain a complaint form, you can:

- Use the online consumer complaint form at <https://secure.kentucky.gov/formservices/AttorneyGeneral/ConsumerComplaintForm>.
- Download a form online at <http://ag.ky.gov/family/consumerprotection/complaints/Pages/forms.aspx>.

- Call the Consumer Protection Division at 502-696-5389 or 888-432-9257 and select option #3. Leave your name and address and indicate whether your complaint is against a telemarketer, automobile dealer or other type of business.
- You can also write to the following address as long as adequate information is contained in the letter and supporting documents are attached.

Consumer Protection Division
1024 Capital Center Drive
Frankfort, KY 40601

Only after you are sure that no settlement can be reached should you file a small claims action.

Before filing suit, you should have some idea of whether the person you are suing has the ability to pay if you win your case. In some cases, a person may be “judgment proof” because of a lack of income or property. Therefore, even if you win you might not collect your judgment.

Statute of Limitations

It is important to file suit immediately after you realize no settlement can be reached. The law sets a period of time, called the statute of limitations, in which a person must file suit. After this period expires, a person cannot file suit. Statutes of limitations vary with the type of claim. Here are some examples:

Oral contracts | Claims involving oral contracts have a five-year statute of limitations.

Written contracts | Claims involving written contracts have a 15-year statute of limitations.

Personal injury claims | Some personal injury claims have a one-year statute of limitations.

If you are unsure about bringing your claim within the proper time frame, you may proceed with filing a suit. However, if too much time has passed the judge will dismiss the claim and you will lose your filing fee.

The Office of Circuit Court Clerk cannot advise you concerning the statute of limitations of your claim.

Who Can File a Small Claims Suit

Any person, business or corporation with a claim for money or personal property of \$2,500 or less, or who seeks to disaffirm, avoid or rescind a contract or agreement for the purchase of goods and services not in excess of \$2,500, may file suit in the Small Claims Division, except the following:

- A person or organization in the business of lending money with interest.
- A collection agency or a collection agent.
- A person or organization with an assigned claim (a legal claim or cause of action that has been transferred to a third party) or a class action.

In Kentucky, an individual may not file more than 25 claims in any one calendar year. A business is entitled to 25 claims for each established location in the district that has been engaged in trade or commerce for at least six months. Limitations on the number of claims filed and other requirements of this section do not apply to claims initiated by city, county or urban governments.

If a corporation or partnership is a party to a small claims action, the person who comes to the hearing must be an officer of the corporation, a person regularly employed in a managerial capacity by the corporation or partnership, or an attorney.

If you believe you have been wronged, if the claim involves \$2,500 or less, and if the exceptions below do not apply, you may sue for actual damages and court costs only. The exceptions are:

- Criminal actions
- Cases of libel, slander or alienation of affection
- Malicious prosecution
- Abuse of process

These types of actions must be filed in another court.

In addition, the Small Claims Division may not be the answer in these situations:

- In a complicated lawsuit, even if the loss is less than \$2,500.
- Situations where the other party cannot be located.
- When a person has been wronged by disreputable businesses, companies no longer in business, individuals who have filed bankruptcy or individuals with no money or property.

How to File a Small Claims Suit

Generally there are two parties to a lawsuit:

Plaintiff | The person or business filing the lawsuit.

Defendant | The person or business being sued.

When You Are the Plaintiff

A small claims lawsuit begins when the plaintiff files a Small Claims Complaint form (AOC-175) with the Office of Circuit Court Clerk. The complaint explains the disagreement.

Where to File a Complaint

Circuit court clerks have offices in all 120 Kentucky counties and are responsible for managing the records of Circuit and District courts. Decide in which county to file your complaint and go to the Small Claims Division of the Office of Circuit Court Clerk in the courthouse or judicial center in that county.

Consider the following when deciding where to file your complaint:

- Your small claims complaint should be filed in the county where the person you are suing lives or does business, or, in the case of corporations, in the county where its office or place of business is situated or in which its officer or agent resides. There are, however, exceptions to this general rule.
- For example, if you are suing a corporation about a breach of contract, then you may choose to sue in the county in which the contract was made or was to have been performed.
- If your complaint concerns a contract but the defendant is not a corporation, then different rules apply and it may be best to file the complaint where the defendant lives.

Amount for Which You Can Sue

The maximum amount of money for which you can sue is \$2,500. Even if your claim is for more, you can choose to sue in the Small Claims Division for only \$2,500 instead of filing suit in another division for a greater amount. The amount of your claim should include both the actual amount due and extra expenses resulting from the unpaid claim. You must be able to prove the amount of the claim for which you are suing.

Steps to File a Complaint

To file a small claims action, you will need to complete the Small Claims Complaint form (AOC-175). You can obtain this form from the Office of Circuit Court Clerk or you can fill out this form online and print a copy. The online form can be found at <http://courts.ky.gov/resources/legalforms/Pages/legalformlibrary.aspx>. The forms are listed in numerical order.

The Office of Circuit Court Clerk cannot fill out this form for you or provide you with legal advice.

You must include the correct address of the person you are suing on the Small Claims Complaint form. The Office of Circuit Court Clerk is not responsible for finding an address for you. If you do not have the address, consider looking in the phone book or consulting other resources.

You must also include an explanation of your claim against the defendant. Include this information on the complaint form itself and do not attach an explanation on a separate page.

If your suit is against a business, it is your responsibility to determine who should be served the summons on behalf of the business. You can call the Office of the Kentucky Secretary of State at 502-564-3490 or visit <https://app.sos.ky.gov/ftsearch/> to find out if the business is incorporated and obtain the name and address of the corporation's process agent. If there are several parties involved and you cannot determine who to sue, your claim may be too complex to be filed as a small claims action. In this case, you should consult a private attorney for assistance.

After completing the complaint form, take it to the Office of Circuit Court Clerk for filing. You will be charged a fee to file the complaint. The Office of Circuit Court Clerk will issue a summons to notify the defendant that a complaint has been filed. The defendant will be sent a copy of the complaint and this handbook along with the summons.

Tell the Office of Circuit Court Clerk how you want the summons to be served. You may choose either certified mail with a return receipt requested or have the summons personally served on the defendant by the Sheriff's Office. The Office of Circuit Court Clerk requires payment in advance for mailing the summons by certified mail. If you choose personal delivery, you will pay the service fee directly to the Sheriff's Office.

It is your responsibility to check with the Office of Circuit Court Clerk to be sure the defendant has been served the summons. It is not the responsibility of the Office of Circuit Court Clerk to notify you. Your case will not be heard by the judge until the defendant has been served the summons. The location, time and place of the hearing will be listed on the Small Claims Summons form (AOC-180).

When you present your side of the story to the judge, you may also call witnesses and present evidence to the judge. Each party has the right to examine any evidence presented and may question the other party and witnesses.

After hearing both sides of the suit, the judge will make a decision based upon the facts of the case and will enter a judgment that will say who won, how much is to be paid and how it is to be paid.

Failure to Appear at the Court Hearing

Even if the defendant does not appear at the hearing, you (the plaintiff) must still be prepared to show the judge proof of your claim.

If you (the plaintiff) do not appear for the hearing, the case may be dismissed. The judge may grant any counter-claim filed by the defendant if the defendant can prove his or her claim.

When You Are the Defendant

The person being sued is the defendant. The defendant will receive a Small Claims Summons with a copy of the Small Claims Complaint and this handbook from the Office of Circuit Court Clerk (if the summons is sent by mail) or the Sheriff's Office (if the summons is delivered in person).

The complaint will list the name and address of the person (the plaintiff) who is suing you, the claim of the plaintiff, and the amount of money or property claimed to be owed by you to the plaintiff. The summons will tell you the date, time and location of your court hearing.

When you receive a summons notifying you that you have been sued, you must appear in court on the date stated in the summons. If you do not appear at the time and place specified on the scheduled date, the judge may enter a default judgment against you for all of the money or property claimed by the plaintiff. The judge may further require you to pay all court costs. A judgment is an official court order that can be enforced by garnishing your wages and/or seizing and selling your property.

Consider the following ways to handle your case:

Settle Your Differences. After you have been sued, you and the plaintiff still have an opportunity to settle your differences out of court. Consider a compromise. Both time and money may be saved by all parties concerned if you can resolve your case prior to a court hearing. If you want to avoid the court hearing, notify the plaintiff of the settlement offer before the hearing.

If you and the plaintiff reach a settlement before the hearing, complete a Small Claims Settlement Agreement & Order form (AOC-199). You can obtain this form from the Office of Circuit Court Clerk.

Both you and the plaintiff must sign the form. Give the Small Claims Settlement Agreement & Order to the Office of Circuit Court Clerk for filing. Find out from the Office of Circuit Court Clerk whether you and the plaintiff are still required to appear in court. If the judge approves the settlement agreement, it becomes legally enforceable.

Defend Your Case in Court. The hearing is informal. The judge will ask you to respond to the plaintiff's complaint against you. Keep your statement as short as possible without neglecting important facts. Even though you are familiar with the case, the judge is not. Therefore, it is important to state everything as clearly as possible and support your statements with evidence. The judge is concerned only with the facts relevant to the case.

When you go to court, take originals (or copies if you do not have originals) of contracts, letters, receipts, canceled checks, leases, estimates, police reports, photographs, actual damaged goods or other evidence. The type of evidence you need depends upon your case. You must present evidence to prove every point in your defense.

File a Counter-Claim. If you believe the plaintiff owes you money or personal property related to the same dispute involved in the lawsuit filed against you, you may choose to file a counter-claim.

To file a counter-claim, you will need to complete a Small Claims Counter-Claim form (AOC-185). You can obtain this form from the Office of Circuit Court Clerk or you can fill out this form online and print a copy. The online form can be found at <http://courts.ky.gov/resources/legalforms/Pages/legalformlibrary.aspx>. The forms are listed in numerical order.

Return the completed form to the Office of Circuit Court Clerk for filing at least five days before the court date. It is your responsibility to deliver a copy of the counter-claim to the plaintiff.

There is no filing fee unless the amount of your counter-claim exceeds \$2,500. If the counter-claim exceeds \$2,500, the Office of Circuit Court Clerk will transfer the case from the Small Claims Division to the Civil Division of District Court. You will be charged an additional fee to transfer the case.

The procedures in the Civil Division of District Court are more formal than in the Small Claims Division. You may need to hire an attorney to handle your counter-claim for you.

Request a Jury Trial. You may request a jury trial if the amount in controversy exceeds \$250. At least seven days before your court date, notify the Office of Circuit Court Clerk that you want a jury trial. The Office of Circuit Court Clerk will transfer the case from the Small Claims Division to the Civil Division of District Court. You will be charged an additional fee to transfer the case. You may need to hire an attorney to handle the jury trial.

Appealing a Small Claims Case

If you disagree with the judge's decision, you may choose to appeal the case. A Notice of Appeal must be filed with the Office of Circuit Court Clerk to appeal the case to Circuit Court. A filing fee is required for the appeal.

New evidence will not be heard. The Circuit Court judge will only review the record developed in the Small Claims Division to determine if the law was applied correctly. You should not appeal just because you did not win the suit.

An appeal is complicated. You may need to seek the advice of an attorney to help you decide if you have grounds for an appeal. If you lose, you must still pay the original judgment plus any court costs the circuit judge may order. Further, if you hired an attorney to file the appeal for you, you will be responsible for attorney fees.

Filing the Appeal

If you decide to appeal the judge's ruling in your case, you must file a Notice of Appeal.

Deliver the Notice of Appeal to the Office of Circuit Court Clerk for filing in the Small Claims Division. This must be done within 10 days from the date the small claims judgment was stamped "Entered."

You must file a Statement of Appeal in the Circuit Court case within 30 days of filing your Notice of Appeal. It is your responsibility to deliver a copy of the signed Statement of Appeal to the opposing party. The Statement of Appeal must contain the following information:

- The style of the case and the District Court docket number.
- The name, mailing address and phone number of each attorney who made an appearance in the case, together with the name of the party he or she represented.
- The name of the district judge who presided over the small claims case.
- The date on which the notice of appeal and any cross-appeal was filed.
- A statement as to whether the matter has been before the Circuit Court on any previous occasion and whether reference to the record of the prior appeal is necessary.

- A request for an oral argument if you want the circuit judge to hear your appeal in person instead of you submitting a written argument for the judge to review. Unless you request an oral argument, the judge will decide the appeal on the basis of the pleadings alone and you will not appear before the judge. You will be notified of the time and place to appear if your request for an oral argument is granted.
- A short statement of the legal (not factual) issues for consideration by the judge, including an explanation as to why you believe the district judge made an error (or errors) in the small claims judgment. The small claims case will not be tried again. The judge will simply review the case file to determine if the law was applied correctly.
- A fair and accurate summary of the evidence heard by the judge in the small claims case or a statement that the appeal does not require consideration of the evidence. New evidence cannot be submitted in your appeal.
- A statement of the relief (compensation) to which you believe you are entitled.

You must follow the time limits for filing the Notice of Appeal and Statement of Appeal. The Notice of Appeal and Statement of Appeal must be filed with the Office of Circuit Court Clerk in the same county where the small claims action was filed and heard.

There are no forms for the Notice of Appeal or the Statement of Appeal. You must prepare these documents yourself or you may choose to hire an attorney to prepare them for you.

Post-Judgment Collections

Judgment in a Small Claims Case

A judgment in a small claims case is a court order that is legally enforceable. It entitles a winning party to receive money awarded by the court. The judge may order the losing party to pay the winning party a sum of money or to fix any damaged goods. The judge may give the losing party additional time to satisfy the judgment.

Judgment Not Paid by Due Date

If the losing party fails to pay the judgment ordered by the court within 10 days of the due date, additional action may be necessary. First, the winning party should contact the losing party and attempt to collect the judgment. This will save time and money, in addition to avoiding the complexity of post-judgment collection procedures. If the losing party refuses to pay the amount ordered by the court, you may wish to take further steps to collect the judgment. Although a judgment is legally enforceable, you are responsible for taking any additional action necessary to collect the money. The Office of Circuit Court Clerk is prohibited from giving you legal advice.

There are three post-judgment collection procedures you may use to collect your judgment:

- I. Garnishment of the losing party's wages or bank account(s)
- II. Execution (seizure) of property
- III. Judgment lien

Garnishments, executions and judgment liens can be difficult and hard to pursue. You may need to consult an attorney to assist you with these procedures.

Identifying the Losing Party's Assets

In order to legally enforce the judgment, you must know if the losing party owns any property, such as land or an automobile, which can be seized, or if they have a bank account or salary from an employer that can be garnished. If you do not know this information, you may serve the losing party with written questions (called interrogatories) to find out what you need to know.

Complete the Small Claims Post-Judgment Interrogatories form (AOC-197). You can obtain this form from the Office of Circuit Court Clerk or you can fill out this form online and print a copy. The online form can be found at <http://courts.ky.gov/resources/legalforms/Pages/legalformlibrary.aspx>. The forms are listed in numerical order.

This form contains basic questions to help you obtain information about the losing party's assets. You may add up to 15 additional questions. These questions are for your use and benefit and are not to be filed with the Office of Circuit Court Clerk. The Office of Circuit Court Clerk cannot assist you with writing any additional questions.

Send the Small Claims Post-Judgment Interrogatories and any additional questions to the losing party. Keep a copy for yourself. In order to ensure that the losing party receives the interrogatories, you may want to send them by certified mail. The losing party must answer the questions under oath and return a copy of the answers to you within 30 days after receiving the questions.

If the losing party fails to answer the questions within 30 days, you may file a written motion requesting the judge to issue an order requiring the losing party to answer your questions.

Complete the Small Claims Post-Judgment Motion/Order Requiring Losing Party to Answer Interrogatories form (AOC-198). You can obtain this form from the Office of Circuit Court Clerk or you can fill out this form online and print a copy. The online form can be found at <http://courts.ky.gov/resources/legalforms/Pages/legalformlibrary.aspx>. The forms are listed in numerical order. The Office of Circuit Court Clerk cannot assist you in preparing the motion.

I. Garnishment

The winning party may use garnishment to obtain money that belongs to the losing party but is in the hands of a third party. There are two types of garnishment:

Wage garnishment | This is money due the losing party as wages from employment, for example. For wage garnishment, the affidavit is the last page of Notice of Rights to Assert Exemption to Wage Garnishment form (AOC-150). You must then fill out the remainder of the form AOC-150 and select its method of service upon the garnishee.

Non-wage garnishment | This is money the losing party may have in a bank account, for example. For non-wage garnishment, the affidavit is the Affidavit for Writ of Non-Wage Garnishment form (AOC-145). You must then fill out an Order of Garnishment (Non-Wage) form (AOC-150.1) and choose the method of service upon the garnishee. The garnishee is any person, corporation or business holding the losing party's money. The garnishee may, for instance, be an employer or a bank.

In order to get a garnishment issued, follow the court's order specifying when a garnishment may be issued. If the court's order does not specify a date when the garnishment may be issued, you must wait 10 days from the "Entered" date stamped on the order. To have the garnishment issued, you must file an affidavit. Form AOC-145 may be obtained online, while forms AOC-150 and AOC-150.1 must be obtained from the Office of Circuit Court Clerk. You may have the garnishment issued from the Office of Circuit Court Clerk. There is a fee to have the garnishment issued.

You may have the order of garnishment served by the sheriff or sent by first class or certified mail. The garnishment fee and sheriff's fee or mailing costs may be recoverable as costs and should be added to the amount requested in the affidavit and order of garnishment.

The garnishee has 20 days after being served with the garnishment to file an answer to the garnishment. The garnishee may answer by paying the money owed or the losing party may file an Affidavit to Challenge Garnishment form (AOC-150.2) if he or she contests the garnishment.

If the garnishee does not answer the garnishment within 20 days, you may file a motion asking the judge to require the garnishee to appear in court. Check with the Office of Circuit Court Clerk for a date and time your motion can be heard. The date and time must be included in the motion and a copy must be sent to the garnishee. There is no form to use in filing this motion. You must prepare it yourself or hire an attorney to file it for you.

If the judge issues an order for the garnishee to appear in court, you can ask the garnishee why the garnishment was not answered and what assets of the losing party the garnishee holds. If the garnishee fails to appear after being ordered to do so by the judge, you may ask the judge to issue an order for the garnishee's arrest.

The garnishee is required to pay all of the money held for the losing party, up to the amount of your judgment, plus costs, except any money the garnishee proves is exempt from garnishment. An example of money exempted from garnishment may include money received for support of dependent children and benefits received by reason of age, illness, disability or length of service. The garnishee may not be holding enough of the losing party's money to pay your judgment and costs in full. Any money the garnishee is holding will be paid and applied toward your judgment, with the exception of those funds the garnishee proves are exempt.

The order of garnishment stays in effect until the judgment is paid in full. If you are not represented by an attorney, the garnishee will forward funds to the Office of Circuit Court Clerk. The Office of Circuit Court Clerk is required to hold the funds for 15 days from the issuance date of the garnishment check before paying the funds to you. If the debtor files an objection within that period, the Office of Circuit Court Clerk will continue to hold the funds until the court rules upon the objection.

When your judgment is almost paid in full, obtain the Affidavit and Supplemental Order of Wage Garnishment form (AOC-150.5) from the Office of Circuit Court Clerk. Complete the form and take it to the Office of Circuit Court Clerk for filing. You may have the Supplemental Order of Wage Garnishment served upon the garnishee by the sheriff or you may send it by first class or certified mail. This will let the garnishee know when to stop paying you the money held for the losing party.

If you think the garnishee is withholding money that is due you or if the garnishee fails to answer to your satisfaction, you may file a separate lawsuit that would not be filed in the small claims case. You may want to seek legal advice before pursuing this course of action.

Money of Losing Party Held in Another County

If you discover money owed to the losing party is being held in a county other than the one in which the judgment was entered, you may send the order of garnishment to the garnishee in the other county. You may have the sheriff of that county serve the garnishee or you may mail the order of garnishment to the garnishee by certified mail or first class mail. The garnishee will have 20 days to file an answer or to send the funds to the court where your judgment was entered.

How to Garnish Out-of-State Wages

If the losing party works for an employer located outside of Kentucky, you may garnish wages only if the employer is subject to process in Kentucky. You can call the Office of the Kentucky Secretary of State at 502-564-3490 or visit <https://app.sos.ky.gov/ftsearch/to> find out the name and address of the employer's process agent in Kentucky. Send the order of garnishment to the process agent.

No employer may discharge an employee because the employee's wages are garnished for any one indebtedness. KRS 427.140.

II. Execution

Execution is a procedure that commands the sheriff to seize property of the losing party. The property can be sold and the money from the sale applied to your judgment.

An execution may be issued 10 days after the date on the “Entered” stamp on the judgment unless the judge has ordered otherwise. Obtain the Execution form (AOC-135) from the Office of Circuit Court Clerk. Complete the form and file it with the Office of Circuit Court Clerk in the county where your judgment was obtained. A fee will be charged for issuing the execution.

Take the execution to the sheriff who will “execute” it by searching within the county for property of the losing party.

If you know there is no property in the county where the judgment was obtained, file an affidavit with the Office of Circuit Court Clerk stating there is insufficient property in that county and request that an execution be issued for the county where you think the debtor has property. Send the execution to the sheriff of the county where the property is located.

Kentucky law states that the defendant’s personal property is subject to execution first before any real estate may be seized. KRS 426.230. Personal property includes items such as household goods, tools, equipment and automobiles. List both personal property and real estate on the Execution form. In the event there is insufficient personal property to satisfy your judgment, the sheriff can execute on the real estate.

The sheriff may require you to post a bond to pay for any damages that might be incurred in the event the property is proved to have been improperly seized.

The sheriff must return the Execution to the court within 60 days of issuing the Execution. (The sheriff’s return is on the bottom of Page 2 of the form.) If non-exempt property belonging to the losing party is found by the sheriff, this information will be noted on the sheriff’s return. The losing party has 10 days from the date of service of the execution to challenge the execution by filing an Affidavit to Challenge Execution form (AOC-135.1, available online) with the Office of Circuit Court Clerk. Any payment made by the debtor to the sheriff will be applied toward payment of your judgment.

If the debt still remains, you may need to have the executed property sold in order to collect your debt. You may obtain an Order for Sale form (AOC-140) from the Office of Circuit Court Clerk 14 days after the execution is served.

Items Exempt From Execution

Some items are exempt from execution up to a certain value. Example:

- Household furnishings, jewelry, personal clothing and ornaments up to \$3,000 in value. KRS 427.010(1).

- Farm tools, equipment and livestock of a person engaged in farming up to \$3,000 in value. KRS 427.010(1).
- One automobile and its necessary accessories up to \$2,500 in value. KRS 427.010(1); KRS 427.030.
- Professionally prescribed health aids for debtor or dependent. KRS 427.010(1).
- Trade tools up to \$300 in value. KRS 427.030.
- Professional library, office equipment, instruments and furnishings necessary in the practice of ministers, attorneys, physicians, surgeons, chiropractors, veterinarians and dentists up to \$1,000. KRS 427.040.
- The debtor's interest, not to exceed \$5,000, in real or personal property used as a residence. KRS 427.060.
- Insurance benefits. KRS 427.110.
- Police and firefighters' pension fund established in first through fourth class cities. KRS 427.120 and 427.125.

III. Judgment Lien

The winning party (judgment creditor) may use a judgment lien to collect money awarded him or her in a judgment.

Notice of Judgment Lien

The winning party or his or her counsel files with the county clerk a notice of judgment lien containing the court of record entering the judgment, the civil action number of the suit and the amount of the judgment, including principal, interest rate, court costs and attorney fees. The notice shall also include the following language:

Notice to Judgment Debtor. You may be entitled to an exemption under KRS 427.060, reprinted below. If you believe you are entitled to assert an exemption, seek legal advice.

“In addition to any exemption of personal property, an individual debtor's aggregate interest, not to exceed \$5,000 in value, in real or personal property that such debtor or a dependent of such debtor uses as a permanent residence in this state, or in a burial plot for such debtor or a dependent of such debtor, is exempt from sale under execution, attachment, or judgment, except to foreclose

a mortgage given by the owner of a homestead or for purchase money due thereon. This exemption shall not apply if the debt or liability existed prior to the purchase of the property or the erection of the improvements thereon.” KRS 427.060.

The judgment creditor or his or her counsel must then send a copy of the notice of the judgment lien by first-class mail to the last known address of the judgment debtor or deliver it to the judgment debtor personally.

Action to Enforce Judgment Lien

You can then institute an action to enforce the judgment lien. In your petition you must list liens held on the property by others and make them defendants in the lawsuit. If you are successful, the court will order sale of the property.

Be aware that the property may be subject to federal exemptions as well.

Difficulty in Collecting Your Judgment

There are instances when a losing party has no job or other income and no assets that may be seized. This type of individual is considered “judgment-proof” and there is no way to immediately collect your judgment.

It may be difficult to collect money from disreputable businesses, companies located outside of Kentucky, companies no longer in business or individuals who have filed for bankruptcy.

If the losing party moves and leaves no forwarding address, you may not be able to collect your judgment because the defendant cannot be located.

Small claims judgments are enforceable for 15 years.

Satisfaction of Judgment

Upon the return of an execution (e.g., a document stating that a court officer seized and sold a judgment debtor’s property to satisfy a money judgment), the circuit court clerk notes on the judgment that it has been satisfied. If there has been no execution but the judgment has been satisfied (e.g., paid), the party or his or her attorney receiving satisfaction should enter “Satisfaction in full” (and sign and date it) upon the margin of the judgment or execute and file a document styled “Satisfaction of Judgment.”

When parties receiving satisfaction refuse to comply with this rule, the party satisfying the judgment may file a Motion for Satisfaction of Judgment (Small Claims form (AOC-191) with the Office of Circuit Court Clerk.

Appendix of Legal Forms

Forms Available Online

These small claims forms can be downloaded from the Legal Forms section of the Kentucky Court of Justice website under the Small Claims category. The address is <http://courts.ky.gov/resources/legalforms/Pages/legalformlibrary.aspx>.

Forms

Affidavit to Challenge Execution, form AOC-135.1
Affidavit for Writ of Non-Wage Garnishment, form AOC-145
Affidavit to Challenge Garnishment, form AOC-150.2
Small Claims Complaint, form AOC-175
Small Claims Summons, form AOC-180
Small Claims Counter-Claim, form AOC-185
Motion for Satisfaction of Judgment (Small Claims), form AOC-191
Small Claims Post-Judgment Interrogatories, form AOC-197
Small Claims Post-Judgment Motion/Order Requiring Losing Party to Answer Interrogatories, form AOC-198

Forms Available From the Office of Circuit Court Clerk

These small claims forms are available from the Office of Circuit Court Clerk. There is an Office of Circuit Court Clerk in all 120 Kentucky counties. Address information can be found on the Kentucky Court of Justice website at <http://courts.ky.gov/courts/clerks/Pages/default.aspx>.

Forms

Execution, form AOC-135
Order for Sale (Venditioni Exponas), form AOC-140
Notice of Rights to Assert Exemption to Wage Garnishment, form AOC-150
Order of Garnishment (Non-Wage), form AOC-150.1
Affidavit and Supplemental Order of Wage Garnishment, form AOC-150.5
Small Claims Settlement Agreement & Order, form AOC-199



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