

SMALL CLAIMS SUMMONS AND COMPLAINT INSTRUCTIONS FOR PLAINTIFF

In most cases in Small Claims Court you are acting as your own attorney and therefore you are responsible for all aspects regarding your case.

**DO NOT REQUEST LEGAL ADVICE FROM THE CLERKS AT THE COURT
THESE INSTRUCTIONS ARE THE ONLY ASSISTANCE THE COURT CAN GIVE YOU**

This information has been prepared to help you complete the Small Claims Complaint form, pursue your claim in the Court, and collect any monies awarded to you. The Court furnishes the forms and information packet and the Clerks can instruct you in the procedures for filing your claim. The same procedures apply whether the Complaint is filed in person at the Court or on-line at the Court's website.

YOU MAY *NOT* FILE IN SMALL CLAIMS IF THE MATTER INVOLVES:

1. A claim of defamation by libel or slander.
2. Forcible entry, forcible detainer or unlawful detainer.
3. Actions for specific performance.
4. Action brought or defended on behalf of a class.
5. Requesting or involving prejudgment remedies.
6. Involves injunctive relief.
7. Traffic violations or other criminal matters.
8. The State, its political subdivision, or an officer or employee of the State or its political subdivisions in their official capacity
9. Divorce decree enforcement

PRE-FILING INFORMATION:

1. If you sue someone, you are the **PLAINTIFF**; the person or business being sued is the **DEFENDANT**.
2. You may file for any amount **not to exceed \$3,500**. You may reduce a larger claim to \$3,500 and waive the remaining amount. You may not, however, split a claim and file two separate actions. You may file for "court costs" in addition to the \$3,500 maximum. Court costs may include, but are not limited to, filing and service fees. Interest, as provided by law, is allowed.
3. Before you file the Complaint, you must research any appropriate information necessary to proceed on the case inclusive of the **EXACT LEGAL NAME and address** of the person or business you are suing. Many valuable public information resources are available to you such as Consumer Affairs, City or County Business License Offices, State of Arizona Corporation Commission, telephone books, City Directories, Information and Referral Services, County Recorders, and County Assessors.
4. After the case is filed, you must inform the Court in writing of any address, telephone, and mailing changes.
5. If you are awarded a judgment as the result of an automobile accident you may, after the judgment remains unpaid for 60 days, file paperwork to notify the Motor Vehicle Division. This will result in the Defendant's Drivers License being suspended until the judgment is paid in full. **See:** Collecting the Judgment, item #3 of this pamphlet for more information.

RULES OF SMALL CLAIMS PROCEDURES:

1. At the discretion of the Court, the Justice of the Peace will hear your case.
2. A Small Claims case cannot be heard before a jury.
3. The decision from a Small Claims case cannot be appealed.
4. You must be the original owner of the claim. You may not sue on an assigned claim.
5. Lawyers cannot represent either party in a Small Claims Division unless:
 - a. S/he is an officer or authorized employee of a corporation;
 - b. S/he is representing him/herself; or
 - c. If both parties agree to the use of attorneys and file a "Stipulation to Use of Attorneys", The case will remain in the Justice Court. A Hearing Officer will hear it as a Small Claims case;
 - d. Either party has the right to choose to be represented by counsel, however, if an attorney files for or represents either party, **and there is no "Stipulation to Use of Attorneys" filed**, the case will automatically be transferred to Civil Court in the Justice Court and appropriate fees assessed to the party represented by counsel.
6. A Small Claims case may be transferred to the Justice Court's Civil Court by either party up to **ten days** prior to Trial. The party requesting the transfer will be assessed a transfer fee. If a Small Claims Trial date has been set before the transfer, the Trial will be held on the scheduled date but will be heard before a Judge instead of a Hearing Officer and all the provisions relating to civil actions in Justice Court shall apply.
7. When a Small Claims case already scheduled for trial has been transferred to Civil Court and a continuance is wanted, **a written or oral request for the continuance must be presented to the Judge on the trial date.**

SOME TIPS FOR NAMING PARTIES:

1. *IF YOU SUE A MARRIED PERSON:* You should name and serve both spouses. If you only know the name of one spouse the other may be referred to as "John Doe" Smith or "Jane Doe" Smith, h/w. See sample on the instructions entitled "How to Designate Defendant".
2. *IF YOU SUE A CORPORATION:* The corporation must be listed as the Defendant on the Summons and Complaint.
3. *IF YOU SUE A BUSINESS WHICH IS NOT A CORPORATION:* Other types of businesses are sole proprietorships and partnerships. The City and County Business License Divisions can help you with the named owners. These types of businesses are shown differently on the Complaint. See samples on the instructions entitled "How to Designate Defendant".
4. *IF YOU SUE YOUR LANDLORD:* You must sue the **owners** of the property if known, and **not** the manager or the apartment complex.
5. *IF YOU SUE AN INSURANCE COMPANY:* When suing an insurance company, the filing procedures are somewhat different. The State of Arizona Department of Insurance requires you to complete two sets of Summons and Complaint forms, each exactly the same. **VERY IMPORTANT:** Before you file your case, you must know specific information about the insurance company you will be suing and what the specific fees the Department of Insurance may require. The Department of Insurance requires that you contact them at either of the following addresses and phone numbers and they will give you the required information:

STATE OF ARIZONA DEPARTMENT OF INSURANCE:

PHOENIX OFFICE
2910 N. 44th Street, Phoenix, AZ 85018
Phone: (602) 912-8400

TUCSON OFFICE
400 W. Congress, #152, Tucson, AZ 85701
Phone: (520) 628-6370

HOW TO FILE:

1. After completing the Small Claims Complaint form included in this packet, you may file the forms at the Court's public service counter, 2160 N. Congress, Ste. 2100, Nogales, AZ. 85621, or by mailing to the Justice Court at P.O. Box 1150, Nogales, AZ. 85628. The filing fee must be paid at the time of filing. A Filing Fee Chart is available either in the packet or on-line at the Court's website. The computer will assign a case number and the Clerk will issue the Summons. The Clerk keeps the original Summons/Complaint for the Court's file and gives you the remaining copies for service. If you file your Complaint by mail, the Clerk will retrieve your Complaint and issue the Summons and return all your copies to you to have the complaint served on the Defendant.
2. If you think you may qualify for a Waiver or Deferral of the filing and/or service fees, you must inform the Clerk prior to filing your Complaint. The Clerk will ask you to complete the proper forms and then arrange for you to speak with a Judge.
3. After your Summons is issued, you must have the Defendant served with a copy of the "Complaint/Summons". You may do so by using any of these methods:
 - a. *SERVICE BY CERTIFIED MAIL FOR A CASE FILED IN PERSON AT THE COURT OR BY MAIL:* You must go to the Post Office and send the complaint to the defendant via certified mail (restricted delivery) a **green card** (certificate of service) must be signed by the defendant only, before an application for default is filed or a judgment can be entered.
 - b. *SERVICE BY CONSTABLE OR PRIVATE PROCESS SERVER:* You must arrange to have the Defendant served. Service fees will be required.

AFTER SERVICE:

1. The Defendant has twenty (20) days (after the date of service) to file an ANSWER.
2. You may check on your case several ways:
 - a. Call the Court's Customer Service Representatives;
 - b. Come to the Court and request the information at the counter. If you do not understand what your next step is, the Clerk may be able help you. Although the clerks cannot give you advice, they can tell you what your options are;
 - c. Access your case on the Court's website.
3. If the Defendant fails to file and pay the Answer fees within the specified time period, you may file papers requesting a Default Judgment be entered for the amount of your Complaint, your costs, and applicable interest.
4. The Defendant may file a Counterclaim against you. If this happens, you have twenty days from the day you were served to file an answer to the Counterclaim with the Court and send a copy to the Defendant. If you do not file an answer to the Counterclaim, the Defendant may ask for a Default Judgment against you on the Counterclaim.

GOING TO TRIAL:

1. Your case will be set for Trial within sixty days after the Defendant files an Answer. On or about a month before the Trial date, you will receive a Notice to Appear for Trial in the mail.
2. If your case is not settled before the Trial date, you must appear on the date and time set. If you do not appear, the Trial may go on without you. Appear for your Trial on time. The Court's docket moves rapidly. The cases are set every thirty minutes and you are advised to bring all witnesses and evidence (three sets) necessary to establish and prove your claim. You will not be able provide additional information to the Court after the Trial.
3. A copy of the written decision ("the Judgment") will be mailed to each party within ten working days of the close of the Trial. This Judgment **cannot** be appealed to a higher court.
4. If the matter is settled **prior to** your scheduled trial date, you must file a Dismissal form with the court. If the defendant has filed an Answer, **both you and the defendant must sign** the Stipulated Dismissal form.

COLLECTING THE JUDGMENT:

1. Ask the defendant to pay the amount of the judgment.
2. Debtor's Exam. At the time of the judgment the Judge may order the debtor within 10 days to disclose the debtor's income, bank account, assets, and provide supporting documentation.
3. If you are granted a Judgment on a case resulting from a motor vehicle accident, you have the option of notifying the Motor Vehicle Division of the Judgment. If you choose this option, you must provide the Court with **a police report, a certified copy of the judgment, and a Notice of Non Satisfaction of Judgment**. The Court will then notify MVD. *Note:* The Judgment must remain unpaid for 60 days before you may pursue this option.
4. A JUDGMENT COLLECTION handout is available at the Court's Information Center or on-line at the Court's website. This handout gives you different options to collect your Judgment. If the Judgment Debtor does not pay, you may file any of the following actions at this Court:
 - a. **Writs of Garnishment:** If you file in person, the Clerk will give you the forms packet to complete.
 - b. **A Writ of Execution:** Pamphlets on Writs of Execution are available at the Information Center or on-line. If you file in person, the Clerk will give you the forms packet to complete.
 - c. **A Transcript of the Judgment:** (Certified Copy of the Judgment) after this is filed with Superior Court and then Recorded at the Recorder's Office, the Judgment becomes a lien on any real property the Judgment Debtor has in the County where the Judgment Transcript is recorded.

AFTER YOU COLLECT THE JUDGMENT:

After you are successful in collecting the judgment through the options mentioned above, you **must** sign and file a **Satisfaction of Judgment** with the Justice Court. This form is available from the Information Counter. If you filed a certified transcript of the judgment at Superior Court, the Satisfaction of Judgment **must** be filed in the office of the Clerk of Superior Court. If you have recorded your judgment in the Recorder's Office, you must also file a copy of the Satisfaction of Judgment in their office as well.

HOW TO DESIGNATE THE PARTIES ON YOUR COURT PAPERS

When representing yourself in Court, you are acting as your own attorney and responsible for completing your own forms. This handout shows examples of commonly used party designations used in civil litigation and how to display these parties on your papers. Please choose and adopt the sample that best applies to your situation when naming the parties on your papers.

INDIVIDUAL:

JOHN SMITH
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

PARENTS OF A MINOR:

JOHN AND MARY SMITH, h/w,
parents of JOSEPH SMITH, a minor
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

HUSBAND AND WIFE:

JOHN AND MARY SMITH, h/w
111 S.W. "Z" Street
Nogales, AZ 85621
Phone: 555-1111

JOHN AND MARY SMITH, h/w
111 S.W. "Z" Street
Nogales, AZ 85621
Phone: 555-1111

TWO OR MORE DEFENDANTS:

JOHN SMITH
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

MARY JONES
123 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1234

CORPORATION:

ABC CANDY STORE, INC.
c/o John Smith, Statutory Agent
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

SOLE OWNERSHIP:

JOHN SMITH, dba SMITH'S CANDY SHOP
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

PARTNERSHIP:

JOHN SMITH and JOE JONES, Partners
dba XYZ CANDY SHOP
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

JOHN SMITH and JOE JONES, Partners
dba XYZ CANDY SHOP
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

PARTNERSHIP AND SERVICE ON PARTNERS AS INDIVIDUALS:

JOHN SMITH and JOE JONES, Partners
dba XYZ CANDY SHOP
111 S.W. "Z" Street
Nogales, AZ. 85621
Phone: 555-1111

**NOTICE TO PERSONS REPRESENTING THEMSELVES
IN LAWSUITS WITHOUT AN ATTORNEY**

A person acting on his or her own behalf is, under the law, held to the same standards and duties as an attorney admitted to the practice of law in the State of Arizona. You are expected to know what the law requires and how to accomplish your purposes in accordance with applicable statutes and court rules.

No Court employee is obligated to tell you what you have to do, how you are to do it or what you should or should not do under the circumstances. The law prohibits Judges, Commissioners, Clerks, and all Court personnel from giving legal advice.

If you need legal advice, seek assistance from an attorney. If you do not have a lawyer and don't know a specific lawyer to contact, you can be referred to counsel through:

**Pima County Bar Association Lawyer Referral Service
177 N. Church Ave., Suite 101 · Tucson, Arizona 85701
Telephone: (520) 623-4625
<http://www.pimacountybar.org/>
Monday through Friday, 9:00 AM to 3:00 PM**

You will be referred to a lawyer who will consult with you for one-half hour for a small fee. If you have no further legal problem, the lawyer will tell you so. If further legal services are necessary, you may arrange for them directly with the lawyer on a fee basis to be arranged between you and the lawyer.

If you do not have the funds necessary to hire counsel, you may seek assistance from the following:

**Southern Arizona Legal Aid, Inc.
2343 East Broadway Blvd., Suite 200
Tucson, Arizona 85701
(520) 623-9465 / (800) 234-7252**

COLLECTION OF A MONEY JUDGMENT

If you receive a money judgment, it is your responsibility to legally collect from the debtor. The Justice Court can provide you with many of the forms and instructions needed to start your collection proceedings.

<p style="text-align: center;">A JUDGMENT IS NOT SELF-COLLECTING GARNISHMENTS, EXECUTIONS, AND LIENS ARE AVAILABLE OPTIONS WHEN PURSUING COLLECTION ON YOUR JUDGMENT</p>

GARNISHMENT

A garnishment is a process that may enable you to gain access to monies owed to the judgment debtor by others, such as wages the person is earning at a job, or through a bank account. To do this, you must know where the judgment debtor works, banks, or who may owe the judgment debtor money. After completing the forms and paying the filing fee, a Writ of Garnishment will be issued by the Court Clerk. You may then take the papers to either a Constable or a private process server to have them served upon the party or business holding the money. After the business, employer, or party holding the money files an answer to the garnishment, you may file a Motion and Order requesting the Court to release the money to you.

EXECUTION

A Writ of Execution is used when you want to have the Constable go to the judgment debtor and attempt collection of the judgment for you. The Writ of Execution form is available at the Information Counter. After the filing fee is paid, the form is completed and Writ issued, it will be forwarded along with a check or money order for service fees to the Constables' Office. The Constable will go to the defendant's home or business and try to collect the judgment. The Execution may be returned unsatisfied, partially satisfied, or satisfied. A more detailed pamphlet is available at the Information Counter, but be sure to contact the Constable's Office (740-5442) for proper information on service charges and answers to any questions you may have regarding the specifics of this Execution.

JUDGMENT LIENS ON REAL PROPERTY

A judgment entered in a Justice Court can be transcribed to Superior Court and recorded as a lien in the county where the judgment is docketed. It affects the judgment debtor's real property currently owned or acquired later (except certain real property exempt from execution) including the interest in the homestead. The judgment lien is active for five years from the date of the judgment. If you choose this procedure, a request to issue a Transcript of the judgment must be filed and a fee paid in the Justice Court. When the Transcript is ready, you may take it to the office of the Clerk of the Superior Court for filing. When the filing fee is paid a case number will be assigned. You may then take the Superior Court Transcript of the judgment to any County Recorder's Office in a county where you think the debtor owns real property. A recording fee will be required to record the judgment. When the recording is completed, the Judgment Lien is then effective.

JUDGMENT LIENS ON DRIVER'S LICENSES

A lien can be put against a judgment debtor's driver's license 60 days after a judgment is entered in civil cases involving motor vehicle accidents (ARS §28-4071). Before the Motor Vehicle Department will allow a lien on someone's license, you will have to complete a document at the Justice Court certifying that the judgment is not satisfied and pay a fee for a certified copy of the judgment. When the certification is ready, you may deliver it to the Motor Vehicle Department and file it with that office.

SATISFACTION OF JUDGMENT

After you are successful in collecting the judgment through the options mentioned above, you **must** sign and file a Satisfaction of Judgment with the Justice Court. This form is available from the Information Counter. If your case has been Transcribed to Superior Court, the Satisfaction of Judgment **must** be filed in the office of the Clerk of Superior Court. If you have recorded your judgment in the Recorder's Office, you must also file a copy of the Satisfaction of Judgment in their office as well.

**Justice of the Peace, Precinct No. 1, County of Santa Cruz
2160 N. Congress, Ste. 2100, Nogales, AZ. 85621 (520)375-7762**

<i>PLAINTIFF-Name-Address-Phone</i>	<i>CASE NO.</i>	<i>DEFENDANT Name-Address-Phone</i>
SUMMONS/COMPLAINT/ANSWER SMALL CLAIMS DIVISION		

NOTICE AND SUMMONS

TO DEFENDANT:

You are directed to answer the claim of the plaintiff within twenty (20) days at the Customer Service (SEAL) Department at Justice Court, Civil Division, If you do not appear and defend yourself, a judgment may be entered against you.

*If you wish to defend against the Plaintiff's claim, you **must** file an Answer and pay a **\$15.00 Answer Fee**.*

Requests for reasonable accommodation for persons with disabilities must be made to the court parties at least three (3) working days in advance of a scheduled court proceeding.

Date: _____

Clerk

PLAINTIFF'S CLAIM

The defendant owes me \$ _____ for the following reasons: _____

Date: _____

Plaintiff's Signature

CERTIFICATE OF SERVICE OF MAILING BY PLAINTIFF

I, _____, Plaintiff in this action, certify that a copy of this form was sent by Registered/Certified Mail, Return Receipt requested, to the Defendant named at the above-listed address on _____, 20____.

Plaintiff's Signature

Date

DEFENDANT'S ANSWER

*TO DEFENDANT: If you dispute this claim, you must write your Answer below. File this form and pay a **\$15.00 Answer fee** at the Civil Division of this Court **within twenty (20) days** of the date of service of the Claim or **you may lose by default**.*

I do not owe the Plaintiff because: _____

Date: _____

Defendant's Signature

CERTIFICATE OF SERVICE OF MAILING BY DEFENDANT

I, _____, Defendant in this action, certify that I have mailed or delivered a copy of this form to the Plaintiff at the above-listed address on _____, 20____.

Defendant's Signature

Date

WARNING: - YOU DO NOT HAVE THE RIGHT TO APPEAL THE DECISION OF THE HEARING OFFICER OR THE JUSTICE OF THE PEACE IN A SMALL CLAIMS COURT. IF YOU WISH TO PRESERVE YOUR RIGHT TO APPEAL, YOU MAY HAVE YOUR CASE TRANSFERRED TO THE JUSTICE COURT PURSUANT TO 22-504, SUBSECTION A, ARIZONA REVISED STATUES, IF YOU REQUEST SUCH TRANSFER AT LEAST TEN DAYS PRIOR TO THE DAY OF THE SCHEDULED HEARING.

**INSTRUCTIONS FOR SERVICE BY MAILING
SMALL CLAIMS SUMMONS/COMPLAINT**

1. As you have chosen to serve your Small Claims Summons/Complaint by Registered Mail (restricted delivery) you are responsible for properly mailing the Summons/Complaint to the Defendant(s).
2. If you are suing more than one person at the same address, you must serve each Defendant individually. Therefore, you must send a copy of the Summons/Complaint by **Registered Mail** under **Restricted Delivery** with **Return Receipt Requested**, to each defendant named.
3. You will know if you are successful in serving your Summons/Complaint by this mailing method when the Defendant(s) signs the *green card* and the Post Office returns it to you. You must then file the signed green card with the Court as proof of service. Only then, will the Court recognize that proper service was completed.

When you use service by Registered mail, the green card (certificate of service) must be filed with the Court. Service is deemed complete on the date of delivery and all statutory time lines begin running from that date.

4. If for any reason the Post Office returns the envelope to you undelivered, bring the entire envelope and its contents to the Court. This envelope will be filed in the Court's file.
5. You must then take a copy of the Summons and Complaint" to have it served by a Constable or Private Process Server. A listing of current Private Process Servers can be found in the court or at the courts' website.
6. After this part of the process is completed, please refer to the INSTRUCTIONS TO PLAINTIFF document contained in the Small Claims packet you received upon filing your case with the Court.