



SMALL CLAIMS NEWSLETTER

Volume 1 Issue 3

This is the third in a series of newsletters to inform our clients of how to get the most out of using small claims court.

In this issue we will talk about what to do after you get your judgment.

Right to Have the Judgment Reviewed

When a judgment is entered against a non-appearing party, the defaulting party can ask the court to set aside or *vacate* the judgment in certain circumstances.



If the Defendant was properly served, he or she must file a ***Notice of Motion to Vacate Judgment and Declaration*** with the small claims court within 30 days after the date of mailing the ***Notice of Entry of Judgment***. If the defendant wasn't properly

served, the defendant has 180 days after he or she learns that the judgment was entered to file the ***Notice of Motion to Vacate Judgment and Declaration***.

If the defendant's motion to vacate the judgment is granted, the case will be reheard by the small claims court. If the motion is denied, the defendant has 10 days from the date of denial to request a review of the denial by the superior court. This request is accomplished by filing a ***Notice of Appeal*** of the denial with the small claims court.

Generally, only the defendant may *appeal* the judgment. The party who files a claim in small claims court cannot appeal the judge's decision on that claim. For that party, the court's judgment is

final. Thus the plaintiff cannot appeal the judge's decision on his or her claim.

When a party exercises a right to appeal, the superior court in the same county or court district will hold a new hearing on *all* the claims of *all* the parties--both plaintiffs and defendants--that were decided by the small claims court.

A defendant who appeared at the small claims hearing may file the ***Notice of Appeal*** with the small claims court up to 30 days after the date of mailing or delivery of the ***Notice of Entry of Judgment***. A filing fee is required in order to file an appeal. During the time for appeal, and until another judgment is rendered if there is an appeal, the small claims court judgment cannot be enforced, and the defendant doesn't have to make any payments.



At the appeal hearing, the superior court will rehear all of the claims in the case. The jurisdictional limit of the small claims court and the same informal hearing procedures generally apply. Even though attorneys may represent parties, the Small Claims Act states that the appeal process be no more formal than the original hearing. The law states that the same rules that govern the hearing in the small claims court also govern the hearing on appeal. If only one party has an attorney, the superior court judge will make sure that the unrepresented party is treated fairly. Both parties should be fully prepared to present their sides of the case and should bring any supporting witnesses and documents.

After Judgment...Collecting the Debt

If a timely appeal is not filed, the judgment becomes final and enforceable. Action to enforce the judgment cannot be taken for 30 days, after the expiration of time for an appeal or a motion to vacate.

The **Notice of Entry of Judgment** states exactly who is obligated to pay money or take other action and how much must be paid, and it also includes any order authorizing *payment by installments*.

The party who must be paid is called the *judgment creditor*, and the party who is obligated to pay is called the *judgment debtor*. The judgment is good for up to 10 years and can be renewed if enforcement isn't successful within 10 years.

Options for Judgment Creditors

Should the judgment debtor not pay the judgment voluntarily, the court will help enforce the judgment by issuing orders and other documents. The judgment creditor can also hire an attorney to collect the judgment, or turn it over to a collection agency. Except when the judgment debtor chooses to pay the judgment directly to the court, however, the court does not receive or collect the judgment.



A number of enforcement procedures are available to help the judgment creditor enforce and collect the judgment. These include:

* *Court orders that require the judgment debtor to appear in court to answer detailed questions about his or her income, bank accounts, and property (Orders to Appear for Examination);*

* *Court orders requiring the judgment debtor to provide specific documents such as bank account records or other financial statements (Subpoenas Duces Tecum);*

* *Court orders requiring the judgment debtor to surrender cash to the judgment creditor or valuables and other personal property in his or her possession to a levying officer (turnover orders); and*

* *Court orders (Writs of Execution) authorizing a sheriff or marshal to obtain money directly from a judgment debtor's bank or other financial account (bank levies) from regular salary or wages (wage garnishments), or from a business's cash register or safe (keeper levies). If the judgment debtor has real property (for example, a house, a lot, or a condo), the judgment creditor can tie up the property or sometimes force the sale of the property (Abstract of Judgment).*

Once the Judgment is Paid...

After the judgment debtor pays the judgment (fully or for a lesser amount, if the parties agree), the judgment creditor is required to immediately sign the short **Acknowledgment of Satisfaction of Judgment** portion of the **Notice of Entry of Judgment** form and file it with the small claims court.



If the judgment creditor has filed an **Abstract of Judgment** in any county where the judgment creditor owns real property, a different acknowledgment form must be used. Also, the judgment creditor must sign the form in front of a *notary public* and record it with the county recorder in any county where he or she has filed an **Abstract of Judgment**.

Message From The Editor

When trying to collect on a judgment, it is important to take into account the psychological impact of the levies available. Often time's actions such as a bank levy will bring the debtor to the bargaining table, even though the levy was able to obtain very little money. Placing a marshal's keeper in a business, even if no cash business is being conducted often results in a frantic call from the judgment debtor offering a payment plan. Part of your plan should be to make the psycho-logical cost to the debtor of not of not paying the debt higher than paying it .

In these series of *NewsLetters*, we have given a broad overview of small claims court. In our next issue we will address other areas as they impact the collection of you're A/R.