

# PROSECUTING AND DEFENDING A SMALL CLAIMS CASE

Effective June 7, 2005

## SMALL CLAIMS INFORMATION AND INSTRUCTIONS

Please read carefully. Definitions follow the instructions.

(1) **ATTORNEYS.** You may hire an attorney to represent you, but small claims procedures are simplified to help you proceed without an attorney. You may also be represented by an employee, or, with the express approval of the court, by any other person who is not compensated for the representation. This manual will assist you in prosecuting or defending a small claims case. The court clerks can help with procedural questions, but they cannot give legal advice. If you have an unanswered question, you may need to consult an attorney. The court clerks cannot refer you to an attorney.

(2) **STATUTES, RULES AND FORMS.** Utah Code Annotated Title 78, Chapter 6 and the Rules of Small Claims Procedures, both of which govern small claims procedures, this manual and sample forms are available for free through the Internet at [www.utcourts.gov](http://www.utcourts.gov). If there is a difference between this manual and the statutes and rules, the statutes and rules govern. Some courts permit the web forms to be filed. Others require forms that are specially formatted and are available from the court clerk for a fee. Check with the clerk of court at the courthouse in which you plan to file.

(3) **PARTIES.** The party filing the case is the plaintiff. The party responding to the case is the defendant. A party may be self-represented, represented by an attorney or represented by an employee.

(4) **LIMITS ON SMALL CLAIMS.** Small claims cases are to recover money only, and claims cannot exceed \$7,500. If the claim exceeds \$7,500, the plaintiff must file a civil complaint in the district court under the Utah Rules of Civil Procedure. The defendant must owe the debt to the plaintiff or, on a counter affidavit, vice-versa. Small claims cases cannot be used to sue a governmental entity, to sue for possession of property, to evict a tenant or to recover claims assigned to you by another.

(5) **FEES.** Fees must be paid at the time a document is filed or a service is provided. If you cannot afford the fee, you can file an affidavit of impecuniosity. The court clerk will accept the filing or provide the service without charging the fee, but you will be required to provide financial information from which the court will later decide whether to waive all or part of the fee. Entities other than the court also charge fees, which are not waived by the affidavit of impecuniosity. For example, the county sheriff, constable or private process server will charge a fee to serve papers. The county recorder will charge a fee to record a judgment. There may be others, but the most common small claims fees are as follows.

| Document or Service  | Fee   |
|--|---|
| Printed Small Claims Information and Instruction Manual<br>(Available for free from the court website) | \$5   |
| Small claims NCR (no carbon required) forms  | \$.50/form                                      |
| Affidavit or interpleader affidavit – Claim of \$2,000 or less   | \$45  |
| Affidavit or interpleader affidavit – Claim of more than \$2,000                                       | \$70  |
| Counter affidavit – Claim of \$2000 or less  | \$35  |
| Counter affidavit – Claim of more than \$2,000   | \$50  |
| Notice of appeal   | \$75 to district court<br>\$10 to justice court |
| Abstract of judgment   | \$40  |
| Writ of garnishment  | \$35 to the court<br>\$10 to the garnishee      |
| Writ of continuing garnishment   | \$35 to the court<br>\$25 to the garnishee      |
| Writ of execution  | \$35  |
| Regular copies   | \$.25 per page                                  |

| <b>Document or Service</b>                    | <b>Fee</b>   |
|---|--|
| Certified copies                              | \$4 for the certificate and \$.50 per page   |
| <b>Non-court fees</b>                         |  |
| Witness fee                                   | \$18.50 for first day.<br>\$49 for subsequent days.<br>Mileage at \$1 for every 4 miles over 50 one way.<br>Paid to the witness. |
| Service of process fee<br>County recorder fee | Amount determined by statute or by the provider.   |

(6) **SERVING OTHER PARTIES.** Each party must serve on all other parties a copy of any document filed with the court and then file proof of service with the court. There are special requirements for serving the affidavit, which are explained in Paragraph (15). The court clerk will mail a copy of defendant's counter affidavit to the plaintiff. Otherwise, to serve another party, mail the document to them at the address shown on the affidavit unless you have a more recent address. Retain for your records a copy of everything you file with the court and everything served on you by other parties.

(7) **PROOF OF SERVICE.** In addition to serving the other party, you must file with the court proof of having done so. Most of the small claims forms have a proof of mailing certificate at the end of the form for this purpose. For any document without a proof of mailing certificate, complete a separate proof of service form (Form D) and mail it to the court clerk.

(8) **CALCULATING TIME.** If a designated period of time is 10 or fewer days, the reference is to business days, excluding intervening Saturdays, Sundays and holidays. If the time designated is 11 or more days, the reference is to calendar days. The day from which the time begins to run is not included. The last day of the period is included. If the last day is a Saturday, Sunday or holiday, the time expires on the next business day.

(9) **FILING WITH THE COURT.** Whenever the rules or this manual refer to filing a document, they mean delivering the document to the court clerk. This can be done by hand-delivery or by mail, although the sender assumes the risk of failure of delivery.

(10) **WHERE TO FILE.** A small claims case must be filed in the court where **the defendant resides or where the claim arose.** Depending on the circumstances this may be the justice court or the district court.

At the option of the plaintiff, file the case in any district court or justice court of the county or municipality **in which the defendant resides or the claim arose.** Consult the court clerk to see whether there are restrictions.

(11) **COMPLETING THE COVER SHEET (FORM A).** The plaintiff must complete and file a cover sheet with the affidavit. Driver license number, social security number and date of birth are not required for filing but are required to perfect a judgment lien against real property. See Paragraph (27)(a). All parties are required to notify the court and the other party of a change of address. Names and addresses are public records. All other information on the cover sheet is private unless a judgment is entered against that party.

(12) **COMPLETING THE AFFIDAVIT (FORM B).**

Plaintiff's name and address. If you are suing in your personal capacity list your name and address. If you are representing a business with a trade name, including a corporation, partnership or solely owned business, list the business' trade name and address.

Defendant's name and address. If you are suing a natural person, list the person's name and address. If you are suing a business with a trade name, including a corporation, partnership or solely owned business, list the business' trade name and address. Contact the Department of Commerce at 801-530-4849 or [www.utah.gov/serv/bes](http://www.utah.gov/serv/bes) to obtain a corporation's name and the name of its registered agent.

The court clerk assigns the case number.

Paragraph (1). Enter the amounts claimed in the spaces provided. Include in the principal amount any interest accrued to the date of filing. Do not file an amended affidavit to claim interest between the date of filing and the date of judgment. If the court grants judgment, the court will include prejudgment interest in the judgment if you qualify for it.

Paragraph (2). Enter the date on which the claim arose. Describe the facts that form the basis of the claim.

Signature. Sign the affidavit under oath before a notary or a court clerk.

Summons. The court clerk will schedule a trial date and complete the summons.

(13) **COMPLETING THE INTERPLEADER AFFIDAVIT (FORM C)**. Interpleader is a special type of small claims case in which the plaintiff does not claim money but rather holds money claimed by two or more other persons. Do not complete Form C unless you have this special type of case. The instructions for completing Form C are the same as for Form B in Paragraph (12).

(14) **SERVING THE AFFIDAVIT AND SUMMONS ON THE DEFENDANT**. The court clerk will give you a copy of the affidavit and summons to serve on the defendant. The affidavit and summons must be served on the defendant by one of the following methods at least 30 days before the trial date:

(a) Mail a copy of the affidavit and summons to the defendant by any method that requires the defendant to acknowledge receipt with a signature. (Examples are registered or certified mail with return receipt signed by addressee only or a commercial courier service that will return a receipt signed by the addressee only.) The date of service is the date the defendant signs the receipt. OR

(b) Give the affidavit and summons to the sheriff, constable or private process server, who will deliver the papers to the defendant.

If defendant cannot be served by one of these methods, plaintiff may refile the case as a civil complaint and obtain alternative service under the Utah Rules of Civil Procedure.

(15) **COMPLETING THE PROOF OF SERVICE (FORM D)**. If a sheriff, constable or private process server serves the affidavit and summons on the defendant, that person will complete and file the proof of service form. If the plaintiff serves the affidavit and summons on the defendant by mail with a signed receipt, the plaintiff must complete and file the proof of service form with the original receipt signed by the defendant attached. For proof of service of documents other than the affidavit and summons, complete the certificate of mailing at the end of the form or, if there is no certificate of mailing on the form, complete Form D with a brief description of the document, the date of mailing and the address to which the document was mailed. A signed receipt is not required for documents other than the affidavit and summons. Proof of service must be filed within 10 days after service. If proof of service is not filed and the other party fails to appear at trial, the judge will not grant a dismissal or default judgment. (See Paragraph (19).)

(16) **COMPLETING THE COUNTER AFFIDAVIT (FORM E)**. If the plaintiff owes defendant money, the defendant may file a counter affidavit up to 15 days before the trial. The instructions for completing Form E are the same as for Form B in Paragraph (12). The court clerk will complete the summons and mail a copy of the counter affidavit to the plaintiff. The court clerk may reschedule the trial. The defendant may not claim more than \$7,500 in the counter affidavit. If the defendant's claim exceeds \$7,500, the defendant may file a civil complaint in the district court under the Utah Rules of Civil Procedure.

(17) **SETTLEMENT BEFORE TRIAL (FORM F)**. If defendant does not deny the facts in the affidavit or if plaintiff does not deny the facts in the counter affidavit, the parties should make arrangements to pay the claims. If the case goes to trial and collection through the court, additional costs and interest may be charged. If the case is settled prior to trial, complete and file a Motion to Dismiss.

(18) **POSTPONING THE TRIAL (FORM G)**. To change the trial date, complete and file a motion for continuance at least five days before trial. A continuance is not automatic; you must provide a good reason. The party requesting the continuance may be ordered to pay the other party's costs, such as the reasonable and necessary cost of preparing for trial.

(19) **FAILURE TO APPEAR AT TRIAL**. A party who fails to appear at trial after receiving notice of the trial is in default and will lose. A claim by a non-appearing party will be dismissed. A claim against a non-appearing party will be granted judgment. A judgment against a non-appearing party is called a default judgment. In order to obtain

a default judgment, the plaintiff must file an affidavit stating whether the defendant is in military service. (Form P) This is required by federal law. If the plaintiff does not know whether the defendant is in military service, the judge may require the plaintiff to file a cost bond to protect the defendant's interests.

(20) **TRIAL, EVIDENCE AND WITNESSES.** It is suggested that you observe a session in the small claims court before your trial date. By doing so, you will become more familiar with court procedures and you will be better prepared to present your case. Bring to the trial all witnesses, documents and photographs necessary to prove your claim or defense or the case may be decided against you for lack of proof. Evidence may be offered through the statements of witnesses, who may be any person with knowledge of the relevant facts. Evidence may be offered through documents, such as business records, bids, appraisals, invoices and account statements. Evidence may be offered through photographs, such as photographs of the damage to a vehicle. The judge will usually question the parties and witnesses. The courts do not provide language interpreters. If you need an interpreter for yourself or a witness, you must make those arrangements.

(21) **SUBPOENA.** If a witness will not testify or produce a document voluntarily, you may require that person to attend or produce a document by serving a subpoena. For more information about subpoenas, see Utah Rule of Civil Procedure 45 and Civil Procedure Form 40. The court clerk will issue a subpoena upon request. Any person over the age of 18 who is not a party to the case may serve the subpoena on the witness by any method permitted for serving the complaint in a civil action. The subpoena must be served at least 5 days before trial. To ensure the subpoena is correctly served on time, give the subpoena and witness fee to the sheriff, constable or private process server, who will deliver the subpoena to the witness and file proof of service with the court. A witness may appear voluntarily without a subpoena, but the judge will not continue the trial if a witness without a subpoena fails to appear. If a witness served with a subpoena fails to appear, the witness may be held in contempt of court.

(22) **JUDGMENT (FORM H or I).** The judge will decide the case based on the evidence. Usually the judge decides the case immediately after the trial. If the judge takes the case under advisement, the judge should issue a decision within 60 days, and the court clerk will notify the parties by mail. If the judge decides for the defendant on plaintiff's affidavit or for the plaintiff on defendant's counter affidavit, neither party owes the other any money, unless the judge orders one party to pay the other party's court costs. If the judge decides for the plaintiff on plaintiff's affidavit or for the defendant on defendant's counter affidavit, the judge will enter a judgment for money (Form H) or a judgment determining the defendants' rights to money held by the plaintiff (Form I). In a judgment for money, the winning party is called the judgment creditor and the losing party is called the judgment debtor. The judgment principal will include court costs and prejudgment interest. The judgment principal continues to accrue interest after judgment. In addition to the judgment principal and post-judgment interest, the creditor is entitled to collect from the debtor the cost of collecting the judgment. The judgment exists for 8 years, and the creditor must collect it or renew it within that time.

(23) **NOTICE OF ENTRY OF JUDGMENT (FORM J).** The court clerk will deliver a copy of the judgment to all parties present at the trial. If the judge grants a judgment or dismissal to one party because the other party failed to appear after notice, the party who appeared must serve a copy of the judgment or dismissal on the non-appearing party. The appearing party can serve the judgment by mail. Proof of service can be by Form D, Form J, or the proof of service section on the bottom of Form H. Consult the court clerk to see if one method is preferred over the others.

(24) **SETTING ASIDE DISMISSAL OR DEFAULT JUDGMENT (FORM K).** If the judge dismisses an affidavit or counter affidavit without prejudice, the party can file a new affidavit or counter affidavit without setting aside the dismissal. New filing fees apply. If the judge dismisses an affidavit or counter affidavit with prejudice, the case cannot be re-filed, but the non-appearing party may complete and file a motion to set aside the dismissal. If the judge enters a default judgment, the non-appearing party may complete and file a motion to set aside the judgment. The party requesting the dismissal or default judgment be set aside must file the motion within 15 days after the dismissal or default judgment, showing a good reason for not appearing at the trial. The requesting party may be ordered to pay the other party's costs, such as the reasonable and necessary cost of preparing for trial. If the dismissal or default judgment is set aside, the court clerk will reschedule the trial and notify the parties. The judge may allow a motion to set aside to be filed late if the motion is filed within a reasonable time after dismissal or default judgment and the party shows a good reason for filing late.

(25) **NOTICE OF APPEAL (FORM L).** A party may appeal a small claims judgment by filing a notice of appeal within 30 days after the dismissal or judgment. The notice of appeal is filed with the court that issued the judgment. The appeal is a new trial, called a trial de novo, held in the district court. The court clerk will forward the trial court's file to the district court. The parties do not file new affidavits, but the procedures for the trial de novo are the same as for the original trial. The parties present the evidence again. The decision after the trial de novo is final and cannot be appealed. The notice of appeal does not stay the judgment, and the judgment creditor may attempt to

collect (See Paragraph (27).) during the appeal. To stay the judgment and prohibit collection, the debtor must file with the district court a bond sufficient to cover the amount of the judgment.

(26) **SATISFACTION OF JUDGMENT (FORM M).** When the judgment is paid, the creditor must file a satisfaction of judgment. A satisfaction of judgment must also be filed with the county recorder in each county in which an abstract of judgment (FORM O) was filed. (See Judgment Lien, Paragraph (27)(a).) The debtor may file a satisfaction of judgment if the creditor fails to do so. If the creditor fails to object within 10 days, the court may enter the satisfaction.

(27) **COLLECTING A SMALL CLAIMS JUDGMENT.** If the debtor does not voluntarily pay the judgment, the creditor may take steps to collect it. To collect a small claims judgment the creditor uses the same procedures as for collecting a civil judgment. The process is governed by Utah Rules of Civil Procedure 64, 64A, 64B, 64C, 64D, 64E, and 69A, 69B and 69C, which are not part of this manual but which can be obtained from the courts' website. This manual contains a brief summary of the procedures, but creditors and debtors should refer to the Utah Rules of Civil Procedure to understand their full rights and responsibilities. State and federal law designate some property as exempt from seizure. The list of exempt property is in Utah Code Title 78, Chapter 23.

(a) **JUDGMENT LIEN.** A judgment lien on real property is not a direct collection of money from the debtor, but the lien prevents the debtor from selling or mortgaging real property until the judgment is paid or expires. Obtain an abstract of judgment (FORM O) from the court clerk. If the judgment is from a justice court, file the abstract of judgment in the district court and in the office of the county recorder in the county where the debtor's real estate is located. If the judgment is from a district court, file the abstract of judgment in the office of the county recorder in the county where the debtor's real estate is located. If the debtor has real property in more than one county, file in each county. Also file with the district court and the county recorder a judgment information statement (FORM N) that contains: the amount of the judgment; the name, address, social security number, date of birth, and driver's license number of the debtor; the name and address of the creditor; whether the court has stayed the judgment and when the stay expires; the date of recording in the recorder's office; and the recorder's entry number.

(b) **SUPPLEMENTAL ORDER.** Use a supplemental order to obtain information about the debtor's employment, income, accounts and other property. Obtain a supplemental order from the court clerk, complete and file the forms. The court clerk will set a date for the debtor's and creditor's appearance. Deliver the order to the sheriff, constable or private process server, who will serve the papers on the debtor.

(c) **WRIT OF GARNISHMENT.** Use a writ of garnishment to seize non-exempt money owed to the debtor by a third party, such as the debtor's employer or bank. Obtain garnishment forms from the court clerk, complete and file the forms. To have the papers served, deliver them to one of the officials authorized by Utah Code Section 78-12a-2.

(d) **WRIT OF EXECUTION.** Use a writ of execution to seize and sell the debtor's non-exempt real or personal property. Obtain a writ of execution from the court clerk, complete and file the forms along with a description and location of the property to be seized. The court clerk will issue the writ and other papers. To have the papers served, deliver them to one of the officials authorized by Utah Code Section 78-12a-2.

(28) **DEFINITIONS.** The following are not official definitions, but they may help you understand unfamiliar terms.

**Affidavit.** An allegation of facts sworn to under oath. The oath is usually administered by a notary public or court clerk. The affidavit must be filed by the plaintiff. The counter affidavit may be filed by the defendant.

**Appeal.** A higher court reviewing the decisions of a lower court. In small claims cases the appeal is a new trial, called a trial de novo.

**Attorney fees.** The fees charged by an attorney. A party is not entitled to recover attorney fees unless authorized to do so by contract between the parties or by statute.

**Court costs.** Costs associated with filing or defending a small claims case and preparing for trial. Costs might include filing fees, service fees, witness fees, etc. Costs do not include attorney fees.

**Default.** The failure of a party to appear as required.

**Defendant.** The party against whom a claim is made.

Dismissed with/without prejudice. When a case is dismissed with prejudice, it cannot be refiled. If a case is dismissed without prejudice, it can be refiled.

Garnishee. A person holding a judgment debtor's property, such as debtor's employer (holding wages) or bank (holding an account).

Hearsay. Testimony by a witness in court about statements made out of court.

Judge pro tempore. A lawyer appointed by the Utah Supreme Court to sit temporarily as a judge. A judge pro tempore has all the authority of a regularly appointed judge.

Judgment. The final decision of the judge about who owes money to whom.

Judgment creditor. The party in whose favor a judgment has been rendered.

Judgment debtor. The party against whom a judgment has been rendered.

Motion. Asking the court to do something.

Plaintiff. The party who files a claim.

Praecipe. A document describing property to be seized.

Subpoena (duces tecum). An order to appear in court at a specified time (and to bring a specified document). Failure to obey a subpoena is punishable as a contempt of court.

Trial. The hearing at which the parties present evidence to the judge.

