



## **OFFICIAL SMALL CLAIMS GUIDES:**

### **ENFORCING YOUR JUDGMENT**

Written by lawyers, edited to be simple to understand

Congratulations on winning your case! You are now “the judgment creditor” and you are lawfully entitled to collect on your judgment. The person who owes you the money is the judgment debtor. Squabble will be releasing an “Enforce” feature in late 2021 that helps you to enforce your judgment. Until then, we’ve prepared a guide to assist you in collecting.

#### **When can I collect?**

##### **The debtor has 30 days after entry of the original judgment before they have to pay you**

The debtor has 30 days after the court mails or delivers your jurisdiction’s *Notice of Entry of Judgment* form before he or she has to pay you.

During this time, the debtor can:

- Voluntarily pay the judgment;
- Ask the court to order an installment payment plan;
- File an appeal (this is very rare); or
- Fill out and send you a *Judgment Debtor's Statement of Assets* form available on your county court’s website.

#### **If the debtor will voluntarily pay, how does it work?**

##### **The debtor can pay the judgment directly to the court**

A debtor in a small claims case can pay the judgment directly to the court, if he or she prefers. Often this is done so that the debtor can immediately get proof of payment from the court in order to clear their credit record.

To pay the judgment to the court, the debtor must pay:

- The principal amount of the judgment;
- Costs after judgment;
- Interest accrued on the judgment; and
- The court's processing fee (usually around \$25, depending upon your jurisdiction).

The court (not the debtor) will let you know that that the judgment has been paid and tell you to:

- Complete the "Judgment Creditor's Request for Funds" (a portion of a *Request to Pay Judgment to Court* form); and
- Claim the money by either mailing your completed request to the court or giving the form in person to the court clerk.



It is very important that the court has your current mailing address at all times. If within 3 years (jurisdictions may vary) the court is unable to reach you to tell you that it is holding payment of your judgment, the money becomes the property of the court. If you have questions about this payment, be sure to tell the court the case name, case number, and date of entry of judgment.

### **The debtor is required to send you a *Judgment Debtor's Statement of Assets* form**

A debtor who does not appeal or file a motion to vacate (cancel) the judgment (and that does not voluntarily pay the judgment) must fill out a *Judgment Debtor's Statement of Assets* form and send it to you. In many counties the court clerk will mail this form to the debtor with the original judgment.

Unfortunately, many debtors do not fill out and deliver the form. If the debtor does not complete and send you this form (and he or she has not paid or appealed the judgment or asked for a payment plan), you can ask the court for sanctions against the debtor. Call the court and ask the clerk for help with this process.

If you do not receive this form and need information about the debtor's assets to collect your judgment, you will have to do a debtor's examination. Call the court and ask the clerk for instructions on how to do so.

### **The debtor can ask the court to let them pay the judgment in installments**

The debtor will make the request using a *Request to Make Payments* form (which must include a *Financial Statement* form). The court clerk will mail a copy of the request to you.

You then have 10 days to tell the court that:

- You will accept the proposed payment schedule;
- You will accept payments in a different amount; OR
- You do not want to accept installment payments.

You can give the court this information and your reasons for your response using a *Response to Request to Make Payments* form or in a letter or *Declaration* form. If you do not respond within 10 days (jurisdictions may vary), the court may assume that you accept the proposed payment schedule and will grant the debtor's request. If you do not accept the proposed payment schedule, the court will probably hold a hearing to discuss the request and your opposition.

This payment plan option affects the interest on the judgment as it may stop all interest from accruing until the judgment is paid off or the debtor fails to keep up with the payments. So if you have questions about how a payment plan can affect you, you might talk with a lawyer.

**Note:** If the debtor already got the court's permission to pay you in installments (through a payment plan) and he or she has stopped paying you (or never paid you), you can ask the court to cancel the payment plan and make the full balance due right away. Call the court to ask the clerk how to cancel the payment plan so you can collect the full balance.

### **What if the debtor doesn't want to pay?**

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This happens occasionally and you have options. Here's some tips to collect if your debtor won't pay on their judgment:

## **First, we want to make sure you don't use illegal ways to collect your money**

The debtor may be protected from abusive or unfair ways to collect the debt. And generally, it's not a good idea for you to use deceitful tactics to get the money the debtor owes you.

In your efforts to collect the debt:

- Don't lie or make misleading statements to collect a debt;
- Don't harass the debtor;
- Don't ask another person for more than basic information about where the debtor is;
- Don't tell the debtor's employer or other people that the debtor owes you money (except when you get an earnings withholding order from the court);
- Don't call the debtor before 8:00 a.m. or after 9:00 p.m. or at any time or place that is not convenient for the debtor;
- Don't threaten to hurt the debtor or the debtor's family, property, or reputation; or
- Don't suggest the debtor will face criminal charges (if no crime was committed) or that the debtor's property will be taken (unless the law allows it and you intend to do it).

## **Second, encourage the debtor to pay you voluntarily**

If you are too aggressive in collecting, the debtor may file for bankruptcy. This means you would have to file a claim in federal bankruptcy court, which no one wants to do. The good news is that most small claims debtors can make payments over time. Try to work out a payment plan with the debtor. Here are some tips to encourage the debtor to pay voluntarily:

### *Write a Letter*

Write a letter to show the debtor it is in his or her best interest to pay the judgment as soon as possible.

In your letter, you can say that if the debtor does not pay:

- The amount the debtor owes will increase daily, since the judgment accumulates interest at the rate of 10 percent per year.
- You will seek reimbursement from the debtor of any reasonable and necessary costs of collection.
- Credit reporting agencies will know the debtor has not paid the judgment because the debtor's name will appear on the court's "Judgment Roll" which is a public record. The credit reporting bureaus go to each courthouse and get that information for their records.
- If the debtor does not pay, you can ask for:
  - A wage garnishment against the debtor, and maybe the debtor's spouse, or the debtor's domestic partner;
  - A levy on the debtor's bank account or safe deposit box;
  - Liens on real property (like a house or land) or personal property; and
  - Suspension of the debtor's professional license, like a real estate, contractor's, or driver's license in certain situations.

### *Help the debtor find assets to pay the judgment*



Sometimes debtors honestly believe they do not have any way to pay this debt.

Encourage your debtor to consider sources of assets like:

- Using an income tax refund;
- Taking a personal loan;
- Having a garage sale;
- Auctioning personal items on the Internet;
- Borrowing against a retirement account (401(k)); or
- Getting a credit card cash advance (but if you are the debtor, realize that this can result in high credit card fees).

#### *Be Flexible About Payment Terms*

Sometimes, being flexible will pay off.

Here are some ideas:

- Accept (weekly or monthly) payments.
- Accept less than what the court ordered.
- Let the debtor pay you with property or work instead of money.
- If the debtor is out of work, help the debtor find work.

#### *Accept Installment Payments*

If you decide to accept installment payments, write a letter to the debtor. Explain how you want the judgment to be paid. Include payment of interest and costs, if any.

#### **Third, be organized**

- Keep records of everything you do to collect the judgment.
- Make a copy of the judgment.
- Write down the debtor's contact information and list of assets, unless the debtor sent you a *Judgment Debtor's Statement of Assets* form, in which case you should find the assets listed there.
- Keep track of your expenses. Many collection expenses can be reimbursed (added to the judgment so you can collect them).
- To calculate interest on your judgment, keep a record of the date your judgment was entered. Usually this is the same date the court clerk mailed the proper *Notice of Entry of Judgment* form in your jurisdiction. Also keep track of the dates of any partial payments made by the debtor. If the debtor does make a partial payment by check, make sure to make a note of the location of the bank branch and the account number.

#### **Fourth, ask a lawyer or collection agency for help**

You can ask a lawyer or collection agency to help you collect your judgment. But you may have to pay a percentage of the judgment in fees (some agencies charge only 15 percent or 20 percent). They may also ask you to assign the right to your judgment to them. Usually, a lawyer or collection agency



will write letters to the debtor. They can also help locate the debtor's assets. You can also do these things yourself.

### **Fifth, make sure you renew your judgment**

Money judgments automatically expire (run out) after a certain number of years (depending upon your state –see the chart below).

To prevent this from happening, you (as the judgment creditor) must file a request for renewal of the judgment with the court BEFORE the period runs out. If the judgment is not renewed, it will not be enforceable any longer and you will not be able to get your money. Once a judgment has been renewed, it is renewable for another period and then renewable after that.

When the judgment is renewed, the interest that has accrued will be added to the principal amount owing. From that point on, you are entitled to interest on the principal and the accrued interest.

For example:

- Let's say you have a judgment for \$6,000 and after nearly 10 years the debtor has not paid you anything. The judgment accrues daily interest of \$1.64 ( $\$6,000 \times 10\% = \$600$ ;  $\$600 \div 365$  days gives you the daily interest). You seek to renew the judgment after about 9 years and 10 months, or exactly 3,605 days. The accrued interest is \$5,912.20 (3,605 days x \$1.64).
- Once that is added to the original judgment, a renewed judgment of \$11,912.20 can be entered. The interest will now accrue at a rate of \$3.26/day ( $\$11,912.20 \times 10\% = \$1,191.22 \div 365$  days).

*To renew a judgment:*

1. Review the applicable law in your jurisdiction. A simple Internet search (“Renew my small claims judgment in X state”) will send you to the appropriate section of your state’s code of civil procedure.
2. Find your jurisdiction’s *Application for and Renewal of Judgment* form and the *Notice of Renewal of Judgment* form. The *Notice of Renewal of Judgment* must be personally served on the debtor or served by first-class mail.
3. Liens created at the time of the original judgment also must be renewed. This is because when you renew your judgment, the liens are no longer enforceable since the judgment the liens were based on is no longer enforceable.
4. In order to extend a real property lien, you must record a certified copy of your jurisdiction’s *Application for and Renewal of Judgment* form with the county recorder in the county where the property subject to the lien is located.

State	Small Claims Collection and Renewal Period
Alabama	20
Alaska	10
Arizona	5

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State	Small Claims Collection and Renewal Period
Arkansas	10; 5 in Justice of Peace Courts
California	10
Colorado	20; 6 in county courts
Connecticut	10
Delaware	10
District of Columbia	12
Florida	20
Georgia	7
Hawaii	10
Idaho	11
Illinois	7
Indiana	10
Iowa	20
Kansas	5
Kentucky	15
Louisiana	10
Maine	20
Maryland	12
Massachusetts	20
Michigan	10
Minnesota	10
Mississippi	7
Missouri	10
Montana	10
Nebraska	5
Nebraska	5
Nevada	6
New Hampshire	20
New Jersey	20
New Mexico	14
New York	20
North Carolina	10
North Dakota	10

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State	Small Claims Collection and Renewal Period
Ohio	5
Oklahoma	5
Oregon	10
Pennsylvania	4
Rhode Island	20
South Carolina	10
South Dakota	20
Tennessee	10
Texas	10
Utah	8
Vermont	8
Virginia	20
Washington	10
West Virginia	10
Wisconsin	20

## Sixth, ask the court for help

If the debtor does not pay you, the court can also issue documents and make other orders allowing you to

- Get information about the debtor's assets
- Collect from the debtor's property (including wages, bank accounts, and real property);
- Collect from a retail business; and
- Suspend the debtor's real estate, contractor's, or driver's license.

## Collection Problems and Special Situations

When you try to collect your judgment, you may run into problems. These situations are uncommon, but in case they occur, here's some tips:

### **The debtor is supposed to pay you in installments but has stopped paying (or never paid) the installments**

If the court gave the debtor permission to pay you in installments (a payment plan) and the debtor stopped paying you, is paying you late, or never paid you, you can ask the court that the payment plan be canceled and that the entire balance become due. Basically, you are telling the court that the debtor is in default and the payment plan should be canceled so you can collect on the entire balance right away.

**To do this:**

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1. Fill out your jurisdiction's *Declaration of Default in Payment of Judgment* form. Page 2 of the form gives you (and the debtor) information on the process. And it tells you how to calculate the interest on the payments the debtor owes you.
  - o If there is more than one debtor in this case, fill out this form for each debtor that has failed to make an installment payment.
2. File your form with the court clerk.
3. The court will mail any other parties in the case a copy of your *Declaration of Default in Payment of Judgment* form plus a blank *Response to Declaration of Default in Payment of Judgment* form for the debtor to use if he or she wants to respond to your *Declaration*.
4. The debtor has 10 days to file the *Response to Declaration of Default in Payment of Judgment* form.
5. The court will then mail all the parties in the case (including you) an *Order on Declaration of Default in Payments* form which will have:
  - o A decision on whether or not to end the payment plan and have the full balance become due right away, or
  - o A notice to go to a court hearing to hear both sides in person and make a decision then.
6. If the court's decision is that the full balance is due now, you can start collecting on the full amount through the means discussed in this Guide.
7. If the court sends you a notice for a court hearing, make sure you go to the court hearing. If you have any proof of late or missed payments, bring that with you.

## **Your judgment does not state the debtor's correct name**

Usually, your small claims judgment must use the correct name of the person or business that owes you money. If not, you may not be able to collect your judgment.

The law says that you (the plaintiff) may request the court to amend (change) the judgment to include both the correct legal name and any names actually used by the defendant. Check out your state's code of civil procedure.

If the defendant's correct name is different from what is written on the judgment, you can ask the court for a new judgment with the correct name.

You may need to ask the court to "correct" a judgment if:

- The name on the judgment is not spelled correctly;
- The name on the judgment is a maiden name, and the debtor has a new married name (or the judgment has a married name when the debtor has gone back to using a maiden name);
- The first name is listed as the last name because of a clerical error;
- There has been a legal change of name (other than through marriage);
- The debtor routinely uses a different name (an alias or pen name) and has assets in that name; or
- Your judgment lists the business name but not the debtor's personal name, and the business is owned by the debtor as a sole proprietor. You will NOT be able to have the judgment changed to name an officer or employee of the business.

A judge will probably deny a request to "correct" a judgment that asks to:

- Name a spouse or domestic partner that was not a named defendant in the original claim; or

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- Name a different entity or person than the one originally sued (for example, a business partner you did not know about).

These cases are more complicated. The judge will probably only correct or "amend" the judgment if the interests of justice are served and the business partner, spouse, or domestic partner was in court on the day of the hearing and defended the case.

## **Changing the name on the judgment when there is NO clerical error**

To change the name on your judgment for any reason other than to correct a clerical error, first check with your local court to see if they have a local form that you must use to make your request. If not, you should use your jurisdiction's *Request for Court Order and Answer (Small Claims)* form.

Here is how:

1. Fill out a *Request for Court Order and Answer* form.
2. Indicate that you are asking for an order to change the judgment to reflect the debtor's true name.
3. When you fill in the request part of the form:
  - Say whether you are the plaintiff or the defendant that won a defendant's claim.
  - Explain why you want to change the name on the judgment, that you have a good reason for the proposed change, and that the change will support the interests of justice. If there is not enough room on the form, attach a longer explanation on a sheet of paper (or use your county's *Attached Declaration* form).
  - If you have documents that support your request, say that "exhibits are attached" and attach those papers to your form. Make sure to explain why your attachments prove that the name should be changed.
4. File the *Request for Court Order and Answer* form (and any attachments) with the small claims court clerk. The clerk will put a hearing date on the form. Keep an extra copy of the filed request for your records. You will have to pay a fee for filing the motion unless you qualify for a fee waiver (check your county's website or call the court clerk to see if you qualify).
5. After you file your request, the court clerk will mail a copy of it to the other side and the judge will mail a decision to you or will hold a hearing on the date the clerk put on your *Request for Court Order and Answer* form.

## **Changing the name on the judgment to correct a clerical error**

To change the name on your judgment to correct a clerical error, follow these steps:

1. Fill out your jurisdiction's *Request to Correct or Cancel Judgment and Answer* form.
2. Indicate that you are asking for an order to correct (NOT cancel) the judgment.
3. When you fill in the request part of the form:
  - Say whether you are the plaintiff or the defendant that won a defendant's claim.
  - Identify the clerical error and explain why you want to correct it. If there is not enough room on the form, attach a longer explanation on a sheet of paper (or use the *Attached Declaration* form).
  - If you have documents that support your request, say that "exhibits are attached" and attach those papers to your form.
4. File the *Request to Correct or Cancel Judgment and Answer* form (and any attachments) with the small claims clerk within 30 days after the clerk mails your jurisdiction's *Notice of Entry of*



*Judgment.* Keep an extra copy of the filed request for your records. You will probably have to pay a fee for filing the motion unless you qualify for a fee waiver.

5. After you file your request, the court clerk will mail a copy of it to the other side. The debtor will then have 15 days to file and serve an answer. If the debtor files an answer, it will say why the judge should deny your request. In the answer, the debtor can also ask the court to hold a hearing on your request. The debtor can serve his or her answer on you by mail.
6. If the debtor files an answer:
  - o The court may schedule a hearing so the parties can tell their stories to the judge. If a hearing is scheduled, the court will send both parties a notice of the hearing.
  - o If a week goes by (after you have been served with the debtor's answer) and you still do not have a notice of hearing from the court, contact the court clerk and ask what is happening with your case, giving the clerk your case name and number.
  - o If the debtor does not file an answer within 15 days, the judge will probably grant your request.

### **You cannot find the debtor or his or her assets or employer**

If you do not know where the debtor lives or works, you can:

- Use the Internet and its search tools: white pages, reverse lookup, etc.
- Check with the county assessor to see if the debtor, debtor's spouse, or the debtor's domestic partner owns real property. Some county assessors will confirm if a debtor owns real property over the phone. Do an Internet search for your state's "Board of Equalization" and find your local tax assessor.
- Search the county clerk's records to find if the person has a fictitious business name statement on file with an address.
- Check with the court to see if there are any other lawsuits filed against the debtor, the debtor's spouse, or the debtor's domestic partner, and see if an address is listed in that file.
- And keep in mind that it may not matter if you do not know where the debtor is if you know the bank branch where the debtor has his or her accounts.

If you do not know where the debtor works or where their property is located, you can:

- Contact a credit reporting agency and pay a fee to get a copy of the debtor's credit report. Some credit reporting agencies may require that you provide them with the debtor's social security number and a certified copy of your judgment; others may not require that information. You cannot get this fee back later from the debtor.

Remember, you can always do a debtor's examination to get information about the debtor and his or her assets.

### **Someone else owes the debtor money or has the debtor's property**

If you know that someone else owes the debtor money or is holding property owned by the debtor, you may be able to collect.

It is possible to collect from items like:

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- Judgments in favor of the debtor against someone else;
- Loans made by the debtor to someone else;
- Accounts receivable payable to the debtor;
- Rent payable to the debtor; or
- Royalty payments to the debtor.

It is possible to collect from the debtor's money or property held by someone else if:

- You want a one-time immediate collection (called "levy") from this source and not a levy that will continue over an extended period of time.
- The property you seek to collect from is accessible to the public (like an art gallery or consignment shop).

The collection procedure is not complicated. To collect your judgment from these assets, follow these steps:

1. Call the clerk to ask the court to issue a *Writ of Execution* form to the sheriff/marshal in the county where the property or other person is located.
2. Give instructions to the sheriff/marshal. Check with your levying officer to see if his or her office has a local form or you must prepare your own.
3. A *Notice of Levy (Enforcement of Judgment)* form is then prepared and served on the person who is holding the property, instructing that person to turn the money or property over to the levying officer.
4. If the third party does not deliver the property to the sheriff/marshal, you may be able to file a lawsuit against them.

## **I got paid! Is there anything else I have to do?**

### **Filing the Acknowledgement of Satisfaction**

You must file an *Acknowledgment of Satisfaction of Judgment* form with the court after the debtor pays the judgment. If you're unable to find this form on your jurisdiction's court website, call your court clerk.

If the debtor makes a written request and you do not file the acknowledgment within a period of time (usually two weeks), you can be held liable for all damages sustained, plus a small additional sum (in some jurisdictions).

If there are no liens related to the judgment, you can sign the *Acknowledgment of Satisfaction of Judgment* on the back of your copy of the small claims judgment. If a lien exists, you will have to use the *Acknowledgment of Satisfaction of Judgment* form and have it notarized before filing it with the court and recording a certified copy with the county recorder's office.

### **Removing liens you have placed on the debtor's property**

You **MUST** remove liens that you have placed on the debtor's real and personal property.



To remove a real property lien, use your jurisdiction's *Acknowledgment of Satisfaction of Judgment* form and have it notarized before filing it with the court. Then record a certified copy with the county recorder's office.

To remove a personal property lien, follow the instructions on the Judgment Lien Change and send it to your Secretary of State at the address listed on that form.

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Additional questions?

Email us at [info@squabbleapp.com](mailto:info@squabbleapp.com) or [support@squabbleapp.com](mailto:support@squabbleapp.com). We can't offer legal advice, but we can help you understand how the system works and how to prepare for court.