

# WOOD COUNTY SMALL CLAIMS PROCEDURES INFORMATION SHEET

The clerk of the Small Claims Court cannot give you legal advice or answer questions requiring knowledge of the law. Some basic procedural questions are addressed below.

Please note we are a mandatory electronic filing county for small claims. If you file 10 or more actions a year in this county you will be required to electronically file. Please see a Clerk for instructions on electronic filing.

## TYPES OF SMALL CLAIMS CASES

- Money judgment when the amount claimed is \$10,000 or less
- Replevin(return/repossession of property)
- Eviction
- Eviction due to foreclosure
- Arbitration award
- Return of earnest money
- Tort/Personal injury (\$5,000 or less)

## WHERE TO FILE YOUR LAWSUIT

For most claims, the proper county to file your lawsuit is:

- Where the claim arose
- Where the property which is the subject of the claim, or part of it, is located or
- Where the defendant resides or does substantial business

A consumer transaction is a purchase or lease of goods, property or services, or loan of money or credit, for personal, family, household or agricultural purposes. If your claim arises out of a consumer transaction, the lawsuit may be filed in the county:

- Where the consumer resides
- Where the consumer made the purchase or
- If it was a credit transaction, where the collateral (property securing the transaction) is located

## SUMMONS AND COMPLAINT SMALL CLAIMS FORM (SC-500-I) AND DECLARATION OF NONMILITARY SERVICE (GF-175)

The clerk has a Summons and Complaint form with accompanying Declaration of Nonmilitary Service form that will be provided upon request or you can find the forms at [www.wicourts.gov](http://www.wicourts.gov) Complete the forms providing the following information as requested. The person initiating the lawsuit is the plaintiff. The person being sued is the defendant. Under the complaint section, plaintiff's demand, check one or more of the seven boxes as they apply to your action. If you have checked the money box, insert the amount of your demand. Complete the brief statement of dates and facts section. If you need to attach additional information, a total of 3 copies of all attachments must be provided at the time of filing. If you are mailing in your summons, please provide a self addressed stamped envelope for your return copy(ies).

All Summons and Complaints need to be personally served on the Defendant(s). This is the responsibility of the Plaintiff to make the arrangements for service of the Summons and Complaint. Plaintiff can not serve the papers on the defendant(s). Once the defendant is served, the original certificate (proof) of service must be filed with the Clerk of Courts office. The plaintiff may file the certificate prior to the return date but no later than in court on the date and time set for the return date.

The summons and complaint form must be served on in-state defendants at least 8 business days prior to the initial return date and 5 business days for eviction-excluding holidays. Defendants who reside out-of-state-, require a minimum of 20 days notice prior to the hearing. It is the responsibility of the plaintiff or their attorney to see that service is accomplished in a timely fashion.

## FILING FEES

Summons and Complaint - \$94.50

Private Process/Sheriffs Service

Fees will vary. Please contact the appropriate sheriff's department/private server in advance of service to discuss fees and payment options. Service fees are payable directly to the appropriate process server. If you are using the Wood County Sheriff's Department, they charge \$75.00 per defendant.

## RETURN DATE (Initial Appearance)

A court date and time will be assigned on the summons and complaint form. All initial appearances are held on Tuesdays at 1:00 p.m. on the 3<sup>rd</sup> floor at the Courthouse in Wisconsin Rapids. A mandatory appearance for the plaintiff is required. The defendant may appear in person or may file a written answer with the court with a copy of the answer to be provided to the plaintiff. Said written answer must be filed on or before the date and time stated on the summons and complaint.

If the defendant does not appear in person or by written answer, a default judgment will be granted by the court in favor of the plaintiff provided the required Declaration of Nonmilitary Service form has been filed by the plaintiff. If the Declaration of Nonmilitary Service is not filed within 30 days of the return date, the action will be dismissed by the Court. If the defendant appears and admits to the complaint, a judgment will be granted by the court in favor of the plaintiff without the requirement that the Declaration of Nonmilitary Service form be filed. A Notice of Entry of Judgment will be mailed to all parties. The defendant is also mailed a financial disclosure statement. If the defendant appears either in person or by written answer and enters a denial, the matter will be set for a pretrial conference in front of a court commissioner. All parties will receive notice from the court of the date and time. All parties need to keep the court informed of their current address to assure proper delivery of mail.

### **EVICTION RETURN DATE**

If the Defendant does not contest the eviction, the plaintiff is entitled to a writ of restitution. If the defendant appears at the initial return date at 1:00 p.m. and contests the eviction the matter will be sent to the duty judge at 2:00 p.m. the same day and the judge will make the determination if and when the defendant needs to vacate the premises.

Writ of Restitution: A writ of restitution directs the sheriff to remove the defendant from the property. The fee for a writ is \$5.00. The Sheriff's Department must serve the writ of restitution and they charge a fee of \$75.00.

**Trials on Damages:** The damage hearing date will be scheduled in front of the Court Commissioner at 1:00 p.m. on pre-trial conference days approximately 30 days after the eviction hearing. Upon being restored to the premises, landlords seeking damages shall file an itemized damage list with the Clerk of Courts and have the respondent served by first class mail, certified mail – return receipt requested, or personal service. The Plaintiff must provide proof of service of the damage list by providing an affidavit of mailing to the Clerk of Courts if they mailed the itemized damage list to the defendants. This service shall occur at least five (5) days prior to the trial on damages or the landlord will be limited to the amount of damages originally claimed in the complaint.

### **PRE-TRIAL CONFERENCE**

In some instances a case may be set for a pre-trial conference. All parties must appear at the pretrial conference. If the plaintiff fails to appear the case will be dismissed. If the defendant fails to appear default judgment may be entered against the defendant. The purpose of the pre-trial conference is to narrow the issues in dispute and try to negotiate a settlement. Bring with you to the pre-trial conference any documents relevant to your claim or defense. It is not necessary for you to bring witnesses or other evidence at this time. If the matter cannot be resolved at the pre-trial conference, it will be scheduled for a court trial in front of the court commissioner at a later date.

### **COURT TRIAL**

Notice of court trial will usually be given to the parties at the conclusion of the pre-trial if a settlement was not reached. The notice of court trial can also be mailed by regular mail to all parties. Once again, please keep the clerk notified of your current mailing address. Your case will be heard as a court trial in front of the court commissioner. On the date of the trial, be sure to bring any necessary witnesses and 3 set of documents with you. The court commissioner will decide the case only on the evidence and arguments presented at the trial.

### **DENOVO**

In cases where a court commissioner has decided a small claims matter, either party may file a demand for a trial de novo to have the matter heard by a judge. The demand must be filed within 10 days from the date of the commissioner's oral decision, or 15 days from the date of mailing of a written decision, to prevent the entry of the judgment. Mailing of the notice and proof of such mailing is the responsibility of the party seeking review. Notice of a demand for trial may also be given in writing and filed by either of the parties at the time of an oral decision.

### **POST JUDGMENT CONSIDERATIONS**

**Financial Disclosure Statement:** Even though a judgment is granted in your favor, the defendant might not pay you the money due or return the property as ordered. The court will order the defendant to complete a financial disclosure statement and return it to you. This statement will disclose to you the defendant's name, address, employer and their address, real property information, financial institution information and other required information. The defendant must complete and mail this form to the plaintiff within 15 days of the judgment being entered by the court, unless within that time the judgment is paid in full. If the defendant does not pay the judgment in full or provide the plaintiff with the financial disclosure statement, the plaintiff can start contempt of court proceedings.

**Motion and Order for Hearing on Contempt (SC-515A and SC-515B):** If the plaintiff does not receive a completed financial disclosure statement from the defendant within 15 days of entry of judgment a contempt action may be commenced. You can force the defendant to come to court and disclose that information. You will need to complete the Motion and Request for Hearing on Contempt (Small Claims) form SC-515A and an Order for Hearing on Contempt (Small Claims) form SC-515B. There is no charge to file the completed form but it must be personally served by the sheriff in the county where the defendant resides or by a private process server. (If defendant is in Wood County the Sheriff's Department requires a \$75.00 pre payment) Fees will vary. Please contact the appropriate sheriff's department in advance of service to discuss fees and payment options. A hearing date will be assigned and all parties must appear. The defendant will usually be ordered to complete a financial disclosure statement at that time. If the debtor fails to appear the court will authorize the issuance of a warrant for the defendant's arrest.

**Docketing the Judgment:** If a judgment is granted in your favor you can "docket" the judgment. The fee to docket a judgment is \$5.00. When a docketing fee is paid, the judgment will be placed in the civil lien index. After a judgment is docketed, it becomes a lien on any real estate owned by the debtor in the county judgment was granted for 10 years from the date of entry of judgment. If the debtor tries to sell the property, the purchaser will usually require the lien to be removed by paying the judgment in full. A transcript of judgment can be obtained from the clerk (\$5.00 fee required) and docketed in any other county where the defendant owns real estate, creating a lien in that county as well.

**Earnings Garnishment:** If a judgment is granted in your favor and the defendant does not voluntarily pay the judgment and if the defendant's wages are not exempt from garnishment, you may opt to commence garnishment proceedings. The plaintiff begins an earnings garnishment by filing an Earnings Garnishment Notice (CV-421). Complete the form and return it to the clerk along with the required filing fee. After the fee is paid, the plaintiff will be provided with an earnings garnishment packet and instructions. The garnishment will run for 13 consecutive weeks. For more detailed information on garnishment proceedings, please contact the small claims clerk.

**Non-Earnings Garnishment:** If a judgment is granted in your favor and the defendant does not voluntarily pay the judgment you may commence a non-earnings garnishment. This type of garnishment is commonly used to garnish a debtor's bank account or some type of agricultural payment such as a milk check. The clerk has a garnishment summons and complaint for non-earnings form that will be provided upon request. There is a filing fee required. These documents need to be personally served on the debtor and garnishee.

**Executions:** Execution Against Property is an order to the sheriff directing the sheriff to seize property, sell it and deliver the proceeds to the creditor. The fee for an execution is \$5.00 to the Clerk of Courts. The Sheriff's Department will charge a fee for this service. You will need to check with the Sheriff's Department for costs associated with the execution against property.

The above is a brief summary of general small claims procedures for Wood County. If you have a question of a non-legal nature or a concern that is not addressed, please feel free to contact the small claims clerk at 715-421-8548 for further assistance or visit [www.wicourts.gov](http://www.wicourts.gov).