

# Small Claims Handbook

## A Citizen's Guide to Handling Small Claims Complaints in Kentucky



Provided by the Kentucky Administrative Office of the Courts  
and the Kentucky Office of Attorney General



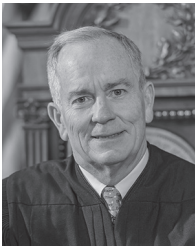
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## Handbook provides guide to small claims procedures



Each year thousands of cases are decided in the Small Claims Division of District Court, which settles disputes involving money or personal property valued at \$2,500 or less.

The Small Claims Division allows individuals to save time and money by handling their small claims cases in an informal legal forum.

The Kentucky Administrative Office of the Courts is pleased to join the Kentucky Office of Attorney General to provide this handbook to those who would like guidance on how to follow procedures for small claims cases. I believe you will find this to be a valuable resource.

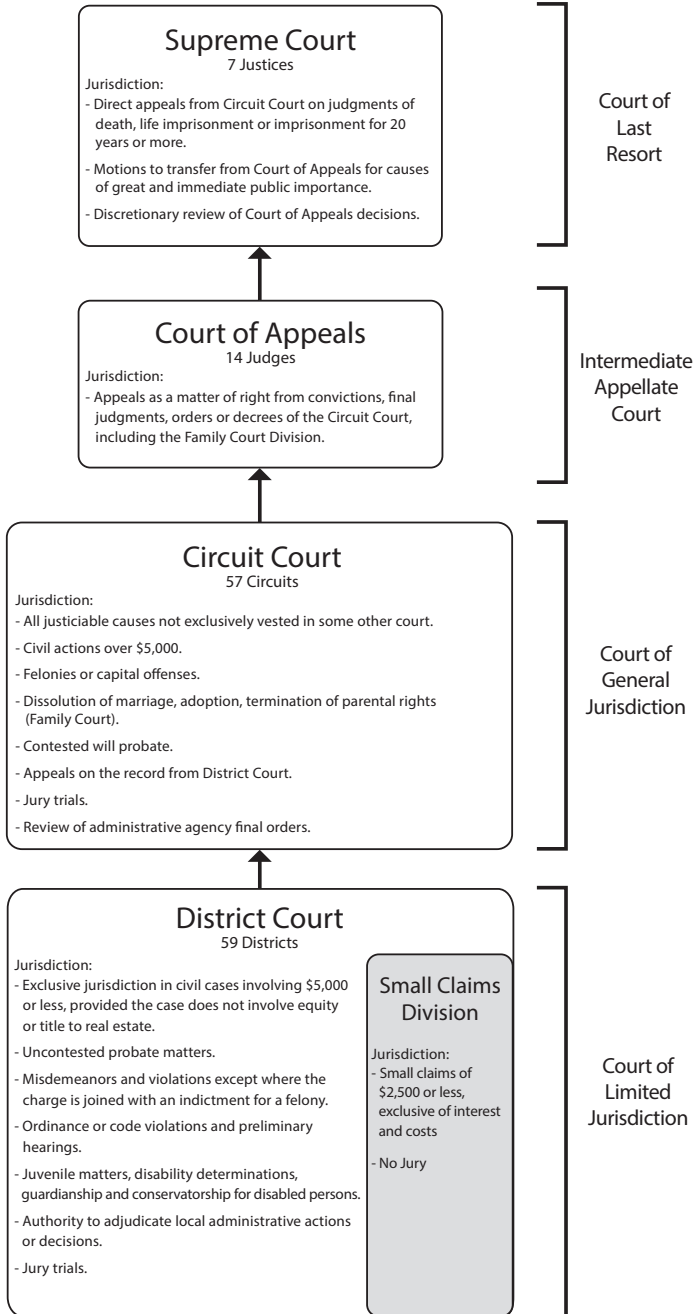
Laurance B. VanMeter  
Chief Justice of the Commonwealth

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# Kentucky Court System



# Introduction

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The Kentucky Office of Attorney General (OAG) is required to prepare an informational pamphlet on the Small Claims Division of District Court. KRS 24A.350(1). The Kentucky Administrative Office of the Courts is pleased to join the OAG in providing this handbook on the small claims process.

The Small Claims Handbook should:

- Help you understand the small claims process.
- Provide step-by-step guidance.

The Small Claims Handbook will not:

- Provide legal advice.
- Make parties an authority in small claims or collection procedures.
- Take the place of an attorney. If a party chooses to represent themselves, they are expected to do the things an attorney is expected to do.

All individuals involved in the small claims process should read this entire handbook for information concerning their rights and duties.

## Locating Legal Forms and Other Resources

All legal forms necessary to file a small claims case are available online at <https://www.kycourts.gov/Legal-Forms/Pages/default.aspx>. Legal forms are searchable by form number, keyword, and/or topic. However, there are some forms that it is recommended you obtain in printed format.

Additional resources can be found at the KCOJ Self-Help Portal at <https://www.kycourts.gov/Legal-Help/Pages/Self-Help-Portal.aspx> and filled out electronically on your device.

The Office of Circuit Court Clerk in each county can provide legal forms in printed format. The circuit court clerk cannot give legal advice. Contact information for all 120 Offices of Circuit Court Clerk can be found at <https://www.kycourts.gov/Pages/index.aspx>.



# Small Claims Division

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The Small Claims Division of District Court in each Kentucky county settles disputes involving money or personal property valued at \$2,500 or less. The \$2,500 limit does not include interest and court costs. The jurisdiction for the Small Claims Division is found in KRS 24A.230.

The procedures are informal. Individuals may file a claim or defend themselves without an attorney or they may employ an attorney to handle their case if they wish.

In the Small Claims Division, the parties involved in the dispute go to court and tell their sides of the story to the judge. The judge makes a decision based upon the law governing the facts presented. There is no jury trial in the Small Claims Division.

## When to Use the Small Claims Division

Before filing a small claims suit, individuals should try to resolve the dispute. A settlement out of court will save both time and money. If a settlement is reached, the terms of the agreement should be put in writing and be signed by all parties.

If the dispute cannot be resolved by the parties on their own, consider other options. If the dispute is with a Kentucky-owned and operated business or corporation, an individual may want to contact the Consumer Protection Division in the Kentucky Office of Attorney General. However, the Consumer Protection Division cannot seek any amount that may be owed to an individual but can mediate a dispute between an individual consumer and a business. It does not mediate business-to-business disputes.

For information on how to file a consumer complaint with the Office of Attorney General, visit: <https://www.ag.ky.gov/Resources/Consumer-Resources/Consumers/Pages/Consumer-Complaints.aspx>.

The office has consumer complaint forms to ensure adequate information is contained in a complaint. It is not mandatory that an individual use these complaint forms, but all complaints must be in writing. To obtain a complaint form, an individual can:

- Use the online consumer complaint form at <https://secure.kentucky.gov/formservices/AttorneyGeneral/ConsumerMediationForm>.



- Download a form online at <https://ag.ky.gov/Priorities/Protecting-Kentuckians/Consumers/Pages/Consumer-Complaints.aspx>.
- Call the Consumer Protection Division at 502-696-5389 or 888-432-9257 and select option #3. Leave their name and address and indicate whether the complaint is against a telemarketer, automobile dealer, or other type of business.
- Mail a written complaint to the following address as long as adequate information is contained in the letter and supporting documents are included:

Consumer Protection Division 1024  
Capital Center Drive, Suite 200  
Frankfort, KY 40601

Only after it is clear that no resolution can be reached, should an individual file a small claims action.

## Who Can File a Small Claims Suit

Generally, there are two parties to a lawsuit:

**Plaintiff** | The person or business filing the lawsuit.

**Defendant** | The person or business being sued.

The plaintiff can be any person, business, or corporation claiming either they are owed money or personal property worth \$2,500 or less, or who seeks to reject, avoid, or cancel a contract or agreement for the purchase of goods and services not more than \$2,500. The following may not file suit in the Small Claims Division:

- A person or organization in the business of lending money with interest.
- A collection agency or a collection agent.
- A person or organization with an assigned claim (a legal claim or cause of action that has been transferred to a third party) or a class action.

In Kentucky, an individual may not file more than 25 claims in any one calendar year. A business may not file more than 25 claims for each established location in the district that has been engaged in trade or commerce for at least six months. A district is the geographical limitations of a specific district court. A map of the districts in Kentucky is available at [https://www.kycourts.gov/Courts/Documents/P-108%20KY%20Judicial%20Districts%20Map%208.5x11\\_012423web.pdf](https://www.kycourts.gov/Courts/Documents/P-108%20KY%20Judicial%20Districts%20Map%208.5x11_012423web.pdf). These limitations do not apply to cases filed by city, county, or urban governments.

If a corporation or partnership is the plaintiff or defendant in a small claims action, the person who comes to the hearing must be an officer of the corporation, a person regularly employed in a managerial capacity by the corporation or partnership, or an attorney.

The following types of cases or claims cannot be filed in the Small Claims Division:

- Criminal charges
- Cases of libel, slander, or alienation of affection
- Malicious prosecution
- Abuse of process

In addition, a complaint filed in the Small Claims Division may not be the best solution if:

- The dispute is complicated, even if the loss is less than \$2,500.
- The other party cannot be located.
- If the plaintiff has been wronged by a disreputable business, company no longer in business, an individual who has filed bankruptcy or has no money or property.
- The person to be sued lacks any income, money, or property to be seized if a judgment were entered against them.

# When You Are the Plaintiff

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## Time for Filing Suit

It is important to file suit immediately after you realize no settlement can be reached. The law sets a period of time, called the statute of limitations, in which a person must file suit. After this period expires, a person cannot file suit. The statute of limitations depends on the type of claim made in the lawsuit. Here are some examples:

**Oral contracts** | Claims involving an oral contract or agreement have a five-year statute of limitations.

**Written contracts** | Claims involving a written contract or agreement have a 15-year statute of limitations.

**Personal injury claims** | Some claims involving personal injury have a one-year statute of limitations.

If you are unsure about bringing your claim within the proper time frame, you may proceed with filing a suit. However, if too much time has passed, the judge will dismiss the claim, and you will not be refunded your filing fee.

The Office of Circuit Court Clerk cannot advise you concerning the statute of limitations of your claim.

## Where to File a Complaint

Consider the following when deciding in which county you should file your small claims complaint:

- Your small claims complaint should be filed with a court in the county where the person you are suing lives or does business, or, in the case of a corporation, in the county where its office or place of business is situated or where its officer or process agent resides. There are, however, exceptions to this general rule.

For example, if you are suing a corporation about a dispute involving an agreement or contract, then you may choose to sue in a court located in the county in which the agreement or contract was made or was to have been performed.

- If your complaint concerns an agreement or contract but the

defendant is not a corporation, then different rules apply, and it may be best to file the complaint with a court located in the county where the defendant lives.

## **Amount for Which You Can Sue**

The maximum amount of money you can sue for is \$2,500. Even if you are owed more, you can choose to sue in the Small Claims Division for only \$2,500 instead of filing suit in another division for a greater amount. The amount you sue for should include both the actual amount owed to you and any extra expenses resulting from the dispute. You must be able to prove the amount for which you are suing.

## **How to File a Small Claims Suit**

A small claims lawsuit begins when you file a Small Claims Complaint form (AOC-175). The Office of Circuit Court Clerk cannot fill out this form for you or provide you with legal advice. Additional resources can be found at the KCOJ Self-Help Portal here: <https://www.kycourts.gov/Legal-Help/Pages/Self-Help-Portal.aspx>.

You must include the correct address of the person you are suing on the Small Claims Complaint form. The Office of Circuit Court Clerk is not responsible for finding an address for you. If you do not have the address, consider searching the Internet.

You must also include an explanation of your dispute with the defendant. Include this information on the complaint form. Do not attach an explanation on a separate page.

If your suit is against a business, it is your responsibility to determine who should be served the summons on behalf of the business. You can visit the Office of the Kentucky Secretary of State's website at <https://web.sos.ky.gov/bussearchnprofile/search.aspx> to find out if the business is incorporated. If the business is incorporated, obtain the name and address of the corporation's process agent, who will be listed on the summons for service. If there are several parties involved and you cannot determine who to sue, your claim may be too complex to be filed as a small claims action. In this case, you should consult an attorney for assistance.

After completing the complaint form, you can either take it to the Office of Circuit Court Clerk in the county where you want to file the complaint, or you can file using the KCOJ's eFiling system. For information about

how to eFile, visit <https://ehelp.kycourts.net/>.

You will be charged a fee when you file the complaint, either in person or through the eFiling system. The Office of Circuit Court Clerk will issue a summons to notify the defendant that a complaint has been filed. The defendant will be sent a copy of the complaint and this handbook along with the summons.

Tell the Office of Circuit Court Clerk how you want the summons to be served. You may choose either certified mail with a return receipt requested or have the summons personally served on the defendant by the Sheriff's Office. The Office of Circuit Court Clerk requires payment in advance for mailing the summons by certified mail. If you choose personal delivery, you will pay the service fee directly to the Sheriff's Office.

It is your responsibility to check with the Office of Circuit Court Clerk to be sure the defendant has been served the summons. It is not the responsibility of the Office of Circuit Court Clerk to notify you. Your case will not be heard by the judge until the defendant has been served the summons. The location, time, and place of the hearing will be listed on the Small Claims Summons form (AOC-180).

When you present your side of the dispute to the judge, you may also call witnesses and present evidence to the judge. Each party has the right to examine any evidence presented and may question the other party and witnesses.

After hearing from both sides, the judge will make a decision based upon the law and facts of the case and will enter a judgment that will say who won, how much is to be paid, and how it is to be paid.

## **Failure to Appear at the Hearing**

Even if the defendant does not appear at the hearing, you must still be prepared to show the judge proof of your claim.

If you do not appear for the hearing, the case may be dismissed, or the judge may grant any counter-claim filed and proven by the defendant.

# When You Are the Defendant

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You will receive a Small Claims Summons with a copy of the Small Claims Complaint and this handbook from the Office of Circuit Court Clerk (if the summons is sent by mail) or the Sheriff's Office (if the summons is delivered in person).

On the complaint, you will see the name and address of the person who is suing you, the claim made against you, and the amount of money or property claimed to be owed by you. The summons will tell you the date, time, and location of the hearing.

You must appear in court at the date and time stated on the summons. If you do not appear as ordered on the summons, the judge may enter a default judgment against you for all of the money or property claimed to be owed by you to the plaintiff. The judge may further require you to pay all court costs. A judgment is an official court order that can be enforced by garnishing your wages and/or seizing and selling your property.

## Responses to a Small Claims Complaint

Consider the following ways to respond when sued:

**Settle Your Differences.** After you have been sued, you and the plaintiff still have an opportunity to settle your differences out of court. Consider a compromise. Both time and money may be saved if you can resolve the dispute prior to the hearing. If you want to avoid the court hearing, propose settlement terms to the plaintiff before the hearing.

If you and the plaintiff agree on a resolution before the hearing, complete a Small Claims Settlement Agreement form (AOC-199). Both you and the plaintiff must sign the completed form. File the Small Claims Settlement Agreement with the Office of Circuit Court Clerk or the eFiling system. For information about how to eFile, visit <https://ehelp.kycourts.net/>.

Find out from the Office of Circuit Court Clerk whether you and the plaintiff are still required to appear in court. If the judge approves the settlement agreement, it becomes legally enforceable.

**Defend Your Case in Court.** The hearing is informal. The judge will ask you to respond to the plaintiff's complaint against you. Keep your statement as short as possible, without neglecting important facts. Even

though you are familiar with the dispute, the judge is not. Therefore, it is important to state everything as clearly as possible and support your statements with evidence. The judge is concerned only with the facts relevant to the dispute.

When you go to court, take originals (or copies if you do not have originals) of contracts, letters, receipts, canceled checks, leases, estimates, police reports, photographs, actual damaged goods, or other evidence. The type of evidence you need depends upon the dispute. You must present evidence to prove every point in your defense.

**File a Counter-claim.** If you believe the plaintiff owes you money or personal property related to the same dispute involved in the lawsuit filed against you, you may choose to file a counter-claim.

To file a counter-claim, you will need to complete a Small Claims Counter-Claim form (AOC-185).

File the completed form with the Office of Circuit Court Clerk or the eFiling system at least five days before the hearing. It is your responsibility to deliver a copy of the counter-claim form you have filed to the plaintiff.

There is no fee charged for filing a counter-claim unless the amount you are asking from the plaintiff exceeds \$2,500. If the counter-claim is asking for more than \$2,500, you will be charged a filing fee and the Office of Circuit Court Clerk will transfer the lawsuit from the Small Claims Division to the Civil Division of District Court. The procedures in the Civil Division of District Court are more formal than in the Small Claims Division. You may need to hire an attorney to represent you.

**Request a Jury Trial.** You may request a jury trial if the plaintiff is asking for an amount of money or personal property worth more than \$250. At least seven days before the hearing, notify the Office of Circuit Court Clerk that you want a jury trial. The Office of Circuit Court Clerk will transfer the case from the Small Claims Division to the Civil Division of District Court. You will be charged an additional fee to transfer the case. You may need to hire an attorney to represent you.

# Appealing a Small Claims Case

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If either the plaintiff or the defendant disagrees with the judge's decision, they may choose to appeal the case. A Notice of Appeal must be filed with the Office of Circuit Court Clerk to appeal the case to Circuit Court. A filing fee is required for the appeal.

New evidence or information cannot be filed or presented to the Circuit Court judge if the case is appealed. The Circuit Court judge will only review the court case file and any electronically recorded proceedings in the Small Claims Division to determine if the law was applied correctly. A party should not appeal just because they did not win the suit.

An appeal is complicated. The losing party may need to seek the advice of an attorney to help them decide if they have grounds for an appeal. If a party was ordered to pay a Small Claims judgment by the District Court judge and then they lose their appeal, they will have to pay the Small Claims judgment plus any court costs the Circuit Court judge may order. Further, if the party hires an attorney to file their appeal, they will be responsible for any attorney fees charged for that representation.

## Filing the Appeal

Generally, there are two parties to an appeal:

**Appellant** | The person or business who lost.

**Appellee** | The person or business who won.

If the losing party decides to appeal the judge's ruling, they must file a pleading captioned as a Notice of Appeal. There is no legal form available. The appellant may choose to prepare this document on their own or hire an attorney to do so. The notice of appeal must:

- Identify the filer by name as the appellant and indicate whether they were the plaintiff or defendant before the District Court;
- Identify the other party by name as the appellee and indicate whether they were the plaintiff or defendant before the District Court;
- List the date the judgment was entered;
- Note that the appeal is being taken to the Circuit Court;
- Attach a copy of the judgment; and
- Certify that a copy of the notice was sent to the other party.



The appellant must file the Notice of Appeal with the Office of Circuit Court Clerk or the eFiling system in the same county where the small claims action was filed and heard. This must be done within 10 days from the date the Small Claims judgment was stamped “Entered.” KRS 24A.340. The appellant will be charged a filing fee when they file the Notice of Appeal. The appellant must send a copy of the notice to the appellee.

The appellant must file a Statement of Appeal in the Circuit Court case within 30 days of filing the Notice of Appeal. The Statement of Appeal must contain the following information:

- A caption listing the Circuit Court, the Circuit Court case number (ex: 00-XX-00000), the parties and their designation as appellant or appellee, and the District Court case number.
- A sentence telling the court whether this dispute has been appealed to the Circuit Court before and if so, whether the court needs to review anything from that appeal.
- A sentence requesting to make an oral argument to the court, if wanted. If oral argument is not requested or granted, the judge will decide the appeal on the basis of the Statement of Appeal and the court record. The parties will be notified of the time and place to appear if the request for an oral argument is granted.
- A section labeled “Statement of the Case” followed by a brief summary of the dispute and court events that are relevant to the appeal. All references to the dispute and court events must indicate where in the court file or on the electronic recording the information is contained so the court can verify the accuracy of the information. No new evidence can be submitted or considered in the appeal.
- A section labeled “Argument” followed by a concise statement of the legal claim, with citation to legal authorities that support the claim.
- A statement of the relief (usually compensation) the appellant believes they are entitled.
- A certification that a copy has been delivered to the appellee.
- Appellant’s signature.

The Statement of Appeal must be clearly readable, in black type, no smaller than 12-point font, lines that are double-spaced, with 1-inch margins, and print only on one side of white paper that measures 8 ½ x 11 inches. The Statement of Appeal is limited to either 8,750 words or if computer-generated, 20 pages in length. The Statement of Appeal must be filed with the Office of Circuit Court Clerk in the same county where the small claims action was filed and heard.

There is no legal form for the Statement of Appeal. The appellant must prepare this document or may choose to hire an attorney to prepare it.

The appellee may file a Counterstatement of Appeal within 30 days of the appellant filing the Statement of Appeal. The Counterstatement of Appeal must include the same items as the Statement of Appeal.

# Collections When You are the Winning Party

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## Judgment in a Small Claims Case

A judgment in a small claims case is a court order that is legally enforceable. It entitles a winning party to receive money awarded by the court. The judge may order the losing party to pay the winning party a sum of money or to fix any damaged goods. The judge may also give the losing party additional time to pay or fix the damaged goods.

## Judgment Not Paid by Due Date

If the losing party fails to pay the judgment ordered by the court within 10 days of the due date, additional action may be necessary. First, you should contact the losing party and attempt to collect the judgment. This will save time and money, in addition to avoiding the complexity of post-judgment collection procedures. If the losing party refuses to pay the amount ordered by the court, you may wish to take further steps to collect the judgment. Although a judgment is legally enforceable, you are responsible for taking any additional action necessary to collect the money owed. The Office of Circuit Court Clerk is prohibited from giving you legal advice.

## Identifying the Losing Party's Assets

In order to legally enforce the judgment, you must know if the losing party owns any property, such as land or an automobile, which can be seized, or if they have a bank account or salary from an employer that can be garnished. If you do not know this information, you may serve the losing party with written questions (called interrogatories) to find out what you need to know.

Complete the Small Claims Post-Judgment Interrogatories form (AOC-197). This form contains basic questions to help you obtain information about the losing party's assets. You may add up to 15 additional questions. These questions are for your use and benefit. The Office of Circuit Court Clerk cannot assist you with writing any additional questions.

Once you complete the form, do not file it with the Office of Circuit Court Clerk. Send the Small Claims Post-Judgment Interrogatories and any additional questions to the losing party. Keep a copy for yourself. In order to ensure that the losing party receives the interrogatories, you may want to send them by certified mail. The losing party must answer the questions under oath and return a copy of the answers to you within 30 days after receiving the questions.

If the losing party fails to answer the questions within 30 days, you may request the judge order the losing party to answer your questions. Complete the Small Claims Post-Judgment Motion to Require Losing Party to Answer Interrogatories form (AOC-198). The Office of Circuit Court Clerk cannot assist you in preparing the motion. File the completed form with the Office of Circuit Court Clerk or the eFiling system. You must send a copy of the motion to the losing party.

## Post-Judgment Collection Procedures

The winning and losing parties may be called different names during collection proceedings, including:

**Judgment Creditor** | The winning party to whom money is owed.

**Judgment Debtor** | The losing party who has been ordered to pay or fix damaged goods.

There are three post-judgment collection procedures you may use to collect your judgment:

- I. Garnishment of the losing party's wages or bank account(s)
- II. Execution (seizure) of property
- III. Judgment lien

Garnishments, executions, and judgment liens can be difficult and hard to pursue. You may need to consult an attorney to assist with these procedures.

### I. Garnishment

You may use garnishment to obtain money that belongs to the losing party but is in the hands of someone else, known as the garnishee. The garnishee may be any person, corporation, or business holding the losing party's money. The garnishee may, for instance, be an employer or a bank.

There are two types of garnishments:

**Wage garnishment** | This is money due by the losing party paid from their wages from employment, for example.

**Non-wage garnishment** | This is money due by the losing party paid from their bank account, for example.

In order to get a garnishment issued, follow the District Court's judgment specifying when a garnishment may be issued. If the court's order does not specify a date when the garnishment may be issued, you must wait 10 days from the "Entered" date stamped on the judgment.

For a wage garnishment, use the Notice of Rights to Assert Exemption to Wage Garnishment form (AOC-150). The AOC-150 is a multi-part form and it is recommended that you obtain a printed version of the form from the Office of Circuit Court Clerk. You will complete the affidavit on the last page of the form. For a non-wage garnishment, use the Affidavit for Writ of Non-Wage Garnishment form (AOC-145) and the Order of Garnishment (Non-Wage) form (AOC-150.1). For either type of garnishment, complete the affidavit, choose the method of service upon the garnishee, pay the applicable fee, and file with the Office of Circuit Court Clerk in the county in which the small claims action was filed and heard.

You may have the order of garnishment served by the sheriff or sent by first-class or certified mail. The garnishment fee and sheriff's fee or mailing costs may be recoverable as costs and should be added to the amount requested in the affidavit and order of garnishment.

The garnishee has 20 days after being served with the garnishment to file an answer to the garnishment. The garnishee may answer by delivering the money owed or the judgment debtor may file an Affidavit to Challenge Garnishment form (AOC-150.2) if they want to dispute the garnishment.

If the garnishee does not deliver the money owed within 20 days, you may file a motion asking the judge to require the garnishee to appear in court. Check with the Office of Circuit Court Clerk for a date and time when you will be able to make this request to the court in person. The date and time provided by the circuit court clerk must be included in the motion and a copy of the motion must be sent to the garnishee. There is no legal form for this motion. You must prepare it yourself or hire an attorney to draft and file it for you.

If the judge issues an order for the garnishee to appear in court, you can ask the garnishee why it has not delivered the money owed and what other assets it has that belong to the judgment debtor. If the garnishee fails to appear after being ordered to do so by the judge, you may ask the judge to issue an order for the garnishee's arrest.

The garnishee is required to deliver all of the money it has belonging to the judgment debtor, up to the amount of the judgment, plus costs that were listed in the affidavit, but less any amount the garnishee or judgment debtor proves is exempt from garnishment. An example of money exempted from garnishment may include money received for support of dependent children and benefits received by reason of age, illness, disability, or length of service. It is possible that the garnishee may not have enough of the judgment debtor's money to cover all of the judgment and costs.

The order of garnishment stays in effect until the judgment and costs are paid in full. If you are not represented by an attorney, the garnishee will deliver money owed to the Office of Circuit Court Clerk. The Office of Circuit Court Clerk is required to hold the money for 15 days from the date the garnishment check was issued before paying the money to you. If the judgment debtor files an objection before the 15 days are up, the Office of Circuit Court Clerk will continue to hold the money until the court rules on their objection.

When the judgment is almost paid in full, use the Affidavit and Supplemental Order of Wage Garnishment form (AOC-150.5) to let the garnishee know when to stop the garnishment. The AOC-150.5 is a multi-part form and it is recommended that you obtain a printed version of the form from the Office of Circuit Court Clerk. Complete the form and take it to the Office of Circuit Court Clerk for filing. You may have the Supplemental Order of Wage Garnishment served upon the garnishee by the sheriff or you may send it by first-class or certified mail.

If you think the garnishee is withholding money that is due you or if the garnishee fails to deliver the correct amount of money, you may file a separate lawsuit. You may want to seek legal advice before pursuing this course of action.

### **Money of Judgment Debtor Held in Another County**

If you discover money owed by the judgment debtor is located in a county other than the one in which the judgment was entered, you may send the order of garnishment to the garnishee in the other county. You may have the sheriff of that county serve the garnishee or you may mail the order of garnishment to the garnishee by certified mail or first-class mail. The garnishee will have 20 days to send the money to the court where your judgment was entered.

### **How to Garnish Out-of-State Wages**

If the judgment debtor works for an employer located outside of Kentucky, you may garnish their wages only if the employer is subject to process in Kentucky. You can call the Office of the Kentucky Secretary of State at 502-564-3490 or visit <https://web.sos.ky.gov/bussearchnprofile/search.aspx> to find out the name and address of the employer's process agent in Kentucky. Send the order of garnishment to the process agent.

An employer may not discharge an employee because the employee's wages are garnished due to their indebtedness. KRS 427.140.

## **II. Execution**

Execution is a procedure that commands the sheriff to seize property of

the judgment debtor. The property can then be sold and the money from the sale will be applied to your judgment.

An execution may be issued 10 days after the date on the “Entered” stamp on the judgment unless the District Court judge has ordered otherwise. Use the Execution Form (AOC-135) and file it with the Office of Circuit Court Clerk in the county where your judgment was obtained. The AOC-135 is a multi-part form and it is recommended that you obtain the printed version from the Office of Circuit Court Clerk. A fee will be charged for issuing the execution.

Take the execution to the sheriff who will deliver notice and search within the county for property of the judgment debtor.

If you know there is no property in the county where the judgment was obtained, file an affidavit with the Office of Circuit Court Clerk stating there is insufficient property in that county and request that an execution be issued for the county where you think the judgment debtor has property. Send the execution to the sheriff of the county where the property is located.

Kentucky law states that the judgment debtor’s personal property is subject to execution first before any real estate may be seized. KRS 426.230. Personal property includes items such as household goods, tools, equipment, and automobiles. List both personal property and real estate on the AOC-135. In the event there is insufficient personal property to satisfy the judgment, the sheriff can seize the real estate.

The sheriff may require you to post a bond to pay for any damages that might be incurred in the event the property is proved to have been improperly seized.

The sheriff must return the execution to the court within 60 days of issuance. (The sheriff’s return is on the bottom of Page 2 of the AOC-135.) If non-exempt property belonging to the judgment debtor is found by the sheriff, this information will be noted on the sheriff’s return. The judgment debtor has 10 days from the date of service of the execution to challenge it by filing an Affidavit to Challenge Execution form (AOC-135.1) with the Office of Circuit Court Clerk. Any payment made by the judgment debtor to the sheriff will be applied toward payment of the judgment.

If the debt still remains, you may need to have the executed property sold in order to collect the judgment and costs in full. Use Order for Sale form (AOC-140) and file it with the Office of Circuit Court Clerk 14 days after the execution is served.

### **Items Exempt from Execution**

Some items are exempt from execution up to a certain value.

Examples:

- Household furnishings, jewelry, personal clothing, and ornaments up to \$3,000 in value. KRS 427.010(1).
- Farm tools, equipment and livestock of a person engaged in farming up to \$3,000 in value. KRS 427.010(1).
- One automobile and its necessary accessories up to \$2,500 in value. KRS 427.010(1); KRS 427.030.
- Professionally prescribed health aids for debtor or dependent. KRS 427.010(1).
- Trade tools up to \$300 in value. KRS 427.030.
- Professional library, office equipment, instruments and furnishings necessary in the practice of ministers, attorneys, physicians, surgeons, chiropractors, veterinarians and dentists up to \$1,000. KRS 427.040.
- The debtor's interest, not to exceed \$5,000, in real or personal property used as a residence. KRS 427.060.
- Insurance benefits. KRS 427.110.
- Police and firefighters' pension fund established in first through fourth class cities. KRS 427.120 and 427.125.

## **III. Judgment Lien**

### **Notice of Judgment Lien**

You may file with the county clerk a notice of judgment lien containing the District Court that entered the judgment, the case number, and the amount of the judgment, including principal, interest rate, court costs, and attorney fees. The notice shall also include the following language:

**Notice to Judgment Debtor.** You may be entitled to an exemption under KRS 427.060, reprinted below. If you believe you are entitled to assert an exemption, seek legal advice.

“In addition to any exemption of personal property, an individual debtor's aggregate interest, not to exceed \$5,000 in value, in real or personal property that such debtor or a dependent of such debtor uses as a permanent residence in this state, or in a burial plot for such debtor or a dependent of such debtor, is exempt from sale under execution,



attachment, or judgment, except to foreclose a mortgage given by the owner of a homestead or for purchase money due thereon. This exemption shall not apply if the debt or liability existed prior to the purchase of the property or the erection of the improvements thereon.” KRS 427.060.

You must then send a copy of the notice of judgment lien by first-class mail to the last known address of the judgment debtor or deliver it to the judgment debtor personally.

### **Action to Enforce Judgment Lien**

Once you have filed the notice of judgment lien and served it, you can then file a separate lawsuit to enforce the judgment lien. In your complaint, you must list any other liens held on the property by others and name them as defendants in the lawsuit. If you are successful, the court will order the sale of the property.

Be aware that the property may be subject to federal exemptions as well.

### **Difficulty in Collecting Your Judgment**

There are instances when a judgment debtor has no job or other income and no assets that may be seized. This type of individual is considered “judgment-proof”, and there is no way to immediately collect your judgment.

It may be difficult to collect money from disreputable businesses, companies located outside of Kentucky, companies no longer in business, or individuals who have filed for bankruptcy.

If the judgment debtor moves and leaves no forwarding address, you may not be able to collect your judgment because the defendant cannot be located.

Small claims judgments are enforceable for 15 years.

### **Satisfaction of Judgment**

Upon the return of an execution (e.g., a document stating that a court officer seized and sold a judgment debtor’s property to satisfy a money judgment), the circuit court clerk will note on the judgment that it has been satisfied. If there has been no execution but the judgment has been satisfied (e.g., paid), you should write “Satisfaction in full” upon the margin of the judgment and sign and date it. You can also sign and file a document styled “Satisfaction of Judgment.”

If you refuse to comply with this rule, the judgment debtor may file a Motion for Satisfaction of Judgment (Small Claims) form (AOC-191) with the Office of Circuit Court Clerk.

# Appendix of Legal Forms

These small claims forms can be downloaded from the Legal Forms page of the Kentucky Court of Justice website at <https://www.kycourts.gov/Legal-Forms/Pages/default.aspx>. Forms are searchable by form number, keyword, and/or topic.

Execution Form, form AOC-135\*

Affidavit to Challenge Execution, form AOC-135.1

Order for Sale (Venditioni Exponas), form AOC-140

Affidavit for Writ of Non-Wage Garnishment, form AOC-145

Notice of Rights to Assert Exemption to Wage Garnishment, form AOC-150\*

Order of Garnishment (Non-Wage), form AOC-150.1

Affidavit to Challenge Garnishment, form AOC-150.2

Affidavit and Supplemental Order of Wage Garnishment, form AOC-150.5\*

Small Claims Complaint, form AOC-175

Small Claims Summons, form AOC-180

Small Claims Counter-Claim, form AOC-185

Motion for Satisfaction of Judgment (Small Claims), form AOC-191

Small Claims Post-Judgment Interrogatories, form AOC-197

Small Claims Post-Judgment Motion to Require Losing Party to Answer Interrogatories, form AOC-198

Small Claims Settlement Agreement, form AOC-199

\*Forms AOC-135, AOC-150, and AOC-150.5 are multi-part forms not available in a fillable format. It is recommended you obtain these forms in printed format from the Office of Circuit Court Clerk.

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