Small Claims Manual (2023)

Indiana Office of Court Services

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Application of Manual

This manual has been prepared to provide you with general knowledge of the operation of Small Claims Courts in Circuit and Superior Courts. It does not address the specific jurisdiction or procedures of Marion County Small Claims Court. Marion County Small Claims Court is governed by Ind. Code § 33-34 et seq.

The manual does not cover all areas of the law or procedure; it does deal with many of the problem areas experienced in Small Claims Court and, hopefully, will aid you in preparing your case. Keep in mind that the procedures outlined in this manual may be subject to change by local court rule, practice or custom. ***Please be sure to follow the current version of the Small Claims Rules as they may change after posting this publication.*** If you have a question about a particular procedure, practice, or court policy, check with the clerk or court staff. He or she may be able to assist you.

Please read the manual from cover to cover. Although the court staff and the Small Claims clerk cannot give you legal advice, they will try to answer any questions you might have after you have read the manual.

Important Information About Suing in Small Claims Court

Small Claims Courts have simple rules of procedure and allow you to represent yourself without an attorney. As a result, many of you may feel that all you need to do to win your lawsuit is to appear in court on the day of the trial. Others may feel that it is the judge's job to develop and help you present your evidence at trial. Still others may believe that there is some "magic" associated with the courtroom or that the judge possesses supernatural insight which enabled him or her to find the truth without the benefit of evidence. None of these beliefs is correct.

A judge has no supernatural insight and there is no magic in the courtroom. The judge's job is to decide disputes between you and another party that you have been unable to settle yourselves. The judge's decision must be based solely on the evidence given by the parties at the time of the trial and in accord with the applicable law. The court, like a hammer or saw, is only a tool which you may use to settle your dispute. Like any tool, the end product will show your skill in using the tool. A good case can be lost if you do not prepare your case before the trial or if you fail to effectively present your evidence when you get to trial.

Proper preparation and effective presentation of your evidence greatly increases your chances of winning in Small Claims Court.

Introduction

The Small Claims Court allows every citizen to bring a lawsuit in an informal manner and does not require that a party hire an attorney. You may hire an attorney if you want; however, in most instances you will not be able to get the other party to pay your legal fees even if you win; unless there is some written agreement or statutory basis making the other party liable for your attorney's fees.

The Small Claims Courts were created so that you would have a speedy, reasonably inexpensive, uncomplicated means of determination of your claim. It is for your benefit. Do not be afraid to use it. The court's staff and the clerk's staff will assist you, but they cannot give you legal advice.

The procedures are not complex. The Plaintiff fills out a simple form stating why the Defendant owes him or her money or that the Defendant has property which should be returned to the Plaintiff. Each party will explain his or her side of the story to the judge at trial. The judge may ask questions of each party to determine the complete facts of the case. The judge will decide based on the facts and evidence presented by the parties and on the law as it applies to the facts.

Definitions

Agreed Judgment/ Pre-Trial Settlement

An agreement by the parties settling a dispute, subject to the judge's approval.

Affidavit

A written statement made upon affirmation that the statement is true under the penalty of perjury or under oath before a notary public or other person authorized to administer oaths.

Affidavit of Debt

Plaintiffs must file an Affidavit of Debt when filing a Notice of Claim on an account. Form provided with this manual may be subject to future updates. The current form can be found at: https://www.in.gov/judiciary/files/form-civil-affidavit-of-debt-sc.pdf.

Body Attachment

An order of arrest issued when a party does not appear at a Rule To Show Cause Hearing.

Contempt

An act or a failure to act that tends to obstruct or interfere with the operation of the court.

Continuance

Postponement of a hearing or trial to a later date.

Counterclaim

A written demand filed by a defendant against a plaintiff for money or possession of property.

Damages

A sum awarded by the court as compensation for an injury.

Default Judgment

Decision for the plaintiff when the defendant fails to appear in court.

Defendant

The person being sued.

Discovery

A request for disclosure of information held by the other party.

Dismissal

The removal of a claim from the court prior to a trial.

Eviction

The legal process of removing someone from real property.

Garnishee Defendant

A third party served with a written notice to apply property to a judgment.

Garnishment

A request that property (cash or other items of value) controlled by a third person be used to pay a judgment.

Immediate Possession

A procedure for expedited return of real property or personal property.

Injury

Any wrong or damage done to another, either to a person, his or her rights or property.

Interrogatories

Written questions.

Judgment

The decision of the court.

Jurisdiction

The authority of the court to hear and decide cases.

Notice of Claim

Written statement of a claim against the defendant that serves as a notice that the lawsuit has been filed and that the party is ordered to appear in court.

Open Account

A running billing for goods or services rendered under a pre-existing agreement between parties.

Party

Any person suing or being sued.

Personal Property

Movable items or things that have value and are owned.

Plaintiff

The person suing.

Post-Judgment Interest

Compensation for loss of the use of money from the day of judgment to the time the judgment is collected.

Pre-Judgment Interest

Compensation for loss of the use of money between the time the money was due and the day a judgment is entered.

Proceedings Supplemental

A written filing asking the court to take steps to collect a judgment.

Real Property

Ownership, rights or interests to land and items such as buildings that are affixed to the land.

Release of Judgment

An entry on the court's records showing the judgment has been paid in full.

Rule to Show Cause

A written request asking the court to hold the other party in contempt for not following a court order.

Statute of Limitations

A time limit for filing a case.

Subpoena

A court order requiring the appearance of a witness at a hearing or trial.

Third Party

Someone other than the plaintiff or defendant.

Third Party Notice of Claim

A written claim allowed when a third party has a financial claim or obligation that relates to the lawsuit between the plaintiff and defendant.

Vacate

Making a judgment or court order ineffective.

Venue

The county where the case must be filed.

Before You File Your Claim

Before you fill out the forms to file your claim answer these questions (each is explained in this booklet):

(a)	Does the Small Claims Court have the authority (jurisdiction) to hear your case? (See Pages 11 and 12)	Yes	No
(b)	Is this county the proper location (venue) for filing you claim? (See Page 12)	Yes	No
(c)	Who are the parties to the action? (See Pages 12 and 13)	Yes	No
(d)	Is it too late under the Statute of Limitations to file your claim? (See Pages 13 and 14)	Yes	No

Only if the answers to Questions (a) and (b) are both "yes" and the answer to (d) is "no" may you file a small claims action in this county.

What You Can and Cannot Sue for in Small Claims Court

There are many times when you may sue in Small Claims Court. The following list contains some examples:

1) Personal injury, Ten Thousand dollars ($10,000.00) or less.
2) Damage to personal property or real estate, Ten Thousand dollars ($10,000.00) or less.
3) Landlord and tenant disputes, if the rent due at the time of filing is Ten Thousand dollars ($10,000.00) or less.
4) Money owed (bad checks, wages, services rendered, accounts receivable), Ten Thousand dollars ($10,000.00) or less.
5) Return of wrongfully taken property and return of money paid for

faulty work, Ten Thousand dollars ($10,000.00**)** or less.

6) Emergency possessory actions between a landlord and tenant under I.C.32-31-6.

As you might have guessed from the above examples, by Indiana law, small claims filed on or after July 1, 2021 are currently limited to cases where the amount sought to be recovered is Ten Thousand dollars ($10,000.00) or less.

If you hire an attorney, you probably will not be able to get attorney's fees as part of any judgment. Exceptions to this rule do exist, such as when a written agreement calls for the payment of attorney's fees or in the case of a bad check. Also, there are limits on the rate of interest you can ask for.

You may not use small claims court to take possession of real estate if the agreement is a land contract or seek a foreclosure action. These types of cases must be filed as a civil case in the proper Circuit or Superior Court.

Location (Venue) for Filing Your Claim

Small Claims Rules state that the right place to file a small claims suit is the county:

1) where the transaction or occurrence actually took place; or
2) where the obligation or debt was incurred; or
3) where the obligation is to be performed; or
4) where the Defendant resides; or
5) where the Defendant has his or her place of employment at the time the claim or suit is filed.

The county in which the suit is filed must meet one of the above requirements in order to be the proper county of venue. If several counties qualify under the requirements, then the Plaintiff can file suit in any one of the qualifying counties.

Parties to the Suit

The Plaintiff is the person or business which files the suit and asks the court to help collect an obligation or to grant some other relief from another person or entity.

The Plaintiff must be the person or business to whom the money is owing. For example, an apartment building manager cannot sue a tenant because the manager is just an employee. It must be the landlord who brings the lawsuit.

The Defendant is the person or business which is being sued and who must defend against the charge of the Plaintiff.

If more than one person is responsible, then all Defendants should be named in one suit.

Change of Address, E-Mail, or Telephone Number

If you change your mailing address or telephone number after you have become a party to a small claims suit, either as the Plaintiff or the Defendant, you must promptly notify the court in writing of the change. All notices concerning your suit, including any changes of the trial date, will be sent to your last known address. Your interest may be hurt if the court is unable to contact you due to a change of address. Remember, written notification of a change of address or telephone must be sent to the court. Some counties permit service by e-mail after the initial filing, if your email address changes or you want to be served by U.S. mail please send written notification to the court.

Deadlines for Filing Suit (Statute of Limitations)

Before you bring your lawsuit, you must be sure that the suit is filed within the time period provided by the statute of limitations. You cannot bring suit if the time limit has expired. The time limit begins to run for a contract when the contract is breached (broken) and for personal injury or damages to property when the injury occurs. A list of some of the most common statutes of limitations is set out below. (This is not an exhaustive listing of the statutes of limitations in the Indiana Code.)

1) Two Years
    a. Personal injury (that is, injury to a person as opposed to damage to property).
    b. Damage to personal property.
2) Six Years
    a. Accounts.

b. Contracts not in writing (other than a contract for sale of goods).
c. Rents and use of real estate (landlord-tenant disputes).
d. Damage to real estate.
e. Recovery of personal property.
f. Promissory notes and/or contracts for the payment of money.

Filing a Small Claim

If you wish to file a lawsuit against another person, you must follow these rules:

1) You must fill out several copies of a Notice of Claim form by briefly and clearly stating in writing the nature and amount of your claim against the Defendant. You will have an opportunity to explain more fully in court. Notice of Claim forms are available from the clerk's office without charge.
2) If your suit is based upon a written contract, you must provide to the clerk of the court one (1) copy of the contract for the court records and one (1) copy for each Defendant.
3) If suing on an account, you must file with the Notice of Claim an Affidavit of Debt. The current form is provided at https://www.in.gov/judiciary/files/form-civil-affidavit-of-debt-sc.pdf.
4) You must give the clerk the correct name, address and telephone number of the Defendant. Be sure the named Defendant is the real party in interest. For example, following an automobile accident, you should sue the driver of the other vehicle, not his or her insurance company.
5) You must pay the cost of filing the suit regardless of whether you choose to have the Notice of Claim delivered by certified mail, or to have the sheriff deliver it to the Defendant. If you win your suit, the Defendant will be ordered to repay this money to you. You will not be repaid if you lose.
6) If you are filing an action in a small claims court, you waive any claim in excess of the current jurisdictional limit ($10,000) and may **NOT** later bring a separate action for the remainder of such claim.

If you have questions about the procedure you must follow or any other matter relating to your case, ask the clerk for help. If you need legal advice, you must talk to an attorney. Neither the judge nor the clerk can give you legal advice.

After you file your lawsuit, you will be notified of the time and date of your trial / hearing. (You should check with the court staff to find out if you will be expected to have all of your witnesses and evidence with you on this trial date. In many courts this first trial date is used merely as a date to find out if the Defendant is going to dispute your claim. If the Defendant does not show up for this first date after receiving proper notice from the clerk or if the Defendant does show up and you can work out some agreement, then no trial will be necessary. On the other hand, if the Defendant does dispute all or a part of your claim, the judge may set the trial for a later date.)

Notice of the suit must be served upon the named Defendant at least ten (10) days before the parties are to appear in court. If the clerk or the sheriff is unable to find or notify the Defendant of the lawsuit within this time, you may either dismiss the suit or request a continuance of the trial date in order to have more time to notify the Defendant of the suit. If such a continuance is requested, you must again fill out several copies of the Notice of Claim, now called an "Alias Notice of Claim", with attached exhibits, if any. You may also be required to obtain a more current address for the Defendant.

You may withdraw or dismiss your claim prior to trial, but fees paid to the clerk for filing and service upon the Defendant cannot be returned.

If the Defendant has information which you cannot get and which you need to pursue your claim, you may request that the court order the Defendant to disclose this information to you. The Defendant may also make such a request to the court in order to prepare a defense. Such a request will be granted only if you give good reasons for disclosing the information and only after the other party has been notified of your claim and that the information is being sought. The court may limit the information sought to that which is necessary for the particular case. This process of seeking information from the party before trial is called "discovery."

Representation at the Trial - Attorneys

Small Claims Rule 8 allows a person to appear at trial and, if he or she chooses, represent himself or herself and avoid the cost of hiring an attorney. However, a person can hire an attorney and have the attorney appear with him or her at the

trial. A person who has power of attorney for another person may not represent that person in court.

Corporations - Representation in Small Claims Court

As a general rule in the United States, corporations, Limited Liability Corporation (LLC's), Limited Liability Partnership (LLP's), or trusts must appear by counsel. This is to curtail the unlicensed practice of law. Also, these entities by their nature acts through agents. When these agents are not attorneys, a lack the legal expertise may act to frustrate the continuity, clarity, and presentation of evidence which the judicial process demands. However, the Indiana Supreme Court has granted an exception to this general rule in Small Claims Court cases where the amount sought in a claim or counterclaim is $6,000 or less. This exception recognizes the economic realities of having to hire and compensate an attorney for claims of such a small amount.

Small Claim Rule 8 provides a limited exception for certain claims. A corporation, whether as a Plaintiff or a Defendant, may be represented by an employee who is not an attorney if the following conditions exist:

1) The claim or counterclaim (for or against the corporation, LLC, LLP, trust) is not more than the prescribed limit set by Small Claims Rule 8(C) ($6,000); and
2) The claim is not an assignment (such as a claim that has been assigned to a collection agency); and
3) There is a corporate resolution and employee or trustee affidavit filed in each case authorizing a full-time employee or trustee to represent the corporation and states that the designated employee or trustee is not disbarred or suspended from the practice of law in Indiana or any other jurisdiction. (Most small claims courts provide forms for this purpose.)

Sole Proprietors and Partnerships (Unincorporated Businesses)

As a general rule, an unincorporated business must be represented by the owner of the business or an attorney. Small Claims Rule 8 provides a limited exception for certain claims**.** A business, operated as a sole proprietorship or partnership, may (whether as a Plaintiff or Defendant) be represented by an employee who is

not an attorney if the following conditions exist:

1) The claim (for or against the business) is not more than the prescribed limit set by Small Claims Rule 8(C) ($6,000); and
2) The claim is not an assignment (such as a claim that has been assigned to a collection agency); and
3) The business has filed in each case an employee or trustee affidavit and certificate of compliance designating a full-time employee or trustee to represent the business and states that the designated employee or trustee is not disbarred or suspended from the practice of law in Indiana or any other jurisdiction. (The small claims court may have forms available for this purpose.)

Please note the following:

1. An employee NOT authorized by resolution cannot represent the corporation when the claim is below the prescribed amount. In this situation, the employee must be authorized by resolution.
2. If the claim involves a business operated as a sole proprietorship or partnership and it is less than the prescribed limit, an employee may represent the business in small claims court only if authorized by the certificate of compliance.
3. If the claim involves a corporation and it is greater than the prescribed limit, an attorney must represent the corporation.
4. If the claim involves a business operated as sole proprietorship or partnership and it is greater than the prescribed limit an employee who is not an owner cannot represent the business. In such cases, the owner or an attorney must represent the business.
5. A person with only a power of attorney cannot represent another person or entity. The power of attorney, under the law, does not permit you to act as a person's or entity's lawyer.

NOTE: Assigned claims (collection agencies) must have an attorney regardless of the amount of the claim.

6. If you are the employer, represented by designated employee or trustee, you and your designated representative may be sanctioned for failure to comply with the Small Claims rules or local rules of court. Sanctions may include assessment of costs or reasonable attorney's fees, the entry of a default judgment, the dismissal of a claim with or without prejudice, fines, incarceration, or both. Small Claims Rules 2(B)(11) and 8(C)(6).

Counterclaims

If you are the Defendant and have received notice that you have been sued in Small Claims Court and you believe that you have any claim against the Plaintiff, you may file a counterclaim against the Plaintiff.

You must file your counterclaim with the court so that the court will be able to mail a copy to the Plaintiff in time for the Plaintiff to receive it at least seven (7) days before the trial. If the Plaintiff does not receive the copy of the counterclaim within that time, the Plaintiff may request a continuance (postponement) of the trial date to allow time to prepare to defend against your counterclaim.

The court can only hear counterclaims up to the dollar amount listed earlier in this manual. As the Defendant, you may agree to give up the amount over this limit in order to sue in Small Claims Court. However, if you do this, you may not be permitted to sue for the rest of the claim later. If you do not want to give up the excess amount, then you may request or petition the court to transfer the case to another court or division of the same court. In response to such a request or petition, the court may transfer your counterclaim or the entire case to another court or division of the same court where the Small Claims Rules no longer apply. If this occurs, you and the other party should then hire attorneys to represent you.

If a counterclaim is filed by the Defendant, the court will hear the Plaintiff's complaint and the Defendant's counterclaim at the same time.

If you are the Defendant and you believe that another person who is not a party to the suit may be responsible to you for all or part of the Plaintiff's claim, before the trial you may file a third-party notice of claim against the person. To do this, you should request a notice of claim form from the clerk and fill it out naming the person whom you believe responsible as the "Third-Party Defendant" and explain on the form why you believe this person should be responsible to you for the Plaintiff's claim.

Trials

Jury Trials

When the Plaintiff files a claim in Small Claims Court the Plaintiff waives or gives up the right to a trial by jury. If the Defendant wants a jury trial it must be requested no later than ten days after the Defendant is served with the Notice of Claim. The defendant demands a jury trial by filing an affidavit in compliance with Ind. Code 33-28-3-7 or Ind. Code 33-29-2-7 and paying a seventy-dollar ($70.00) fee. The affidavit must state that there is a question of fact in the case which requires a jury trial, must explain this fact (or facts), and must state that the request for a jury trial is made in good faith. The transfer fee must be paid within ten (10) days after the jury trial request has been granted; otherwise the party requesting the jury trial has waived the request. If a jury trial request has been granted, it may not be withdrawn without the consent of the other party or parties.

If the Defendant properly requests a trial by jury, the case will lose its status as a small claim and will be transferred to the court's plenary docket. The plenary docket requires a much more formalized procedure. At this point, all the formal rules of evidence and procedure will apply to the trial of the case and both parties should seriously consider consulting legal counsel for assistance in the case.

Settlements

If the Plaintiff and the Defendant can reach a settlement of the dispute before the trial, the parties should write down the settlement and, after signing the agreement, file it with the clerk of the court. Then, the judge will approve the settlement and enter the agreement as the judgment in the case. Many courts provide forms for these agreements. You should become familiar with exemptions that may apply in your case. There are State and Federal laws that protect certain income and property from collection of a judgment. Knowing these exemptions can help you in deciding the appropriate settlement terms.

The court cannot and will not receive personal property in settlement or judgment except under circumstances with the judge's approval. Do not request the court to receive personal property for you in connection with a settlement or

judgment.

Continuances

Continuances (postponements) will only be granted if good cause is shown. Except in unusual circumstances, no party shall be allowed more than one (1) continuance in any case and each continuance must be specifically approved by the judge. Notice of the continuance and the new date and time of the trial will be provided to all parties. Parties should appear at all hearing or trials unless specifically told by the judge's staff that the matter has been continued.

Change of Judge

You may request a change of judge, but strict time limits apply. A party seeking a change of judge must file that written request with the court within ten (10) days from the date of service of the notice of claim.

Trial/ Hearing

Arrive on time on the day of your trial or hearing. If both parties appear at the time and date scheduled, the trial will be held in an informal, yet orderly manner. The Plaintiff will present his or her case first. The Plaintiff may do this by testifying on his or her own behalf and by having other witnesses, including the Defendant, testify. After the testimony of each witness, the judge may allow the Defendant to cross-examine the witness by asking questions. As the Plaintiff's case is presented, physical evidence such as receipts, written leases, or other items to support the Plaintiff's claim for damages may be shown to the judge. It is suggested that you bring additional copies of any physical evidence you intend to present.

After the Plaintiff has finished, the Defendant may testify, present witnesses, and present physical evidence. It is suggested that you bring additional copies of any physical evidence you intend to present. After each of the Defendant's witnesses has testified, the judge may allow cross-examination by the Plaintiff.

After the Plaintiff has finished with any contradicting testimony, each party may, at the judge's discretion, make a final statement to the judge to sum up his or her position.

Remember, although the trial is informal, all parties and witnesses are subject to penalties for contempt of court and perjury.

During the trial the judge may stop at any point to ask questions of any of the parties or witnesses. In addition, the judge may, with or without a request by either party, inspect scenes or locations involved in the case.

Remember that the judge can base a decision only on the facts presented by the parties at the trial and on the law as it applies to those facts. Therefore, know as much about your claim as possible and tell the judge as much as you can. You should lay a solid foundation for your claim as to dates, parties involved, actions taken or not taken, and damages occurring. Bear in mind that the judge is totally without knowledge of the events surrounding your claim and can only rely on the information presented at trial as a basis for a decision.

Burden of Proof

If you are the party trying to recover damages, as the Plaintiff on a claim or as a Defendant on a counterclaim, you have the burden of proving your case by a preponderance of the evidence. In other words, to win, your evidence must be more convincing than that of the other party. If each party's evidence is equal, you will not win. For example, if it your word against the word of the person you are suing and both of you are equally believable, the judge must decide the case in favor of the person you are suing.

The party trying to recover damages must prove two things before the court can award a judgment:

1) Liability: You must prove by your evidence that the other party has done something that makes him or her liable to you for damages. Examples of this would be that the other party has failed to pay rent owed; caused an accident resulting in damages to your property; or ordered and received goods without paying for them.
2) Damages: You must also then prove the actual amount of damages (money) which you are entitled to recover.

This area is one of major concern for the Small Claims Court, and one of

tremendous frustration to a person who files suit but is not well prepared to present his or her claim or counterclaim. The law provides that a party seeking judgment must prove both liability **AND** damages before a judgment may be entered in his or her favor. The judge cannot speculate or guess what damages were caused or what the dollar amount of the damages was. If a party cannot produce evidence to show the amount, the judge cannot award a judgment.

Often parties have been able to present enough evidence to show liability but then have failed to show the dollar amount of the damages. In such cases, the judge cannot guess at this figure and must decide in favor of the alleged wrongdoer.

What kind of evidence can be used to show damages? The general rule is that the proper amount of damages to be awarded is the difference between the value of the property before the accident or event and the value of the property after the accident or event, although a repair estimate may be sufficient to establish the amount of damages in a small claims action.

Example:

> The Plaintiff and the Defendant are involved in an automobile accident. The cause of the accident was the Defendant's negligence. To prove damages at trial, the Plaintiff may show either a written estimate of the cost to repair or the difference between the market value of the automobile before and after the accident. The "market value difference" may be proven either by oral testimony or written evidence from a qualified person. But the Plaintiff may not always plead for the greater damages. The injured party has a duty, where reasonable, to keep the damages as low as possible. Therefore, where the "market value difference" is much greater than the cost to repair, and repair of the car is reasonable, the Plaintiff must ask for damages in the amount of the cost to repair. However, where the repair costs are much higher than the "market value difference," the measure of proper damages may be the difference between the market value of the car before and after the accident.

If your damages include a claim for labor, remember that mere speculation as to future labor costs will not be considered by the court in computing damages, although estimates by an expert would be proper evidence. An example of an expert would be an auto mechanic. Evidence establishing sums actually spent for

labor would also be proper evidence.

The area of burden of proof and proof of liability and damages is very important to the party seeking recovery for damages. If you are not sure what proof is needed at the trial, you should seek legal advice on that problem. You could then decide to hire the lawyer to represent you at the trial or, after being advised of what the law requires, continue to represent yourself.

If at the time of trial you feel that more damages have occurred between the date you filed your Notice of Claim and the date set for trial, such as rent due, newly discovered damage to property, interest on account, etc., before the trial, you may ask the court to allow you to amend (change) your Notice of Claim to include new damages.

Witnesses and Exhibits for Trial

A party should try to get all witnesses to attend the trial. If a witness does not want to appear and testify voluntarily a party may request the clerk to issue a subpoena ordering the witness to appear at the trial. Requests for subpoenas should be made at the earliest possible date.

It is often important to the case that the proper documents or other exhibits be brought to the trial and shown to the judge during the trial. Exhibits are identified by the court reporter and become a part of the court record of the trial and cannot be returned. If for any reason you must keep the original documents, bring photocopies also. If the judge is satisfied as to the genuineness of the copies and there is no objection by the other party, the photocopies may be identified and made part of the court record of the trial in place of the original documents.

Attendance of witnesses and the presence of exhibits at the trial are the sole responsibility of the parties.

Plaintiff Fails to Appear at Trial

If the Plaintiff fails to appear at the time specified on the Notice of Claim or any continuance of that date, the Small Claims Rules provide that the court may dismiss the action/claim without prejudice. If the claim is dismissed without

prejudice, the Plaintiff can refile the claim by paying another filing fee. If the Plaintiff fails to appear a second time for trial, the Small Claims Rules provide that the court may dismiss the claim with prejudice. A dismissal with prejudice will prevent the Plaintiff from attempting further action in the case. Be sure to check the local court rule or procedure on the consequences of failing to appear at trial.

If the Plaintiff fails to appear at trial and the Defendant appears and has filed a counterclaim, the judge may enter a Default Judgment against the Plaintiff based on the Defendant's counterclaim. (For the requirements, see Default Judgment below.)

Judgment

Judge's Decision - Judgment

The Judge may decide at the end of the trial or take the matter under advisement and decide at a later date. Notice of the small claims judgment, including Default Judgment, will be sent either to the attorneys of record if the parties are represented or to the parties. The judgment will then be entered into the court record.

The law allows interest to accrue on a judgment from the date of the judgment.

Once you have received full payment of your judgment, you will be required to release the judgment. This is accomplished by filing a Release of Judgment with the clerk of the court.

Default Judgment

If the Plaintiff shows up and the Defendant does not appear at the time specified on the Notice of Claim or any continuance of that date, the Plaintiff can ask for a Default Judgment against the Defendant for the amount stated in the original claim.

For the judge to grant the Default Judgment, the Plaintiff must prove the following:

1) That the Defendant was timely served with notice of the claim.
2) That, so far as the Plaintiff knows, the Defendant has no legal, physical, or mental disability that would keep him or her from attending the time specified on the Notice of Claim or any continuance of this date or that would prevent the Defendant from understanding the nature of the proceedings.
3) That the Plaintiff has a valid claim and should recover from the Defendant.
4) Plaintiff must notify the Court whether the Defendant is an active member of the military. You may request this information at: https://scra.dmdc.osd.mil/scra/#/home.

To do this, the Plaintiff may sign affidavits, or in some cases the court may require

the Plaintiff to give testimony from the witness stand.

Vacating a Default Judgment

The party against whom a Default Judgment has been entered may file a written request with the court to have the Default Judgment vacated or set aside. Such a request must be filed with the court within one (1) year of the date the judgment was entered. If the request is properly filed, the judge will hold a hearing where the parties may appear. The party requesting the overturning of the Default Judgment must show "good cause" for vacating the Default Judgment. If the judge does vacate the judgment, the case will be scheduled for a new trial on the original claims of the parties.

If the one (1) year period has passed, the party seeking to set aside the Default

Judgment can file an action to reverse the original judgment only by following Trial Rule

60(B) of the Indiana Rules of Trial Procedure. This action would best be accomplished with the help of a lawyer.

Appeal

If one or both parties are not satisfied with the court's decision and judgment, an appeal of the decision may be taken to the Indiana Court of Appeals. To qualify for an appeal, the appealing party must take certain action within thirty (30) days of the Small Claims Court judgment. Due to the complicated rules for taking an appeal, the party seeking the appeal should consult legal counsel as soon as possible after the Small Claims Court judgment has been entered.

Collection of Small Claim After Judgment

If you are the winning party, the judgment entered by the court is a legal determination that another person owes you a certain sum of money, and court costs.

Your judgment will be recorded (i.e., entered and indexed) in the judgment docket of this county. At the time your judgment is recorded it becomes a lien on any real

property owned by the debtor in this county now or in the future. For your judgment to be a lien on real property in another county in this state it must be recorded in that county. This is done by obtaining a certified copy of the judgment and delivering it, along with the necessary fee, to the Clerk of the county in question for registering in that Clerk's judgment docket. The judgment will then become a lien on the debtor's real property in that county. Once the judgment is recorded, the judgment lien exists for a period of ten (10) years. At the end of the ten-year period from its entry, the lien against real property will expire. However, the lien can be extended for another ten-year period by bringing an action on a judgment within the ten-year statute of limitations found in Ind. Code Section 34-11-2-11 prior to the expiration of the lien.

Although the judgment lien expires after ten years as a general rule, the judgment itself may be enforced for up to twenty (20) years after its entry. The expiration of the lien on real property will prevent the judgment creditor from collecting his or her judgment through execution on real property. After the expiration of twenty years a judgment is deemed satisfied under Ind. Code Section 34-11-2-12. The presumption of satisfaction is not conclusive and can be rebutted by the judgment creditor.

Collecting the judgment is your responsibility. The length of time it will take to collect will depend upon both your diligence and the debtor's ability to pay. When the judgment is entered, payment may be ordered in full or by installments. In addition, the court may order that the payments be made to the clerk's office. If payments are made to the clerk's office, neither that office nor the court will monitor payments, but you may call the clerk's office to ask about payments. If payment is not made, you have several legal methods of collection.

Filing a Proceedings Supplemental is the first step. When a Proceedings Supplemental is filed, the debtor is ordered to appear in court and answer questions under oath about his or her ability to pay based upon income, assets, liabilities, family size, etc. If you know that the debtor has a job and know the address of his or her employer, you may ask the clerk to issue Interrogatories to the employer when you file the Proceedings Supplemental. The court can determine from the answers to the Interrogatories whether the debtor has wages which can be garnished.

At the hearing, you will have the opportunity to ask the debtor, or inform the court, about the debtor's ability to pay. At the conclusion of the hearing, the judge may order any of the following:

1) the Defendant to pay the judgment in full or in installments (the installments may be modified at any time in the future);
2) the Defendant to supply the court with current information regarding employment status and address;
3) the Defendant to reappear sometime in the future to provide additional information;
4) a garnishment of the debtor's earnings;
5) execution against the debtor's personal property.

At any time in the future if the debtor fails to follow a court order or if you have reason to believe that the debtor's ability to pay has improved, you may ask that the debtor be ordered to come back to court. This can be done throughout the lifetime of the judgment.

If the debtor is served with notice of the hearing and does not attend, the court, may set a show cause hearing in order to determine whether the debtor is in contempt of court for failing to appear.

If the debtor cannot be found to be served with the order to appear, the winning party can request that the hearing be continued for a period of time to allow more time to find the debtor and to serve him or her with notice of the hearing.

Garnishment

The law limits the amount of garnishment and regulates the kinds of income that can be garnished. Only one garnishment can be applied at one time; it is important to "get in line" because garnishment orders are paid in the order that they are received by the employer. If the debtor changes jobs, you will have to ask for a new garnishment order.

Execution Against Personal Property

The personal property of the debtor can be attached and sold at execution. This means of collection is strictly controlled by statute and subject to many exemptions. For that reason, it is advisable that you consult with an

attorney if you think execution against personal property might be worthwhile.

If the Debtor Dies

To collect the judgment if the debtor dies before the judgment is paid, you must file a claim against the deceased's estate.

If the Debtor Files Bankruptcy

If it is shown to the court that the debtor has filed bankruptcy and your judgment is listed in the bankruptcy petition, the court is required by Federal law to stop collection proceedings. In that case, your only remedy is in Bankruptcy Court.

What All Landlords and Tenants Should Know

1) Local housing ordinances and public housing laws create both rights and duties for landlords and tenants and those laws and regulations should be understood where they apply.
2) Oral lease agreements are enforceable, but there are fewer disputes about the terms of the lease when it is written and when all parties have read it carefully before signing. Many leases contain provisions that require the tenant to be responsible for rent for the entire period of the lease, even when they vacate early. The lease may also include terms that allow the landlord to collect cleaning fees, fees for leaving before the lease is over, and attorney fees. There may also be a provision requiring the tenant to give advance written notice, at the end of the lease as to whether they are renewing or not renewing their lease. It is important that all parties read the lease carefully before signing so they understand what their obligations are under the lease.
3) Unless the lease terms provide otherwise, the general rule is that a month-to- month lease, written or oral, requires advance notice of a least 30 days for termination by either party. There are certain statutorily prescribed circumstances (IC 32-31-1-8) where advance notice or notice to quit is not necessary. For example, if the rent has not been paid the landlord can ask the tenant to vacate without advance notice. However, actual eviction with the sheriff's participation will require a prior court order. The better practice is to give advance notice in case of doubt, and/or consult an attorney if you are not sure whether advance notice is required in the particular situation.
4) If a landlord has accepted late rent payment in the past the landlord must give the tenant reasonable notice, preferably in writing that in the future late payments will no longer be accepted and will be considered a breach.
5) Reasonable charges for late rent payments may be assessed by the

landlord but ONLY if agreed to in writing.

6) Landlords are entitled to come onto or enter the premises at reasonable times and with reasonable notice to make repairs and inspections; they are entitled to immediate access to make emergency repairs and inspections. Otherwise, the tenant is entitled to peaceful enjoyment and if the landlord wrongfully violates the peaceful enjoyment the landlord is in violation of the lease.

7) Pursuant to IC 32-31-8-5, the landlord is required to deliver the rental premises to the tenant in compliance with the rental agreement in a safe, clean, and habitable condition. Additionally, a landlord must maintain electrical systems, plumbing systems, sanitary systems, heating, ventilating and air conditioning system, elevators, and appliances if supplied as an incentive to the rental agreement if such items were provided on the lease premises when the rental agreement was entered. Tenants must inform the landlord promptly and, if possible, in writing when essential repairs or those agreed on are needed. The best practice is to make sure all repair requests are documented in writing. If the landlord fails to make agreed repairs within a reasonable time after notice, the tenant may have them completed and deduct the cost from rent BUT ONLY FOR ESSENTIAL REPAIRS THAT THE LANDLORD HAS AGREED TO MAKE, AND ONLY IF A PRIOR REQUEST HAS BEEN MADE.

8) Recovery of a money judgment by landlords is allowed only for damages in excess of normal wear and tear. Tenants are expected to leave the premises in as clean a condition as when they took possession and the landlord can claim damages for the cost of cleaning to return the premises to that condition.

9) The measure of damages to personal property and fixtures is the difference between the fair market value before and after the damage; estimates of the cost of repairs and actual proof of actual costs of repairs are admissible at trial to prove damages.

10) There are far fewer disputes about damages if the landlord and the tenants go through the premises together either BEFORE OR IMMEDIATELY AFTER the tenants move in and list in writing all

damages evident at that time. When the tenants are moving out, the parties should go through again so that they are more likely to agree about what, if any, damages are the fault of the present tenants.

11) Before and after photographs of the premises and any damages claimed are very helpful if the dispute goes to trial. This assists the court in determining whether the damages are claimed to have been there when the tenant moved in or claimed by the landlord to be due to the actions or negligence of the tenant.

12) The landlord may not keep any portion of a damage or security deposit unless there is back rent due or damages to the premises.

13) A tenant should always provide the landlord a forwarding address. For rental agreements entered into after June 30, 1989, the landlord must, within forty-five (45) days of receiving from the tenant a forwarding address, either refund in full any security or damage deposit or deliver to the tenant an itemized, written statement showing why all or part of the deposit is being kept by the landlord. The law imposed potentially harsh consequences upon a landlord who fails to comply with this requirement. If a tenant believes the landlord is unfairly keeping the deposit, the tenant may want to contact a lawyer or file a claim or counterclaim since a tenant has certain rights with respect to the return of a security deposit under Indiana law. IC 32-31-3-12.

14) Landlords and tenants should both keep complete records of all rent payments received, security deposits paid, etc. Tenants should demand rent receipts and should keep those receipts, all canceled rent checks, or other written proof of payments.

15) All keys should be returned to the landlord as soon as the premises have been vacated. Additional rent may be charged until the keys are returned or until the locks have been changed, in which case the cost of the new locks may be deducted from the security deposit.

16) I.C. 32-31-7 sets out certain duties of a tenant regarding the care and maintenance of leased premises and provides remedies to a

landlord where the tenant fails to fulfill these duties . The tenant shall:

a. comply with all health and housing codes and keep the rental premises reasonably clean.

b. use the electrical systems, plumbing and sanitary systems, heating, ventilating and air conditioning systems, elevators, if provided, facilities and appliances of the rental premises in a reasonable manner.

c. not deface, damage destroy, impair, or remove any part of the rental premises.

d. comply with all reasonable rules and regulations in existence at the time the rental agreement is entered into.

e. comply with amended rules and regulations as provided in the rental agreement.

f. ensure that each smoke detector installed in the tenant's rental unit is functional and is not disabled. If the smoke detector is battery operated, the tenant shall replace batteries in the smoke detector. If the smoke detector is hard wired and the tenant believes it is not functional, the tenant shall provide written notification to the landlord.

g. deliver the rental premises to the landlord in a clean and proper condition, excepting ordinary wear and tear, when the tenant vacates at the end of the lease.

A landlord may bring an action the court if the tenant fails to comply with the above listed obligations. A landlord cannot bring an action unless the tenant is given notice of the tenant's noncompliance and the tenant has been given a reasonable amount of time to remedy the noncompliance. If the tenant cause physical damage that the landlord has repaired, the landlord shall give notice specifying the repairs that the landlord has made and document the cost of the repair. If the landlord prevails in an action against the tenant the landlord may seek and obtain, if appropriate, actual damages, injunctive relief, any

other remedy appropriate under the circumstances, and attorney's fees and court courts.

It is important to provide any notice of violations in writing and to keep a record of the notice. If there is a provision in the lease regarding notice, then notice should be given as set forth in the lease. In addition to following any notice provision in the lease, an additional notice by certified mail may also be used. If there is email available, then email notice should also be given in addition to the methods stated above. It is important to maintain all copies and records of communications between the landlord and tenant regarding any issues under the lease.

17) I.C. 32-31-8 sets out certain duties of a landlord regarding the care and maintenance of leased premises and provides remedies to a tenant where a landlord fails to fulfill these duties. The landlord shall:

a. deliver the rental premises to a tenant in compliance with the renal agreement, and in a safe, clean and habitable condition.

b. comply with all health and housing codes applicable to the rental premises.

c. make a reasonable effort to keep common areas of a rental premises in a clean and proper condition.

d. provide and maintain, if provided on the premises, the electrical systems, plumbing systems, sanitary systems, heating, ventilation, and air conditioning systems in good and safe working conditions. This includes elevators, if provided, and appliances if included in the rental agreement. A heating system must be sufficient to adequately supply heat at all times.

A tenant may bring an action in court if the landlord fails to comply with the above listed obligations. A tenant may not bring an action unless the tenant gives the landlord notice of the landlord's noncompliance and the landlord has been given a reasonable amount of time to repair or remedy the noncompliance and the landlord fails or refuses to repair the

condition described in the tenant's notice. The tenant must allow the landlord access to the rental premises to make repairs to the condition described in the notice. If the tenant prevails in an action against the landlord the tenant may seek and obtain, if appropriate, actual damages and consequential damages, injunctive relief, any other remedy appropriate under the circumstances, and attorney's fees and court costs.

A landlord's liability for damages begins when the landlord has actual notice or knowledge of noncompliance and has refused to repaid or remedy the issue or failed to repair or remedy the issue within a reasonable amount of time following the notice or actual knowledge; whichever occurs first.

It is important to provide any notice of violations in writing and to keep a record of the notice. If there is a provision in the lease regarding notice, then notice should be given as set forth in the lease. In addition to following any notice provision in the lease, an additional notice by certified mail may be used. If there is an email address available, then notice via email shall be given in addition to the methods above.

It is important to maintain all copies and records of communications between the landlord and tenant regarding any issues that arise under the lease.

18) Generally, utility shut-offs by the landlord are permitted only when the premises have been abandoned by the tenant and the utilities are in the landlord's name; lockouts are not permitted unless the tenant has abandoned the premises and illegal lockouts or utility shut offs could result in a judgment for punitive damages against the landlord.

19) Landlords cannot hold the tenants' personal property as security for unpaid rent UNLESS a court has found the property abandoned or the court permits the landlord to attach the property, in which case the property may be disposed of or its value applied against any

judgment in favor of the landlord. Illegal conversion of another's property is a crime and in a civil suit could result in punitive damages. If a landlord is awarded possession of the dwelling or property in a court action, the landlord may seek a court order allowing the landlord to remove and deliver the tenant's personal property to a warehouseman for storage. In such event, the warehouse has a lien or claim against the property for expenses. The tenant is responsible for the expenses associated with the storage of the property.

20) Landlords are required to mitigate any damages. For example, if the tenant has left the premises before the lease was up, the landlord must make every reasonable effort to re-let the premises and thereby reduce the rent due from the tenant for the remainder of the lease term.

21) Landlords' should obtain information about the tenants' credit history, current and past employment, rental history, and references prior to entering into the lease. Tenants' should obtain information about the property to be rented and the reliability of the landlord BEFORE the lease is signed. Obtaining this information will greatly reduce problems after the lease is in effect.

22) Under I.C. 32-31-6 a landlord is entitled to file a small claims action to obtain emergency possessory relief if a tenant is committing or threatening to commit waste to the premises. Non-payment of rent is NOT a basis for an emergency eviction proceeding. Similarly, under I.C. 32-31-6 a tenant is entitled to file a small claims action to obtain emergency possessory relief if a landlord has unlawfully interfered with the tenant's access on possession of the premises by for example changing locks or interrupting or shutting off utilities or other essential services. Common law defines waste as "the destruction, misuse, alteration, or neglect of the premises by one lawfully in possession, to the prejudice of an estate or interest therein of another." Finley v. Chain, 374 N.E.2d 67, 77 (Ind.Ct.App. 1978).

23) Tenants who are victims of certain crimes, which involve domestic violence are allowed additional rights in some situations. The tenant, who is a victim cannot be retaliated against or asked to vacate because of an act of violence against them. The landlord may have to change the locks and if the tenant decides to leave they may be entitled to early termination of lease without financial consequences. In all these situations the tenant in this situation must have a current, court ordered protection order. IC 32-31-9-8, IC 32-31-9-9, IC 32-31-9-10, and IC 32-31-9-12.

24) If a landlord knows of the death of a tenant who was the sole occupant of the dwelling unit under a lease when they died **or** believes that a tenant who is the sole occupant of the dwelling unit under a lease is incapacitated and absent from the dwelling unit the landlord shall notify a tenant's representative of the death. The landlord shall allow the tenant's representative access to the premises at a reasonable time to remove any personal property located in the unit and elsewhere on the premises. The landlord may require the tenant's representative to prepare and sign an inventory of the property being removed. The landlord shall pay the tenant's representative the deceased tenant's security deposit and unearned rent to which the tenant would other have been entitled to by law. A landlord that willfully violates their obligation owed to a deceased or incapacitated tenant is liable for actual damages to the tenant, if the tenant is living or to the tenant's estate, if the tenant is deceased. I.C. 31-31-1-23.

People that may accept appointment and serve as a tenant representative are as follows:

a. A person designated by the tenant in a written document delivered to the landlord.

b. A person designated in writing, by the tenant in a written lease between the tenant and the landlord.

c. An attorney in fact named by the tenant in a power of

attorney during the tenant's lifetime.

d. A temporary guardian or guardian of the person of a tenant.

e. A tenant's heir.

f. A person selected and appointed by a probate court upon a petition by any interested person under this section.

A person who accepts or is appointed as a tenant representative should not be made a party to the claim.

If there is a dispute between two (2) or more persons claiming to be a tenant's representative, then a probate court's decision controls after a hearing held upon notice to the interested persons. A person who is authorized to serve as a tenant's representative accepts appointment by providing written notice to the tenant's landlord of their acceptance and if the tenant representative is appointed by the probate court, complying with the conditions stated in the probate court's order. Some tenant representative's authority ends after a personal representative has been appointed for the deceased tenant's estate; a tenant's attorney in fact is acting on the living tenant's behalf; or a guardian has been appointed for the living incapacitated tenant's property. There may be additional obligations imposed on the landlord and the tenant representative and a complete review of the statutes and law is advised as there may be further obligations not set forth in this manual. I.C. 31-31-1-23.

25) The landlord in an eviction action shall file a motion to dismiss the action if the case is resolved between the parties at any time before final adjudication of the action, unless the plaintiff is seeking damages, including the retention of the tenant's security deposit. I.C. 32-31-10-3.

26) Beginning July 1, 2022, after the filing of an eviction action by a landlord, if no action has been taken by the landlord to further

prosecute the case for a period of at least 180 days, the court shall send to the parties written notice giving the parties the date of the most recent action taken by the landlord in the case. The notice shall direct the landlord to further prosecute the case or dismiss the case not later than 10 business days after the date of the notice. If the landlord fails to prosecute the action or dismiss the case, then the tenant in the eviction action may petition the court to dismiss the case or the court, on the court's own motion, may dismiss the case. If the court dismisses the case because of lack of prosecution after 180 days the court shall, issue along both its order of dismissal and an order banning the disclosure of any records in the eviction action. This action would, in essence, seal the eviction court record from the general public. The court may assess an administrative fee of $10.00, payable by the landlord for any order of dismissal entered due to the landlord's failure to prosecute or dismiss within 180 days without activity on the case. I.C. 32-31-10-4

27) Beginning July 1, 2022, it is possible for some eviction cases to be sealed in certain circumstances. This relief is not available in eviction cases where a judgment has been awarded. A tenant may file a petition requesting the court, where the action was pending to seal the record, if a landlord files an eviction action and the eviction action is dismissed by the court, dismissed upon petition of the landlord or the tenant, the case is decided in favor of the tenant, or a judgment is entered by the court against the tenant and the judgment is overturned or vacated on appeal. Upon granting the petition the court shall order the clerk of the court and the operator of any state, regional, or local case management system not to disclose or permit disclosure of any records or pleadings in the case. The court shall direct the clerk of the court to redact or permanently seal the court's own records related to the eviction action. A petition filed the tenant should include the following:

a. The tenant's full name.

b. The tenant's date of birth.

c. The tenant's current address.

d. The case number or cause number of the eviction action.

e. A description of why the petitioner is entitled to relief under this section, along with any supporting documentation or evidence.

f. A sworn statement that a monetary judgment is not outstanding to the landlord in the eviction action with respect to which the petitioner seeks relief under this section.

The court may grant the petition without hearing or set the petition for hearing depending on the timing of the petition, the sufficiency of the information included in the petition, or if there are questions regarding the petition. I.C. 32-31-11-3 and I.C. 32-31-11-4

The Court cannot act as your attorney in this matter, so if you have any questions about whether your case may qualify for sealing under the new law, you should consult with an attorney in your area. If you are unable to afford an attorney, your local Court may be able to provide you with information on low or no cost legal assistance available in your area. You may also take advantage of the information and self-help forms located at

28) Both landlord and tenants should be aware that the State of Indiana offers numerous services to assist the parties in resolving rental disputes. There is a statewide pre-eviction diversion program, as well as, a free landlord-tenant settlement conference program available. There are similar programs offered or operated in Indiana on a local basis. These programs are voluntary for all parties but can benefit both the landlord and tenant. It is important to investigate all resources on a state and local level. More information can be found at https://www.indianahousingnow.org/.

Affidavit of Debt Form:

AFFIDAVIT OF DEBT (SMALL CLAIM)

Comes now affiant, and states:

I_____ am □ Plaintiff
(Name of Affiant)

OR

□ a designated full-time employee of _____ (Plaintiff).
(Name of Plaintiff)

OR

□ trustee for _____ (Plaintiff).
(Name of Plaintiff)

I am of adult age and am fully authorized by Plaintiff to make the following representations. I am familiar with the record keeping practices of Plaintiff. The following representations are true according to documents kept in the normal course of Plaintiff's business and/or my personal knowledge:

Plaintiff:

□ is the original owner of this debt, and evidence of the debt, as required in Rules 2(B)(4)(a) and (b) is attached as one or more Exhibits to this Affidavit.

OR

□ has obtained this debt from _____ and the original owner of this debt was _____. Evidence of the debt, as required in Rule 2(B)(4)(c) is attached as one or more Exhibits to this Affidavit.

_____, Defendant, has an unpaid balance of $_____on account _____.
(Name of Defendant) (last 4 digits of number or id only)

That amount is due and owing to Plaintiff. This account was opened on _____. The last payment from Defendant was received on _____ in the amount of $_____.

The type of account is:

□ Credit card account (i.e. Visa, Mastercard, Department Store, etc.)

List the name of the Company/Store issuing credit card:

_____

□ Account for utilities (i.e. telephone, electric, sewer, etc.)

□ Medical bill account (i.e. doctor, dentist, hospital, etc.)

□ Account for services (i.e. attorney fees, mechanic fees, etc.)

□ Judgment issued by a court (a copy of the judgment is required to be attached)

□ Other: (Please explain)_____

_____

_____.

This account balance includes:

□ Late fees in the amount of $_____ as of _____.
(Month, Day, Year)

□ Other (Explain_____)

□ Interest at a rate of _____% beginning on _____.
(Month, Day, Year)

Plaintiff:

□ is seeking attorney's fees and additional evidence will be presented to the court prior to entry of judgment on attorney's fees.

OR

□ is not seeking attorney's fees.

Plaintiff believes that defendant is not a minor or an incompetent individual.

If the defendant is an individual, plaintiff states and declares that:

□ Defendant is not on active military service. Plaintiff's statement that Defendant is not on active military service is based upon the following facts:

_____

_____

_____.

OR

□ Plaintiff is unable to determine whether or not Defendant is not on active military service military service.

("Active military service" includes fulltime duty in the military (including the National Guard and reserves) and, for members of the National Guard, service under a call to active service authorized by the President or Secretary of Defense. For further information, see the definition of "military service" in the Servicemembers Civil Relief Act, as amended, 50 U.S.C.A. Appx. § 521.)

I swear or affirm under the penalties of perjury that the foregoing representations are true.

Dated: _____ Signature of Affiant:_____

Notice of Exemption Rights

STATE OF INDIANA)
) SS:
COUNTY OF _____) IN THE

CAUSE NUMBER _____

_____

Plaintiff vs

_____

Defendant

Notice of Exemption Rights

A person who wins a judgment against you is entitled to collect the judgment from any property you own or income you receive, except when the property or income is protected from collection by state or federal law. When property or income is so protected, we refer to it as "exempt."

Some exemptions are automatically applied. For example, an Order to take your wages (garnishment) will include limitations required by state and federal laws. For all other exemptions, you should notify the Court in writing that you "claim" a specific exemption.

It is the policy of the County Small Claims Courts to disapprove settlements which would result in the defendant losing exempt property or income, unless it can be shown that the defendant was aware of his or her exemption rights before agreeing to the settlement.

Below is a list of frequently used exemptions:

A. **Weekly disposable earnings** (earnings after legally required deductions e.g., Social Security and taxes) as follows:

1. Thirty (30) times the federal minimum wage (Indiana law: 30 (x) $7.25 = $217.50) per week, or
2. One-fourth (1/4) of your disposable earnings, whichever is less. (15 U.S.C. § 1673(a)). *

Example: Let's assume you earn $300 per week and your disposable earnings are $250 after all required deductions. Thirty (30) times the current federal hourly minimum wage ($7.25) is $217.50. This means that your wages can be garnished up to $62.50 (25% of $250) or $32.50 ($250 minus $217.50) per week, whichever is less. As a result, your

wages may only be garnished up to $32.50 per week because you don't make enough money for creditors to be able to garnish 25% of your disposable earnings.

B. **Social Security benefits** (Social Security Pensions, Social Security Disability, SSI, etc.) (42 U.S.C. § 407).

C. **Veterans' Administration benefits** (38 U.S.C. § 5301).

D. **Homestead exemption** up to $15,000 (Ind. Code § 34-55-10-2(c)(1)). Property held as tenancy by the entirety may be exempt against debts held by only one spouse. (Ind. Code § 34-55-10-2(c)(5)). May not be applicable for child or spousal support or maintenance.

E. **Tangible personal property up to $8,000 (Ind. Code** § 34-55-10-2(c)(2)).

F. **Intangible personal property** up to $300 (Ind. Code § 34-55-10-2(c)(3)).

G. **Unemployment compensation** (Ind. Code § 22-4-33-3). May not be applicable for child or spousal support or maintenance.

H. **Workers' compensation** (Ind. Code § 22-3-2-17). May not be applicable for child support orders.

I. **Benefits for victims of crime** (Ind. Code § 5-2-6.1-38).

J. **Certain retirement benefits** (5 U.S.C. § 8346, 29 U.S.C. § 1056(d)(1), Ind. Code §§ 36-8 et seq., 5-10.3-8-9, 34-55-10-2(c)(6), 5-10.4-5-14).

By signing this Notice of Exemptions form, I acknowledge that I was made aware of my exemption rights under state and federal law.

_____ _____

Signature of Judgment Debtor Date

A higher percentage of disposable income may be garnished when a judgment is for child support.

Other exemptions under Indiana or federal law may apply to your income or property. You may wish to seek legal advice from attorneys in your local area. Resources for finding legal help are available on-line at: https://indianalegalhelp.org/.