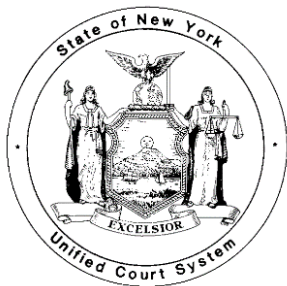


**A GUIDE TO
SMALL CLAIMS &
COMMERCIAL SMALL
CLAIMS
IN THE
NEW YORK STATE
CITY, TOWN &
VILLAGE COURTS**



This Guide shows you how to:

- Start your case
- File a commercial claim in City Court
- Collect a judgment
- Find the right court for your small claim

JANET DiFIORE
CHIEF JUDGE

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What is Small Claims Court?

Small Claims Court is a special part in City, Town or Village courts where you can sue for **money**:

- Up to \$5,000 in City Courts
- Up to \$3,000 in Town and Village Courts



You cannot sue to *make* someone do something or for pain and suffering. For example, you can't use Small Claims Court to get back your laptop that you lent your friend.

Small Claims Court:

- Is inexpensive and easy to use,
- You do not *have to* have a lawyer,
- The Court will notify the defendant for you,*

** If the Court is not able to notify the defendant by mail, the clerk will tell you what to do.*

Before you start your case, read these important facts:

The defendant must live, work or have a place for doing business in New York. (See page 4, *Which Small Claims Court do I use?*)

For **small claims**, you must:

- Be a person who is 18 or older
- Fill out a court form that explains your claim
- Pay a court fee (\$10 – \$20)

For **commercial small claims**, you must:

- Be a corporation, association, partnership, LLC or assignee
- Pay a court fee (\$25 per claim, plus postage costs)
- Send a demand letter first for consumer transactions
- Start the case in a City Court (you can't sue in a Town or Village Court)

You **cannot** file more than 5 commercial claims statewide per calendar month.

Deadline! There are strict deadlines for claims against a municipality, city, or county agency. See page 10.

Who can use Small Claims Court?

Who can use Small Claims Court?

Any person who is 18 or older can sue in Small Claims Court. If you are under 18, your parent or guardian can sue for you.

What if I want to sue for more money than the Small Claims Court allows?

If your claim is for more than the small claims limit (\$5,000 City Court, \$3,000 Town and Village Courts), you can start a civil case in the City Court (up to \$15,000). You cannot split your claim into smaller claims to get around the limit.

Can partnerships start a small claims case?

No. Partnerships can only start a commercial small claims case in a City Court. See page 26.

Can corporations, LLCs and associations start a small claims case?

Municipal and public benefit corporations can use Small Claims Court. Other corporations, LLCs, associations, and assignees cannot start a small claims case. They must start a commercial small claims case in a City Court. See page 26.

Do I need a lawyer to sue in Small Claims Court?

You do not need a lawyer to sue in Small Claims Court. But you may hire one, if you want. The other side may also hire a lawyer. The Court will not give you a lawyer.

Does a corporation or LLC need a lawyer in Small Claims Court?

No. A corporation or LLC does not need a lawyer when it is sued in Small Claims Court. An authorized officer, director, or employee can come to court to defend the case.

If you sue in Small Claims Court:

- You are the *claimant* or *plaintiff*.
- The person or business you sue is the *defendant*

Can I use Small Claims Court if I don't speak English well?

Yes. If the claimant, defendant or a witness needs an interpreter, the Court Clerk will assign an official interpreter for free. Tell the Court Clerk as soon as possible so the interpreter can be at the court date. Learn more:



<http://www.nycourts.gov/COURTINTERPRETER/faqs.shtml>.

What if I need accommodations for a disability (ADA)?

Each Court will help you with accommodations. For Town and Village Courts, call the Court. For City Courts, visit:

<http://www.nycourts.gov/accessibility/listbycounty.shtml> for contact information or ask the Court Clerk.

What if someone sues me, but I am not the responsible person?

Ask the Court Clerk for information about a “third-party action.” You can have the responsible person added to your case. There is a filing fee.

Can I sue on behalf of someone else?

Unless you are the parent or guardian suing on behalf of your child, probably not. For example, if you had an accident in a borrowed car, the registered owner of the car can sue, but you cannot sue for damages to the car.

Do I have to dress-up to go to Court?

No. You do not have to buy anything special or new to wear to Court. Remember it is a formal place, so no t-shirts with swear words or revealing clothing. You want to be polite and respectful.

Some Town and Village Courts do not have Court Clerks. If your Court does not have a Clerk, see the Judge.

Which Small Claims Court do I use?

When do I sue in a Town or Village Court?

If the *defendant* lives, works, or has a place for doing business in a Town or Village, you can use the Small Claims Court:

- In that Town or Village (for up to \$3,000), or
- In any City Court in that county (for up to \$5,000).

When do I sue in a City Court?

If the *defendant* lives, works, or has a place for doing business in a city, you can use the Small Claims Court in any City Court in that county.

What if I want to start the case in New York City or Nassau or Suffolk County?

If you want to start the case in New York City, Nassau or Western Suffolk County, the defendant must live, work or have a place for doing business there. To see the different rules, visit:

<http://www.nycourts.gov/COURTS/nyc/SSI/pdfs/smallclaims.pdf>.

What if the defendant does not live, work or have a place for doing business in New York State?

If the *defendant* does **not** live or work or have a place for doing business in New York State, you **cannot** file a Small Claims Court case.

Where are the Small Claims Courts?

To find court addresses, telephone numbers, and hours go to page 31, *Small Claims Court Locations & Hours*.

How do I start my small claims case?

How do I start my small claims case?

You or someone else may start your case by filling out an application. The application form describes your claim to the Court.



Where do I get the court form?

Different courts use different forms. Most City Courts have websites and some have their forms online. Or, you can get the form from the Court Clerk in the court. See page 31 for *Small Claims Court Locations & Hours*.

What information will I need to fill out the form?

You will need the correct name and street address of each defendant and claimant. You **cannot** use a P.O. Box. If you only have a P.O. Box address speak to the Court Clerk. You must describe what happened and when it happened.

What if I do not have the defendant's correct, legal name?

You can still start your case. You can use any name that the business or person operating the business uses. But once you get the correct information, give it to the Court Clerk. (If you do not provide the correct information, it will be very hard for you to collect your money judgment, if you win.)

To find the correct legal name of a business, contact the County Clerk's Office in the county where the business is located. See page 30, *County Clerks' Offices*. You can also visit the Department of State, Division of Corporations, State Records & UCC at: https://www.dos.ny.gov/corps/bus_entity_search.html.

What do I do with my completed form?

File it (or ask someone to file it for you) at the court. See page 31 for *Small Claims Court Locations & Hours*.

Do I have to pay to file my claim?

Yes. You must pay a court fee. Contact the court to find out how you can pay. Many courts do not take personal checks or credit cards. If paying by check or money order, ask the Clerk who to make the check payable to. See page 31 for Small Claims Court contact information.

The fee to sue in City Court is:

- \$15 for claims up to \$1000, and
- \$20 for claims between \$1000 and \$5000.

The fee to sue in a Town or Village Court is:

- \$10 for claims up to \$1000, and
- \$15 for claims between \$1000 and \$3000.

Is there another way to solve my problem *without* going to Court?

Yes. Every county in the state of New York has a community dispute resolution center that offers mediation for free.

A mediator is a neutral person who helps you and the other side try to settle your dispute. The mediator does not decide the case, but helps you talk with the other side. The mediator helps you and the other side write a settlement agreement.

You can find the location of a community dispute resolution center near you at: <http://www.nycourts.gov/ip/adr/ProgramList.shtml>.

Can the person I am suing sue me?

Can the person I am suing sue me?

Yes! If the person you are suing (the defendant) wants to sue *you*, s/he may file a small claims *counterclaim* against you.

In Small Claims Court, a counterclaim can only be for the amount that can be sued for in the court. The defendant will have to pay a \$3-5 filing fee plus the cost of mailing to file a counterclaim.

How will I know if the defendant files a counterclaim?

The Court will send you a notice or you will be told on the trial date. If the defendant files a counterclaim, s/he must do so:

- Within 5 days of getting the notice of your claim, or
- On the day of the trial.

If the defendant sues me, will my case be postponed?

Maybe, it depends on when the defendant filed the counterclaim. If the defendant filed it more than 5 days after getting the notice of claim, but before the trial date, the judge must grant your request to postpone the trial.

If the defendant files the counterclaim *on the day of the trial*, you may ask the judge to postpone the case so you can have time to prepare. But, the judge can say no.

Who tells the person I am suing about my claim?

Who tells the person I am suing about my claim?

After you file your claim, the Court Clerk will serve the defendant a notice by mail. If the defendant cannot be served by mail, the clerk will tell you what to do.

Service of the notice lets the defendant know about your claim. It tells the defendant:

- What the claim is about,
- How much money you are asking for, and
- The date of your Small Claims Court trial.

How do I know if the defendant was served?

The clerk will mail the defendant two copies of the notice:

- One by regular, first-class mail, and
- The other by certified mail.

If the Post Office does not return the notice that was sent by regular mail to the Clerk's Office within 21 days (30 days for consumer transactions cases), the Court considers the defendant to have been served – even if the notice sent by certified mail was not delivered.

What if the Post Office was not able to deliver either notice?

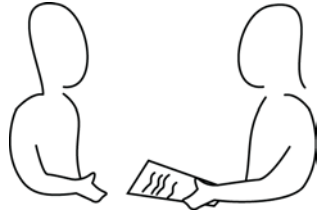
If neither notice could be delivered, the clerk will:

- Tell you how to have the defendant served, and
- Give you a new date and time for your trial.

How do I have the defendant served?

Someone who is 18 or older – not you or anyone else involved in this case – can serve the notice. The Clerk will give you instructions. You can also hire a process server.

If 4 months go by after you first file your claim, and you have not been able to personally serve the defendant, the Court will dismiss your case. Later, if you find out about the defendant's location, you can pay the fee and start a new case.



Important! You cannot have a trial if the defendant was not served.

Can I postpone my trial?

Can I postpone my trial?

You can ask the Court to postpone your trial, but unless you have a good reason, the Court may not agree.

How do I ask to postpone my trial?

Different courts have different rules. Contact the Court. You may be able to postpone (adjourn) your trial by calling the Court. If not, send a letter to the Court and to the other side asking to postpone the case. If the other side agrees in writing, send or bring the letter to the Court. The Clerk will send both sides the new trial date. If you don't get a new trial date from the Court, you (or someone who can speak for you) should go to the Small Claims Court on the date of the trial and explain to the Court why you need an *adjournment*.

If you or someone else on your behalf cannot come to Court on the trial date, the Court will read your letter, but may **not** postpone the case and your case may be dismissed. If you are the defendant, the Court may hear your case even if you are not there. If this happens, the claimant may get a judgment against you. If the Court postpones the case, both sides will be notified of the new trial date.

Special rules for suing a public agency, city, town or village

Can I sue a public agency in Small Claims Court?

You *can* use the small claims courts to sue a school district, town, village, city, county agency or public benefit corporation.

Do I *have to* tell the agency that I plan to sue them?

Yes! By law, you have only **90 days** to notify the agency. Start counting from the day you were injured or your items were damaged. You cannot sue unless you notify the agency.

What if I miss the 90-day deadline?

The Court may dismiss your case, even if you are only 1 day late.

How do I notify the agency?

Get the notice form from the agency you are suing. Find out how the agency wants you to deliver the notice. Some notifications can be done electronically. Fill it out and deliver the notice.

What do I do after I notify the agency?

The agency may:

- Make you an offer to settle your claim,
- Deny (refuse to pay) your claim, or
- May not respond.

After 30 days, if not settled, start your case in Small Claims Court.

Deadline! You have 1 year + 90 days to file. Count from the date you were injured or your items were damaged.

You *cannot* sue the federal government or a state agency in Small Claims Court. Sue a state agency in the Court of Claims: <http://www.nycourts.gov/courts/nyscourtofclaims/>.

How do I get ready for my trial?

Before your trial, organize the evidence that supports your claim:

- Photos, written agreements, letters, or other documents,
- Itemized bills, canceled checks, receipts or invoices, proof of payment, damaged items, etc.
- Printed evidence from your computer or cell phone.
- Audio/visual evidence - ask the Court what format is required.

If you are asking for money to make repairs or get services, bring 2 signed itemized written estimates as proof to support your claim.

Note: if you want your evidence back after the trial, ask the Court when it can be returned.

Can I have witnesses at my trial?

Yes. You can have witnesses at your trial. A witness can be:

- You,
- Someone who knows something about your claim, or
- Someone with a lot of knowledge or experience with the reason for your claim. (This is called an *expert witness*.)

Before speaking to the Court (testifying), all witnesses must first swear or affirm to tell the truth.

Do I need an expert witness to testify at my trial?

If the reason for your claim requires expert knowledge to understand, it's a good idea to have an expert witness. For example, if your claim is about poor workmanship fixing a roof, you will need a roofer with expert knowledge of your type of claim. That roofer must be willing to testify at your trial. In most cases, you must pay an expert witness to testify. In malpractice cases, you must have an expert testify. You cannot use a subpoena to *make* an expert witness testify.

What if a witness does not want to testify or give me records?

You can ask the Court Clerk to issue a *subpoena*. A subpoena is a court order that can order your witness to:

- Send documents or records to the Court, or

- Go to your trial to testify.

Some Courts will give you the form. Call the Court. See sample: <http://www.nycourts.gov/courts/6jd/forms/CivilSubpoena.pdf>.

Who gives (serves) the witness the subpoena?

You must arrange for the witness to be served with the subpoena. The server can be a friend or relative who is 18 or older. Neither you nor anyone else involved in this case can be the server. You can also hire a process server or sheriff.

Do I have to pay the witness?

The witness has the right to receive a \$15 witness fee, which must be paid when the subpoena is served. **You** must give the server the fee to pay the witness, and in if the travel is from outside the city, you must pay .23 cents per mile to and from the courthouse too.

Is there a deadline to serve a subpoena?

The subpoena **must** be served before the trial date. You should give the witness a “reasonable” amount of time to prepare for the trial and/or to produce the items listed on the subpoena. Reasonable means at least 2 or more days before the trial.

Can the defendant and I agree to settle our case before the trial?

Yes. It is almost always *better* if you and the defendant can make an agreement either before or during the trial. You may feel certain that you will win your case, but the Court may not agree with you.

If you make an agreement **before** your trial date, notify the Court Clerk in writing and include a copy of the settlement agreement.

If you agree to settle, but you need more time to finish your agreement, contact the Court to see if the case can be postponed or if you must go to Court on your trial date. Ask for a postponement so you can finish your agreement. (This is called an *Adjournment Pending Settlement*.) The Court may give you a new trial date. If the claim is still not settled by the new trial date, go to Court on the new date.

What do I do on the day of my trial?

You should:

- Get to the courthouse early. (You may have to go through security and find your courtroom.)
- Find your Courtroom, then look for the Small Claims Court calendar. There may be a calendar listing the day's cases. It is usually posted outside the courtroom.
- Look for your last name and the defendant's last name on the calendar. If your case is not listed on the calendar, or if there is no calendar posted, ask the Court Clerk for help.
- When you enter the courtroom, you may need to check in with the Court Clerk.

What happens if one side does not come to court on the trial date?

If you, the claimant, are not in Court when the Clerk calls the case, the Court will dismiss your case.

If the defendant is not in Court within 1 hour from the time the case is scheduled, the Court will hear your case without the defendant. (This is called an *inquest*.) If you show enough evidence, you may win your case. If this happens the Court will enter a *default judgment* against the defendant. Defendants in default judgment cases can ask the Court Clerk how to re-open a case.

What if I can't come to Court because of age, mental, physical or other disability?

The Court can let a person testify for someone who is unwell because of age or other disability. The person must be a family member. The person must ask the Judge to let him or her testify on your behalf.

How will I know when my case starts?

In some courts, the clerk will check names as you arrive and let you know when the Court is ready for you.

In other courts, you must wait until the clerk calls your case and your name. When your name is called:

1. Stand up and say your name.
2. Unless you are asking for a postponement, say, "Ready."
3. If you want to postpone your trial or make another request say, "Application."
4. If you and the defendant are both ready, the trial will start.

Who will decide my case?

In some Courts a judge decides your case. In other Courts, it could be a judge or an arbitrator. You can contact the court to find out. You may have a choice. Some courts also offer mediation to help you and the other side settle your case.



What is an arbitrator?

An arbitrator is an experienced lawyer with special training in small claims cases. Arbitrators and judges apply the same law to your case, but a trial with an arbitrator is less formal.

If the court uses arbitrators does this mean that an arbitrator must decide my case?

Maybe. This depends on whether the court offers *voluntary* arbitration or *mandatory* arbitration. Courts that have voluntary arbitration give you a choice between an arbitrator or a judge. If the court has mandatory arbitration then the arbitrator must decide your case.

If the court offers voluntary arbitration, should I choose a judge or an arbitrator?

If you choose an arbitrator, it may be faster because you may have to wait for a judge or come back on another day. But, if you arbitrate, you and the other side agree to accept the arbitrator's decision. Neither side can appeal. The decision is binding.

If you choose a judge, you may have to come back to court on another date. But, you have the right to appeal the decision. The court may also send you to mediation or a conference to see if your case can be settled before you see the judge.

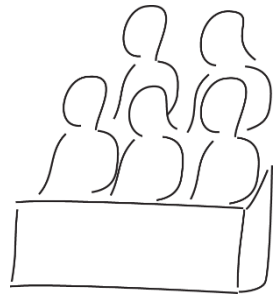
What is mediation?

Mediation helps you and the other side try to settle your dispute. The mediator does not decide the case, but helps you communicate with the other side. If you can't agree on a settlement, then the case goes back to the judge or arbitrator.

Will there be a jury?

Small claims cases decided by an arbitrator or mediator do not have juries. Small claims cases decided by a judge do not have juries unless the defendant demands it. The defendant would have to pay a jury fee (\$10 in Town and Village Courts, \$70 in City Courts) and an additional \$50 fee.* The defendant must also file a sworn notarized statement, called an *affidavit*, saying:

1. S/he is asking for a jury trial in good faith, and
2. The claim has at least one question of fact that must be decided by a jury.



The clerk can give you more information about how to ask for a jury trial.

** If costs are awarded, the additional fee can be used to pay for them. Defendant can ask for any money left over.*

Cases decided by mediation or voluntary arbitration can't be appealed.

What happens during my trial?

The trial starts...

You, the claimant, go first. You will take an oath to tell the truth, and then you will tell your side of the story and show the Court your papers and other evidence. It's up to you to prove your claim.



Next, the Court and the defendant may ask you questions about the case.

If you have witnesses, they will take an oath and testify next. The Court and defendant may ask them questions, too.

Then the defendant takes an oath and tells his/her side of the story. The defendant can show papers and other evidence, and witnesses can testify on his/her behalf. Before they testify they must also take an oath to tell the truth. You (the claimant) and the Court can ask the defendant and the defendant's witnesses questions.

You may ask the Court to question the defendant about his/her name or assets, such as a car, a house, or bank accounts. This information may help you collect your judgment if you win your case. You may also ask the Court to *restrain* (stop) the defendant from getting rid of the assets.

The Court will decide.

When the trial is over, the Court does not usually make a decision right away. In most cases, the Court needs some time to consider your case. The Court will mail its decision to both sides within 30 days.

Important! If you did not have the defendant's correct name when you started the case, you may ask the Court to correct it now. If you do not do this now, it will be very hard for you to collect your money judgment if you win.

What if I do not agree with the Court's decision?

If the Court ordered a *default judgment*...

The person who didn't come to Court may ask to open the case again if s/he has a valid defense *and* a good reason for not coming to the trial. This is done by making a motion or an order to show cause to *vacate* (cancel) the default. See <http://www.nycourts.gov/courthelp/aftercourt/vacatingdefault.shtml>

If the Court agrees to open the case again, the clerk will schedule another trial. The Court may take your case on that date or postpone it to a later date.

If your case was decided by *mandatory arbitration*...

Any party who is not in default has 35 days from the date of the mailing of the arbitrator's award to ask the court for a new trial before a judge. This is called a *trial de novo*. If you ask for a trial de novo you will have to pay a \$75.00 fee.

If your case was decided by a *judge*...

You can ask a higher court to review your case. This is called an "appeal." You can't appeal a default judgment.

Is it hard to appeal?

Yes. Very few small claims decisions are appealed, and very few appeals are successful. The higher Court will only decide if there was *substantial justice* between the parties. That means deciding if the trial was basically fair. The higher Court will not change a small claims decision because of a technical mistake made at trial.

Do I need a lawyer to ask for an appeal?

No. But if you hire one keep in mind that it may cost you more to appeal your small claims case than what you could win.

Is there a deadline to ask for an appeal?

Yes. You must file a *Notice of Appeal* within 30 days of the Court's judgment. If you get the judgment from the court in the mail, you have 35 days to file the Notice with an Affidavit of Service. The Notice of Appeal is filed in the court that decided the case. Learn

more at Starting an Appeal:

<http://www.nycourts.gov/courthelp/aftercourt/appealsstarting.shtml>.

Do I have to pay for an appeal?

Yes. You will have to pay a fee for a Notice of Appeal. You will also have to pay for a typed transcript of the trial for the higher court. If you can't afford to pay, you may ask the Court for a fee waiver.

Do I still have to pay the judgment if I ask for an appeal?

Unless you deposit a sum of money equal to the amount of the judgment called an *undertaking* or file a bond with the Court Clerk, the judgment creditor can still try to collect the judgment. The bond or money deposited stops (*stays*) the judgment creditor from collecting. It also guarantees payment of the judgment if you lose the appeal.

What do I have to do after I file the Notice of Appeal?

You must *perfect* your appeal. This means getting a transcript, writing and serving a brief with your arguments and filing your papers with the trial Court. The Court will send your papers to the higher Court to decide. The process can take a lot of time and effort.

Which higher Court will decide my appeal?

When your appeal is perfected, the City, Town or Village Court will send it to the County Court to decide. But, if your case was decided in Dutchess, Orange, Putnam, Rockland or Westchester County, the appeal will be sent to the Appellate Term to decide.

Where can I find more information about appeals?

Visit the CourtHelp website to learn more:

<http://www.nycourts.gov/CourtHelp/AfterCourt/appeals.shtml>.

If you receive a notice of appeal, the Court Clerk can tell you if an undertaking or bond has been paid to the Court. If it hasn't, the judgment can still be collected.

How do I get my money if I win?

After the trial, the Court will mail you and the other side a *Notice of Judgment* or Arbitration Case Report. Read it carefully. It says:

1. The Court's decision about how much money the other side must pay you, and
2. Ways to collect your judgment.

The judgment is valid for 20 years, plus interest of 9% per year.

Note! The judgment is valid for 20 years for money, but only for 10 years to enforce against homes and land unless you renew the judgment for another 10 years by filing papers in court.

Will the Court collect (enforce) the judgment?

No. The Court will not collect the money for you. You must take steps to collect the judgment yourself. Even if you won your case, there is no guarantee that you can collect your money. If the defendant does not pay willingly, there are legal steps that you can take.

How do I collect my judgment?

Call or write the judgment debtor and ask for payment. If the debtor doesn't pay, you must take steps to find the judgment debtor's money and property. Once you have done this, you may hire an enforcement officer to collect the judgment (see pages 22-24). There are also other ways to collect the judgment without an enforcement officer (see page 24).

How do I find the debtor's money and property?

You must find out about the judgment debtor's assets and give that information to the enforcement officer. The officer will want to know about the judgment debtor's property, including:

- Money from a job or a checking or savings account.
- Real property, like land or a house.
- Personal property, like a car, boat or jewelry.

If you win, you are the ***judgment creditor***.

The side that owes the money is the ***judgment debtor***.

Here are some ways to find the debtor's assets:

- **Internet search:** A quick search may help you find out if the debtor owns a home, where the debtor works, or even where the debtor has a bank account. The internet may reveal court cases involving the debtor that lead you to various assets. The debtor may have a website with useful information that may tell you if the debtor has a business license.
- **Asset investigation companies:** There are asset search companies that you can pay to search for the debtor's property. You can find them on the internet.
- **Cancelled checks:** You or someone you know may have paid the judgment debtor with a check. If so, look on the back of the canceled check for the bank's information.
- **Department of Motor Vehicles:** Contact the New York Department of Motor Vehicles to find out if the judgment debtor owns a car. Ask DMV for this information:
 - Vehicle model,
 - Year,
 - License plate number, and
 - Address where the vehicle is registered.

You can request this information by mail. The form is on the internet at: <https://dmv.ny.gov/get-another-persons-records>.

- **County Clerk property search:** Contact the County Clerk in the county where you believe the judgment debtor owns a home or land.

Important! If the judgment debtor does own property, ask the Small Claims Court Clerk for a *transcript of judgment* and then file it with the County Clerk to put a lien on the property (see page 25).

- **Information Subpoena:** An *information subpoena* is a two-part legal document that orders the judgment debtor and others to answer questions about the judgment debtor's assets. The first-part is signed and issued by the Court Clerk for a small fee (\$2-3). The second-part contains the questions about the judgment debtor's assets. See page 21 to learn more.

How do I use an Information Subpoena?

Use an information subpoena to find out about the debtor's assets. Get the form with preprinted questions:

- At a legal stationery store,
- From a legal forms book from any law library,
- From the Court Clerk (\$2-3 fee)

Or write your own questions based on what you know about the debtor. See sample subpoena questions for the NYC Civil court: <http://www.nycourts.gov/COURTS/nyc/smallclaims/forms/civsc61.pdf>. Bring the subpoena to the Court Clerk to sign.

Who should I send the information subpoena to?

Send it to the judgment debtor and anyone else who may know about the judgment debtor's assets, including the judgment debtor's:

- Employer,
- Landlord,
- Phone or utility company, or
- Banks.

Will the clerk deliver the information subpoena for me?

No. The clerk will *sign* the information subpoena, but will not deliver it for you. Send the signed information subpoena to the judgment debtor along with:

- Two copies of the questions, and
- A self-addressed stamped envelope. *Make sure you put enough postage!*

The subpoena can be served by registered or certified mail, return receipt requested. The person or company served has 7 days from receiving the subpoena to answer the questions.

What do I do if I don't get a response?

You can ask the Court to order the questions to be answered and to punish the person or company for not responding. This takes many steps and must be done in writing the right way. Visit a Court Help Center or law library and ask about *contempt*.

What is an enforcement officer?

An enforcement officer is authorized to take money or property from the judgment debtor to pay your judgment. An enforcement officer can be a:

- sheriff,
- town or village constable, or
- local police officer.



Is a collection agency different from an enforcement officer?

Yes. A collection agency will try to find the debtor's assets. An enforcement officer does the actual collection. The collection agency may hire an enforcement officer. This means that if you use a collection agency, you may have to pay a percentage of the judgment collected to the collection agency and to the enforcement officer. If you use a collection agency, make sure you ask what the fees will be.

What do I say to the enforcement officer?

Say that you are the judgment creditor in a small claims case and you want to have the enforcement officer collect it for you. Give the officer your small claims number and the information you have collected about the debtor's money and property. The officer will either get an *execution* or tell you how to get one. An execution is a court order that allows the officer to take the judgment debtor's property or money to get your judgment paid.

Do I have to pay the enforcement officer?

Yes. If the judgment will be taken from the judgment debtor's income, you may have to pay a fee in advance. If the officer is taking property to pay the judgment, you must also pay the officer's mileage fees in advance. The enforcement officer will also charge a small percentage (usually 5%) of any money collected. This is called *poundage*.

Note! Some fees can be collected in addition to the judgment. Ask the enforcement officer which fees can be recovered.

If you and the judgment debtor agree to settle *after* you hire an enforcement officer, the enforcement officer will still be owed a fee if he or she already started collection. This fee is owed whether the enforcement officer helped you settle the case or not. Find out who is paying this fee when the case is settled. None of the fees paid to the enforcement officer will be refunded.

What can the enforcement officer do to collect the judgment?

The enforcement officer can take steps to collect the judgment:

- **Garnishment of salary – if you know where the debtor works:** if the debtor has a job the enforcement officer can get an *income execution*. This means that the debtor's employer pays a percentage of the debtor's salary to the enforcement officer each paycheck until the debt is paid.
- **Garnishment of bank account – if you can find the name and address of the debtor's bank,** the enforcement officer can *seize* (take) money from the account to pay your judgment.

Note! Under the law, certain money, like social security and veteran's benefits, can't be taken to pay a judgment. These funds are *exempt*. Also, a certain base sum of money can't be taken at all, even if it is not exempt.

- **Seizure and sale of the debtor's car – if the debtor has a car,** the enforcement officer can seize (take) it, then sell it to pay your judgment.

Caution! If the judgment debtor still owes money on the car, that loan must be paid before you can get any money. You will also have to pay the enforcement officer towing and storage fees in advance (about \$150 or more).

- **Force a sale of the debtor's home or land – if you filed a transcript of judgment with the County Clerk,** the enforcement officer can get an *execution* to force the sale of the property.

Are there *other* ways to make a debtor pay without using an enforcement officer?

Yes. Here are some examples of things you can do:

- **If your claim had to do with the judgment debtor's car or how s/he drove a car**, DMV may suspend the judgment debtor's driver's license and car registration until your judgment is paid. Your judgment must be for \$1000 or more, and it must be unpaid for more than 15 days. Follow the instructions for completing the DMV SR-60 form found at: <https://dmv.ny.gov/forms/sr60.pdf>.
- **If your claim was about the judgment debtor's licensed or certified business**, notify the state or local licensing agency if the judgment debtor has not paid you. The agency may decide to revoke, suspend, or refuse to grant or renew a business license.

It must be at least 35 days since the judgment debtor received notice of the judgment.

Contact the licensing agency for information. Contact information for state agencies can be found at: <http://www.ny.gov/agencies>.

- **If a judgment debtor has 3 or more unpaid recorded small claims judgments including yours**, but has the ability to pay them, you may be able to sue the judgment debtor for 3 times more than your original judgment in a new action. The unpaid judgments must be about the defendant's business. This is called *treble damages*. Check with the Court Clerk and the County Clerk to see if the judgment debtor is listed in the Court's index of unsatisfied judgments.
- **If the Court finds the judgment debtor's business is fraudulent or illegal**, you can notify the Attorney General. If the business is licensed, also notify the agency that licensed the business. Contact information for the Attorney General: Office of the Attorney General, The Capitol, Albany, NY 12224, 800 771-7755, <https://ag.ny.gov/>.
- **If the debtor has money in the bank or someone owes money to the debtor**, you can get a *restraining notice* from the Court. This will stop them from releasing the money to

the debtor until your debt is paid. You can also start a *turnover* case to order the money released to you. But you can't start a turnover case in a Town or Village Court. Go to the County or Supreme Court to start the case.

- **If the judgment debtor owns property**, you can ask the Small Claims Court Clerk for a *transcript of judgment* (small fee) and then file it with the County Clerk (\$10.00). This will put a *lien* on the debtor's property. Having a lien means that when the property is sold, your judgment must be paid. See page 30 for the County Clerks' contact information.

Note! The judgment is only good for 10 years against homes and land unless you renew the judgment for another 10 years by filing papers in court.

Commercial Small Claims in City Courts

To start a commercial small claims or consumer transaction case, read pages 1-25 of this booklet *and* the text below.*

**This section does not apply to Town and Village Courts. Corporations, partnerships, associations and assignees must start a civil case in the City Court.*

What are commercial small claims?

Any money claim by a corporation, partnership, LLC, PLLC or association for up to \$5,000 is a commercial small claim. You cannot sue to make someone do something or for pain and suffering.

Here are some examples of commercial small claims:

- You are a corporation and you have a contract to sell bananas to Joe's grocery store. You deliver the bananas, but Joe does not pay. You can sue for the money you are owed.
- You are a homeowner's association and you hire Ernie's lawn company for landscaping. You pay half the money owed up front. The landscaping is done poorly. You can sue for your money back.

If your claim is against an individual, not a business, and the claim is about goods or services that were mainly for personal, family or household use, the commercial small claim is a "*consumer transaction*." You must follow the special rules below.

Here is an example of a consumer transaction claim:

- You are a corporation and you sell a dining room set to Rochelle. She does not pay you for the furniture. Your claim can ask for the money you are owed.

Who can file a commercial small claims case?

Any corporation, partnership, or association that has its principal office in New York State, or an assignee of any commercial claim, may file a commercial small claim* for up to \$5,000.

***"Corporation" includes: municipal corporations, public benefit corporations, LLCs and PLLCs.*

Can a collection agency file a commercial small claim?

Yes. Collection agencies or other entities with a claim on a debt assigned to them may file a commercial small claim if they did not buy the claim to start an action.

Is there a limit on how many commercial small claims can be filed?

Yes. You **cannot** file more than 5 claims statewide per calendar month.

Can a commercial small claimant sue more than one person or business?

Yes. There can be more than one defendant in a commercial small claims case.

Do you need a lawyer to bring a commercial small claim?

No. You do not *have to* have a lawyer to file a commercial small claims case. But you may have one at your own expense, if you want one.

Can the defendant have a lawyer?

Yes. The other side may have a lawyer. If both sides have a lawyer, your case may be transferred to Civil Court. You (the claimant/plaintiff) must pay any additional court fees.

Is there a fee to file a commercial small claims case?

Yes. The fee is \$25, plus postage costs. If you have more than one defendant there will be additional postage costs.

What are the special rules for starting a commercial small claims case that is a consumer transaction?

Consumer transaction cases must follow these rules:

1. You must send the defendant a demand letter *before* you file your commercial small claim. Do this at least 10 days (but not more than 180 days) before you file your claim.



2. You must certify that you sent a demand letter.

Where can I get a demand letter form and certification for my consumer transaction case?

You can get a demand letter form and demand letter certification form from the Court Clerk or download them from the internet:

Sample Demand Letter:

<http://www.nycourts.gov/courts/6jd/forms/Local/City/DemandLetter.fillable.pdf>.

Sample Demand Letter Certification:

<http://www.nycourts.gov/courts/6jd/forms/Local/City/DemandLetter.Cert.fillable.pdf>.

Where do I get the court form to start my case?

You can get the form from the Court Clerk in your county's City Court. Contact the court to see if the form is on the internet. See page 31, *Small Claims Court Locations & Hours*.

Where can you file a commercial small claims case?

To find the addresses, phone numbers, and hours see page 31, *Small Claims Court Locations & Hours*.

When will the trial take place?

The clerk will tell you the trial date when you file the claim. The clerk will also mail the defendant two copies of the notice:

1. One by regular, first-class mail, and
2. The other by certified mail.

If the Post Office does not return the notice that was sent by regular mail to the Clerk's Office within 30 days, the Court considers the defendant to have been served – even if the notice sent by certified mail was not delivered.

Important! You cannot have a trial if the defendant was not served.

What will the notice say?

The notice lets the defendant know about your claim. It tells the defendant:

- What the claim is about,

- How much money you are asking for, and
- The date of your trial.

The defendant must live, work or have a place for doing business within the same county as the Court.

Who can come to Court?

If you are a **partnership**, any of the partners may represent you.

If you are a **corporation**, any officer, director, or employee who is authorized to represent the corporation or settle the case may represent you. An employee may be required to provide a written authorization signed by an officer or director of the corporation.

County Clerk Offices

County Clerks can:

- Search for property that the judgment debtor owns in that county, and
- Tell you the exact, legal name of a business in that county. (If you do not have the exact legal name, it may be harder to collect your judgment.). You can also search the NYS Corporation & Business Entity Database at:
https://www.dos.ny.gov/corps/bus_entity_search.html.

To find the contact information for the County Clerk in your county, visit: <http://www.nysac.org/countyclerks>. You can also call: 1-800-COURTNY (1-800-268-7869).

How to find Small Claims Court and Commercial Claims Court locations and phone numbers

Small Claims Court cases are heard in every city, town and village located in New York State. Commercial Claims and Consumer Transaction cases are heard in New York State City Courts: <http://www.nycourts.gov/courts/cts-outside-nyc-CITY.shtml>. Most Courts do not hear cases every day. Call for court hours.

To find the contact information for your court, use the court locator box at: <http://www.nycourts.gov/courts/index.shtml>. Search by county and choose the court type, then click on “Find the Court.”

THE COURTS

COURT LOCATOR

Choose County

and/or

Choose Court Type

Find the Court

Choose “City,” “Town” or “Village” for the court type,

You can also call 1-800-COURTNY (1-800-268-7869).



Contact the Court Clerk at the number listed for the days and hours that the court hears small claims cases.

A court’s website may not list *small claims*. If you don’t see it, contact the Court Clerk listed for civil cases.

Where to get help

There are many ways to get help. The services listed here are free for anyone who does not have a lawyer. No appointments needed.

Law Libraries

Law libraries have resources for you to do legal research and law librarians can help you look up what you need. There is a law library in every county. Learn more and find library locations at: <http://nycourts.gov/lawlibraries>.

Help Centers

Some Courts have Help Centers located right at the courthouse to help people who do not have a lawyer. Court employees meet with you and give you legal and procedural information, forms and written information. A list of Help Centers is at: <http://nycourts.gov/courthelp//GoingToCourt/helpcenters.shtml>.

CourtHelp Website

The CourtHelp website is the court system's website for people who don't have lawyers. Find information, forms and instructions to help you collect a judgment: <http://nycourts.gov/courthelp//AfterCourt/collection.shtml>.

Language Help (Interpreters)

If you cannot speak English well, the court will give you a free court interpreter: <http://www.nycourts.gov/COURTINTERPRETER/faqs.shtml>.

ADA (Americans with Disabilities Act) Contacts

Each court has a contact person to help make accommodations for people with special needs. Find contact information, how requests are made and handled and learn about the services and aids that courts can provide on the internet: City Courts: <http://nycourts.gov/accessibility>, Town and Village Courts: <http://www.nycourts.gov/courts/townandvillage/ada.shtml>.

Resolving a Case Out of Court (ADR)

Find out ways to work out your dispute without having to go to court: http://nycourts.gov/ip/adr/Info_for_parties.shtml.

