

INSTRUCTIONS FOR FILING A SMALL CLAIMS SUIT

TYPE OF CASE:

Actions for the recovery of money only.

TYPE OF CASE PROHIBITED:

- By Assignee of Claim
- By Person primarily engaged in the Business of Loaning Money
- Collection Agency or Agent

FILING FEE:

\$111.00

(25.00 FILING FEE + \$6.00 FOR LEGAL SERVICES FOR INDIGENT FEE + \$80.00 SERVICE FEE BY THE CONSTABLE IN GRAYSON COUNTY)

If the defendant is not located in Grayson County you will be responsible for calling that county's Constable office to find out how much service is and where to mail the check.

TYPE OF PLEADINGS:

Petition must be sworn, all other pleadings may be informal, exception: Motion to Change of Venue.

GENERAL INFORMATION:

- The amount of money that may be sued for may not exceed the limit of \$10000.00
- In all civil suits, the defendant has the right to be sued in the county and Precinct of residence. There are some exceptions to this rule. Should you be filing this suit in this county and precinct because it is convenient to you, there may be a motion by the defendant to transfer venue (request that this suit be transferred to some other county and precinct). Should there be a motion by a defendant to transfer venue, please be advised that after the motion is made, a hearing shall be set 45 days after the motion is filed.
- Before filing the suit, you need to notify the defendant by certified mail that he has ten days in which to contact you concerning the claim. If the defendant fails to contact you or satisfy the claim, then you would file on the eleventh day after the defendant signs the certified slip.
- It is your burden as a plaintiff, and it is important that you understand, that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their proper legal capacity of which there are typically three. These are as follows:

- **Personally:** Where an individual is responsible to you for damage he or she may have caused as an individual.
- **Proprietor or Partnership:** A business that is not incorporated, but does have on file with the County Clerk, assumed name (example: John Smith d/b/a Greenhouse Supplies).
- **Corporation:** The business that has allegedly caused you damage is incorporated therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. (The authorized agent for service would be listed with Secretary of State whose phone number is 1-512-463-5555.)
- This court will mail you a receipt showing your case number and the Judge's business card so that you may call in periodically to determine the progress of your case. Any change of address or telephone number must be supplied to the court and to the defendant.
- Once you have filed the petition stating the facts and circumstances of your suit a citation, along with a copy of your petition, will be served to the defendant notifying them of the fact that a suit has been filed against them in this Court. The Sheriff or Constable will serve these papers and the Court must wait until they have been returned before further action may be taken.
- The citation will order the defendant to appear in this Court to file an answer to the suit Monday following expiration of ten days from the receipt of the citation. **This will not be the trial date.**

If the defendant answers the suit, this Court will notify both parties by mail as to the trial date. We discourage motions for continuance. However, any requests for a continuance must be in proper form and timely filed (at least 5 working days prior to trial date: to-wit, written request supported by an affidavit).

If the defendant fails to file an answer to the suit, you may present your evidence and obtain a default judgment at any time after the answer date. If you are not contacted within 2 weeks, you will need to call us to determine the status of your case.

- If you have witnesses who will not come to court voluntarily, you may come in two weeks prior to the trial and ask that a subpoena be prepared to secure their presence. Notarized statements from individuals are of very little value and may not always be admissible as evidence. Personal appearance and testimony are much more beneficial. Cost of subpoena is \$35, (\$5 preparation fee, \$30 service fee (if here in Grayson County) and a \$10 bill for the attended subpoena.)
- With respect to the trial itself, all legal rules of evidence and procedure apply in

Justice Court suits. With that statement, I suggest that if one party has an attorney, the other party will be well advised to secure one. However, the legislative intent relative to the creation of this Court was not only to be one in law, but also to be one in equity. Therefore, I will assure both the plaintiff and the defendant in Small Claims Court, that the facts will be solicited and a decision rendered in regard to the evidence that is presented in this Court at the trial. Individuals and proprietorships cannot be represented by non-attorney agents.

- Should you receive judgment, this Court does not collect the judgment for you nor can we force the defendant to pay the judgment. However, you may request an **Abstract of Judgment, Writ of Execution, or Writ of Garnishment** to help you in collection of the judgment.

An **Abstract of Judgment** puts a lien on any real property the defendant may own in a particular county where the abstract is recorded. The Abstract is only good in the county or counties where recorded. This can be obtained ten days after the date the judgment is signed. (*See note at end of this handout concerning Abstracts*)

The **Writ of Execution** may be obtained thirty days after the Judgment is signed. This document authorizes the Sheriff or Constable to seize any assets belonging to the defendant that are subject to this Writ. Those assets are then auctioned at a public sale and the proceeds are applied to the Judgment.

A **Writ of Garnishment** is also available thirty days after the final judgment has been signed. This proceeding is a separate suit wherein you are the plaintiff and the defendant's bank becomes the defendant. You are actually suing the bank in which the original defendant has his/her bank account. You are warning the said bank to freeze the monetary assets of his/her account and appear to make answer in the Garnishment suit. An attorney should be consulted. There are "Application for Writ of Garnishment" forms required, which the court does not provide. You will be responsible for providing all proper forms as required for any filings in this court for any Writs, Applications, Answers, etc.

If you have any other *procedural* questions, please ask one of the Court Clerks. ***The Court cannot answer legal questions.*** An attorney is required for legal questions. There is a Law Library in the Courthouse located at 100 W Houston that is open to the public if needed.

As a plaintiff, you have the burden of proof to show by the weight of the evidence that the defendant you are suing is the proximate cause of your damages in the capacity which defendant is sued. All damages and evidence necessary to meet your burden should be available at the time of filing and not later than the date of trial.

TRIAL BY JURY:

You may request a trial by jury upon payment of a \$5.00 jury fee no later than five days after the citation is served upon the defendant.

THESE INSTRUCTIONS ARE A BROAD INTERPRETATION OF THE LAWS THAT APPLY TO THIS COURT. ANY LEGAL QUESTIONS OR LEGAL INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH OF THIS MATTER OR THE ADVICE OF YOUR ATTORNEY.

Texas Property Code, Chapter 52, Subchapter A

**Duration of Judgment Lien
And recording Abstracts of Judgments**

Section 52.006 DURATION OF JUDGMENT LIEN.

A judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

Commentary. In order for an uncollected judgment to become a lien on the real property of the losing party in a lawsuit, an “abstract of the judgment” must be recorded in the **County Clerk’s Office** in the county where the real property is located. An abstract of judgment is simply a one-page certification by the clerk of the JP court, stating the amount of the judgment, date, interest rate, parties’ names, etc. To get an abstract of judgment, ask the clerk of the court which rendered the judgment to issue the abstract. (There is a \$5.00 fee to the JP Court and there will be a fee in the County Clerks office for filing.)

If an abstract is not recorded, the judgment will not be discovered by title insurance companies. Without a recorded abstract, you cannot force payment of the judgment upon sale or refinancing of the judgment debtor’s property, Time, effort and attorney’s fees have been wasted by people who win a lawsuit, get a favorable money judgment, and then forget to file an abstract of the judgment wherever the judgment debtor is likely to live or to have real property, at that time or in the future.

Also, a judgment lien *ceases to exist* if a judgment goes for 10 years without a request by the judgment holder that the clerk of the court issue a “writ of execution” to a sheriff, asking the sheriff to try to locate and seize property of the judgment debtor, in satisfaction of the judgment. If a writ of execution is not issued within the first 10 years after the date of the judgment and every 10 years thereafter, the lien is lost forever.

Recommendation: Whenever you win a judgment, file an abstract of judgment in all “likely” counties (counties where the debtor may live or own property) and request the

clerk to issue at least one writ of execution. Then create a tickler in your files to remind you to repeat the procedure before 10 years elapse.

Please Note When Contacting This Court:

*“A Judge **shall** not initiate, permit, or consider ex parte or other communications made to the Judge outside the presence of the parties...concerning the merits of a pending or impending judicial proceeding.”*

*A Judge **shall** require compliance with the subsection by court personnel subject to his or her direction and control...”*

Code of Judicial Conduct, Canon 3, B (8).

THE STATE OF TEXAS
COUNTY OF GRAYSON

SMALL CLAIMS COURT
PRECINCT ONE

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE BUTCH MORGAN:

PLAINTIFF: _____

Address: _____

Phone # _____

DEFENDANT: _____

or authorized agent: _____

Address: _____

Phone # _____

CAUSE OF ACTION: _____

Amount sued for: _____

Court Cost: _____

Total: _____

And that there are no counter claims existing in favor of the defendant and against the plaintiff, except _____

PLAINTIFF reserves the right to further plead orally on trial hereof.

PLAINTIFF

ATTORNEY FOR PLAINTIFF

Subscribe and sworn to before me this _____ day of _____ 20____

Clerk, Justice of the Peace Court
Precinct One, Grayson County, TX

DOCKET # _____

THE STATE OF TEXAS

**COUNTY OF
GRAYSON**

In filing this court document, the Plaintiff states that, to the best of his or her knowledge, the defendant(s):

Is not in the military,
On active duty in the military,
Is not in a foreign country on military service.

Plaintiff

Signed this the _____ day of _____, 20__.

Clerk of the Court, Pct 1