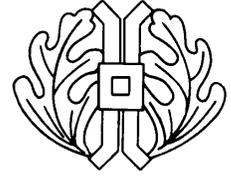


PREVENTIVE LAW SERIES

SMALL CLAIM COURT JUDGMENTS



Prepared by:
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Obtaining a Small Claims Court Judgment is not necessarily the final step in receiving compensation from a debtor. Many debtors will pay you the amount of the judgment immediately after the Small Claims Court Renders its Judgment, but other debtors will not pay you voluntarily, even when faced with a judgment against them. However, a Small Claims Court judgment is good for ten (10) years, can be renewed if you timely apply for renewal, and there are many methods of receiving payment from the debtor.

Allowing the Defendant(s)/Debtor to Appeal:

- * Once a judgment is received from a Small Claims Court, the party to be paid is referred to as the judgment creditor, and the party who owes money is the judgment debtor.
- * The Judgment debtor is given thirty (30) days from the date of the judgment to appeal the judgment.
- * During the thirty (30) day period for appeal, the judgment creditor is prohibited from taking action to enforce the judgment!

Judgment Debtor's Statement of Assets/Judgment Debtor Examination:

- * A defendant who loses and doesn't appeal the case or pay the judgment within thirty (30) days must complete and return a Statement of Assets form to the judgment creditor within thirty (30) days. This provides a list of the judgment debtor's property and sources of income.
- * If the debtor does not send you their Statement of Assets in the time required, you may bring them back into court to answer those questions in a Judgment Debtor Examination. An application may be picked up from the Clerk of Court where your hearing was held. There is a small charge for this new hearing.
- * You must have the debtor served personally by either the Marshal's Office OR a registered process server.
- * At the hearing the debtor will be sworn in by the court. You will then be allowed to go outside the courtroom to ask your questions regarding the debtor's property and income.
- * Be as thorough as possible and have your questions written out.
- * This may be one of the best mechanisms to collect your judgment, because if the judgment debtor does not show up for the Judgment Debtor Examination, the court will issue a warrant for their arrest if you request it.

Enforcing your Judgment:

1) Attaching the Debtor's Real Estate: Go to the Clerk of Court where your case was heard and request an ABSTRACT OF JUDGMENT. There is a fee for this. Take the ABSTRACT to the County Recorder's Office, 1600 Pacific Highway, San Diego, CA 92102 to record it. There is also a fee for this. The ABSTRACT puts a lien against the debtor's real property located in San Diego County.

NOTE: If the debtor owns rental property, you may ask for a Rent Garnishment from the debtor's tenants. Follow the steps for a Wage Garnishment, below. When you go to the Marshal's Office, ask for a Rent Garnishment, and ask the Marshal to serve the papers on the tenant of the debtor.

2) Garnishment of Debtor's Wages: If the debtor is an employee for someone else, his or her wages may be garnished to pay off the judgment EXCEPT if he/she is on active duty in the military, OR works for the federal government. If this is the case, see below for Military and Federal employees.

a) Go to the Clerk Of Court where your case was heard and request a WRIT OF EXECUTION and fill out the form completely. There is a fee for the Writ of Execution.

b) Take this to the Marshal's Office and request the Application For Earnings Withholding Order forms. Fill these out completely with the full name of the employer and its address, along with the full name of the debtor, and the debtor's Social Security Number, if available.

c) The Marshal will serve the papers on the employer for a fee.

d) Wage Garnishment will begin ten (10) days after service, and is usually limited to twenty-five (25%) percent of the debtor's wages.

3) Garnishment/Attachment of Military Wages, Federal Employee Wages, Commission Wages, and Royalties:

a) Military Members Wages:

1) Family Support Garnishment: Obtain the WAGE GARNISHMENT forms from the Clerk and obtain a WRIT OF GARNISHMENT, as well as a Certified Copy of the Court Order from the Clerk of Court. These documents must be sent to the Director, Defense Finance and Accounting Service ("DFAS" - see below for telephone number) for the military branch of the debtor.

2) Involuntary Allotment for Family Support: An Involuntary Allotment for family support may be obtained if the court order includes a CHILD SUPPORT component, and there is at least a two (2) month arrearage in payments. The Court needs to send a letter to the DFAS stating that the arrearage exists and request a "Mandatory Allotment" be started. Arrearages may only be collected if there is a second court order requiring payment of arrearages by involuntary allotment.

3) Involuntary Allotment of Military Pay for other Judgment Indebtedness: The judgment creditor must fill out a DD Form 2653 (Involuntary Allotment Application) and obtain a certified copy of the final court order judgment. These documents must be sent to DFAS. Certain certifications are required in the DD Form 2653, (e.g. that the judgment is still valid).

b) Assignment of Federal Employee Wages, Commissions, and Royalties: Go to the Clerk of Court where the case was heard and obtain a MOTION form. On the form state that it is a MOTION FOR AN ORDER OF ASSIGNMENT OF WAGES (paid by the federal government, commissions, or royalties). Attach to the Motion a DECLARATION from yourself stating the following: 1) I, (Your Name), am the judgment creditor.; 2) Date judgment was entered; 3) Principal amount due and owing, payments made, interest accrued as of date of Motion, and current balance; 4) That the judgment is final and the appeals date has passed; 5) state "I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct."; 6) Sign and date the Declaration.

Give these forms to the Clerk of Court and they will give you a hearing date. Notice will be mailed to the debtor by the Court. If you win, the commissioner will issue an ORDER OF ASSIGNMENT of the payments to you. You must then serve a copy of the order on the people who owe the debtor money. Service may be performed by the Marshal or by certified mail.

4) Levy on the Debtor's Bank Accounts: If you can find the name of the bank and the branch where the debtor banks, you may proceed with a BANK LEVY, even if you do not know the account number. Obtain a WRIT OF EXECUTION from the Clerk of Court where the case was heard. Fill out the form and take it to the Marshal's office, and request a BANK LEVY. Give the Marshal the name of the debtor, and the name and address of the debtor's bank. Tell the Marshal you wish to levy on any and all accounts of the debtor at the debtor's bank. When the Marshal serves this on the bank, the bank will freeze the debtor's funds for seven (7) days. When the bank releases the funds to the Marshal, the Marshal will release the funds to you. There is a fee for the Writ and a Marshal's fee.

5) Till Tap/Keeper's Levy: If the judgment debtor owns a business that has a cash register, you may arrange for the Marshal to go to the business and do either a Till Tap or a Keeper's Levy. A Till Tap sends the Marshal into the business to take all cash and checks out of the cash register. A Keeper's Levy stations the Marshal at the business for 8 or 12 hours to collect money as it is paid to the business. There is a fee for the Writ of Execution. Marshall fees range from \$75.00 to \$300.00. Remember that the judgment debtor may close his or her business for the day and the Marshal will be unable to collect any money.

5) Costs After Judgment: A judgment creditor is entitled to recover certain costs incurred in enforcing a judgment. The judgment creditor is also entitled to claim 10% simple interest on the principal amount of the judgment. Costs must be added to the judgment within two years of incurring them. Interest may be added at any time. Accumulated costs and interest are added to the judgment by filing a Memorandum of Costs with the clerk. Ask the clerk for a Memorandum of Costs for small claims. Complete the form and mail one copy to the judgment debtor, and file the original with the clerk.

If your Judgment is Paid in Full, YOU MUST: File an Acknowledgment of Satisfaction of Judgment with the Court where your case was heard. **THIS IS REQUIRED!** It **MUST** be filed within fourteen (14) days of the full payment of your judgment. The form is found on the reverse side of your Notice of Entry of Judgment you received when you won your case. You can be fined if you fail to comply with this rule!

LEGAL ASSISTANCE APPOINTMENTS:

For an appointment to see a legal assistance attorney, please contact the Legal Assistance Office, located in Building 610, Naval Air Station North Island, by telephone at (619) 545-6278.

RESOURCES:

DEFENSE FINANCE AND ACCOUNTING SERVICE (DFAS) 1-800-346-3374 (active duty Navy)
1-800-321-1080 (retired Navy)

Small Claims Courts: San Diego: (858) 694-2066 Advisors: (858) 236-2471
Chula Vista: (619) 691-4766 (858) 236-2700 -recorded
info. El Cajon: (619) 441-4461
Vista: (760) 726-9595
Ramona: (760) 738-2435

Internet: www.sandiego.courts.ca.gov/superior/courts/smallclaims.html

-This site has lots of helpful information on the small claims court process.

www.dfas.mil -This site has information on DFAS requirements, forms, and points of contact for all branches of the military services.

See California Code of Civil Procedure § 116 et seq.