INTRODUCTION

The Small Claims Courts in Indiana were created so that every citizen of Indiana might have a speedy and less formal means of access to the Courts. 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. At the hearing, each party explains his or her side of the story to the Referee. The Referee may ask questions of each party to determine the complete facts of the case. The Referee will make a decision based on the facts and evidence presented by the parties and on the law as it applies to the facts.

You may hire an attorney to help you present your case, but you are not required to do so.

In order to help you use the Small Claims Court, the State Judicial Study Commission has developed this handbook. We hope that these materials will be helpful to you.

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Frank M. Nardi, Judge
Owen Circuit Court

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Lori Thatcher Quillen, Referee
Owen Circuit Court
Small Claims Division

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Nick Robertson, Clerk
Owen County

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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 County Courts, Superior Court and Circuit Court. It does not address the specific jurisdiction or procedures of Marion County Small Claims Court. Marion County Small Claims Court is governed by Indiana Code 33-11.6 et seq.

This manual does not cover all areas of 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. If you have a question about a particular procedure, practice or court policy, check with the Clerk or the 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 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 enables 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 settle 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 increase your chances of winning in Small Claims Court.

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 making the other party liable for your attorney's fees or unless a law allows for payment of 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. It is

your right. 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 make a decision based on the facts and evidence presented by the parties and on the law as it applies to the facts.

Definitions

Agreed Judgment - 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.

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 adverse 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 an adverse 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 Page 7) Yes No

(b) Is this county the proper location (venue) for filing your claim? (See Page 8) Yes No

(c) Who are the parties to the action? (See Page 8)

(d) Is it too late under the Statute of Limitations to file your claim? (See Page 9) 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.

(a) Personal injury, Three Thousand Dollars ($3,000) or less.

(b) Damage to personal property or real estate, Three Thousand Dollars ($3,000) or less.

(c) Landlord and tenant disputes, if the rent due at the time of filing is Three Thousand Dollars ($3,000) or less.

(d) Money owed (bad checks, wages, services rendered, accounts receivable), Three Thousand Dollars ($3,000) or less.

(e) Return of wrongfully taken property and return of money paid

for faulty work, Three Thousand Dollars ($3,000) or less.

As you might have guessed from the above examples, by Indiana law, small claims are currently limited to cases where the amount sought to be recovered is Three Thousand Dollars ($3,000) or less. From time to time the Indiana Legislature changes this upper limit on small claims cases, and you should check with the clerk if you have a claim which might exceed this amount.

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, in the case of a bad check, or in the event a statute provides for attorney's fees. Also, there are limits on the rate of interest you can ask for.

Location (Venue) for Filing Your Claim

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

(a) where the transaction or occurrence actually took place; or

(b) where the obligation or debt was incurred; or

(c) where the obligation is to be performed; or

(d) where the Defendant resides; or

(e) 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 who or the 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 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 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 of the change. All notices concerning your suit, including any changes of the trial date, will be sent to your last known address. Your interests may be hurt if the court is unable to contact you due to a change of address.

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. Here are the most common statutes of limitations:

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 or account, you MUST provide to the clerk of the court one (1) copy of the contract or account statement for the court records and one (1) copy for each Defendant.

3) 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.

4) 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.

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 help you with legal advice.

At the time you file your lawsuit, or shortly thereafter, you will be notified of the time and date of your trial. If you do not receive the notification of your trial date within 10 days after you have filed your case, you should call the court staff to find out when your court date is. You will be expected to have all of your witnesses and evidence with you on this trial date. If you are driving a long way or are taking time off of work to attend the trial, you may want to call the court staff or the clerk the day before the trial to determine whether service has been obtained on the Defendant. Please note that the court staff and clerk's staff will attempt to answer this question, but there are times when they may not be able to give you a definite answer. If there is any uncertainty about whether there is service on the Defendant, you should appear in Court at the time specified for your trial; otherwise, your case will be dismissed.

If you and the Defendant can work out some agreement, reduce it to writing, and submit it to the Court prior to the trial date, then no trial will be necessary. If the Defendant does not show up for the trial date and there is service on the Defendant, you should appear at the trial to present evidence.

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 may also be required to obtain a more current address for the Defendant and to file an Alias Notice of Claim, with attached exhibits, if any.

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 needing 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 Rules allow 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 is allowed to 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.

Corporation - Representation in Small Claims Court

As a general rule, a corporation must appear by counsel. Small Claims Rule 8 provides an 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 (for or against the corporation) is not more than the prescribed limit set by Small Claims Rule 8(c) ($1,500.00); and

2) The claim is not an assignment (such as a claim that has been assigned to a collection agency); and

3) A corporate resolution and an affidavit are on file with the clerk authorizing the employee to represent the corporation. (The corporate resolution and affidavit forms are available in the Clerk's office.)

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 filed

in Small Claims Court. 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) (($1,500.00); 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 on filed with the clerk an employee affidavit and certificate of compliance designating a full-time employee to represent the business. (The Clerk's office has forms for this purpose.)

The following situations are not permissible:

1) If the claim involves a corporation and it is less than the prescribed limit, an employee NOT authorized by resolution attempts to represent the corporation.

2) If the claim involves a business operated as a sole proprietorship or partnership and it is less than the prescribed limit, an employee NOT authorized by the certificate of compliance attempts to represent the business entity.

3) If the claim involves a corporation and it is greater than the prescribed limit, and a non-attorney attempts to represent the corporation.

4) If the claim involves a business operated as a sole proprietorship or partnership and it is greater than the prescribed limit an employee who is not an owner attempts to represent the business. (In such cases, the owner or an attorney must represent the business.)

5) A person with only a power of attorney to act on behalf of any individual, business, or corporation attempts to represent the individual, business, or corporation in court.

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

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 maila 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 tot he $3,000.00 limit 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 the court may transfer your counterclaim or the entire case to the Circuit 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 the Defendant files a counterclaim, 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 simply fill out a Notice of Claim form under the direction of the clerk 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.

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 and paying a seventy dollar ($70.00) fee. The affidavit must: (1) state that there are questions of fact in the case which require a jury trial; (2) must explain and specify those questions of fact; and (3) 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 formal procedure. At this point, all of the formal rules of evidence and procedure will apply to the trial of the case, and both parties should seriously consider hiring or consulting an attorney for assistance in the case.

Settlements

If the Plaintiff and the Defendant are able to 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.

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. Parties should appear at all hearings or trials unless specifically told by the judge's staff that the matter has been continued. A continuance must be requested in writing by sending the request to the Court and mailing a copy of the request for continuance to the other party.

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 thirty (30) days after suit is filed (Trial Rule 76) or earlier if the trial is set within (30) days after filing suit.

Trial

Arrive on time on the day of your trial. 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 also 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.

After the Plaintiff has finished, the Defendant may testify, present witnesses, and present physical evidence. 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 as 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. You should bring all records, receipts, cancelled checks, and other exhibits, which are important to your case. Try to organize what you will say and organize your exhibits. 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 has to be more convincing than that of the other party. If each party's evidence is equal, you will not win. For example, if it is 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. However, 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 speculations 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 areas of burden of proof, proof of liability, and damages are 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.

Judge's Decision - Judgment

The judge may make a decision at the end of the trial or take the matter under advisement and send the parties a written decision in the mail at a later date. 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 must release the judgment with the clerk.

Plaintiff Fails to Appear at Trial

If the Plaintiff fails to appear for trial, the claim will be dismissed 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 be dismissed with prejudice. A dismissal with prejudice will prevent the Plaintiff from attempting further action in the case.

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.)

Default Judgment

If at the trial the Plaintiff shows up and the Defendant does not, 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 trial 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.

To do this, the Plaintiff may sign affidavits or 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 Indiana Code 34-1-2-2(6) prior to the expiration of the lien.

Although the judgment lien expires after ten (10) 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 Indiana Code 34-1-2-14. 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 whether payments are being made. 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 hearing the judge may order any of the following:

- the Defendant to pay the judgment in full or in installments (the installments may be modified at any time in the future);

- the Defendant to supply the court with current information regarding employment status and address;

- the Defendant to reappear sometime in the future to provide additional information;

- a garnishment of the debtor's earnings; and/or

- 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, at the winning party's request, may issue a body attachment and have the debtor arrested and held in jail until another date for the hearing can be scheduled.

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 hearing.

Garnishment - The law limits the amount of garnishments and regulates the kinds of income that can be garnished. Only one garnishment can be applied at one time; so 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.

3) Unless the lease terms provide otherwise, the general rule is that a month-to-month lease, written or oral, requires advance notice of at least 30 days for termination by either party. There are certain statutorily prescribed circumstances 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 written 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 advance.

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) A general rule a landlord has no duty to make repairs to leased premises unless the landlord agrees to do so by the lease terms or otherwise. Tenants must inform the landlord promptly and, if possible, in writing when essential repairs or those agreed on are needed. If the landlord fails to make agreed repairs within a reasonable time after notice, the tenant may have them completed and deduct the costs 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 the premises again. Landlords and tenants who do this are more likely to agree about what, if any, damages are the fault of the present tenants.

11) Photographs of the premises and of the damages claimed are very helpful if the dispute goes to trial, whether the damages are claimed by the tenant to have been there when he or she moved in, or claimed by the landlord to be due to the 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) 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. If a tenant believes the landlord is unfairly keeping the deposit, the tenant may want to contact a lawyer since a tenant has certain rights with respect to the return of a security deposit under Indiana law.

14) Landlords should keep complete records of all rent payments received, security deposits paid, etc. Tenants should demand rent receipts and should keep those receipts and all cancelled rent checks.

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) Generally, utility shut offs by the landlord are permitted only when the lease has been breached by the tenant and the utilities are in the landlord's name. Lockouts are not permitted if the tenant is not in breach of the lease, and illegal lockouts or utility shutoffs could result in a judgment for punitive damages against the landlord.

17) 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,

18) 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.

19) A landlord should make efforts to obtain information about the tenants' credit history and information from prior landlords BEFORE entering into a lease. A tenant should make efforts to obtain information about the reliability of the landlord BEFORE entering into a lease.

20) If you have specific questions about your rights and duties as either a landlord or tenant, you should consult an attorney.