

JUSTICE COURT # 2
GRAHAM COUNTY STATE OF ARIZONA
P.O. BOX 1159, 136 WEST CENTER STREET, PIMA AZ 85543 PHONE (928) 485-2771 FAX (928) 485-9961

SMALL CLAIMS INSTRUCTIONS FOR FILING

*****EFFECTIVE JANUARY 1, 2014*****

COURT JURISDICTION INCREASES TO \$3,500 IN SMALL CLAIMS COURT

In Arizona, every Justice of the Peace court has a Small Claims Division that provides an inexpensive and speedy way of resolving disputes that don't exceed \$3,500. Court procedures are informal and simple enough for a person to file a complaint or to answer a claim without a lawyer.

*If you wish to file a lawsuit for an amount **over \$3,500.00 up to and including \$10,000.00**, you may file a **civil lawsuit** in the justice court. If you wish to sue an amount **greater than \$10,000.00** then you must file your lawsuit in the **Superior Court**.*

THIS IS YOUR CASE. YOU ARE SOLELY RESPONSIBLE FOR PROSECUTING OR DEFENDING THE CLAIM. THERE ARE CERTAIN STEPS YOU MUST FOLLOW TO PURSUE IT PROPERLY. THIS INFORMATION IS PROVIDED TO ASSIST YOU IN GENERAL PROCEDURE IN PROCESSING YOUR CASE THROUGH THE COURT. FOR YOUR CONVENIENCE, THE COURT PROVIDES CERTAIN BASIC FORMS FOR YOUR USE.

CLERK DUTY

THE CLERKS ARE NOT ATTORNEYS AND ARE NOT AUTHORIZED TO GIVE LEGAL ADVISE. THEY ARE CHARGED WITH THE DUTY OF PROVIDING FORMS AND REQUESTED ASSISTANCE TO ALL PARTIES REGARDING JURISDICTION, VENUE OR PROCEDURES OF THE SMALL CLAIMS DIVISION. IT IS NOT THE COURT CLERK'S RESPONSIBILITY TO ADVISE YOU IF YOU HAVE A LEGAL CLAIM. THE CLERK IS NOT RESPONSIBLE FOR ANY ERROR YOU MAY MAKE IN ASSERTING OR DEFENDING THIS CLAIM. **ARS 22-507**

COURT FEES

COMPLAINT FILING FEE	\$24.00
SUBSEQUENT FILING (ANSWER) FEE	\$14.00

CLAIMS

Small Claims court can't hear disputes involving more than \$3,500. If the amount you are asking for is over \$3,500 you can't file in small claims court. If you wish to recover more than \$3,500 you must consider another court. A larger claim may be reduced to \$3,500 and waive the remaining amount. A claim may NOT be split by filing two separate actions. The plaintiff may ask for reimbursement of court costs in addition to the \$3,500 maximum. Court costs include, but are not limited to filing and service fees. A prevailing

NO RIGHT TO JURY TRIAL OR APPEAL

There is no right to jury trial or appeal in Small Claims cases. There are three requests allowed in Small Claims action. They are:

- o Request for Change of Venue, which is a change of location
- o Request to Vacate Judgment
- o Request for Debtor's Examination

ARS 22-519

ATTORNEYS

An attorney cannot appear or represent either party in the small claims division unless:

- o He/she is representing himself or herself.
- o Both parties agree to the use of attorneys and file a STIPULATION TO USE OF ATTORNEYS, a form the court can provide. A stipulation to use attorneys must be filed at least 24 hours before the scheduled court date.

However, any party has the right to choose to be represented by counsel and may file a request to transfer the case to the civil division for that purpose. The case will then be transferred to the civil division and appropriate fees charged to the party requesting the transfer. After entry of judgment, the prevailing party has the right to employ an attorney to pursue available rights and remedies for the purpose of collecting the judgment award. **ARS 22-512B,C,D,E**

Defendant may also ask for reimbursement of court costs. **ARS 22-503A**

WHO CAN FILE A CLAIM

An Individual, partnership, association or corporation can file a claim in Small Claims court. The person or business that files a claim to sue another is called the **Plaintiff**. The person or business that is sued is called the **Defendant**. The plaintiff must be the original owner of a claim and may not sue on an assigned claim. However, after judgment a party may make an assignment of the judgment. **ARS 22-512**

CASES SUITABLE FOR SMALL CLAIMS COURT

The types of claims that can be filed in the Small Claims Division include:

- Money debts
- Personal Injury
- Property Damage
- Cancellation of a contract

CASES NOT SUITABLE FOR SMALL CLAIMS COURT

- Libel or Slander
- Injunctive Relief
- Class actions
- Criminal Matters
- Forcible Entry
- Actions against State of Arizona
- Prejudgment remedies
- Specific performance
- Traffic Violations
- Claims greater than \$3,500

ARS 22-503B

VENUE

Venue means the proper geographical area (precinct) in which a court may hear a case. If the defendant files a motion alleging that the action was filed in the wrong precinct and the court orders a change of venue, the case shall be transferred to the proper precinct and the plaintiff shall pay all fees. If you oppose a motion for change of venue you must file an objection in writing five (5) days after service of the motion. A motion alleging improper venue must be made before filing the ANSWER. If the defendant fails to file a timely request for a change of venue, that right is waived

METHODS OF SERVICE

In addition to any other available methods of service, the plaintiff may serve the summons and complaint by registered or certified mail. Service is deemed complete upon the delivery of the mailing to the defendant and signed by the defendant as evidence on the return receipt filed in the court. If the postal service does not enter a date of delivery or the date is not legible, service is deemed complete on the date the return receipt is filed with the court. The plaintiff may file the return receipt (the green card) with the court in person or by first class mail. If the defendant cannot be served by registered or certified mail, personal service by a licensed process server may be used. ***EACH NAMED DEFENDANT MUST BE SERVED A COPY OF THE COMPLAINT AND SUMMONS.*** To ensure the named party defendant signs the return receipt restricted delivery should be used.

If the claim is against a corporation, the statutory agent, or an officer of the corporation, must be served on behalf of the corporation named in the complaint. You may obtain the name and address of statutory agent or corporate officer by calling the Arizona Corporation Commission at 602-542-3026 or 1-800-345-5819 or online at www.cc.state.az.us.

MOTION FOR CHANGE OF VENUE

Venue means the proper geographical area (precinct) in which a court may hear a case. If the defendant files a motion alleging that the action was filed in the wrong precinct and the court orders a change of venue, the case shall be transferred to the proper precinct and the plaintiff shall pay all fees. If you oppose a motion for change of venue you must file an objection in writing ten (10) days after service of the motion. **ARS 22-505**

TRANSFER TO REGULAR CIVIL DIVISION OF JUSTICE COURT

Either party may object to the proceedings being held in the Small Claims Division , and may transfer a small claims case to the civil division before trial as long as such objection is made in writing at least ten (10) days before the hearing. The party requesting the transfer will be assessed civil filing fees. Once a case is transferred from the small claims division to

the justice court, the rules of procedure governing justice courts apply to the case, permitting claims in excess of \$2500, attorney representation, jury trial and appeal. **ARS 22-504A**

HEARING OFFICERS

Either a Justice of the Peace or an appointed Volunteer Hearing Office may hear your case. Any party may object to the use of a hearing officer prior to the hearing date. The court can provide you with a form to make this objection. The case will then be referred to and heard by the Justice of the Peace. **ARS 22-506**

SERVICE AFTER APPEARANCE

A copy of all pleadings filed with the court must be mailed or delivered to the opposing party.

FILING AN ANSWER

The defendant has twenty (20) days to file an answer to the complaint with the court. The case will then be set for trial. Failure to file an answer may result in a default judgment. **ARS 22-514**

FILING A COUNTERCLAIM

If the defendant files a counterclaim against the plaintiff, the plaintiff has twenty days to file an answer to the defendant's counterclaim or a default judgment may be entered against the plaintiff for failure to answer the counterclaim. If the defendant files a counterclaim and the amount claimed exceeds \$3,500, the court shall terminate the designation as a small claims action and transfer the case to the civil division.

If the court determines that the amount claimed is not in excess of the small claims jurisdiction and was asserted solely for the purpose of avoiding the small claims proceedings, the court shall award the plaintiff court costs, plus reasonable attorney fees incurred in defending the counterclaim. **ARS 22-517**

DEFAULT JUDGMENT

If the defendant does not file an answer to a complaint, or if the plaintiff does not file an answer to a counterclaim, within twenty days after service is complete, an APPLICATION FOR ENTRY OF DEFAULT with the court. If the party claimed to be in default fails to file a responsive pleading within ten (10) days (judicial), of the notice of entry of default, the default will take effect and judgment by default may be entered. The court will accept an answer or other responsive pleading at a time prior to judgment.

DISMISSAL

The plaintiff may dismiss the claim at any time prior to the defendant filing an answer or other responsive pleading. Once the defendant has filed an answer both parties must stipulate to a dismissal (agree in writing). The court can provide a STIPULATION FOR DISMISSAL form for your use.

SETTING FOR TRIAL

The trial date will be set for a date within sixty (60) days after the answer has been filed with the court by the defendant. All parties will be notified of the trial date and time by mail. **ARS 22-515A**

It is your responsibility to keep the court informed of any address change. Be sure to come on the right day and time. If you fail to appear at the trial, your claim may be dismissed or a judgment entered against you. **ARS 22-515B**

REQUEST TO CONTINUE COURT DATE

If for some reason you find that you are unable to appear for trial on the date and time scheduled, you may file a REQUEST FOR CONTINUANCE with the court, showing good cause why you are unable to appear. The Judge will consider the merits of your request and either grant or deny it. The request for continuance must be in writing and should be timely filed - at least ten (10) days prior to the trial date. **ARS 22-515C**

THE TRIAL

Bring to the trial anything necessary or relevant to establish or defend the claim or counterclaim. As an example: books, papers, bills, pictures of damages, or other exhibits. Either party may also bring witnesses to testify in your behalf to substantiate your position. If you wish to preserve your right to appeal, either party may have the case transferred to the civil division of the Justice court. You may do this at any time up to TEN (10) days before trial. **ARS 22-516**

If the case is settled before the scheduled trial date, be sure to notify the court. A STIPULATED DISMISSAL form must be

filed. Within TEN days after the trial, a copy of the Judgment order will be mailed to each party.

MOTION TO VACATE THE JUDGMENT

A motion to vacate a judgment is one of only two motions allowed in a small claims action. A motion to vacate judgment can be filed by either party to vacate a default judgment or a judgment of the court following a hearing. If you oppose a motion to vacate the judgment, you must file an objection in writing TEN days after service of the motion.

If the motion to vacate judgment is defendant's first filing the defendant must pay a \$14.00 filing fee. The motion must be served in the same manner as if serving a summons and complaint (see Methods of Service). **ARS 22-505**

IF YOU ARE AWARDED JUDGMENT

The plaintiff may be awarded a judgment on the claim against the defendant or the defendant may be awarded a judgment on a counterclaim (if one was filed) against the plaintiff. The party awarded judgment is known as the Judgment Creditor and the party who the judgment is against is known as the Judgment Debtor.

To obtain information about the Judgment Debtor's employment, bank accounts or other assets you may ask the Court for an order for debtor's examination. This may be done immediately following the trial or at any other time after judgment. Additional fees and costs are required for issuing and serving an order for a debtor's examination (called an Order for Supplemental Proceedings).

- A Writ of Garnishment of earnings can be issued after you make a formal written demand for payment of the judgment amount.
- A Writ of Garnishment of non-earnings can be issued to garnish other assets, such as a bank account or other income property.
- A Writ of Execution empowers the Constable to levy on non-exempt personal property of value. You must provide a description and the location of the property.

The court clerk can provide you with the necessary garnishment or execution forms. Additional fees and costs are required for issuing and serving Writs of Garnishment and Writs of Execution.

- If your judgment is the result of an automobile accident and remains unpaid 60 days after the judgment has been entered and you notify the court, the clerk will report the non-payment to the Arizona Department of Transportation, Motor Vehicle Division, pursuant to ARS 28-4071.

COLLECTING THE JUDGMENT AWARD

If you are not able to make arrangements with the judgment debtor for payment of the judgment, you may apply for a WRIT OF EXECUTION, a WRIT OF GARNISHMENT, or an ORDER FOR SUPPLEMENTAL PROCEEDINGS (debtor's examination). You may ask the court clerk for the necessary forms. Please refer to your instructions

When you are paid in full, you must file a SATISFACTION OF JUDGMENT with the court. This form is available from the court.

The following checklist has been prepared to assist you in processing your case. Check off each action when it has been completed.

✓ **PLAINTIFF'S CHECKLIST**

_____ DATE COMPLAINT FILED

_____ DATE OF SERVICE

IF SERVICE IS BY MAIL:

_____ DATE TIME TO ANSWER HAS EXPIRED *(20 days from date return receipt is signed by defendant. If there is no date, or if the date is illegible the time to answer is 20 days from the date the return receipt is filed with the court)*

_____ DATE RETURN RECEIPT FILED WITH THE COURT. (You may file your return receipt with the court in person or by first class mail.)

IF SERVICE IS BY A PROCESS SERVER:

_____ DATE TIME TO ANSWER HAS EXPIRED *(20 days from date of service by process server)*

_____ DATE ANSWER IS FILED WITH THE COURT

_____ DATE MEDIATION IS SET

_____ DATE TRIAL IS SET

IF DEFENDANT DEFAULTS IN ANSWERING THE COMPLAINT:

_____ DATE AFFIDAVIT AND APPLICATION FOR ENTRY OF DEFAULT FILED WITH THE COURT. (The day following the date time to answer has expired, above)

_____ DATE ENTRY OF DEFAULT TAKE EFFECT. (Ten judicial days after a copy of the APPLICATION FOR ENTRY OF DEFAULT has been mailed to the defendant(s) claimed to be in default).

_____ DATE OF JUDGMENT

✓ **DEFENDANT'S CHECKLIST**

SMALL CLAIMS CHECK LIST FOR PARTIES

THERE ARE NO APPEALS IN THE SMALL CLAIMS DIVISION!
 ONLY 2 MOTIONS ARE ALLOWED IN SMALL CLAIMS PROCEDURES (SEE BELOW)

The following procedures may assist you in your case, be advised that ***only you are responsible*** for your case. Clerks are trained in procedures and will answer questions about procedures only. ☞ **Clerks are not attorneys and cannot legally answer questions about the law. Please do not ask them to do so.**

PLAINTIFF CHECKLIST

- FILE COMPLAINT - Fee \$24.00
- SERVE THE COMPLAINT upon defendant(s)
 Mail :
Certified, Restricted Delivery, Return Receipt Requested,
 Defendant is a Corporation, the Statutory Agent must be served. You can obtain the Agent's Name and Address by calling the Corporation Commission at 602-542-3026
 Or TOLL FREE at 1-800-345-5819 or www.cc.state.az.us

If the defendant doesn't receive, refused to accept, or the incorrect person signed for the Registered Letter, then the Defendant has NOT YET been properly served. You may try Certified/Restricted mail again, or use a PROCESS SERVER to perfect proper service.

- Return "Green Card" to the Court as soon as possible. The court needs this information to grant your judgment. PROCESS SERVER: Will return Affidavit of Service to Court. Defendant has 20 days from service to answer.
- ☞ If the Defendant files a **COUNTERCLAIM**, you must answer **within 20 days**. Otherwise, defendant may win Counterclaim by default.

DEFENDANT CHECKLIST

- ANSWER COMPLAINT - Fee \$14.00 within **20 calendar days** of the date you received complaint. The court cannot accept your answer without your answer fee. If you wish to file a COUNTERCLAIM, **YOU MUST DO SO AT THIS TIME**. **YOU** must use the proper form and send a copy to the Plaintiff (no additional charge for counterclaim).

The Court will SET a HEARING DATE when it receives your ANSWER and will notify both parties of date by mail.

- ☞ If you FAIL TO ANSWER, the plaintiff will win by default.
- If you have an attorney file your answer, the case will automatically transfer to the Civil Division of this Court. A Civil Answer fee of \$37.00 is required.

- Counterclaim filed, plaintiff FAILED TO ANSWER. If plaintiff fails to answer, you may file for Default against the Plaintiff's complaint will be set for trial, even though you may have a judgment against plaintiff. (Default procedures must be followed)

	DATE COMPLAINT RECEIVED
	DATE ANSWER FILED <i>(within 20 days of receipt of complaint)</i>
IF COUNTERCLAIM IS FILED:	
	DATE FILED
	DATE MAILED TO PLAINTIFF
	DATE REPLY TO COUNTERCLAIM IS FILED WITH THE COURT
	DATE MEDIATION IS SET
	DATE TRIAL IS SET
	TIME TO REPLY TO COUNTERCLAIM EXPIRES <i>(20 days from date mailed)</i>
IF PLAINTIFF DEFAULTS IN REPLYING TO THE COUNTERCLAIM:	
	DATE AFFIDAVIT AND APPLICATION FOR ENTRY OF DEFAULT FILED WITH THE COURT. (The day following the date time to reply has expired, above)
	DATE ENTRY OF DEFAULT TAKES EFFECT. (Ten judicial days after a copy of the APPLICATION FOR ENTRY OF DEFAULT has been mailed to the plaintiff(s) claimed to be in default)

If an answer to your Complaint is filed, the Court will set a HEARING DATE AND NOTIFY both parties by mail.

☞ If an Attorney files an Answer, the case will automatically transfer to the Civil Division of this Court.

IF ANSWER IS NOT FILED, pick up a Default package from the court and file for Default Judgment (see Default procedures included).

→→ NOTICES TO BOTH PARTIES ←←

☞ **HEARING DATE:** Will be set within 60 days of defendant's answer.

Bring all evidence, documents, and witnesses you need to present your case or establish your defense. Judge will not accept evidence after the Hearing (unless ordered by him at the hearing) Judgment will be rendered either at the hearing for within **10 working days.** Parties will be mailed Judgments. Prevailing party may enforce by: Writs, Garnishments and other means.

☞ **ADDRESS CHANGE:** Both parties are responsible for informing the court of current address so that notifications can be received.

☞ **MOTIONS:** A.R.S. 22-5-5 ALLOWS ONLY Motions for Change of Venue (location) and Motions to Set Aside Judgment. These motions should be filed as soon as possible to ensure prompt handling.

☞ **TRANSFER TO CIVIL DIVISION:** MUST BE FILED at least 10 days prior to hearing or sooner.

☞ **REQUEST FOR CONTINUANCE:** Granted only for MOST SERIOUS REASONS. If you are requesting a continuance, it is a good idea to attach any proof you may have regarding your request. i.e. Doctor's written document.

THERE ARE NO APPEALS IN THE SMALL CLAIMS DIVISION

HOW TO DESIGNATE DEFENDANT(S)

INDIVIDUAL

John Jones
1234 S Main Street
Mesa AZ 85201

PARENTS OF A MINOR

John and Mary Jones, husband and wife
Parents of Johnny Jones, a minor
1234 S Main Street
Mesa AZ 85201

CORPORATION

ABC Candy Store, Inc.
1234 S Main Street
Mesa AZ 85201
SERVE: John Jones, Statutory Agent *
5678 N Notsoezee Street
Mesa AZ 85201

* Service may also be effected upon an officer of the corporation - President, Vice-President, Secretary, Treasurer

SOLE OWNERSHIP

John Jones, dba
Jones' Delicious Candy Shoppe
1234 S Main Street
Mesa AZ 85201

HUSBAND AND WIFE

John and Mary Jones, husband and wife
1234 S Main Street
Mesa AZ 85201
SERVE: John Jones

John and Mary Jones, husband and wife
1234 S Main Street
Mesa AZ 85201
SERVE: Mary Jones

TWO OR MORE DEFENDANTS

John Smith
1234 S Main Street
Mesa AZ 85201

Mary Jones
1000 E First Street
Mesa AZ 85201

PARTNERSHIP

John Smith and Joe Jones, Partners
Db: JJ's Café
1000 E First Street
Mesa AZ 85201
SERVE: John Smith

John Smith and Joe Jones, Partners
Db: JJ's Café
1000 E First Street
Mesa AZ 85201
SERVE: Joe Jones

WHEN THE NAME OF THE DEFENDANT IS UNKNOWN

JOHN DOE Schwarzenegger
1000 E First Street
Mesa AZ 85201

Matilda DOE
JANE DOE Taylor
XYZ Corporation

When the defendant's true name is discovered the pleadings may be amended to reflect the true name.

The court requires a letter (on letterhead) of authorization from the Company, Corporation, Association or Organization authorizing the party who will be filing complaints and other documents and representing the entity as the authorized full-time employee or active member of the organization as per **A.R.S. 22-512**.

PARTIES; REPRESENTATION

ARS 22-512

WHO CAN FILE

- Any person
- Corporation
- Partnership
- Association
- Marital Community
- Organization

CANNOT REPRESENT:

- Assignee - such as a collection agency
- A Person Not A Real Party To Original Transaction

WHO CAN REPRESENT:

- Individual
- Either spouse of marital community
- General Partner
- Partnership - Authorized full-time employee for partnership
- Corporation - Officer of corporation