

How to Collect Your Small Claims Judgment

If you win your case, the judge will order the Defendant to pay you directly and/or return your property.

When can I start collecting the Judgment?



The timeline to collect depends on how the judgment was awarded or whether the Defendant files an appeal or a motion to set aside the default judgment.

Following Hearing	If you and the Defendant were both present at the hearing, you must wait 30 days from the date of the judgment before you can begin collecting.
Default Judgment	If your <i>Judgment</i> is a default judgment, you can enforce it immediately.
Appeal is Filed	If an <i>Appeal</i> is filed, you cannot enforce the <i>Judgment</i> . If you win your case at the new hearing on the Appeal, you can enforce the new <i>Judgment</i> as soon as you receive it.
Default Judgment Set Aside	If your <i>Default Judgment</i> is set aside, you cannot enforce the <i>Judgment</i> . If you win your case at the hearing, you must wait 30 days before you can enforce your <i>Judgment</i> .

To enforce the Judgment:

- Talk to the Defendant. Explain that the longer it takes for Defendant to pay, the more interest and fees the Defendant will owe.
- Ask the court for a *Writ*. You can only ask the court for one type of *Writ* at a time, see the three options listed below. **Note:** To collect from Defendant's *real property* you should talk to a lawyer.
- If the Sheriff returns the *Writ* and it was not paid in full, you can then ask for a *Debtor's Exam* where you can ask the Defendant in court under oath for specific information about their money or property.

File a Writ to Collect Your Judgment

A. Recover Personal Property (Writ of Possession)

If your *Judgment* includes personal property, and the Defendant has not returned it to you, you can ask the Sheriff to recover it for you.

1. To do so file with the court an:
 - a. *Application and Affidavit for Writ of Possession*
 - b. \$2 filing fee, and
 - c. *Writ of Possession*.



Provide a detailed description of the location of the property, including building, walls, or fences. Explain why

you believe the property is at that location. Note: The judge will not grant the *Writ* if there is not enough information to locate the property.

2. Once granted, file the *Writ* at the Sheriff's office in the county where the personal property is located (for a fee). Provide the Sheriff with the description and location of the property. The Sheriff will serve the papers at the location and try to get the property.
3. If the Sheriff is able to recover the property, the Sheriff will tell you where you can pick it up.

Writs Continued...

B. Recover Money by Garnishing Wages (Writ of Continuing Garnishment)



For a wage garnishment, the Defendant's employer withholds part of the Defendant's paycheck and pays the money to the Sheriff, who then pays the money to you.

1. To garnish wages file with the court an:
 - a. *Application and Affidavit for Writ of Continuing Garnishment*
 - b. \$2 filing fee, and a
 - c. *Writ of Continuing Garnishment*.
2. Once granted, file the *Writ* at the Sheriff's office in the county where the Defendant's employer is located (for a fee). Provide the Sheriff with the name and address of the Defendant's employer.
3. The Sheriff will serve the papers on the Defendant and the Defendant's employer.
4. The Sheriff will give you the money received from the employer unless a *Claim of Exemption* is filed (see *Claim of Exemption* on Page 2).

C. Recover Money by Seizing Personal Property (Writ of Execution)



Personal property (anything other than houses, land, or buildings) can be seized by the Sheriff to be sold to pay you. You can collect from sources of money, i.e. bank accounts or cash registers. You can also

ask the Sheriff to seize vehicles, tools, appliances, or equipment to sell them at auction.

Check for loans, liens, or other interests on the property.

Any loans, liens, or other interests on the property may have to be paid off before you can receive any funds from the auctioned item.

Note: You must try to find out if someone else has an interest in the property and give the Sheriff their name and address. You can check with the Secretary of State's Office for liens or security interest. For vehicles, check with the county motor vehicle department for liens or loans.

To seize personal property:

1. File with the court an:
 - a. *Application and Affidavit for Writ of Execution*
 - b. \$2 filing fee and a
 - c. *Writ of Execution*.
2. Once granted, take the *Writ* to the Sheriff's office in the county where the personal property is located (for a fee). Provide the Sheriff with the description and location of the property. If someone other than the Defendant has the property, provide their name and address.

The Sheriff will serve the papers on the Defendant, the person who has the property (if different), and anyone who has an interest in the property. The Sheriff will try to collect money and seize property to sell to pay you unless a *Claim of Exemption* is filed.

More Information About Judgments & Locating Court Forms

Renew Your Judgment Before it Expires

🕒 **5 Year Expiration prior to July 1, 2015.** A *Judgment* expires 5 years from the judgment date if it was entered prior to July 1, 2015, and can be renewed for 5-year periods.

🕒 **10 Year Expiration July 1, 2015 and later.** A *Judgment* expires 10 years from the date of judgment if it was entered on July 1, 2015 or later, and can be renewed for 10-year periods.

The judgment date can be found on the top right corner of the *Judgment* form. If the Defendant has not satisfied/paid the *Judgment*, you can ask the court to renew it for another 5 or 10 year period. To do so, file an *Affidavit and Motion to Renew Judgment* before your *Judgment* expires.

What is a Third Party Claim?

A *Third Party Claim* can be filed by someone other than the Defendant, who has a claim in the property you are trying to seize.

You may be required to pay this person their interest in the property before the Sheriff can sell it. For example, if the Sheriff seized Defendant's car, and the Defendant had a car loan, you may be required to pay the remaining loan before the Sheriff can sell it. If you do not believe that the third party has an interest in the property, you can file a *Motion to Contest the Claim of Exemption*.

What is a Claim of Exemption?

After a Defendant is served with a *Writ*, he/she has 14 days to file a *Claim of Exemption* for any property believed to be exempt from collection.

The Sheriff will notify you within 1 business day if this happens. If you disagree that the property is exempt, you can file a *Motion to Contest the Claim of Exemption* with the court clerk within 5 business days. A hearing will be scheduled 5 to 12 business days later. Provide to the court any evidence that shows that the property is not exempt.

Locate and File the Forms: Choose one of the following.

NOTE: If you are a business you must e-file your forms.



A. Guide & File and E-file: To use an online interview to prepare your forms go to: <http://guideandfile.idaho.gov>. You can also e-file them at this website by choosing the e-filing option, or print the completed forms, sign, copy, then file in person.

B. E-File using File & Serve: Convert your documents to pdf and e-file using **File & Serve**, this may be easier if you routinely file a large volume of small claims cases. Find it online here: <https://idaho.tylerhost.net/ofswab>. or

C. Print and File in Person: To print and fill out your forms by hand go to: www.courtselfhelp.idaho.gov/small-claims or pick up a copy at your local courthouse. Sign and date the completed forms. Make four copies: 1 for you and 3 for the Sheriff, then take them to the court where the Claim was filed.