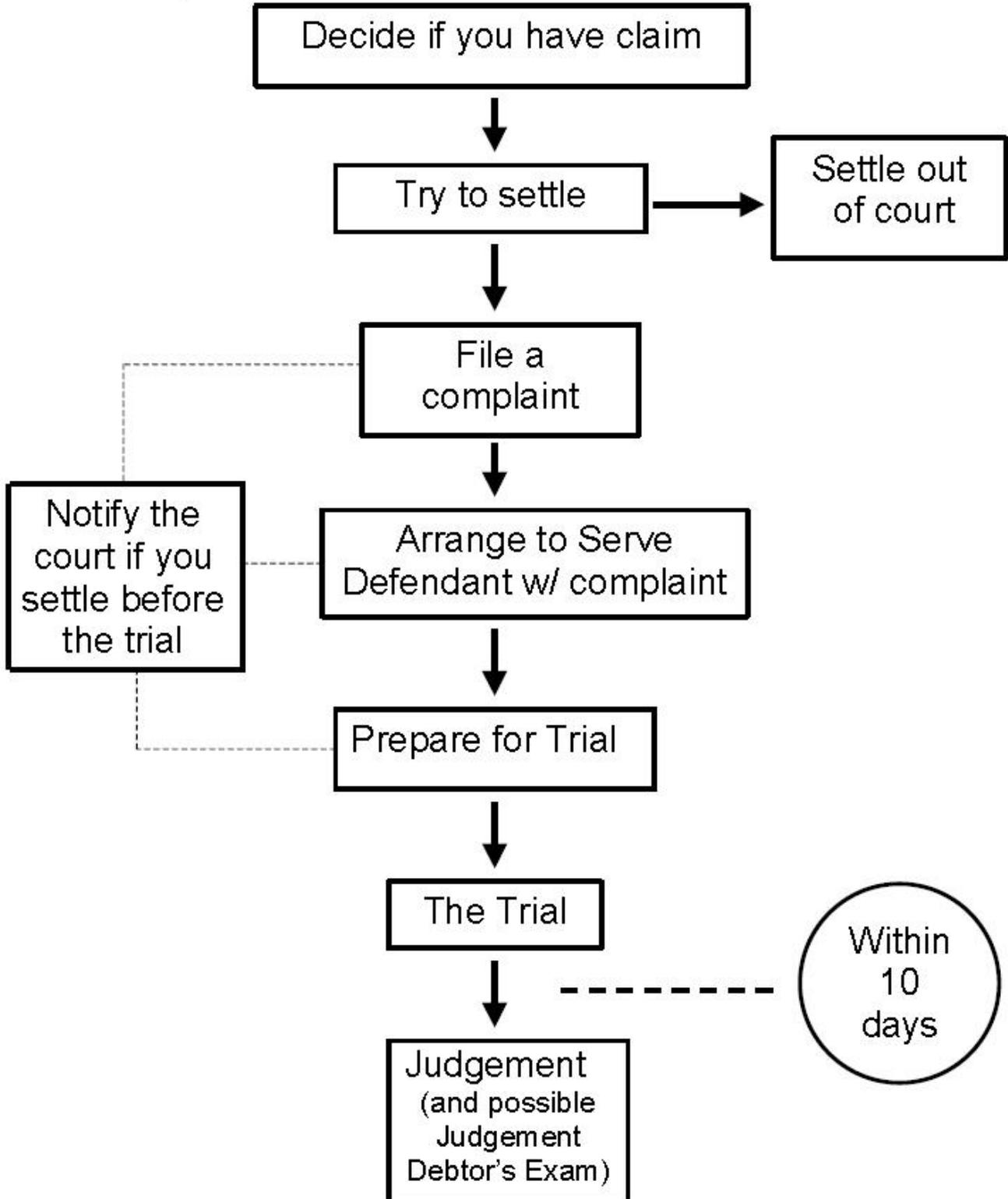


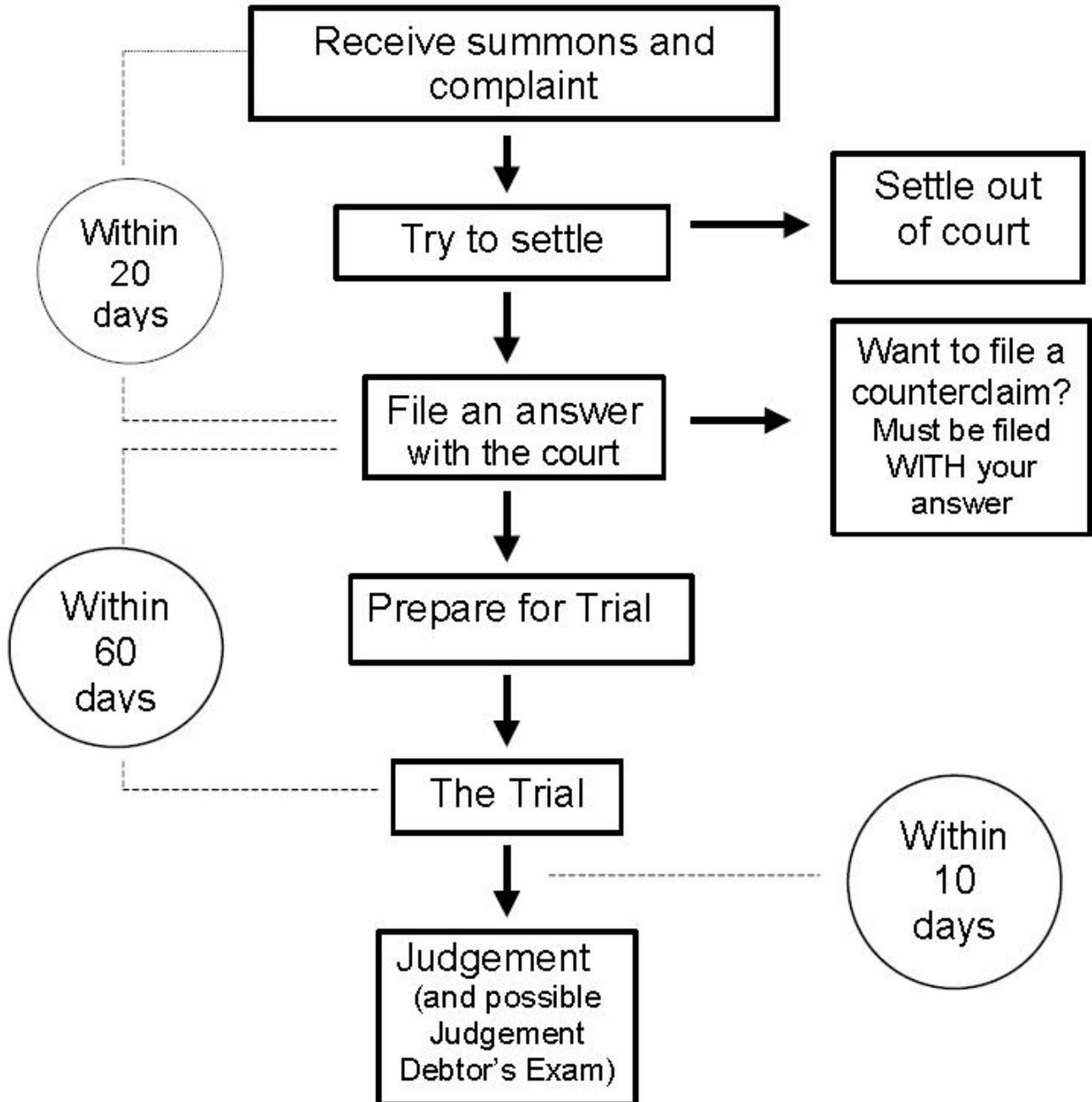
Small Claims: The Process in Detail

If you are the plaintiff in a Small Claims case:



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If you are the defendant in a Small Claims case:



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What is a small claims division?

Every justice court in Arizona has a small claims division to provide an inexpensive and speedy method for resolving most civil disputes that do not exceed \$2,500.

- All cases are heard by either a judge or hearing officer, who then makes a decision.
- The decision is final and binding on both parties. There is no right to a jury trial or an appeal in small claims cases.
- Formal Rules of procedure do not apply. Procedures in small claims cases are intended to be simple enough for a person to file all the necessary forms and represent him/herself at an informal hearing.

There are two specific motions allowed by law in a small claims action. These are Motion for Change of Venue (Location) and Motion to Vacate a Judgment.

Who can use the small claims procedure?

The small claims court can be used by any individual, partnership, association or corporation for civil claims that do not exceed \$2,500. Small claims cases are simplified, therefore, lawyers are not allowed. However, they may be allowed to participate if all parties agree. A form, Stipulation For Use of Attorneys, may be filed for this purpose anytime prior to the hearing. Attorneys can appear in the small claims division if they are representing themselves. Either party may object to the proceedings being held in the small claims division. The request must be made in writing at least 10 working days prior to the time set for the hearing. The case then will be transferred out of the small claims division. Once a case is transferred, the rules of civil procedure apply to the case, permitting claims in excess of \$2,500, attorney representation, jury trial and appeal.

Things to Consider Before Filing.

This is your case. You are solely responsible for prosecuting or defending the claim or recovering any monetary awards. The clerks at each of the courts are not attorneys and are not authorized to give legal advice. It is not the court clerks' 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 the claim. The court does not take sides or render an opinion regarding the merits of a claim. There are certain steps you must follow to pursue your case properly. We have provided the following information to assist you with general procedures in processing your case through the court. The flowcharts, which you can link to from the top of this section, might be helpful in providing a basic overview of the small claims process. We also have made some forms available online. The complaint form can be filled out on your computer and then printed out. Please see our [forms] section for detailed instructions.

When may a small claims complaint be filed?

People should try to settle their disputes and disagreements out of court whenever possible. If an agreement cannot be reached, a small claims complaint may be filed. The types of claims that can be filed in the small claims division include:

- money debts
- personal injury
- property damage
- contracts

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The types of claims that cannot be filed in the small claims division are those for:

- libel or slander
- prejudgment remedies
- injunctive relief
- specific performance
- class actions
- traffic violations
- criminal matters
- claims greater than \$2500
- forcible entry or detainer
- actions against this state; it's political subdivisions; OR
- an officer or employee in an official capacity (i.e. State, County, City, Salt River Project, etc.)

The clerks at the Justice Courts are available to answer most questions relating to jurisdiction, venue, pleadings or procedures that this web site cannot answer for you. Please keep in mind that the clerk cannot engage in the practice of law and cannot give you legal advice.

Statutes of Limitation

Time limits in civil actions accrue from the date the events that gave rise to the action occurred.* The time limits apply to both civil suits and small claims. Please note, this list is meant as a general guide. Not all of the cases listed below can be filed or heard in Justice Court.

- One year - Malicious prosecution; false imprisonment; libel or slander; breach of employment contract; wrongful termination; liability created by statute ([ARS 12-541](#))
- Two years - Personal injury; injury when death ensues; damage to property; conversion of property; product liability; forcible entry and eviction action ([ARS 12-542](#))
- Three years - Debt from oral contract; stated or open account; relief on ground of fraud or mistake ([ARS 12-542](#))
- Four years - Bond to convey realty; partnership account; account between merchants; judgment or instrument given or made without the state; bond of personal representative or guardian; specific performance of contract to convey realty ([ARS 12-544](#), [545](#), [546](#))
- Six years - Written contracts for debt ([ARS 12-548](#))
- Four years - Actions for which no limitation is otherwise prescribed (other than for recovery of real property) ([ARS 12-550](#))

*Under some special circumstances, time limits can be extended or deferred. Please consult an attorney to determine if these circumstances apply to your case.

How is a small claims case initiated?

A plaintiff (the person or organization bringing the suit) begins a small claims case by filing a Complaint with the proper justice court. The case must be filed in the correct venue. The plaintiff must file the complaint in the justice court in which the defendant (the person or organization being sued) resides or operates a business, or where the act/incident took place.

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How is the defendant served with the complaint?

- The summons and complaint must be served on each defendant. This is called "service of process." The summons and complaint may be served by registered or certified mail, return receipt requested. Service is deemed complete when the defendant signs for it. The return receipt must then be filed with 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. Remember, each defendant must be served a copy of the complaint/summons. You should use restricted delivery to ensure the party signs the return receipt. If the claim is against a corporation, the statutory agent or an officer of the corporation must be served on behalf of the corporation in the complaint. You may obtain the id and address of a statutory agent or corporate officer by calling the Arizona Corporation Commission at (602) 542-3026.
- You also can serve the defendant through a private process server. You can use this method if the defendant cannot be served by registered or certified mail. Any registered private process server will serve the summons and complaint for a fee. Process service companies are found in the Yellow Pages. The courts cannot recommend a particular process server. Some courts may have drop boxes for process servers in which documents can be placed.

Venue

If the complaint has been filed in the wrong precinct, the defendant can file a Motion for Change of Venue. The form may be obtained from the court. The plaintiff may file an objection to the requested change. If the court orders a change of venue, the case shall be transferred to the proper precinct and the plaintiff shall pay all fees. The 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.

Fees

The list of filing fees are located at <http://www.azcourts.gov/courtfilingsfees/JusticeCourtFilingFees.aspx>

How is a small claims complaint answered?

After receiving the summons and complaint, the defendant has 20 days to file an Answer with the court. If the defendant fails to file an answer within 20 days, the plaintiff may initiate default proceedings.

How is a counterclaim filed?

A Counterclaim is a statement by the defendant, not necessarily opposing the plaintiff's claim, but alleging other facts to establish a claim by the defendant against the plaintiff. The defendant's counterclaim may also demand money from the plaintiff. If this demand does not exceed \$2,500, the case remains in the small claims division.

If it exceeds this amount, the case is transferred out of the small claims division. All counterclaims are filed at the time of filing the answer. If not, the defendant must seek permission of the court by filing a motion to file a counterclaim.

What happens if an answer is not filed?

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 may be filed with the court. If the party claimed to be in default fails to file a responsive pleading within 10

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business days 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 any time prior to judgment.

How do I prepare for trial?

The trial will be scheduled within 60 days from the date the defendant files an Answer with the court. The clerk will notify both parties of the time and place of the trial. If either party wishes to postpone the trial to a later date, a Request for Continuance form must be filed with the court by that party. This form may be obtained from the court clerk.

Only the most serious reasons will be considered by the court in ruling on this request.

Prior to trial, both the plaintiff and defendant should write down the facts and details of the case in the order in which events occurred. Both parties should bring all witnesses and necessary papers (for example, bills, receipts, price estimates, pictures of damage, etc.) with them when they appear for the trial. If the plaintiff and defendant settle the case prior to the trial, the parties must notify the court, in writing, to dismiss the action. Both parties must stipulate (agree) to the dismissal once an answer has been filed.

What happens at trial?

On the day of the trial, both parties must appear on time before the judge or hearing officer and testify. The court will also hear the defendant's counterclaim, if one has been filed. After both parties have presented their witnesses, testimony and evidence, the judge or hearing officer will make a decision, called a judgment, and record that decision in the court's records. In most cases the judgment is announced at trial; however, the judge has 10 working days to consider the facts in the case, research the law, make a decision and notify the parties of the judgment by mail.

What happens if I do not appear at the trial?

If the defendant fails to appear at the trial, the judge or hearing officer may hear testimony from the plaintiff and his/her witnesses, examine other evidence presented by the plaintiff and enter a judgment against the defendant. If the plaintiff fails to appear at trial, the court may, and probably will, dismiss the case.

Can the court's decision be appealed or changed?

Neither party can appeal the decision of the judge or hearing officer in a small claims case. If either party believes the judgment was entered in error, or if there were good reasons for one of the parties not appearing in court, that party may file a Motion to Vacate Judgment asking the court to set aside, or vacate, the judgment. The court will review the motion and notify both parties of its decision.

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How is the judgment collected?

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.

- Judgment Debtor Exam/Supplemental Proceedings. To obtain information about the Judgment Debtor's employment, bank accounts or other assets you may ask the Court for an order for a debtor's examination to be held 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).
- Writs of Garnishment 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.
- Writ of Execution 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 clerk can provide you with the necessary garnishment or execution forms. You will have to pay additional fees and costs for issuing and serving Writs of Garnishment and Writs of Execution. If your judgment is the result of an automobile accident for which you have an accident report and remains unpaid 60 days after the judgment has been entered, you may notify the court. A clerk will then report the non-payment to the Arizona Department of Transportation, Motor Vehicle Division, pursuant to ARS 28-4071. MVD will suspend the judgment debtor's driver's license, registration and non-resident operating privilege.

When you are paid in full you must file a Satisfaction of Judgment with the court. This form is available from the court.

Other Information

Either a Justice of the Peace or an appointed Volunteer Hearing Officer 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.