

How to Sue in Small Claims Court—the People’s Court

by Stephen E. Berken, Attorney-at-Law

Let’s start with the good news. It is not difficult to sue someone in small claims court. The rules are simple. But these rules need to be followed. The following is a summary of how to get your case before the small claims court judge.

How much can I sue for?

In Colorado, the limit you can sue for is \$7500. Even if you are owed more than \$7500, the judge cannot award any more than \$7500. This does not include your court costs and interest. The court can award up to \$7500 plus those costs to sue the defendant as well as the interest up to the judgment date. You are not entitled to receive attorney’s fees because attorneys are not allowed in small claims court.

What can I sue for?

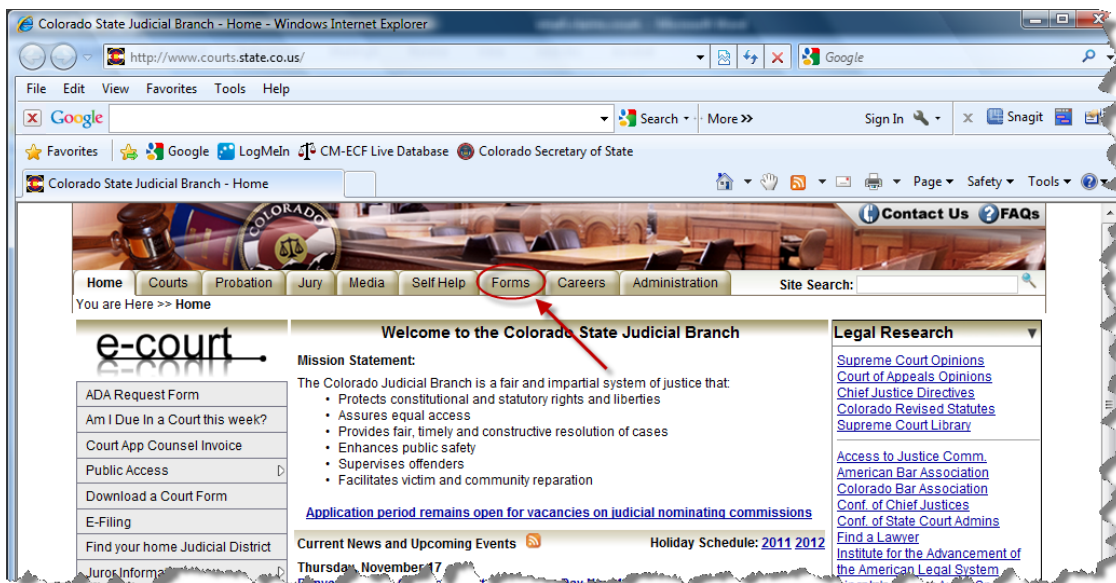
In small claims court, you can sue for recovering money, getting back property, to force a party to perform on a contract. For example, you can sue your landlord who has failed to return your security deposit, the car mechanic who did more harm than good, the contractor who made a mess of your kitchen remodel, the former employer who failed to pay your wages, the guy who ran the red light and crashed into your 1972 Oldsmobile Cutlass...the list goes on. You get the picture.

What is off limits in small claims court?

Even if your claim is for less than \$7500, the court cannot hear matters that involve certain issues, such as libel or slander. The court cannot hear matters as to criminal issues, or matters involving traffic fines. The court cannot enter an injunction against a former boyfriend who continues to harass you on the telephone.

How do I start the process?

To sue in small claims court, as in any court, you must file a “complaint.” The court clerk has a form called a “Notice, Claim & Summons to Appear for Trial.” The form is available at the courthouse for the county in which you plan to sue, or you can download the form at <http://www.courts.state.co.us>. Click on the tab labeled, “Forms.” (shown below)

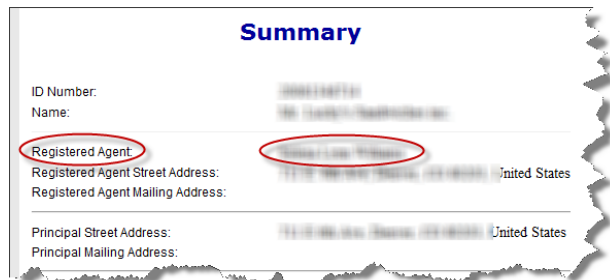


If the matter involves a company, go to the Colorado Secretary of State website (<http://www.sos.state.co.us/>) and click on “Business Search.”



Enter the name of the company. That will tell you whether the company is a Corporation, a Limited Liability Company, or a Trade Name (dba). The precise name of the entity must be filled in as the “defendant” on your complaint.

After the caption, the complaint ask you who the registered agent is for the purpose of suing a business. This only applies to Corporations, Limited Liability Companies or similar business structures. The Secretary of State website will tell you who the registered agent is. If it’s a small company, chances are the owner of the company is the registered agent.



In the body of the complaint, four simple questions are asked. Answer these to the best of your ability.

1. The Defendant(s) is/are in the military service: Yes No Unknown

2. The Defendant(s) reside(s), is/are regularly employed, has/have an office for the transaction of business, or is/are a student in this county, or the Defendant(s) own(s) the real property in this county that is the subject of this claim arising from a restrictive covenant or security deposit dispute. Yes No

3. I/We understand that it is my/our responsibility to have each Defendant served with the “Defendant’s Copy” of this Notice by a person whose age is 18 years or older and who is not a party to this action 15 days prior to the trial and to provide the Court with written proof of service. Yes No

4. I am an attorney: Yes No

The boxed section in the middle of the complaint is where the County Clerk will fill in the date and time of your trial. This section will be filled in when you file with the court.

Notice and Summons to Appear for Trial

To the Defendant(s):
 You are scheduled to have your trial in this case on _____ (date) at _____(time) at the Court address stated in the above caption. Bring with you all books, papers and witnesses you need to establish your defense. **If you do not appear, judgment may be entered against you.** If you wish to defend the claim or present a counterclaim, you must provide a written response or written counterclaim on or before the scheduled trial date and pay a **nonrefundable** filing fee.

Dated: _____

 Clerk of Court/Deputy Clerk

Plaintiff(s)’s Claim (Please summarize reasons to support your claim below.)

The last section of the complaint will ask you for a summary of your claim, including how much money you are suing for. Be succinct, but as complete as possible in describing your claim. This section is designed to assist the judge in determining whether he has jurisdiction to hear your case.

Plaintiff(s)'s Claim (Please summarize reasons to support your claim below.)

The Defendant(s) owe(s) me \$ _____, which includes penalties, plus interest and costs allowed by law, and/or should be ordered to return property, perform a contract or set aside a contract or comply with a restrictive covenant for the following reasons. (If seeking return of property, please describe the property being requested).

Note: The combined value of money, property, specific performance or cost to remedy a covenant violation cannot exceed \$7,500.00. Plaintiff(s) declare under penalty of perjury that the above statements are true and correct, and that I/we have not

Time to file your complaint with the court.

After you've completed the form (Part 1, Court Copy), you must also fill out Part 2 (Defendant's Copy), Part 3 (Plaintiff's Copy), and Part 4 (Court Copy after Service). Once you are finished, file Part 1 with the Court. The County Clerk will fill in the date and time of the scheduled trial on all four of the copies.

When the County Clerk tells you when your trial date is, she will also provide you with information regarding how to have the defendant properly "served." The rules have been relaxed in small claims court. Service may be accomplished by "certified mail." However, the mail must be received. If it's not, you may have to have the defendant served personally by either the sheriff or a process server. The clerk will also ask you for the filing fee.

Part 2 must be served on the defendant(s). Keep Part 3 for your records. Once the defendant(s) are served, file Part 4 (Affidavit of Service) with the court. The affidavit must be notarized.

Once a complaint is received by the defendant, he has several choices. He can file a response, telling the court why he does not owe the monies that you demand. He can file a counterclaim in which he maintains that you owe him money. Or he can do nothing. If he does nothing, when you appear in court, you will ask for a "default judgment."

What happens when I show up for my trial?

The trial is an opportunity for you to tell your story. As Sgt. Friday used to say on the television show Dragnet—"just the facts, ma'am."

Judges are good listeners. And like anyone who hears a story, it's best to start with the beginning and move forward chronologically. Don't skip back and forth with the details of the case, throwing out unnecessary facts. Write out precisely what you want to say. Do not count on your memory to save you. While small claims court is a fairly informal proceeding, you will be nervous when you go before the judge. It is important to have notes in front of you so that you don't forget the most important facts of your case.

Let's say your case involves a claim against a former landlord. Your presentation of the case might go as follows:

Your Honor, I signed a lease with Mr. Williams to rent an apartment located at 1628 Clarkson St. in Denver. The lease required me to pay a security deposit of \$1200, and a pet deposit of \$100. The lease was for a term of one year beginning February 1, 2010. The monthly payments were \$1200. When I moved into the apartment, there were scratches on the wood floor, as well as some stains on the carpet. When the landlord showed me the apartment, before I signed the lease, he acknowledged the scratches and stains. I paid each of my rent payments on time and I have proof of all those payments with me today. At the end of my lease, January 31, 2011, I moved out of the apartment. I left it in the same condition as when I moved in. In fact, I cleaned it more thoroughly than how it was delivered to me in February of 2010. Two months passed after I left the apartment in January of 2011 and the landlord did not return my security deposit. I called him on three occasions and sent him an e-mail. I received no response. Finally, I filed this lawsuit in small claims court asking for the return of my security deposit. Today I am asking for my security deposit, as well as what the law allows, which is three times the amount that I paid him. Today, Your Honor, I am asking for judgment in the amount of \$3600, plus interest. Thank you.

Of course, the landlord is not going to take this lying down. During his testimony, he will claim that you: (1) left the apartment in a shambles, (2) failed to remove garbage, (3) paid your rent late three of the 12 months.

This is the point the trial where you need to “act like a lawyer.” Listen to precisely what your opponent is saying and only address those issues. For example, using our story of the dispute with the landlord, be prepared to argue that you paid each month by check, and that you have canceled checks to prove the payments were timely, or a check register that shows that you tendered the payments on time, and that you have photographs of the premises when you left the apartment after the lease expired, etc.

Keep in mind that if it is important enough to win, it is important to bring witnesses. While a judge may not be persuaded by your testimony, the effect of bringing witnesses will probably help your case.

A common problem when non-attorneys present a case is trying to get into evidence “hearsay” testimony. In short, you cannot tell the court what someone told you if they are not available in court to offer testimony. For example, the following is hearsay testimony:

Your Honor, after the car was damaged by the defendant, I brought it to Double Time Auto Repair. The owner of the repair shop told me that the repairs would cost \$2300. I have a copy of the estimate.

The problem with this argument is that the owner of the repair shop is not in court and available for the defendant to cross examine. The only way you can establish your “damages” is to bring the witness, and in this case, the owner of the repair shop, to court.

Determine what evidence you want to put before the court. If the claim involves payments, bring copies of canceled checks. If the case involves shoddy workmanship, bring photographs of the work with date stamps. If the case involves a car accident, bring a copy of the accident report and photographs of the damaged vehicle. Bring copies of the estimate for the repairs. It’s your job to make the judge’s job as easy as possible. Bring him as much information as you can to feel comfortable with the decision that he renders. Do not count on the judge to do **your** job in presenting **your** case.

What else can I do to prepare for trial?

There is no substitution for practice. Once you’ve written out what you wish to say, practice saying it out loud. Also, organize all the exhibits that you want the court to see in a binder. Again, it’s your goal to make the case as easy for the judge to understand as possible. Consider going to court a day or two before your trial to see how the judge runs his courtroom. This will also give you an opportunity to hear how people present their cases.

Although small claims court appears to be informal, no judge will tolerate rudeness. Keep your wits about you. Don’t let the other side get your goat. Remain calm and stick to your facts.

I got my judgment! Now what?

The law allows for certain methods to collect on a judgment. The most common is a garnishment of wages. In the state of Colorado, 25% of wages may be garnished. A writ of garnishment served on a bank account will often result in getting **all** of the monies deposited in the account when the garnishment is served. However, keep in mind, that collecting on a judgment may be more difficult than getting the judgment. Defendants who are on fixed incomes, such as Social Security or disability, are beyond the reach of a writ of garnishment.

You can find out where the defendant banks, or works, or to whom he is owed monies, by serving “interrogatories.” An interrogatory is a fancy term for a questionnaire. Defendant has an obligation to answer an interrogatory. With that information in hand, you’re in a position to move forward with a garnishment. Also, if you know where the defendant banks, there is no need for an interrogatory—you can ask the court for writ of garnishment and have it served on the bank without the defendant’s consent.

Below are the rules for small claims court. Good luck with “fighting the good fight.”

Stephen Berken
Attorney-at-Law

Rule 501. Scope and Purpose

(a) How Known and Cited. These rules for the small claims division for the county court are additions to C.R.C.P. and shall be known and cited as the Colorado Rules of Civil Procedure, or C.R.C.P. These rules are promulgated pursuant to section 13-6-413, C.R.S.

(b) Procedure Governed. These rules govern the procedure in all small claims courts. They shall be liberally construed to secure the just, speedy, informal, and inexpensive determination of every small claims action.

(c) Purpose. Each small claims court shall provide for the expeditious resolution of all cases before it. Where practicable, at least one weekend session and at least one evening session shall be scheduled or available to be scheduled for trial in each small claims court each month.

(d) Record of Proceedings. A record shall be made of all small claims court proceedings.

Rule 502. Commencement of Action

(a) How Commenced. A small claims action is commenced by filing with the court a short statement of the plaintiff's claim setting forth the facts giving rise to the action in the manner and form provided in C.R.C.P. 506 and by paying the appropriate docket fee.

(b) Jurisdiction. The court shall have jurisdiction from the time the claim is filed.

(c) Setting of the Trial Date. At the time the small claims action is filed, the clerk shall set the trial on a date, time and place certain. The first scheduled trial date shall not be less than thirty days from the date of issuance of the notice of claim by the clerk.

Rule 503. Place of Action

(a) Where Brought, Generally. All actions in the small claims court shall be brought in the county in which at the time of filing of the claim any of the defendants resides, or is regularly employed, or has an office for the transaction of business, or is a student at an institution of higher education. In an action to enforce restrictive covenants or arising from a security deposit dispute, the action may be brought in the county in which the subject real property is located.

(b) Consent to venue. If a defendant appears and defends a small claims action on the merits at trial, the defendant agrees to the place of trial.

Rule 504. Service of the Notice, Claim and Summons to Appear for Trial

(a) Time for Serving the Notice, Claim and Summons to Appear for Trial. A copy of the notice, claim and summons to appear for trial shall be served at least fifteen days prior to the trial date.

(b) Personal Service of the Notice, Claim and Summons to Appear for Trial. Personal service of the notice, claim and summons to appear for trial shall be in accordance with C.R.C.P. Small Claims Rules R11/08 Page 2 of 8

304(c), (d) and (e), with proof of service filed in accordance with C.R.C.P. 304(g), and refusal of service dealt with as described in C.R.C.P. 304(j).

(c) Clerk's Service of the Notice, Claim and Summons to Appear for Trial by Certified Mail.

(1) Within three days after the action is filed, the clerk shall send a signed and sealed notice, pursuant to Forms appended to these rules, to the defendant(s), by certified mail, return receipt requested to be signed by addressee only, at the address supplied or designated by the plaintiff. If the notice is delivered, the clerk shall note on the register of actions the mailing date and address, the date of delivery shown on the receipt, and the name of the person who signed the receipt. If the notice was refused, the clerk shall note the date of refusal.

(2) When Service is Complete. Notice shall be sufficient even if refused by the defendant and returned. Service shall be complete upon the date of delivery or refusal.

(3) Notification by Clerk and Fees and Expenses for Service. If the notice is returned for any reason other than refusal to accept it, or if the receipt is signed by any person other than the addressee, the clerk shall so notify the plaintiff. The clerk may then issue additional notices, at the request of the plaintiff. All fees and expenses for the certified mailing by the clerk shall be paid by the plaintiff and treated as costs of the action. Issuance of each notice shall be noted upon the register of actions or in the file.

Rule 505. Pleadings and Motions

(a) Pleadings. There shall be a claim and a response which may or may not include a counterclaim. No other pleadings shall be allowed.

(b) No Motions. There shall be no motions allowed except as contemplated by these rules.

Rule 506. General Rules of Pleading

(a) Claims for Relief and Responses. Except as provided in subsection (b), claims and responses, with or without a counterclaim, in the small claims court shall be filed in the manner and form prescribed by Forms appended to these rules, and shall be signed by the party under penalty of perjury. Claims and responses, with or without a counterclaim, for an action to enforce restrictive covenants on residential property shall be filed pursuant to Forms appended to these rules, and shall be signed by the party under penalty of perjury.

(b) Availability of Forms; Assistance by Court Personnel. The clerk of the court shall provide such assistance as may be requested by a plaintiff or defendant regarding the forms, operations, procedures, jurisdictional limits, and functions of the small claims court; however, court personnel shall not engage in the practice of law. The clerk shall also advise parties of the availability of subpoenas to obtain witnesses and documents. All necessary and appropriate forms shall be available in the office of the clerk.

Rule 507. Responses and Defenses

Each defendant shall file a written and signed response on or before the trial date. At the time of filing the response or appearing, whichever occurs first, each defendant shall pay the docket fee prescribed by law. Small Claims Rules R11/08 Page 3 of 8

Rule 508. Counterclaim

(a) When Counterclaim to be Filed; Effect on Hearing Date. If at the time of the trial date it appears that a defendant has a counterclaim within the jurisdiction of the small

claims court, the court may either proceed to hear the entire case or may continue the hearing for a reasonable time, at which continued hearing the entire case shall be heard.

(b) Counterclaim Within the Jurisdiction of the Small Claims Court. If at the time the action is commenced a defendant possesses a claim against the plaintiff that: (1) is within the jurisdiction of the small claims court, exclusive of interest and costs; (2) arises out of the same transaction or event that is the subject matter of the plaintiff's claim; (3) does not require for its adjudication the joinder of third parties; and (4) is not the subject of another pending action, the defendant shall file such claim as a counterclaim in the answer or thereafter be barred from suit on the counterclaim. The defendant may also elect to file a counterclaim against the plaintiff that does not arise out of the transaction or occurrence.

(c) Counterclaim Exceeding the Jurisdiction of the Small Claims Court. If at the time the action is commenced the defendant possesses a counterclaim against the plaintiff that is not within the jurisdictional limit of the small claims court, exclusive of interest and costs, and the defendant wishes to assert the counterclaim, the defendant may:

(1) file the counterclaim in the pending small claims court action, but unless the defendant follows the procedure set forth in subsection (2) below, any judgment in the defendant's favor shall be limited to the jurisdictional limit of the small claims court, exclusive of interest and costs, and suit for the excess due the defendant over that sum will be barred thereafter; or

(2) file the counterclaim together with the answer in the pending small claims court action at least seven days before the first scheduled trial date and request in the answer that the action be removed to county court or district court, whichever has appropriate jurisdiction, as selected by the defendant, to be tried pursuant to the rules of civil procedure applicable to the court to which the case has been removed. Upon filing the answer and counterclaim, the defendant shall tender the filing fee for a complaint in the court to which the case has been removed. Upon compliance by the defendant with the requirements of this subsection (2), all small claims court proceedings shall be discontinued and the clerk of the small claims court shall deliver the case and fee to the appropriate court.

(d) Defendant Notified if Counterclaim Exceeds Court's Jurisdiction. All counterclaims asserted over the jurisdictional limit of the small claims court shall be subject to the provisions of Section 13-6-408, C.R.S., and all defendants shall be advised of those provisions on Forms appended to these rules.

Rule 509. Parties, Representation and Intervention

(a) Parties. Any natural person, corporation, partnership, association, or other organization may commence or defend an action in the small claims court, but no assignee or other person not a real party to the transaction which is the subject of the action may commence an action therein, except as a court-appointed personal representative, conservator, or guardian of the real party in interest.

(b) Representation. Small Claims Rules R11/08 Page 4 of 8

(1) **Partnerships and Associations.** Notwithstanding the provisions of article 5 of title 12, C.R.S., in the small claims court, an individual shall represent himself or herself; a partnership shall be represented by an active general partner or an authorized full-

time employee; a union shall be represented by an authorized active union member or full-

time employee; a for-profit corporation shall be represented by one of its full-time officers or full-

time employees; an association shall be represented by one of its active members or by a full-

time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-

time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(2) Attorney Representatives of Entities. No attorney, except pro se or as an authorized full-time employee or active general partner of a partnership, an authorized active member or full-time employee of a union, a full-time officer or full-time employee of a for-profit corporation, or a full-time employee or active member of an association, which partnership, union, corporation, or association is a party, shall appear or take any part in the filing or prosecution or defense of any matter in the small claims court, except as permitted by rule 520(b).

(3) Property Managers. In actions arising from a landlord-tenant relationship, a property manager who has received security deposits, rents, or both, or who has signed a lease agreement on behalf of the owner of the real property that is the subject of the small claims action, shall be permitted to represent the owner of the property in such action.

(4) Defendants in the Military. In any action to which the federal "Soldiers' and Sailors' Civil Relief Act of 1940", 50 U.S.C. App. §§ 501 et seq., is applicable, the court may enter a default against a defendant who is in the military without entering judgment, and the court shall appoint an attorney to represent the interests of the defendant prior to the entry of judgment against the defendant.

(c) Intervention. There shall be no intervention, addition, or substitution of parties, unless otherwise ordered by the court in the interest of justice.

Rule 510. Discovery and Subpoenas

(a) Depositions, discovery, disclosure statements, and pre-trial conferences shall not be permitted in small claims court proceedings.

(b) Subpoenas for the attendance of witnesses or the production of evidence at trial shall be issued and served pursuant to C.R.C.P. 345.

Rule 511. Magistrates - No Jury Trial

(a) No Jury Trial. There is no right to a trial by jury in small claims court proceedings.

(b) Magistrates. Magistrates may hear and decide claims and shall have the same powers as a judge, except as provided by C.R.M. 5. A party objecting to a magistrate pursuant to Section 13-6-405 (4), C.R.S., shall file the objection seven days prior to the first scheduled trial date. Cases in which an objection to a magistrate has been timely filed shall be heard and decided by a judge pursuant to the rules and procedures of the small claims court. Small Claims Rules R11/08 Page 5 of 8

Rule 512. Trial

(a) Date of Trial. The trial shall be held on the date set forth in the notice, claim, and summons to appear for trial unless the court grants a continuance for good cause shown. Good cause for a continuance may include a defense made in good faith raising

jurisdictional grounds or defects in service of process. A plaintiff may request one continuance if a defendant files a counterclaim.

(b) Settlement Discussions. On the trial date, but before trial, the court may require settlement discussions between the parties, but the court shall not participate in such discussions. If a settlement is achieved, the terms of such settlement shall be presented to the court for approval. If an approved settlement is not achieved, the trial shall be held pursuant to subsection (a) of this rule.

Rule 513. Evidence

The hearing of all cases shall be informal, the object being to dispense justice promptly and economically between the parties. Rules of evidence shall not be strictly applied; however, all constitutional and statutory privileges shall be recognized. The parties may testify and offer evidence and testimony of witnesses at the hearing.

Rule 514. Judgment

At the end of the trial, the court shall immediately state its findings and decision and direct the entry of judgment. Judgment shall be entered immediately pursuant to the provisions of C.R.C.P. 358. No written findings shall be required.

Rule 515. Default and Judgment

(a) Entry at the Time of Trial. Upon the date and at the time set for trial, if the defendant has filed no response or fails to appear and if the plaintiff proves by appropriate return that proper service was made upon the defendant as provided herein at least fifteen days prior to the trial date, the court may enter judgment for the plaintiff for the amount due, as stated in the complaint, but in no event more than the amount requested in the plaintiff's claim, plus interest, costs, and other items provided by statute or agreement. However, before any judgment is entered pursuant to this rule, the court shall be satisfied that venue of the action is proper pursuant to C.R.C.P. 503 and may require the plaintiff to present sufficient evidence to support the plaintiff's claim.

(b) Entry at the Time of Continued Trial. Failure to appear at any other date set for trial shall be grounds for entering a default and judgment against the non-appearing party, whether on a plaintiff's claim or a defendant's counterclaim.

(c) Default and Judgment - Soldiers' and Sailors' Civil Relief. If a defendant is a member on active duty in the United States military services, and if the defendant fails to appear on the trial date without having requested a stay of proceedings, the court shall enter the defendant's default and it shall appoint an attorney to represent the defendant's interests in accordance with the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. §§ 501, et seq. Judgment shall enter three business days after the appointment of the attorney unless the attorney shall have filed a written objection to the entry of judgment, stating the legal and factual bases for such objection. The fees of the attorney shall be paid by the plaintiff and shall be assessed as costs in accordance with C.R.C.P. 516. Small Claims Rules R11/08 Page 6 of 8

(d) Setting Aside a Default. For good cause shown, within a reasonable period and in any event not more than thirty days after the entry of judgment, the court may set aside an entry of default and the judgment entered thereon.

Rule 516. Costs

The prevailing party in the action in a small claims court is entitled to costs of the action and also the costs to enforce the judgment as provided by law.

Rule 517. Stay of Proceedings to Enforce Judgment

(a) No Automatic Stay. If upon rendition of a judgment payment is not made forthwith, an execution may issue immediately and proceedings may be taken for its enforcement unless the party against whom the judgment was entered requests a stay of execution and the court grants such request. Proceedings to enforce execution and other process after judgment and any fees shall be as provided by law or the Colorado Rules of Civil Procedure applicable in county court.

(b) Stay on Motion for Relief From Judgment or Appeal. In its discretion the court may stay the commencement of any proceeding to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to C.R.C.P. 515(d), or pending the filing and determination of an appeal.

Rule 518. Execution and Proceedings Subsequent to Judgment

(a) Judgment Debtor to File List of Assets and Property. Immediately following the entry of judgment, the party against whom the judgment was entered, if present in court, shall complete and file the information of judgment debtor's assets and property, pursuant to forms appended to these rules, where appropriate and as ordered by the court, unless the judgment debtor tenders immediate payment of the judgment or the court orders otherwise.

(b) Enforcement Procedures. (1) Execution and the proceedings subsequent to judgment shall be the same as in a civil action in the county court. (2) In addition, at any time when execution may issue on a small claims court judgment, the judgment creditor shall be entitled to an order requiring the judgment debtor to appear before the court at a specified time and place to answer concerning assets and property.

(c) Enforcement of Nonmonetary Judgments. The judgment may compel delivery, compliance, or performance or the value thereof, and damages or other remedies for the failure to comply with the judgment, including contempt of court.

Rule 519. Post Trial Relief and Appeals

No motion for new trial shall be filed in the small claims court, whether or not an appeal is taken. Appeal procedures shall be as provided by Section 13-6-410, C.R.S., and C.R.C.P. 411.

Rule 520. Attorneys

(a) No Attorneys. Except as authorized by Section 13-6-407, C.R.S., rule 509(b)(2) and this rule, no attorney shall appear on behalf of any party in the small claims court.

(b) When Attorneys are Permitted in Small Claims Court. On the written notice of the defendant that the defendant will be represented by an attorney, pursuant to forms appended to Small Claims Rules R11/08 Page 7 of 8

these rules filed not less than seven days before the first scheduled trial date, the defendant may be represented by an attorney. The Notice of Representation shall advise the plaintiff of the plaintiff's right to counsel. Thereupon, plaintiff may also be represented by an attorney. If the notice is not filed at least seven days before the date set for the first scheduled trial date in the small claims court, no attorney shall appear for either party.

(c) Cases Heard by County Court Judge. Cases in which attorneys will appear may be heard by a county court judge pursuant to a standing order of the chief judge of any judicial district or of the presiding judge of the Denver county court.

(d) Sanctions. If the defendant appears at the trial without an attorney or fails to appear at the trial, and the court finds that the defendant's notice of representation by an attorney was made in bad faith, the court may award the plaintiff any costs, including reasonable attorney fees, occasioned thereby.

(e) Small Claims Court Rules to Apply. Any small claims court action in which an attorney appears shall be processed and tried pursuant to the statutes and court rules governing small claims court actions.

Rule 521. Special Procedures to Enforce Restrictive Covenants on Residential Property

(a) The small claims division shall dismiss without prejudice any claim to enforce a restrictive covenant if it affects the title to the real property.

(b) The owners of the residential property, subject of the action, shall be joined as codefendants to the action.

(c) Upon the filing of a claim under oath (see Forms appended to these rules) alleging that the defendant has violated any restrictive covenant regarding residential property, where the cost to comply with such restrictive covenant is not more than \$7,500.00, the clerk shall issue the notice and summons to appear. The notice shall be served pursuant to C.R.C.P. 504.

(d) The general procedures applicable to the small claims court, C.R.C.P. 501 through 520, shall apply to actions to enforce a restrictive covenant on residential property, except as they are modified by this Rule.

(e) On the date set for appearance and trial pursuant to C.R.C.P. 512, the court shall proceed to determine the issues and render judgment and enter appropriate orders according to the law and the facts operative in the case.

(f) If the defendant fails to appear at the trial, the court may proceed pursuant to C.R.C.P. 514 and the provisions of this Rule, except that the court shall require the plaintiff to present sufficient evidence to support the plaintiff's claim.

(g) An order enforcing a restrictive covenant on residential property shall be reduced to writing by the magistrate and shall be personally served upon every party subject to the order (see Forms appended to these rules). If any party subject to the order is present in the courtroom at the time the order is made, the magistrate or judge shall at that time serve a copy of the order on such party
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and shall note such service on the order or file. Any party subject to the order who is not present shall be served as provided by C.R.C.P. 345, except that no fees or mileage need be tendered.

(h) If the plaintiff requests a temporary order directing the defendant to immediately comply with the restrictive covenant before the defendant has had an opportunity to be heard, the plaintiff shall attach to plaintiff's complaint a certified copy of the current deed showing ownership of the residential property, and a certified copy of the restrictive covenant. The request for temporary order shall be heard by the court, ex parte, at the earliest time the court is available. If the court is satisfied from the claim filed and the

testimony of the plaintiff, that there is a substantial likelihood that the plaintiff will prevail at a trial on the merits of the claim and that irreparable damage will accrue to the plaintiff unless a temporary order is issued without notice, the court may issue a temporary order and citation to the defendant to appear and show cause, at a date and time certain, why the temporary order should not be made permanent, see Forms appended to these rules.

(1) A copy of the claim and notice with the attachments and with a copy of the temporary order and citation shall be served on the defendant as provided by C.R.C.P. 504, and the citation shall inform the defendant that if the defendant fails to appear in court in accordance with the terms of the citation, the restraining order may be made permanent.

(2) On the trial date or any date to which the matter has been continued, the court shall proceed as provided in subsections (e) and (g) of this Rule.

(i) A temporary order shall not be an appealable order. A permanent order shall be an appealable order.

(j) When it appears to the court by motion supported by affidavit that a violation of the temporary or permanent order issued pursuant to this Rule has occurred, the court shall immediately order the clerk to issue a citation to the defendant so charged to appear and show cause before a county judge at a time designated why the defendant should not be held in contempt for violation of the court's order. The citation shall direct the defendant to appear in the county court. Such contempt proceedings shall be governed by C.R.C.P. 407. The citation and a copy of the motion and affidavit shall be served upon the defendant in the manner required by C.R.C.P. 345. If such defendant fails to appear at the time designated in the citation, a warrant for the defendant's arrest may issue to the sheriff. The warrant shall fix the time for the production of the defendant in court. A bond set in a reasonable amount not to exceed \$7,500.00 shall be stated on the face of the warrant.