



Debt Claim Petition Packet

Judge Steve Spoon

**Justice Court
Stephens County Courthouse
200 West Walker / 3rd Floor
Breckenridge, TX 76424
Phone#: 254.559.5322 – Fax#: 254.559.1127**

Justice Court, Precinct One
12/27/2017

PLEASE READ CAREFULLY

FOR INFORMATION ON PROCEDURAL RULES IN JUSTICE COURTS, PLEASE CONSULT PART V OF “THE TEXAS RULES OF CIVIL PROCEDURE,” WHICH IS AVAILABLE ONLINE, AND IN THIS COURT. THE FOLLOWING INFORMATION IS FURNISHED TO YOU AS A COURTESY. NEITHER I, NOR MY CLERK CAN ADVISE YOU WHAT YOU SHOULD DO AND ARE BARRED BY LAW FROM GIVING YOU LEGAL ADVICE. WE CAN ONLY ANSWER PROCEDURAL QUESTIONS. PLEASE READ CAREFULLY BEFORE COMPLETING THE STATEMENT OF CLAIM.

1. SMALL CLAIMS CASE: A small claims case is a lawsuit brought for the recovery of money, damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding attorney fees, if any.

2. DEBT CLAIM CASE: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

Please determine which of the above case type is the correct one. Complete the appropriate petition packet. PLEASE PRINT CLEARLY! You are the plaintiff and the person or entity you are suing is the defendant. The defendant has the right to be sued in the county and precinct where they reside; there are exceptions to this rule. Should there be a motion by the defendant to transfer venue, a hearing will be set to determine if a transfer will be granted; a motion to transfer venue may delay the proceedings six to eight weeks.

IT IS YOUR RESPONSIBILITY AS PLAINTIFF TO DETERMINE THE LEGAL CAPACITY IN WHICH YOU WILL SUE THE DEFENDANT. It is important that you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their proper legal capacity, of which there are typically three:

- A. PERSONALLY: Where an individual is responsible to you for damages he may have caused you as an individual.
- B. PROPRIETOR OR PARTNERSHIP: A business that is not incorporated but does have on file with the County Clerk an assumed name. Example: John Smith d/b/a Greenhouse Supplies.
- C. CORPORATION: The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual's name who is authorized to accept service on behalf of the corporation. The authorized agent for service would be listed with the Secretary of State whose phone number is 1-800-252-5555 web address is www.sos.state.tx.us. Example: Greenhouse, Inc. through its agent, John Smith. It is also possible for an incorporated entity to have an assumed name. Example: Greenhouse, Inc. d/b/a Greenhouse Supplies.

After the appropriate packet is completed submit it to the clerk for processing. You will then be required to pay the fees for filing the claim, \$46.00 and service of citation, if you choose to use the Constable's Service in Stephens County, in the amount of \$80.00 for one individual or entity. Each additional person or entity to be served will be an additional \$80.00 provided all parties to be served are located in Stephens County. A citation along with a copy of your statement will be served to the defendant(s) by the Constable or Sheriff's deputy notifying them that a suit has been filed against them in this court. The citation will order the defendant(s) to appear in this court to answer to the suit within 14 days of service of citation. The defendant(s) is required to send a copy of their answer to you as plaintiff and one of the following will take place:

- A. The defendant has entered a denial and the case is set for trial. The trial notice will be mailed approximately 45 days prior to the trial date, or
- B. The defendant did not answer and a prove-up hearing needs to be set for you to present facts to the court as to why you should be granted a default judgment.
- C. The defendant answered and acknowledged his indebtedness. An acknowledged judgment is prepared and mailed to both parties.

If you should receive a judgment, please understand that this court does not collect the judgment for you, nor can we force the defendant to pay the judgment. It is your responsibility to request any post-judgment remedies. Following are some of those remedies that are available to you:

- A. Abstract of Judgment places a lien on any real property the defendant may own in a particular county where the abstract is recorded. There is a fee of \$5.00 for the court to issue the abstract. You will also be required to pay a small fee to the County Clerk to record the abstract. This may be obtained 21 days after the judgment was signed.
- B. Writ of Execution authorizes the Constable or Sheriff to seize any assets belonging to the defendant that are not exempt under Texas Property Code, 42.001 and 42.002. Those assets are then auctioned at a public sale and those proceeds are applied to the judgment. This may be obtained thirty (30) days after the judgment was signed.
- C. Writ of Garnishment is a separate suit wherein you are the plaintiff and the defendant's bank is the defendant. You are actually suing the bank in which the original defendant has his bank account, warning the bank to freeze the monetary assets of his bank account and to appear and make answer to the garnishment suit. Extreme caution should be used when filing a garnishment suit. If there are not sufficient funds in the account at the time the garnishment is served, the person filing the suit is liable for reasonable attorney fees of the garnishee, which he may then tax as additional court costs against the judgment debtor. An attorney MAY BE required.

DEBT CLAIM

DEBT CLAIM CASE: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than **\$10,000**, excluding statutory interest and court costs but including attorney fees, if any.

IMPORTANT NOTICE: **APPROPRIATE COURTROOM ATTIRE IS REQUIRED.** All persons entering the courtroom should be dressed in clothing reasonable befitting the dignity and solemnity of the court proceedings. No shorts, tank tops, flip flops, hats, etc. Cell phones and other electronics must be turned off when in the courtroom. Food and drink is not allowed in the courtroom.

READ CAREFULLY BEFORE FILING PETITION

**FOR INFORMATION ON THE RULES OF PRACTICE IN JUSTICE COURTS,
PLEASE CONSULT PART V OF THE TEXAS RULES OF CIVIL PROCEDURE,
WHICH IS AVAILABLE ONLINE AND AT EACH COURT.**

THE FOLLOWING INFORMATION IS FURNISHED TO YOU AS A COURTESY OF THE JUSTICE OF THE PEACE OFFICE. THE COURT CANNOT ADVISE YOU WHAT YOU SHOULD DO AND ARE BARRED BY LAW FROM GIVING YOU LEGAL ADVICE. WE CAN ONLY ANSWER PROCEDURAL QUESTIONS.

1. CLAIM

Please complete the Civil Information Sheet, Petition and Affidavit of Military Status of Defendant. PLEASE PRINT CLEARLY. You are the plaintiff and the person or entity you are suing is the defendant. Under **complaint** section, make a **very short statement** concerning the nature of your claim. Under **relief** section, put the **PRINCIPAL AMOUNT** of your claim against the defendant. **DO NOT ADD COURT COSTS** to this amount. If you wish to have the judgment include court costs, you would state “plus court costs”. The **Additional Information, Interest and Assignment** sections must also be completed.

2. VENUE

The defendant has a right to be sued in the county and precinct in which they reside; there are exceptions to this rule. Should there be a motion by the defendant to transfer venue, a hearing will be set to determine if a transfer of venue will be granted; a motion to transfer venue may delay the proceedings 6-8 weeks.

3. DEFENDANT

IT IS YOUR BURDEN AS PLAINTIFF TO MAKE SURE YOU ARE SUING THE DEFENDANT IN THEIR PROPER LEGAL CAPACITY. It is very important that you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their ***proper legal capacity***, of which there are typically three:

- a) **Personally:** Where an individual is responsible to you for damages he may have caused you as an individual.
- b) **Proprietor or partnership:** A business that is not incorporated, but does have on file with the County Clerk an assumed name, ex: John Smith dba Greenhouse Supplies.
- c) **Corporation:** The business which has allegedly caused you damage is incorporated and therefore **it is necessary to know the individual's name who is authorized to accept civil process on behalf of the corporation.** The authorized agent for service would be listed with the Secretary of State, whose phone number is 1-800-252-5555, website is www.sos.state.tx.us Ex: Greenhouse, Inc. through its agent, John Smith. It is also possible for an incorporated entity to have an assumed name, ex: Greenhouse, Inc. dba Greenhouse Supplies.

4. SERVICE OF CITATION

After the petition is completed, you will then be required to pay the fees for filing the petition and service of citation. ***If the citation is to be served out of Stephens County, you will be required to pay the service fee in the form of a money order made payable to the out-of-county agency.*** Please check with the clerk for more information in that case. A citation along with a copy of your petition will be served to the defendant notifying him that a suit has been filed against him in this Court. The citation will order the defendant to file an answer with the court by the end of the 14th day after the day he was served with the citation.

5. TRIAL

PLEASE NOTE: YOU MUST HAVE COPIES FOR THE COURT'S FILE OF ANY DOCUMENTS YOU INTEND TO SUBMIT TO THE COURT AS EVIDENCE; YOU WILL BE CHARGED FOR ANY COPIES THE COURT MUST MAKE.

- a) If the defendant has entered a denial, the case will be set for trial. The trial notice will be mailed approximately 45 days prior to the trial date, or
- b) If the defendant did not answer and a prove-up hearing will be set for you to present your facts to the Court as to why you should be granted a default judgment. Notice of the hearing will be mailed to you.

6. POST JUDGMENT REMEDIES

If you should receive a judgment, please understand that this Court does not collect the judgment for you, nor can we force the defendant to pay the judgment. It is your responsibility to request any post-judgment remedies. The following are some of those remedies that are available to you:

- a) **Abstract of Judgment** places a lien on any real property the defendant may own in a particular county where the abstract is recorded. There is a fee of \$5.00 for the Court to issue the abstract. You will also be required to pay a small fee to the County Clerk to record the abstract. This may be obtained 21 days after the judgment was signed.
- b) **Writ of Execution** authorizes the Constable or Sheriff to seize any assets belonging to the defendant that are not exempt under Texas Property Code, Section 42.001 and 42.002. Those assets are then auctioned at a public sale and those proceeds are applied to the judgment. This may be obtained thirty (30) days after the judgment was signed.

7. PLEASE REMEMBER

- a) **It is not required but it is prudent to seek counsel from an attorney before filing any lawsuit.**
- b) It is your duty to provide the correct address or location where service of citation may be obtained by the Constable.
- c) When filing a civil suit you are only making an allegation that you should recover from the defendant. There is no guarantee you will prevail at trial.
- d) You should assume that the defendant will contest your allegation and may file a counter suit against you.
- e) You should properly prepare your case for trial.
- f) Hearsay evidence is inadmissible. Examples of hearsay evidence are written affidavits, garage estimates, police reports, and what other people orally said.
- g) If witnesses are required you may subpoena them to court by requesting a subpoena and paying the required fee of \$80 per person.
- h) After you present your case at the trial, the defendant will then have his time to present a defense to your claim and explain why you should not recover.
- i) Either party may appeal the case if the court rules against their claim. The appeal must be filed within twenty (20) days or the right to appeal is lost.
- j) If the case is not appealed, the judgment is final.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

Cause Number (for clerk use only): _____

Styled _____

(e.g. John Smith V All American Insurance Co. In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact Information for person completing Case information sheet.	2. Names of parties in this case:
Name: _____ Phone #: _____ Fax #: _____ Address: _____ City/State/Zip _____ State Bar # _____ Email: _____ Signature: _____	Plaintiff(s): _____ _____ _____ Defendant(s): _____ _____ _____ _____ (Attach additional pages as necessary to list all parties)
3. Indicate case type, or identify the most important issue in the case (select only 1)	
<input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case of the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.
<input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
VS	§	PRECINCT ONE
_____	§	STEPHENS COUNTY, TEXAS

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT

Before me, the undersigned clerk of the justice court or notary public, on this day personally appeared the undersigned affiant whose identity is known to me. After I administered an oath to such affiant, he or she upon oath and under penalty of perjury stated the following:

My name is ***[please print]*** _____; I am ***[check one]*** _____ the plaintiff or _____ an authorized agent or _____ attorney for the plaintiff in the above styled and numbered cause. I am over the age of 18 and am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

[check as applicable]

- ☐ The defendant is not in the military.
- ☐ The defendant is not on active duty in the military and/or
- ☐ The defendant is not in a foreign country on military service.
- ☐ The defendant is on active military duty and/or is subject to the Service member Civil Relief Act of 2003.
- ☐ The defendant has waived his/her rights under the Service member Civil Relief Act of 2003.
- ☐ The defendant's military status is unknown at this time.

Signature of Plaintiff/Agent/Attorney

Subscribed and sworn to before me by _____ on this the ____ day of _____, 20____.

Court Clerk/Notary Public

PENALTY FOR MAKING OR USING FALSE AFFIDAVIT: A person who makes or uses an affidavit knowing it to be false, shall be fined as provided in title 18 United States Code, or imprisoned for not more than one year, or both.

PETITION: DEBT CLAIM CASE

CASE NO. _____

PLAINTIFF _____

Vs.

In the Justice Court, Precinct One, Stephens Co., Texas

DEFENDANT(S): _____

Defendant(s) address: _____

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

Relief: Plaintiff seeks damages in the amount of \$ _____

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Rules of Practice in Justice Courts. Other addresses where the defendant(s) may be served are:

ADDITIONAL INFORMATION (CASE BASED ON CREDIT CARD, REVOLVING ACCOUNT, OR OPEN ACCOUNT):

Account/Credit Card Name: _____ Account Number (may be masked): _____
Date of Issue/Origination: _____ Date of Charge-Off/Breach: _____ Amount Owed \$ _____ as of _____

ADDITIONAL INFORMATION (CASE BASED ON PROMISSORY NOTE OR OTHER PROMISE TO PAY PERSONAL OR BUSINESS LOAN): Date/Amount of Original Loan : _____ \$ _____ Repayment Accelerated? ____ Date Final Payment Due: _____
Amount Due on Final Payment Date: \$ _____ Amount Due: \$ _____ as of _____

ONGOING INTEREST: Plaintiff ☐ does, or ☐ does not seek ongoing interest. If so, this interest is based on the following contractual/statutory reason: _____ and should be at ____%. \$ _____ of interest was due as of _____.

ASSIGNMENT OF CLAIM: Plaintiff ☐ was, or ☐ was not assigned or otherwise transferred this claim. If so, the original and the date the case was assigned/transferred to plaintiff was _____, subsequent holders were _____, and the date the case was assigned/transferred to plaintiff was _____.

☐ If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: _____.

Plaintiff's Printed Name

Signature of Plaintiff or Attorney

Address of Plaintiff's Attorney, if any, or Plaintiff if none

City State, Zip

Phone & Fax No. of Attorney, if any, or Plaintiff if none

DEFENDANT(S) INFORMATION (if known):

DATE OF BIRTH: _____

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

* LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT(S) PHONE NUMBER: _____