

DEBT CLAIMS PROCEDURE

WHAT IS A DEBT CLAIMS SUIT?

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.

STATUTE OF LIMITATIONS

For the Court to be able to act on a suit, the suit must be filed within time limits set by the Legislature. A court has no power to hear a suit that is filed after these set time periods. A four (4) year statute of limitations exists with Debt Claims as found in §16.004(a) (3) of the Civil Practice and Remedies Code.

PETITION - FILING THE SUIT

To initiate a lawsuit, the Plaintiff must file a Debt Claims Petition (forms available from the court) with the Civil Clerk of the correct Justice of the Peace Court.

Forms needed to file a Debt Claims suit include:

- 1) Civil Case Information Sheet
- 2) Debt Claims Petition
- 3) Affidavit of Non-Military Service Form

Cost of filing a Debt Claims suit is \$144.00, which includes the court cost of \$54.00 and a service fee of \$90.00. A \$90 per person charge will be added to the \$144.00 fee for each additional person listed in a suit. If the person or business is located outside of Terry County, Contact our office for filing charges.

NOTICE OF SUIT & TIME TO ANSWER

The one being sued is the defendant. The defendant must be given notice of the lawsuit against them. The Court will have the defendant served, notifying them of the suit. The defendant has 14 days from date of service to file an answer with the court regarding the lawsuit (forms available from the court).

NOTICE OF TRIAL DATE

Plaintiff and Defendant will be notified by mail of the trial date. Trial dates are generally set within 90 days from the date the defendant was served notice of the lawsuit.

TRIAL

On the date of the Trial, both the Plaintiff and Defendant must be in Court at the time of the trial, must dress appropriately, and must not be late. The Plaintiff and Defendant must bring to Court that day any pertinent evidence they wish to present to the Court, and any witnesses they intend to have testify for them during the trial.

JUDGEMENT

After the Judge has heard all the testimony the Judge will announce the decision in the case if there is no jury. If it is a jury trial, the jury will deliver the verdict.

Judgement for the Defendant:

If the defendant wins, the Plaintiff will recover no money and must pay the court costs. (*Costs are pre-paid to the court when suit is filed*).

Judgement for the Plaintiff:

(*Default Judgment, Agreed Judgment, Judgment*)
If the Plaintiff wins, the Defendant will be ordered to pay the Plaintiff the amount of money awarded by the Court, plus court costs and attorney fees, if any. The Plaintiff can request an Abstract of Judgment (\$5.00) which will need to be filed at the County Clerk's Office.

If the defendant has not complied with the Judge's order after 30 days, the plaintiff may, upon payment of issuance fee and a fee of service (\$175), ask the court to issue a Writ of Execution (an order which allows the Sheriff to levy on property of the Defendant that is not exempt by Texas' laws). An execution cannot be issued if either party is appealing the judgement.

APPEAL

Either party has the right to appeal to the County Court. To appeal, a party must file an appeal bond in the Justice Court within 21 days from the date of the judgment (the judge will set the bond amount). Information about filing an appeal is available from the Clerk of the Court. If a party appeals the County Clerk will notify both parties of the new trial date which will be held in the County Court. The new trial will be held before another Judge or jury anew, as if the original case had never been tried.

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT 1
	§	
_____	§	
DEFENDANT	§	TERRY COUNTY, TEXAS

PETITION: DEBT CLAIM CASE

I. DEFENDANT(S) ADDRESS:

II. COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant is:

III. RELIEF: Plaintiff seeks damages in the amount of \$ _____

IV. SERVICE OF CITATION: Service is requested on Defendant(s) by:

- Personal service at home or work,
- Registered mail, or
- Certified mail return receipt requested.

If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure.

Other addresses where Defendant(s) may be served are: _____

V. 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 _____

VI. 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 Owed: \$ _____ as of _____

VII. ONGOING INTEREST: Plaintiff does or does not seek ongoing interest. If so:

The effective interest rate claimed is _____%; this interest rate is based upon contract statute and began accruing on _____; the dollar amount of interest claimed as of _____ is \$ _____.

VIII. ASSIGNMENT OF CLAIM: Plaintiff was or was not assigned or otherwise transferred this claim.

If so, the original claimant/creditor was _____

Subsequent holders were _____

The date the debt was assigned/transferred to Plaintiff was _____

IX. JURY REQUEST

I request a jury trial. (The fee is \$22 and must be paid at least 14 days before trial unless you file a Statement of Inability to Afford Payment of Court Costs in compliance with Texas Rule of Civil Procedure 502.3.)

I do not request a jury at this time.

X. SERVICE BY EMAIL (Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive, open, and view large attachments, and it is important that you check this email account every day. **Even if you receive some documents by email, you will still receive some documents about the case by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.**)

Yes, I would like to receive documents related to this case by email at this email address:

_____.

No, I do not want to receive any documents by email.

XI. REMOTE PARTICIPATION

Hearing by Phone Call: (When a hearing happens by phone call, you will be able to talk to and hear the judge, Plaintiff, or any witnesses, but you will not be able to see them. Copies of any evidence to be used must be exchanged by the parties and sent to the judge before the hearing.)

Yes, I am able to have any hearings in this case, except a jury trial, by phone call with the judge and Plaintiff and understand that I must have a phone to use on the date and time of the hearing.

No, I am not able to have hearings by phone call.

Hearing by Video Conference: (When a hearing happens by video conference, you can hear, see, and talk to the judge, Plaintiff, and any witnesses. You will be able to see any evidence presented during the hearing. You will need to have a computer, a smartphone, or tablet that has a camera feature. You will also need access to the internet to be able to have a video conference.)

Yes, I am able to have any hearings in this case, except a jury trial, by video conference. I understand that I am responsible for having the equipment and internet access needed to participate in a video conference on the date and time of the hearing.

No, I am not able to have hearings by video conference.

NOTE: Your responses in this section do not guarantee that hearings will be held remotely, but rather they help the court know how you are able to participate.

Respectfully submitted,

Signature of Plaintiff

Printed Name: _____

Address: _____

Email: _____

Telephone: _____

Fax: _____

Signature of Attorney, if any

Printed Name: _____

Address: _____

Email: _____

Telephone: _____

Fax: _____

State Bar No.: _____

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT 1
	§	
_____	§	
DEFENDANT	§	TERRY COUNTY, TEXAS

SERVICEMEMBER'S CIVIL RELIEF ACT AFFIDAVIT

Instructions: The Servicemember's Civil Relief Act applies to a civil proceeding in the Justice Courts. Before entering a default judgment against an individual defendant, the plaintiff must file with the court an affidavit stating whether or not the defendant is in military service, showing necessary facts to support the affidavit, or stating that the plaintiff is unable to determine whether or not the defendant is in military service, if that is the case. The requirement for an affidavit may be satisfied by a written, signed document declared to be true under penalty of perjury. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the court is unable to determine if the defendant is in military service, the court may require the plaintiff to file a bond in an amount approved by the court. To obtain certificates of service or non-service under the Servicemember's Civil Relief Act, you may access the public website: <https://www.dmdc.osd.mil/applj/scra/scraHome.do>. This website will provide the current active military status of an individual.

Plaintiff being duly sworn under oath swears that Defendant is: *(check one)*

- not on active duty in the military
- on active military duty and/or is subject to the Servicemember's Civil Relief Act of 2003
- has waived in writing his/her rights under the Servicemember's Civil Relief Act of 2003
- military status is unknown at this time

PLAINTIFF

SWORN TO AND SUBSCRIBED before me on _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY

**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.*