

6 Steps in the U.S. Collection Suit Process

What to Expect

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What actually happens once an account is submitted to an attorney for suit?

Here's a brief summary of six steps that describe the process from the decision to sue to its outcome.

Step #1 Summons and Complaint – Getting Things Started

Once the creditor authorizes a lawsuit, the attorney is provided with the required advancements and documentation. The attorney then files the complaint with the appropriate court. The complaint sets forth the amount due and outlines the basis of the creditor's case.

A process server, or local sheriff, serves the debtor with the Summons and Complaint. This puts the debtor on notice that he is being sued, and provides the basis of the claim against him.

The national average for successfully serving a debtor is approximately 2-3 weeks. Once served, the debtor has a specified time frame in which to file an answer to the lawsuit. This varies by jurisdiction, but typically ranges from 20 to 45 days.

Step #2 Default Judgment – The Debtor Fails to Respond

Should the debtor fail to file an answer within the specified time frame, the collection attorney will enter a Motion for Default Judgment.

A Motion for Default Judgment requests the court to enter a judgment against the debtor, since he has not come forward to defend himself. Once a default judgment is rendered, most jurisdictions have a short waiting period (2-3 weeks) before a final judgment is entered. This gives the debtor every possible chance to have his day in court.

Step #3 Summary Judgment – Failure to Dispute



If the debtor does file an answer to the lawsuit, the collection attorney cannot obtain a default judgment.

If the debtor's answer is in the form of a general denial (i.e. it does not include any disputed issues of fact), in most jurisdictions the collection attorney will file a Motion for Summary Judgment.

This motion requests the court to render a judgment based on the strength of the evidentiary documentation included with the complaint, together with the fact that the debtor has not refuted what the documents say. If Summary Judgment is granted, a waiting period of 2-3 weeks applies before the judgment becomes final.

In most disputed lawsuits, the debtor's answer will include details as to why he is disputing the creditor's claim. These cases typically end up at trial, unless the disputes can be resolved and the case settled out of court.

Step #4 Going to Trial – The Debtor’s Day in Court

Should a trial become necessary, it is usually preceded by the discovery phase of the lawsuit and/or by pre-trial hearings. These serve to narrow the disputed issues and to give each side a better understanding of the opposing side's claims. Unless the case is settled during this phase, the trial will be held at a time set by the court.

Once the trial is held, there are two possible outcomes:

- the creditor wins and a judgment is rendered against the debtor; or
- the debtor wins, an adverse decision is entered against the creditor, and the case against the debtor is dismissed

Step #5 The Final Judgment and Writ of Execution

Let's assume the creditor wins the case. After the entry of Final Judgment, if the debtor's statutory time to pay the judgment (usually 20-30 days) expires, the creditor may proceed with a Writ of Execution.

A Writ of Execution is then issued to the local sheriff, who attempts to arrange payment of the judgment. He assesses the debtor's attachable assets to determine whether it would be in the creditor's best interest to schedule a Sheriff's Sale in the event the sheriff is unable to collect the judgment directly. Most jurisdictions allow the sheriff 90 days to work the execution. At the end of that period, if the sheriff is unsuccessful in collecting the debt and/or locating attachable assets, he returns the Writ of Execution *nulla bona* (no good). This means he has conducted a diligent search for attachable assets and has been unsuccessful in locating any.

Step #6 Supplementary Proceedings – The End of the Line

Once the sheriff has returned the Writ of Execution, the final phase of the collection lawsuit begins.

This is called, Supplementary Proceedings (sometimes referred to as Sup Pro). The creditor now has the right to subpoena the principal of the debtor (owner, president, etc.) to appear in court to undergo a judgment debtor exam.

During this phase, the principal of the debtor is questioned about any assets the firm may have which the sheriff may not have discovered. These may include accounts receivable, bank accounts, company vehicles, etc.

From the time the claim is placed with a collection agency, the entire collection process works toward this final step. If this examination fails to reveal any attachable assets, the matter has hit the end of the road. The debtor has no assets with which to pay the judgment, leaving the creditor with no further options.

Fortunately (for creditors), however, most lawsuits do not progress all the way to supplementary proceedings. Default judgments are obtained on most. Many others are settled prior to trial, sometimes on the courthouse steps!