

# COLLECTING BUSINESS DEBTS IN SMALL CLAIMS/CONCILIATION COURT



Presented by the Eckberg Lammers  
Business Litigation Team

# INTRODUCTIONS

The Business Litigation Team at Eckberg Lammers

# Agenda

- What is Small Claims/Conciliation Court?
  - ▣ What is accomplished in small claims/conciliation court?
  - ▣ What types of complaints can you file in conciliation court and small claims court?
  - ▣ Are there are any drawbacks to small claims/conciliation court?
  
- Small Claims Court – Wisconsin Rules & Regulations
  - ▣ What case examples are included and excluded in small claims court?
  - ▣ What steps are involved in small claims court?

# Agenda Continued

- Conciliation Court – Minnesota Rules & Regulations
  - ▣ What case examples are included and excluded in conciliation court?
  - ▣ What steps are involved in conciliation court?
  
- Post-Judgment Collections in Small Claims/Conciliation Court
  - ▣ How do you file and act on a judgment in MN and WI?
  - ▣ What are methods for discovering assets in MN and WI?
  - ▣ What are the exemptions for judgment in MN and WI?
  - ▣ What are the collection options in MN and WI?

# WHAT IS SMALL CLAIMS/CONCILIATION COURT ?

Nick Vivian- Partner at Eckberg Lammers

# What is Small Claims/Conciliation Court

## What is Small Claims/ Conciliation Court

- Small Claims Court is a special court where disputes are resolved more quickly and inexpensively than in other court proceedings
- Main purpose is to help people recover relatively small sums of money without having to hire a lawyer
- The rules in small claims court also are simpler and less formal
- You do not need an attorney, but one can represent you if you prefer
  - A company must be represented by a company officer

## What Can You Accomplish in Court

- Resolution to minor legal issues
  - In Wisconsin, the amount sought is \$5,000 or less
  - In Minnesota, the amount sought is \$7,500 or less
- Money judgment against an individual or company
- Specific to Wisconsin Small Claims
  - Return of personal property – known as replevin
  - Eviction

# What is Small Claims/Conciliation Court

Rule of thumb:


- file a complaint in small claims/conciliation court when you can show that a person or business owes you money but won't pay you

- **What Types Of Complaints Do Small Claims/Conciliation Courts Handle?**
  - Property damage
  - Money disputes arising out of a tenant/landlord relationship, personal injury (actual medical bills only), losses due to bad checks, nonpayment for goods or services, or other bad debts
- **Small Claims/Conciliation Court May Be Used When:**
  - You believe someone owes you money
  - That person or business refuses to pay
  - The amount owed is \$5,000 (WI) / \$7,500 (MN) or less
  - You believe the person or company you are suing will be able to pay you (because it will cost you some money to make your claim)


# What is Small Claims/Conciliation Court

## □ **Are There Any Drawbacks To Small Claims/Conciliation Court?**

□ Generally, you may sue only for money

 □ Disputes involving over \$5,000 (WI) / \$7,500 (MN), cannot be determined in conciliation court

□ Lost or destroyed property or merchandise usually cannot be recovered

 □ *For example, if a dry cleaner loses your jacket, a small claims/conciliation court might order the dry cleaner to pay you money for your loss rather than order the cleaner to replace the jacket*

 □ Small Claims usually cannot be used to force delivery of merchandise or completion of a job

# **SMALL CLAIMS COURT – WISCONSIN RULES & REGULATIONS**

Amanda Prutzman- Associate at Eckberg Lammers

# Small Claims Court – Wisconsin

## Rules & Regulations

### Small Claims Court In Wisconsin

- In Wisconsin, Conciliation Court is called “Small Claims Court”
  - Civil actions where the amount claimed is \$5,000 or less
    - For money judgment
    - To enforce a lien upon personal property
  - All hearings in small claims court are conducted informally, and the rules of evidence are relaxed
    - The court will admit any evidence having “reasonable probative value” that is not irrelevant or repetitious
- Small Claims Court can be used for these actions:
    - Eviction
    - Return of earnest money for real estate purchase
    - Forfeiture
    - Replevin - where the value of the property is \$5,000 or less
    - Arbitration – confirmation, vacation, modification or correction of an arbitration award if in settlement of controversy regarding real property

# Small Claims Court – Wisconsin Rules & Regulations



## Small Claims Procedure

### □ Choose Your Court and File Your Claim:

- In the county of residence of defendant or county where property at issue is located
- In the county where the defendant does substantial business

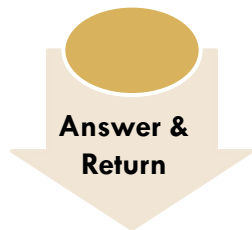
### □ Summons and Complaint

- State the nature of the claim
- State the dollar amount
- Include a “return date”
- Complaint must be signed by an attorney or clerk of court

### □ Service of Summons and Complaint

- Personal or substitute service
- Service by mail- through clerk of court
- If unable to serve personally, by substitute service, or by mail, you may publish in the newspaper
  - You must be unable to obtain the mailing address with reasonable diligence
  - Publish only the information found in the summons

# Small Claims Court – Wisconsin Rules & Regulations



## Small Claims Procedures

- **Answer**
  - The defendant's answer is due on or before the return date
  - May be oral or written – check local rules of the county
- **Return**
  - You should appear at the return date, if you do not, the court may dismiss your case or enter judgment for the defendant
  - If the defendant does not appear or file a written answer, you will receive a default judgment
  - If the defendant appears, the court will set a trial date

# Small Claims Court – Wisconsin Rules & Regulations



## Small Claims Procedures

### □ **Mediation**

- Some counties require mediation before a trial date will be set
- St. Croix County –the court will require you to attend a mediation session at the return date
- Pierce County – there is no formal requirement that you mediate

### □ **Pretrial**

- The pretrial hearing date will be set by the court
- At the pretrial hearing the court commissioner will likely discuss resolution of the case with the parties

### □ **Trial**

- The court commissioner or judge will conduct the hearing informally
- The course of the hearing will be determined by the court

# CONCILIATION COURT – MINNESOTA RULES & REGULATIONS

Kevin Sandstrom – Associate at Eckberg Lammers

# Conciliation Court – Minnesota

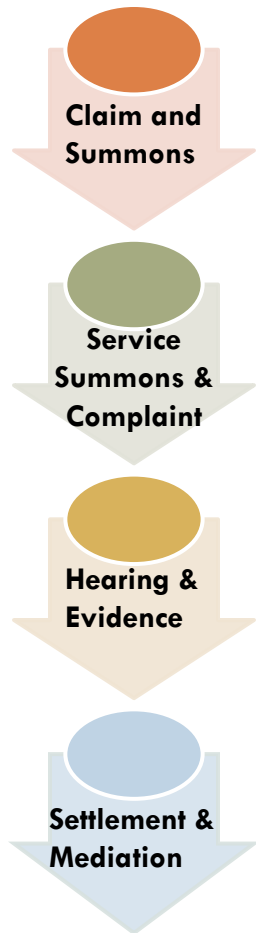
## Rules & Regulations

### Conciliation Court In Minnesota

- In Minnesota, Small Claims Court is called “Conciliation Court”
  - Civil actions where the amount claimed is \$7,500 or less
  - Claims less than \$4,000 if claim involves a credit card used for personal/household purposes
  - Claims less than \$15,000 if the claim involves criminal forfeiture of money or personal property
- Conciliation Court can be used for these actions:
  - Contract disputes
  - Cases involving personal injury (but not medical malpractice)
  - Disputes over ownership, possession, or damage to personal property
- Conciliation Court cannot be used for these actions:
  - Disputes involving title to/ownership of real estate
  - Claims of defamation by libel or slander
  - Claims for specific performance

# Conciliation Court – Minnesota

## Rules & Regulations



### Conciliation Court Procedures

#### □ Choose Your Court and File Your Claim:

- In the county of residence of defendant or county where property at issue is located
- In the county where the defendant does substantial business

#### □ Statement of Claim and Summons

- Must be notarized
- Form on the MN court website
- Filing fee is between \$70-\$75

#### □ Service of Summons and Complaint

- Claims under \$2,500: court administrator will serve it on Defendant on your behalf, via mail
- Claims over \$2,500: court administrator will send back to you the completed form with hearing date, and instructions, and you must serve Defendant
- Complete an “Affidavit of Service” and file it with the Court, or at least bring it with you to the hearing

# Conciliation Court – Minnesota

## Rules & Regulations



### Conciliation Court Procedures

- **Hearing and Evidence**
  - No jury, just the Judge, who will make the final ruling
  - No court reporter, no transcript created
  - Representation by an Attorney generally NOT permitted
  - Bring evidence, three copies of all documents (For Judge, opposing party, and you)
    - Copy of contract, if one is involved
    - Invoices or receipts, if payment or reimbursement for goods or services are at issue
    - Notices of default or demands for payment
    - Pictures of damaged property or other relevant places/objects
    - All documents proving your amount of damages

# Conciliation Court – Minnesota

## Rules & Regulations



### Conciliation Court Procedures

- **Settlement and Mediation**
  - All courts will promote settlement before the start of the hearing, and most often offer services of a mediator at little or no cost at the Courthouse immediately before the start of the hearing
  - At the very least, the judge will ask the parties to step out into the hall and see if they can reach a settlement

# POST-JUDGMENT COLLECTIONS IN SMALL CLAIMS/CONCILIATION COURT

Daniel Bakken— Associate at Eckberg Lammers

# Post-Judgment Collections in Small Claims/Conciliation Court

## Process in Wisconsin

- Perfecting your judgment
- Discovery of Assets
- Exemptions
- Collection Options

## Process in Minnesota

- Perfecting your judgment
- Discovery of Assets
- Exemptions
- Collection Options

{ A judgment is merely a piece of paper stating  
that you are entitled to money or property from a debtor  
The Court and sheriff will not collect the judgment for you }

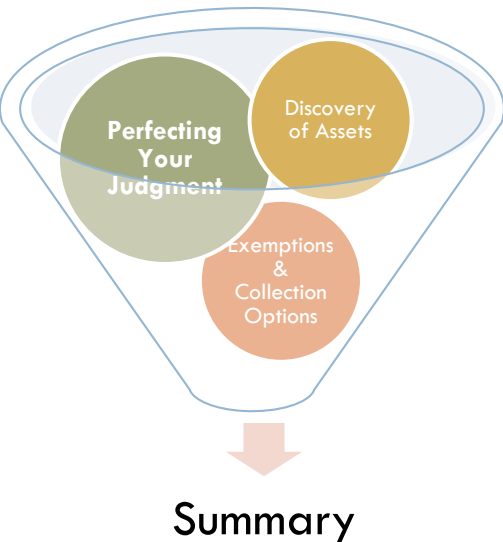
# POST-JUDGMENT COLLECTIONS WISCONSIN

Daniel Bakken— Associate at Eckberg Lammers

# Post-Judgment Collections in Small Claims/Conciliation Court

## □ Perfecting Your Judgment - WI

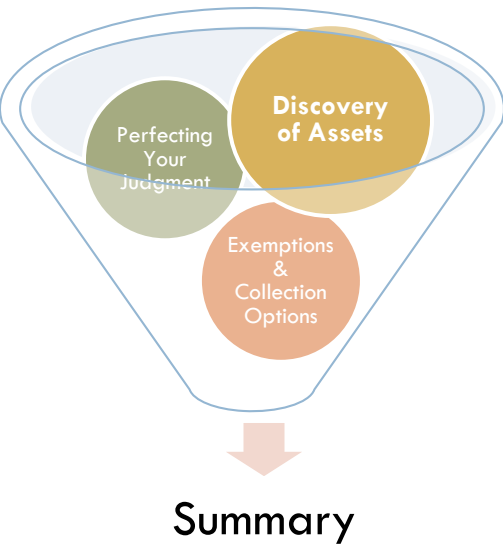
- Judgment is automatically entered by Clerk of Court and notice is mailed to parties within five (5) days of entry
- YOU MUST PAY DOCKETING FEE (\$5.00) to perfect judgment
- Docketed judgment is a lien upon all real property (for 10 years) within county where docketed
  - This can be renewed for an additional 10 years



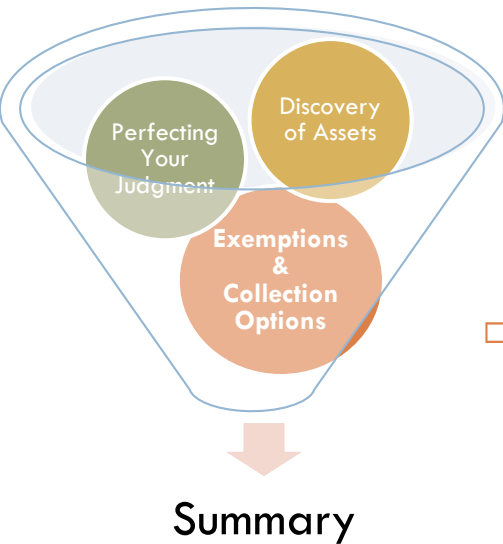
# Post-Judgment Collections in Small Claims/Conciliation Court

## □ Discovery of Assets- WI

- Upon entry of judgment, Clerk of Court “shall” order the debtor to execute a disclosure statement and to mail or deliver it to the judgment creditor within 15 days of entry of the judgment
  - Requests employment, bank account and asset information
  - Failure to comply is punishable by contempt of court
- Post-judgment interrogatories, supplemental proceeding
- Your records and Internet
  - Google, Facebook
  - Judgment searches
  - Property tax records



# Post-Judgment Collections in Small Claims/Conciliation Court



## Exemptions and Collections - WI

### □ Exemptions

- \$5,000 for personal bank account (not available to companies)
- \$75,000 (single)/\$150,000 (married couple) for homestead
- \$12,000 for consumer goods
- \$4,000 for motor vehicles (one or more)
- 80% of earnings

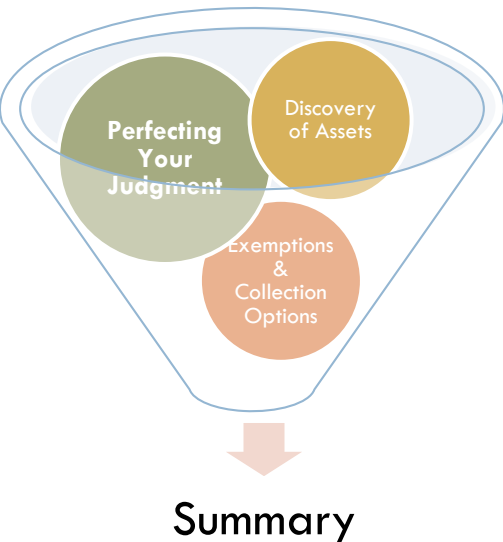
### □ Collection Options

- Garnishment
  - Wages, bank accounts or other property
- Writ of Execution
  - Prepare Writ of Execution (available online)
    - Describe property to be seized if known
  - Prepare letter to Court with fee requesting Writ to be executed and sent to sheriff
  - The Writ requires sheriff to drive out to the judgment debtor's property and try to collect all non-exempt assets
  - Arrange for sale of all property once seized

# POST-JUDGMENT COLLECTIONS MINNESOTA

Daniel Bakken— Associate at Eckberg Lammers

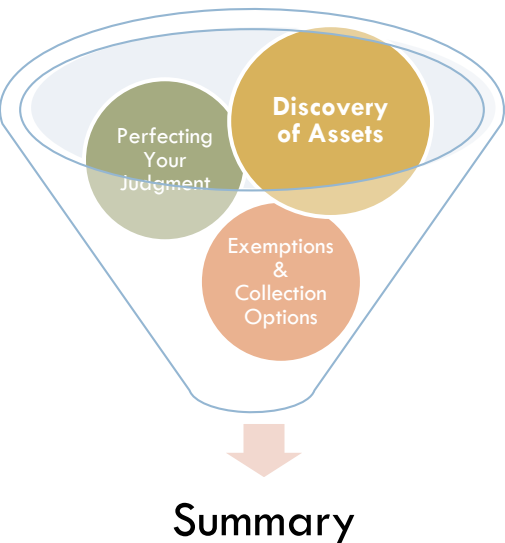
# Post-Judgment Collections in Small Claims/Conciliation Court



## □ Perfecting Your Judgment - MN

- Once you win, the Court Administrator will enter your judgment
  - The entry of the judgment will become effective twenty (20) days after notice is mailed to all parties unless:
    - The judgment is paid by the losing party;
    - The losing party appeals to District Court;
    - The Court orders the judgment to be vacated; or
    - The Court otherwise orders
- After twenty (20) days (if none of the above happens) you must perfect your judgment by docketing it
  - Request a transcript of judgment from the Court Administrator
  - Request and complete the Affidavit of Identification of Judgment Debtor
  - Pay the fee and file the transcript of judgment and Affidavit of ID in the District Court
    - The fee is usually \$40

# Post-Judgment Collections in Small Claims/Conciliation Court

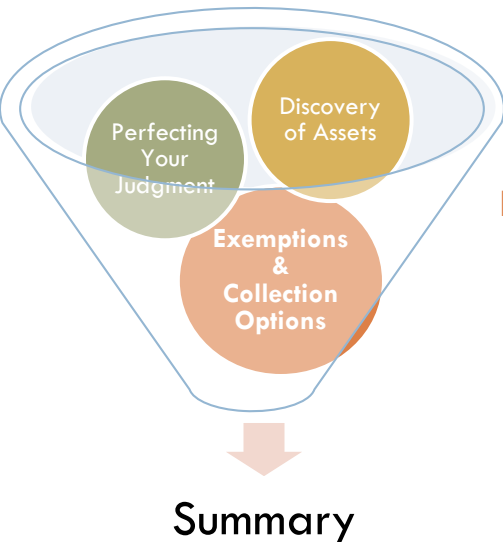


## □ **Discovery of Assets- MN**

- Request an Order for Disclosure
- Financial Disclosure
  - Warns judgment debtor that failure to fill out within ten (10) days may result in contempt of court
- Affidavit in Support of Order to Show Cause
- Post judgment interrogatories and depositions
- Your records
  - Do you have a cancelled check?
  - Do you have a credit reference?
  - Do you know where they work?
- Internet
  - Google, Facebook
  - Judgment searches
  - Property tax records

# Post-Judgment Collections in Small Claims/Conciliation Court

## Exemptions and Collections - MN



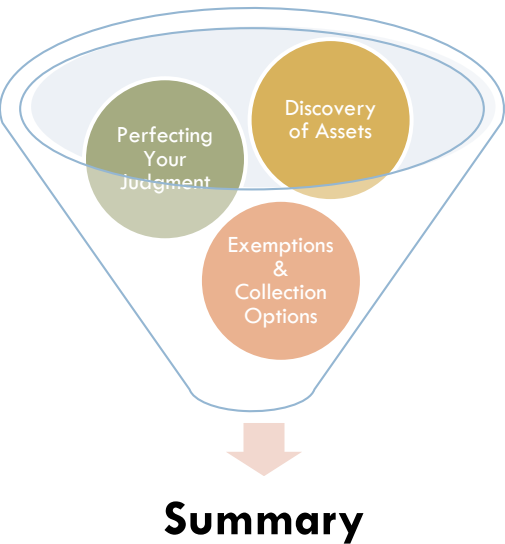
### □ Exemptions

- 75% of earnings, \$360,000.00 for homestead, \$4,400.00 for one car, etc.

### □ Collection Options

- Garnishment-Chapter 571 of Minn. Stats.
  - Wages, bank accounts or other property
- Writ of Execution by Sheriff
  - Request Writ of Execution from Court Administrator
    - Types: Real property or money/personal property
    - Cannot levy on real property until you have tried personal property
  - Have Writ directed to sheriff in county where property is located

# Post-Judgment Collections in Small Claims/Conciliation Court



## □ Summary

- The Court and sheriff do not collect your judgment for you
- Use the Internet to discover assets and court forms
- Be courteous to court staff and they will gladly help you
- When in doubt, hire an attorney to help with your post-judgment collections.
- Attorneys can help with discovery of assets, garnishments and executions

# QUESTIONS ???

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