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HOW TO USE THE LAKE CHARLES CITY COURT

This is an informational publication of the Ward 3 Marshal's Office. The Marshal and the employees of the Marshal's Office are not allowed to give legal advice. Therefore, you may wish to contact a lawyer, even if you intend to handle your own claim. If you cannot afford to hire a lawyer, you can contact the Southwest Louisiana Legal Services at 436-3308.

WHAT IS THE LAKE CHARLES CITY COURT?

The Lake Charles City Court was established by the State of Louisiana. It is called a City Court, but it has jurisdiction over all of Ward 3 in Calcasieu Parish. It has authority to decide certain juvenile and criminal matters as well as civil disputes up to \$25,000 in amount. You do not have to hire a lawyer to represent you in City Court. However, suits require written pleadings which can be too complicated for an individual to prepare on his own behalf. The technical rules of evidence are relaxed and all relevant evidence is admissible provided the Judge is satisfied as to its reliability, and he has sufficient competent evidence on which to base his judgment.

Though the procedure in Lake Charles City Court is relatively informal, **YOU MUST STILL PROVE BY COMPETENT EVIDENCE THAT THE DEFENDANT OWES YOU THE MONEY YOU SEEK.** You do not have to have a lawyer, but it is advisable to get legal advice **BEFORE** you file a lawsuit.

The Lake Charles City Court exists as a service to you; however, it is not free. You will be required to pay a deposit before filing your suit. The clerk can provide you with a schedule of fees and tell you how much the deposit will be. The deposit is an advance toward the actual costs incurred during the suit. The clerk cannot predict exactly how much final costs will be. If the costs exceed the deposit, you will be required to post additional deposits as the case progresses. If a judgment is rendered in your favor, the Court may order the defendant to reimburse you for the costs. The Court

cannot guarantee that you will get your money back. If you file the suit, **you** are responsible to the Court for payment of all costs.

WHO MAY BE SUED IN LAKE CHARLES CITY COURT?

Any individual acting in his own behalf who is 18 years of age or older may sue in Lake Charles City Court. The person who files the suit is called the "PLAINTIFF". A minor may sue only through a parent or guardian.

WHO MAY BE SUED IN LAKE CHARLES CITY COURT?

The person or company being sued may be an individual, a sole proprietor, a partnership, a corporation or an incorporated association such as a club or association. The person being sued is called the "DEFENDANT". In some cases there may be more than one defendant.

It is important that you properly identify and sue the person or company who has caused you damage or injury.

1. If the defendant is an individual, his "domicile" (usually synonymous with "residence") should be within Ward 3 of Calcasieu Parish, LA.
2. If the defendant is a corporation, its "registered office" should be located within Ward 3 of Calcasieu Parish (for this information, check with the Louisiana Secretary of State Corporation Division, phone (504) 925-4704.
3. If the defendant is an unincorporated association, its principal business establishment should be located within Ward 3 of Calcasieu Parish.
4. If the defendant is a partnership, the action is brought where its principal business establishment is located if within Ward 3 of Calcasieu Parish.

WHAT KIND OF SUITS MAY BE FILED IN LAKE CHARLES CITY COURT?

Suits which may properly be filed in the Lake Charles City Court include suits on open accounts, promissory notes, evictions, contractual disputes, and actions for money damages based on injury caused by another person..

The following types of cases MAY NOT be instituted in Lake Charles City Court: suits involving annulments, separation, divorce, alimony, separation of property, succession, interdiction, receivership, liquidation, habeas corpus, or the title to real estate; suits against a State agency, parish municipality or other political sub-division, or suits against public official performing official duties.

WHERE DO YOU FILE SUIT?

Come to the Lake Charles City Court, 118 W Mill Street, Lake Charles, LA.

HOW DO YOU BEGIN A SUIT IN LAKE CHARLES CITY COURT?

The documents that comprise a lawsuit are called "pleadings". The Clerk's Civil Office has standard "fill-in-the-blank" forms already prepared for certain types of lawsuits. The clerk can provide you with a form, if appropriate, for your lawsuit. If the clerk does not have the appropriate forms, it may be necessary for you to hire a lawyer to prepare pleadings for you. *The clerk's office personnel cannot give legal advice or prepare pleadings for you.*

Your pleadings must contain the following information:

1. The amount of money you are suing for;
2. The correct name and address for the defendant or defendants; if a business is being sued, call the

Corporation Division of the Louisiana Secretary of State at (504) 925-4704 to find out if the business is incorporated or if it is simply using a "trade name" and is not incorporated. If the business is incorporated, you should request the name and address of the REGISTERED AGENT for the corporation. That is the individual who will receive "service" or notice of the suit. You should also find out the address of the REGISTERED OFFICE of the corporation, as this is the corporation's "residence". If the business is *not* incorporated, you must find the NAME AND ADDRESS OF THE OWNER of the business, *not the name of the business itself*. The owner's name can sometimes be found on licenses or certificates posted in the place of business. If you are suing someone as a result of an automobile accident and you do not know the owner of the vehicle causing the injury, the license number is helpful for determining the name and address of the owner. You can write Motor Vehicles Registration, 7701 Independence Blvd., Baton Rouge, LA and request this information. There will be a \$2 fee.

3. The reason why you believe the defendant owes you money; (e.g. "Defendant negligently ran into my car on July 17th of this year, causing damage that he has refused to repair".);
4. A demand that the Judge award you the amount sued for plus court cost and judicial interest. Attach copies of any contracts, leases, bills, receipts, cancelled checks, etc., that support or prove your claim.

You will be asked to sign the pleadings and furnish your telephone number and address where you may be contacted during the pendency of the lawsuit. You must notify the court of any changes as the court may need to contact you on short notice.

FOR HOW MUCH SHOULD YOU SUE?

Sue for the sum of money which represents your loss or the damage caused you. For example, if the washing machine you just bought for \$340 does not work and the store refuses to repair it or refund your money, sue for \$340 plus court costs and judicial interest.

On a promissory note or open account, sue for the current balance due, plus legal interest and court costs. You must sue for the full amount when you file the original pleadings. If you decide later that the defendant actually owes you more than you sued for, it will be necessary for you to file an amended or supplemental petition. You will have to hire an attorney to prepare this petition for you.

If you receive a judgment in your favor, you can claim interest on the sum of money owed running from the date you originally filed suit until the money is actually paid. This is known as "judicial interest" and the rate is fixed by law.

Court costs are usually but not always assessed against the losing party. However, if you file suit and then agree to an out-of-court settlement, you must still pay the court costs even though you drop the suit.

WHAT HAPPENS AFTER YOU FILE SUIT?

After you file suit, the Clerk's Civil Office will prepare a "citation" to be served on the defendant along with a copy of your petition. The citation informs the defendant that he has been sued and will have ten (10) calendar days (inclusive of holidays) in which to answer. Contact the Clerk's Civil Office at 491-1564 two weeks after filing your suit to check on the date of service of your lawsuit on the defendant.

If the defendant cannot be located, you will not be able to proceed with your suit without the assistance of an attorney. If the defendant has been served and has failed to file an

answer or other responsive pleadings within ten (10) days, you must write the Clerk's Civil Office and request that a judgment be rendered. If your claim is based on an open account, negotiable instrument, or other conventional obligation, and if there is sufficient evidence contained in your pleadings, your personal appearance may not be necessary. In that case, the Judge will review the record and sign a judgment. If not, you will be assigned a date to appear before the Judge and present your witnesses and evidence for confirmation of a "default judgment".

HOW SHOULD YOU PREPARE FOR TRIAL?

Since you, as plaintiff, have the burden of proving your case before the Judge at trial, you should bring with you any important documents related to your case. These may include cancelled checks, receipts, bills, correspondence, messages, contracts, leases, accident reports, and anything else that may be used as evidence to support your claim. You are also responsible for arranging to have witnesses appear to testify on your behalf. Some witnesses will agree to come to court voluntarily. You must inform them of the date, time and place of the trial and make sure they appear. If it is necessary for you to call a witness who does not wish to appear voluntarily, you may ask the clerk to issue a "subpoena" or Court Order directing the person to appear. Otherwise, your witness' failure to appear will not ordinarily constitute good grounds for a postponement or continuance of your case. An additional court cost deposit is required for each witness you wish to have subpoenaed.

The plaintiff bears the burden of proving his case by a "preponderance of the evidence". This is a balancing test by which the Judge weighs the probabilities of accuracy of each party's respective claim. The plaintiff's evidence must be greater in order for him to win the case. Therefore, if your suit involves a complex piece of machinery, a defective car or appliance, you may wish to bring an expert witness to testify at your trial (e.g., a mechanic or appliance repairman). You may

also wish to consult an attorney regarding trial preparation even if you intend to handle your own case.

If a settlement is reached prior to trial, notify the Clerk's Civil Office in writing IMMEDIATELY so the case may be dismissed and replaced on the docket. If time does not permit a letter, telephone the Clerk's Civil Office.

If you find that you are unable to attend court at the date and time set, IMMEDIATELY notify the Court IN WRITING to seek a continuance. Continuance requests that do not reflect the consent of the opposing party are not automatically granted and must be supported by good cause.

WHAT SHOULD YOU DO THE DAY OF THE TRIAL?

Arrive early and bring all court papers with you. If you are the party suing and arrive late, or do not appear at all, your case may be DISMISSED. If you are the party being sued and arrive late, or do not appear at all, a judgment could be entered against you. In other words, YOU MAY LOSE WITHOUT A HEARING. If you are SUING and the other party is not there, you must still show proof of your claim before you can get a judgment in your favor. If you are BEING SUED and the other party is not there, you may ask that the case against you be dismissed (so you will win the case).

The plaintiff will present his case first, and he may be allowed to present evidence in an effort to disprove the defendant's case. There will be no jury. The Judge will hear and decide the entire case. It is his/her duty to sufficiently develop the facts to render a fair judgment. The Judge can summon witnesses, raise defenses, take testimony, ask questions and generally take whatever action is appropriate to ascertain the true facts of the case. Lawyers may or may not be present. The Judge will set the rules and insure that the rights and interest of both parties are preserved.

IF YOU ARE THE PLAINTIFF:

Present your facts in a straight forward manner. Tell the truth; remember, you will be under oath. Explain to the Judge why you believe the defendant owes you money, or has failed to live up to his commitments. Have your witnesses present to give their testimony and bring all your exhibits to Court. The Judge may question you and your witnesses to obtain the information needed to arrive at a fair decision. Answer all questions directly and honestly. When you have concluded your case, the Judge will hear the defendant's side. You will have the opportunity to present additional or "rebuttal" evidence at the close of the defendant's case since you, as plaintiff, have the ultimate burden of persuasion to convince the court in order to obtain a judgment in your favor.

IF YOU ARE THE DEFENDANT:

If you decide to contest a case in Lake Charles City Court, file your answer in writing with the Clerk's Civil Office within the ten (10) day period provided or the plaintiff may receive a default judgment against you. Your answer should be truthful and contain every defense you intend to raise.

Some possible defenses include:

1. No jurisdiction or improper "venue".
2. Contributory negligence (negligence on the part of the plaintiff).
3. Discharge in bankruptcy.
4. Error or mistake.
5. Fraud or illegality on plaintiff's part.
6. Previous compromise or payment of an obligation.

If you have a “counterclaim” or “reconventional demand” against the plaintiff, you may include it in our answer. HOWEVER, YOU WILL BE REQUIRED TO PAY A DEPOSIT AND COURT COSTS SINCE YOU ARE NOW INSTITUTING A SUIT AGAINST THE OTHER PARTY.

WHAT HAPPENS AFTER THE TRIAL?

If the Judge decides that you win, he may award you only part of the money you requested or whatever amount of damages he thinks you have proved you deserve. The judgment of the Court becomes a binding legal obligation after it is signed, unless one of the parties requests a new trial within three (3) days after judgment. However, a judgment merely establishes that the defendant owes you money. IT DOES NOT NECESSARILY MEAN YOU WILL BE PAID.

Some judgment creditors are never paid, for various reasons. In order to collect your money, you may have to take further action; such as asking the Court to “garnish” the defendant’s wages or “seize” and sell certain non-exempt property that belongs to the defendant. An additional deposit is required for each procedure.

If you need more information about the defendant in order to take these steps, you may request a “judgment debtor examination” to require the defendant to appear in Court and produce evidence of his assets and employment status. There is a court cost deposit required for filing this action, and it is not a new trial or hearing. You will be allowed to orally examine the defendant who will be under oath regarding his assets, employment, etc., at a place suitable for such examination, usually in the courtroom. This information may help you in finding other legal means for collecting on your judgment.

If you are not satisfied with the court’s judgment, you may appeal its decision. An appeal would permit a review of the trial judge’s ruling by a higher court to determine whether the judge properly applied the law to the facts of the case. However, the trial judge’s

factual findings on disputed issues (such as credibility of witnesses) would not ordinarily be reversed on appeal.

If you want to file an appeal, you must contact an attorney IMMEDIATELY after the trial.

EVICTION PROCEDURE

Definition of Terms:

- A. FIVE DAY NOTICE - A five day notice is obtained when a landlord has a written lease with the tenant and evicts a tenant for non-payment of rent or breach of contract. **** Reference C.C. Art. 2680 & C.C. Art. 2728****
- B. TEN DAY NOTICE - A ten day notice is obtained when a landlord has a month to month lease, or does not have a lease and evicts a tenant for any reason. When the rent has been paid, then a ten day notice prior to the expiration of rent has to be filed. There can be more than ten days, but not less.
- C. SERVICE OF NOTICE - Notice under the eviction statutes of the State of Louisiana may be served either domiciliary (on a person residing in the household of suitable age and discretion), personal service, or by tacking the notice on the premises.

Procedure:

- A. NOTICE TO VACATE - **** Notice to Vacate is only good for 30 days****
 - 1. Obtain a five day notice or a ten day notice from the Clerk's Office in the City Court Civil section. This notice will be served by the Marshal's Office. The jurisdiction is Ward 3, Lake Charles, LA. The tenant

will be served. The delays run straight through the holidays and weekends, starting the day after service is made. The Marshal then returns the Notice to Vacate with the date served to the Clerk's Civil Office for filing.

B. RULE FOR POSSESSION OF PREMISES

1. If the tenant does not pay the rent or move from the premises after receipt of the Notice to Vacate, a rule to show cause must be fixed for hearing. This process is called an eviction suit, and a deposit of \$100 for one defendant or \$135 for two defendants is required for the filing of this action. **** When filing the eviction suit and suing for RENT, the Advanced Deposit is \$135 for one defendant or \$150 for two defendants. ****
2. The rule is fixed so that both parties may show cause before the judge. At this time, the landlord has the opportunity to show why the tenant should vacate the premises and the tenant has the same opportunity to show cause why he should not.
3. If both parties appear for the rule and the landlord is granted an eviction judgment, the tenant is notified in person that he has 24 hours to vacate. If the landlord appears and the tenant does not, then a 24 hour Notice of Eviction will be issued and serviced on the tenant by the Marshal.

C. WRIT OF EJECTMENT - FINAL STEP

1. If the tenant does not move within the 24 hour period, then the landlord may request a Writ of Ejectment. At this time, the Marshal meets the landlord at the address of the rent property. The tenant has to move out voluntarily or by the force of the Marshal.