

# Answering your questions about small claims court

## What's the purpose of small claims court?

Small claims court provides an informal way to resolve minor lawsuits and other legal problems. You may use small claims court in any of the following situations:

- someone injures you, damages your property or violates a contract to which you're a party, and the amount you seek is \$5,000 or less.
- you want to repossess property valued at \$5,000 or less. This is called a replevin action.
- you already have a legal judgment for \$5,000 or less against someone and you want to enforce the judgment by seizing funds or property which the other person possesses (such as wages). This is called a garnishment (for money) or an attachment (for property).
- you're a landlord seeking to evict a tenant. Any amount of rent may be owed. The \$5,000 limit doesn't apply.

## How do you sue in small claims court?

Before you start any legal action, try to settle your dispute. If you can't settle and you feel small claims court is appropriate, go to your county courthouse and obtain the necessary forms from the clerk of court.

Make sure you're suing in the right county. Your county is the right place if:

- the person or business you're suing (the defendant) resides or does a substantial amount of business in your county;
- your claim arose in your county; or
- the property involved in your claim is located in your county.

To start your action, fill out the forms, called the summons and complaint. You're the plaintiff. Make sure you list the defendant's name and address correctly. Check one of the three boxes on the form to show the type of lawsuit: money, eviction or return of property. (Interest on money lawsuits is normally 5 percent from the date on which the claim arose to the date the court enters judgment, and 12 percent thereafter until paid.) In the "Statement of Dates and Facts" section, tell what happened simply and concisely – legalese isn't necessary. It's a good idea to attach any billing statements or invoices if you're suing for money. You will need one copy for the court and one for each defendant.

Ask the clerk if you need help completing the forms, but keep in mind that he or she can't give legal advice. By law, each county must make a small claims pamphlet available to explain small claims court procedures.

## How much does it cost to sue in small claims court?

Various fees must be paid, and many are subject to change. Presently the filing fee is \$85.

There's often a charge for having the summons and complaint served. It must be delivered to the defendant by an adult other than yourself. The sheriff charges at least \$42 per defendant. Fees charged by private process servers may differ.

If you want to require a witness to come to the trial, you have to issue a subpoena. The subpoena must be served just like the summons and complaint, with the same fees. In addition, you have to pay each witness a fee of \$16 per day and 20 cents per mile for travel.

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## What's the procedure once the case is started?

A "return date" will be set as the first step. Both you and the defendant must appear in court at the scheduled day and time. (Some counties require only a written response or a telephone call from the defendant instead of a personal appearance.) Bring along proof that the defendant was served and that he or she owes you the money or property you claim.

If the defendant doesn't show up or respond, you may get a default judgment. In other words, you win. The defendant who does appear will have to admit or deny the accusations in the summons and complaint. The defendant may admit all or part of your claim and ask for time to pay. Many cases are settled at this stage.

A hearing is the next stage in a contested matter. In many counties, a court commissioner will conduct a hearing at a later date. Both you and the defendant may present evidence and call witnesses. The hearing is informal and the court commissioner will help identify the issues. Rules of procedure and evidence aren't strictly enforced. The court commissioner's decision may be given orally or in writing. It becomes final within 11 days if given orally, and within 16 days after the decision is mailed if in writing. A written decision must be mailed within 30 days of the hearing.

Along with the court commissioner's decision, you'll receive instructions on how and when you may challenge the ruling. Either party has the right to challenge it and demand a trial before a judge or jury. The demand for a trial must be made in writing within 10 days of the court commissioner's oral decision, or within 15 days after the mailing of a written decision. The party requesting a jury trial must pay \$89. In small claims court, the jury is limited to six persons.

The judge may hold a pretrial conference in an effort to settle the case. If the case goes to trial, the court commissioner's ruling won't be considered.

Note: In some counties a judge, not a court commissioner, handles small claims hearings. Be sure to ask the clerk of court for information on how your county handles small claims.

### Do you need a lawyer for a small claims case?

It all depends on the complexity of your case and whether it's contested. Generally you don't need a lawyer to file a small claims action. But if the defendant hires a lawyer, you may want to do the same to protect your interests, especially if your case is tried before a judge or jury. If you win your case, the court may order the defendant to pay the following attorney fees to you:

<u>Judgment</u>	<u>Attorney Fees</u>
\$1,000 - or more	\$300
Less than \$1,000	\$100

You must pay the rest of your lawyer's fees yourself.

*Note:* If you obtain a default judgment or if the other side voluntarily dismisses the lawsuit, you get one-half of the attorney fee.

### What happens if you win your case?

If you win, you're entitled to the money or property the judge decides is due you, plus out-of-pocket expenses such as the fees discussed before.

If you win a money judgment, the judge will order the defendant to fill out a financial disclosure form and mail or deliver it to you or the clerk of court. The defendant must list his or her residence, employers and their addresses, financial institutions where he or she has funds on deposit, real estate owned, automobiles, cash on hand, and other assets or sources of income. The completed form must be sent to you or the clerk, or the judgment paid, within 15 days.

If the defendant doesn't pay, you have several options. You may docket the judgment at the courthouse by paying a \$5 fee. The docketed judgment then acts as a lien on the defendant's real estate. You may also start a garnishment action to obtain a portion of the defendant's earnings or bank deposits. If the defendant fails to file the required financial disclosure form, you can ask the court to hold the defendant in contempt.

### What happens if you lose?

If you lose altogether or don't get all the money or property you wanted, you may take your case to the court of appeals. The appeal fee is \$195, plus a \$15 record transmittal fee. You must also pay for the preparation of the transcript. Since an appeal is complicated, it's best to seek legal advice. ◀

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