



Small Claims Court Fact Sheet

Introduction

Small claims court is a place for people to sue for legal wrongs done to them without the help of a lawyer. Almost anyone may file a lawsuit in small claims court. You must be asking for less than \$5,000 in damages, or you may not sue in small claims court.

Collection agencies or any other person or business involved in the business of lending money with interest may not sue in small claims court. Such businesses or people must sue in district or circuit court. Anyone else who is not represented by an attorney may sue or be sued in small claims court.

Using an Attorney

Small claims courts were designed for people to represent themselves. No attorney may participate in any part of the lawsuit. If a judge finds out that either side in the lawsuit is being represented by or has been represented by an attorney, the small claims case may be transferred to the regular district court docket.

Fees

The minimum filing fee is \$25. The cost of service of the complaint is extra. Other things, such as issuing a subpoena, cost extra.

Timeline

There are time limits for filing a complaint. If you wait too long to file a complaint, you may not be allowed to sue in small claims court or any other court. The length of time you have to file depends upon the type of claim you are bringing. If a written agreement has been broken or breached, you have five years after the date it was broken to file your complaint. If an oral agreement or contract or rent or injury to goods or people is involved, then you usually have three years to file your claim.

Some people do not file a complaint because they believe the person they are suing does not have any money or assets. However, a judgment is good for at least 10 years. The person may get some money or assets in the future that may be collected upon if you have a judgment. However, if the time for filing a complaint has passed, then it will be too late to get a judgment and collect your damages.

Filing the Complaint

In order to sue in small claims court, the person suing, called the plaintiff, must file a legal form known as a complaint. Fill-in-the-blank complaint forms may be gotten from the small claims clerk at the courthouse.

Generally, you must file the complaint in the county in which the person being sued, called the defendant, lives. If you are suing for a personal injury, such as an automobile accident, or on a contract, you may sue where the injury happened or where the contract was to be performed.

What the plaintiff must include in the complaint:

- the names and addresses of the plaintiff and the defendant
- the amount of money being claimed or a description of the property to be recovered
- a brief description of why the plaintiff believes the defendant owes you the amount of money or property claimed, and the description must be clear enough so that the defendant can understand your claim

Damages

In addition to any actual damages, the prevailing party—the person who wins the lawsuit—is entitled to reasonable costs associated with the lawsuit. However, these costs must be asked for in the complaint or they may not be rewarded. Such costs include filing and service fees, any time you had to take off work, and mileage you drove associated with the lawsuit. You must provide evidence of any costs you ask for, such as a pay stub and mileage records. You should also ask for any costs associated with collecting any judgment.

Serving the Complaint

Once the complaint is filed, you must send a copy of the complaint along with summons, issued by the small claims court clerk, to the defendant. This is called service of process, or “service.” You have a limited period of time to serve the complaint, so it must be done as soon as possible.

Complaints are usually served in one of three ways:

- by certified mail
- by personal delivery of a summons by the sheriff
- by a private process server

Special rules apply to people being served in jail. Contact an attorney if you want to sue someone who is in jail.



Answering the Complaint

The defendant must answer the complaint within 30 days of the date they get the summons. If the defendant does not answer within 30 days, a default judgment may be entered against them. This means that the plaintiff may be given everything they asked for in the complaint. If a defendant defaults, they cannot later go back to try to argue the merits of the case. The time to argue the facts of the case is when the complaint is first served.

An answer form should be sent with the complaint, but if it is not, you may contact the small claims clerk in the court where the complaint was issued and request one. This answer must be filed with the small claims court within 30 days of the date of service. The answer should be filed in person. Do not rely on mail service. Postmark dates from the Post Office do not count as filing within the time period. The clerk must have stamped your answer before the 30th day expires.

Suing the Plaintiff in Return

If the defendant wants to sue the plaintiff in return, they must file what is called a "counterclaim." If proven, the defendant's counterclaim will defeat or reduce the plaintiff's claim. The counterclaim must be related to the same facts that the plaintiff is suing under.

The defendant must file a counterclaim when they file the answer with the clerk. A counterclaim follows all the same rules as a complaint except that it does not cost anything to file.

Once a counterclaim is served on the plaintiff, they must answer within 30 days. Just like with the complaint, if the plaintiff does not answer the counterclaim within 30 days, a default judgment may be entered against them, and the defendant may get whatever they asked for in the counterclaim.

If the plaintiff dismisses their complaint, a counterclaim will continue the lawsuit unless the defendant dismisses their counterclaim.

Transferring to District Court

A small claims case will be transferred to district court if any party obtains an attorney or if the defendant counterclaims for more than \$5,000.

Trial

Once the answers have been filed, the plaintiff or defendant should request that a hearing date be set. The court will notify the parties of when their trial date is. How soon a trial date is set depends on how busy the court is.

The party suing, whether it is the plaintiff or the defendant in a counterclaim, must prove his or her case by a preponderance of the evidence. A preponderance of the evidence means that the party who is suing must prove that it is more likely than not that what they say happened actually happened.

On the day of trial:

- Show up to court dressed nicely, and leave any distractions, such as children, at home with a babysitter.
- Check with the court clerk to make sure your case is going to be heard that day and to let them know you are ready to present your case.
- Wait until your case is called. This may be a long wait, depending on how busy the court is. Plan to spend all day at the courthouse.
- You should direct all questions and statements to the judge. Do not talk to the other party.
- The judge will ask for the evidence and the witnesses when the judge is ready. Do not present them until the judge asks for them. The plaintiff will present his side first.
- Do not interrupt the judge. Avoid saying or doing anything to anger or irritate the judge or the other party. Remember, the judge is the one who makes the decisions, so you should avoid causing any problems or conflicts that could make the judge rule against you.
- Show up prepared to present your side. The purpose of the small claims court is to present an inexpensive and speedy method of hearing your claim. Showing up prepared helps the judge make a decision.

Failing to Show Up to Court

If the defendant does not show up, the judge will enter a default judgment for the plaintiff and determine the amount of damages. If the plaintiff does not show up, the judge will dismiss the lawsuit. If the defendant has filed a counterclaim, the judge will enter a default judgment for the defendant and determine the amount of damages.

If you know beforehand that you cannot attend the trial, you should send a letter to the judge and the other party as soon as possible explaining why you cannot be at trial that day. The judge may reset the trial for another day or tell you that you still have to come on the trial date.

If something unavoidable happened to prevent you from coming to court on the scheduled day, you should immediately send a letter to the judge explaining why you did not show up. If the plaintiff did not show up, and the judge determines that there is good reason, then the judge may allow them to file again. The plaintiff will have to pay the filing costs again.



If the defendant did not show up, they should write a letter to the judge explaining why and asking the judge to set aside the judgment. If there is good reason shown for the absence, the judge may set the default judgment aside and set a new court date.

Proving Your Case

Witnesses

Find all witnesses who can testify for you and bring them to court with you on the date of the trial. If there is a witness who has told you something that is helpful to your case, you cannot tell the judge what the witness said—the witness must be at trial to speak for themselves. If the witness refuses to testify, you can obtain a subpoena from the court clerk to make them come to the trial. A subpoena is an order from the judge to appear at a certain time and place to give testimony upon a certain matter.

Some witnesses may not like getting subpoenas. They may not do a good job as a witness for you if you force them to come to trial. You may want to use subpoenas only as a last resort. In addition, there will be additional costs for issuing and serving each subpoena. You must pay the witness a witness fee and their mileage costs to come to court under a subpoena.

Evidence

Besides witnesses, you should find other evidence that will be helpful to you. You must bring all the evidence with you to the court if you wish the judge to consider it. The judge will not consider anything you do not bring with you. If your case concerns injury to property, take a picture of it and bring the picture with you. Also, bring any receipts, cancelled checks, or other documents that concern your case.

The Defendant

If the plaintiff presents witnesses, even if it is only themselves, the defendant will have the opportunity to ask questions of the witness, including the plaintiff. After the plaintiff has finished presenting their evidence, then the defendant will have an opportunity to present their side, including any witnesses or evidence. After the defendant finishes questioning their own witnesses, the plaintiff will have the opportunity to ask them questions, as well. Once both sides are done, the judge will make his decision.

Appealing the Decision

You may file an appeal of the judge's decision. The appeal must be filed within 30 days from the date the small claims judgment is entered.

An appeal costs more money. Small claims court cases are appealed to circuit court. The circuit court filing fee of \$100 must be paid to the clerk before you are allowed to file your appeal. In addition, you may have to post a bond to appeal the judgment.

All papers are filed in the circuit court of the county where the small claims court is located.

An appeal to circuit court is taken by requesting that the small claims clerk send a record to the circuit clerk. If the small claims clerk does not have a record or will not send one for you, you may file an affidavit with the clerk stating that you tried to get the small claims clerk to send the record, but it was not sent.

The circuit court will hear the trial *de novo*, or "all over again." This means you will be able to present additional evidence but will have to have the trial all over again.

After the Judgment

The judge decides who wins and who loses. However, the judge does not help collect a judgment once it is issued. If the loser of the suit does not voluntarily pay any money they owe, the winner will have to try to collect it from him. Collection is usually done by garnishment and execution. Please see our fact sheets on garnishment and debt collection for more information.

Once a judgment is made, the parties cannot sue on the same issue or facts again. If an appeal is not taken, the judgment becomes final after 30 days, and nothing can be done to change it. Default judgments may be set aside only in special cases.

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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