

## SMALL CLAIMS COURT



**ANDREWS LAW CENTER**  
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### HOW IT WORKS

Small claims courts truly are the “people’s courts.” They allow individuals to file lawsuits involving minor legal issues and relatively small amounts of money without incurring the fees and costs associated with a regular lawsuit. You do not need an attorney to win a judgment in small claims court. The parties can prepare the case themselves, present evidence, and bring their own witnesses. This is done in an informal hearing where the rules of evidence are relaxed.

Although filing a claim in small claims court is relatively simple, you should first attempt to resolve the problem through direct discussions with the other party. One way of doing this is by writing a letter to the other party stating the reasons why that party owes you money and request payment by a certain date. Inform the person if you are not paid, you will sue in small claims court. Mail the demand letter certified/return receipt and keep a copy of the letter and return receipt. You may need it in court to prove that you attempted to resolve the problem before filing suit.

If that fails, most local governments and a number of private organizations have mediation, conciliation, or complaint resolution programs in which a trained individual will work with both parties to reach a settlement.

You can even attempt to negotiate a compromise after a small claims court suit has been filed. Sometimes consumers reach agreements while sitting in court waiting to go before the judge.

### REQUIREMENTS FOR SMALL CLAIMS COURT

There is usually a maximum amount you can sue for in small claims court. In Maryland, Virginia, and D.C., the maximum amount is \$5,000. Generally, you must sue for money; you cannot sue for the

performance of service or the return of property. You also cannot request any discovery.

### FILING THE SUIT

Any person 18 years or older or any individual(s) doing business as a company may file a small claims case. A parent or guardian may file on behalf of a minor child.

Go to the small claims court office and pay the filing fee. The court clerk will give you the appropriate form. On this form you will have to write the name of the party you want to sue, how much you are asking for, and all relevant facts. In addition to your basic claim, ask for interest. Also, check whether you can claim court costs and attorney fees in your jurisdiction. If you have questions, ask the court clerk for help. But remember, the clerk is neither qualified nor permitted to offer legal advice.

When the appropriate form has been prepared and signed, the clerk will give you a court date. Often, you may request a date that is convenient to you. For instance, you might be able to get a weekend or evening hearing if the court holds such hours. Speak to the clerk about this.

### INFORMING THE OTHER PARTY

Once you have filed the appropriate form and received the court date, you must inform the other party. Each defendant must receive the claim and a summons to appear in court. If delivery of the summons is accomplished by a person not affiliated with the court (i.e. if you hire a private process server), a “Proof of Service” form must be filed with the small claims court clerk to show that delivery of summons as actually made. This activity is known as process-serving.

It is important that you file your claim against the right party. The additional time you spend researching the current name could make a difference in whether you are able to collect should a judgment be entered by the court in your favor.

If the defendant is not served properly, or if the clerk does not receive the Proof of Service form, the case can be dismissed.

### YOUR DAY IN COURT

The most important thing for you to do in preparation for your court appearance is to gather all documents and arrange for any witnesses (or sworn affidavits for

witnesses that cannot attend) that are needed for evidence for your case. You will not need to prepare anything elaborate. Just try to have everything you would need to answer the judge's questions. This might include written agreements (i.e. contracts), copies of all correspondence between the parties, photographs, and damaged items.

Witnesses should have firsthand knowledge of the subject matter, not general opinions or things they heard from other people. Unless providing expert testimony, witnesses must not be paid by you to appear. Discuss the case with your witnesses before the hearing so you know what they will say—otherwise you might be surprised to find out that they did not see or hear what you thought they did.

If you need an official witness to testify (i.e. a police officer) you may need to subpoena him or her. Talk to the witness to see if a subpoena is needed; if it is, ask the clerk how to serve one.

You might consider outlining the points you feel important for the judge to know. You can use the outline in court to make sure you have covered everything. Also try to think about the case from the other party's point of view and prepare to counter their arguments. Try to keep it simple, but be thorough.

### COLLECTING THE JUDGMENT

If you win the case, you should ask the judge to include court costs (i.e. filing fees, service fees, etc.) in your monetary award. Once the dollar amount is settled, the clerk will tell you how to collect the judgment amount.

If the losing party refuses to pay the judgment amount, you have two options for collection: garnishment or execution. Garnishment means involuntarily seizing wages. To pursue a garnishment, you must fill out a form and file it with the clerk's office. You may not garnish the wages of a military member, although you may be able to obtain an involuntary allotment against the pay of a military member. Execution against property means seizing, or "attaching," money or tangible personal property, subject to some exceptions under state law. Again, you must fill out the proper form and file it with the clerk's office.

Prior to either garnishment or execution, you should find out what property or bank accounts are available for payment of the judgment.

### SHOULD YOU BRING A SMALL CLAIM?

While small claims court can be ideal mechanism for resolving many common disputes, there are situations in which you may not want to or may not be able to sue in small claims court. To help you decide whether your case belongs in small claims court, review the following facts:

- **You may only seek a monetary settlement.** If you want something other than money, such as for your neighbor to stop his dog from barking late at night, going to small claims court will not help you. You must sue for actual damages which you must be able to prove. You cannot sue in small claims court for the lost sleep caused by your neighbor's barking dog.
- **You must prove your case.** The burden is on you to prove your case. You must be able to produce evidence or testimony that will convince the judge that you are right. The evidence need not be very sophisticated. For example, it might be convincing to present an estimate statement, or bill from a second repair shop. You can even bring damaged merchandise into court for the judge to examine. If you cannot bring the items in, you might be able to produce a picture of it. Receipts, canceled checks, and complaint letters can also help you prove a case.
- **You must be able to locate the person or business and file suit in the proper jurisdiction.** If the person you are suing has left town, or if you cannot find the address of the business you wish to sue, you will not be able to file suit. If the business only has offices in Los Angeles, you may have to go there in order to sue.
- **The case may not involve enough money for you to sue.** Although you can sue for very small amounts, you may decide that your time and energy are too valuable to spend pursuing the case.

If you have any questions about filing a case in small claims court, please make an appointment with the legal office at (301) 981-2042. You are not required to have a lawyer in small claims court, but it can help to have a lawyer's advice.