

defendant is leaving something out or is misstating facts, be sure to tell the judge.

A judge's decision is final. Neither you nor the defendant can appeal to a higher court once the judge has made a decision in the small claims division; although, on petition by either party, the same judge may reopen the case in the small claims division. Either party may appeal a magistrate's decision. The case would be rescheduled before a judge and both parties would explain their case again.

### **Collecting Your Money**

If you obtain a judgment against the defendant, the court will provide instructions regarding post-judgment collections. The defendant may pay the judgment plus court costs immediately after the hearing, but if he/she does not have the money to pay right away, the judge may allow a reasonable time to pay and may set up a payment schedule.

If the defendant fails to pay the judgment when ordered, you must go back to the court and file additional papers to collect on the judgment by having their wages or bank account garnished or property seized. This cannot occur until 21 days after the judgment is entered. As part of the judgment, the defendant must provide information to the court that can be used in post-judgment collection efforts.

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# Small Claims Court

**Produced by**

**State  
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If you feel an individual or a business has treated you unfairly and you believe they owe you money, there is something you can do about it. If your community has a mediation program, you and the person you are having a dispute with can try to work the problem out with the help of a neutral mediator. If you cannot resolve your problem informally through mediation, you can file a lawsuit in small claims court for up to \$3,000. This pamphlet tells you how to file a small claims case.

### **What is a Small Claims Lawsuit?**

In the small claims division of the district court you can bring a lawsuit against anyone who owes you money. You can sue a person or business which has caused damage to your property or possessions. The maximum you can collect through a judgment in small claims court is \$3,000. Small claims courts are designed to operate informally and without attorneys present. If you feel you need an attorney to represent you, the matter must be filed in district court. In small claims court you represent yourself, speak directly to the judge or attorney magistrate, provide your own evidence, and have any witnesses you wish speak for you. You do not need to know the law before you appear for a hearing.

You simply tell the judge why you feel that someone owes you money and the person or business you are suing has the opportunity to tell their side of the case. After hearing both sides, the judge will

decide whether money is owed to any party, and if so, how much.

When deciding whether to file a claim, consider whether the person you are suing has any income. Even if the judge grants you a judgment, if the person you sued has no income, it will be difficult for you to collect any money. You might want to check this out before you invest your time and money in filing a claim. Also consider whether mediation would better resolve your problem.

### **Before You Start a Lawsuit: Mediation**

Filing a lawsuit in court should be used as a last resort. Make sure you have discussed your problem with the person or business you are thinking about suing. In many cases, people and businesses do not know that someone has a dispute with them until they receive court papers. If talking the problem over does not work, consider using mediation instead of going to court.

Mediation is a process in which two or more people involved in a dispute meet in a private, confidential setting, and with the help of a trained neutral person, work out a solution to their problem. Mediation is fast, either free or low cost, and effective in resolving many disputes including landlord/tenant, consumer/merchant, and neighborhood disputes. In most cases, a mediation meeting can be set up within 10 days, and 90% of all cases in which both parties to a dispute agree to use a mediation service result in agreements acceptable to

all sides. If you can work out your dispute in mediation, you may not need to go to court. Ask the clerk of your local district court if a mediation program is available in your area, or call 1-800-8RESOLVE.

## How to Start Your Lawsuit

If you cannot resolve your dispute through mediation, you can file a claim against the person or business in the small claims division of district court. Your case must be filed in the city or county where the transaction in dispute took place, or where the person or business you are suing is located. If you are suing more than one person or business, the suit may be filed in the district court in which any of the persons lives or where any of the businesses do business.

At court, tell the clerk you want to file a small claims case. You will be given an affidavit and claim form to fill out. On the form, you name the person or business you are suing and list reasons why you are suing and the amount you are suing for.

There is a cost for filing a small claim which includes postage or service fees; you will need to contact the court for this information. Be sure to bring this amount with you when you file your claim. The amount can be made a part of the judgment if the judge decides in your favor.

After you have filed your claim, the court will notify the other party that you have filed a claim against them and the date they are to be in court. The defendant may respond before the hearing.

The defendant may offer to settle out

of court after learning you have filed a suit. If you settle the matter out of court, you can either voluntarily dismiss your lawsuit or obtain a judgment. If you want an enforceable judgment, the terms of your agreement must be spelled out in writing and signed by both you and the defendant. A copy of the agreement must be filed with the court.

## If You Have Been Sued in Small Claims Court

If you are served with court papers from the small claims court, you are called the defendant. You have several ways to respond to the affidavit and claim you have received.

If you want to deny the claim, you must either answer the complaint before the hearing date or appear in court on the hearing date, bringing with you any evidence you have to support your denial. If you want an attorney to represent you, you must tell the court at or before the hearing. The case will be transferred from small claims court to the regular district court.

If you have a claim against the person who is suing you, you can also file a counterclaim. Your written counterclaim should be filed with the court and served by first class mail to the person suing you.

If you fail to appear for the hearing, the court may enter a default judgment against you. This means the judge may grant a judgment for the plaintiff without hearing your statement.

The entry of a judgment may appear on your credit report.

## Preparing for the Hearing

On the hearing date, any of the following may happen:

1. If both the person filing the lawsuit and the defendant appear, the judge may recommend that the parties go to mediation and the case may be adjourned. If either party does not want to try mediation, the hearing may proceed.
2. If the party filing the lawsuit does **not** appear, and the defendant does appear, the case will be dismissed.
3. If the defendant does **not** appear, the person filing the lawsuit may ask for a “default” judgment. This means that if the judge decides you have a good claim, you can obtain a judgment without a hearing since the person or business you are suing did not appear to challenge your claim.

When you go to court for a hearing, take with you all the evidence you believe proves your claim. This might include a sales receipt, guarantee, lease, contract, or accident report. If a damaged article is too big to bring with you, photographs can be presented as evidence. Any witnesses you would like to speak on your behalf should appear in court as well.

Remember, a small claims case will be heard by a judge or attorney magistrate; you have no right to a jury trial, and the hearing will not be recorded.

Either party has the right to ask that the

case be heard in the general district court. The court will notify the person filing the lawsuit if the defendant makes such a request. In the district court, both you and the defendant have the right to be represented by an attorney. Whoever loses the case may be asked to pay for court costs and attorney fees. Unless defendants are prepared for the extra expense, they usually agree to have the hearing in the small claims division.

## The Hearing

The hearing will usually take place at the court where you filed your claim. It is important to be there on time; if you filed the lawsuit and are not in court when your case is called, the case may be dismissed. If you are the defendant and are not in court when your case is called, a default judgment may be entered against you. Bring all of your relevant papers or other evidence and make sure your witnesses will be on time.

The court clerk will call your case and you and the defendant will appear before the judge or magistrate. The judge will ask you to state your claim. Take your time and tell what happened in your own words and why you think the person or business you are suing owes you money. Show the judge your evidence and introduce any witnesses you have. The witnesses will be allowed to tell the judge what they know about the case.

When you have finished, the person or business you are suing will have an opportunity to explain their side of the case. Listen carefully. If you think the