



Community Alliance of Tenants – Tenant Education

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Small Claims Court

Information provided by Oregon State Bar

http://www.osbar.org/public/legalinfo/1061_smallclaims.htm



What is small claims court?

Sometimes called “the people’s court,” small claims court is for cases involving claims of less than \$10,000. Cases can be decided quickly and economically in small claims court where hearings are informal and you do not need a lawyer. In fact, you must have special permission from the judge to bring a lawyer with you to small claims court.

What types of cases are heard?

Small claims court is for all claims for money or the recovery of personal property valued at under \$750. Small claims court also can be used for the same kinds of claims valued

from \$750 to \$10,000 by people who do not want to use a lawyer and who want to get their case heard relatively quickly. Class action suits and actions that call for statutory attorney fees cannot be heard in small claims court.

What can be won in small claims court?

Small claims court can only award money (up to \$10,000 plus court costs) and/or the recovery of personal property. You cannot ask the court to order the defendant to do anything, or to refrain from doing something. If you need an order to make someone do something or stop doing something, other courts are available.

How do I file a lawsuit?

Before you sue, try to settle your dispute. When you file your claim with the court, you will be asked to sign a sworn statement called an affidavit stating that you have made a genuine effort to collect on the claim. You can try to settle by phone or in writing. Make sure your offer is simple, clear and unemotional. Remember that all written communications can be used later in the courtroom if necessary.

If you have exhausted all reasonable steps to settle the dispute out of court, and you have determined whom you are going to sue and where to file your case, it is time to prepare everything you need to start a lawsuit in small claims court. You should collect all the in-

formation that will be needed before you go to the courthouse. As the plaintiff, you have the burden of proving your case. You have a higher risk of losing your case if you do not have the appropriate documentation and other evidence to prove your case. Collect your records, including copies of contracts and agreements, and bring any necessary witnesses or arrange for their telephone testimony in advance, as letters from witnesses may be considered inadmissible.

You will also need the following information:

- ★ Your complete name and address.
- ★ The complete name and address of each person or business your claim is against. Correct names and addresses are vital, because the court cannot grant a judgment against a defendant who is improperly named in the complaint. If the defendant is a business, call the Oregon Secretary of State's office, Corporation Division, at (503) 986-2200, and ask for the Business Information Center to see if the business is registered. You may also go to www.filinginoregon.com and do a business name search from that website. Use these resources to obtain the correct title of the business and the name and address of its registered agent. The proper person to serve is the registered agent, officer, director, general partner or managing agent of the corporation. If the business is a partnership, you should name all partners individually and the partnership by its correct legal name. If the business is a sole proprietorship, you should find out both the name under which the business is operated and the name and address of the owner. You can find this information by going to the Assumed Names Department at the County Clerk's office.
- ★ The amount you intend to claim in damages. (This amount must be \$10,000 or less.)
- ★ A simple and concise statement of the basis for your claim, including the date the claim arose and any other relevant dates.
- ★ Filing fees.

Once you are prepared, you can begin your suit by visiting the Small Claims Department at the courthouse. The courthouse clerk will give you the appropriate forms to file your claim and can help you with limited information. However, he or she cannot give you legal advice. If you need legal advice, you may call the Oregon State Bar Lawyer Referral Service. A lawyer referred through the attorney referral line will charge no more than \$35 for an initial consultation. The attorney can also advise you on whether or not your case qualifies for attorney fees and whether small claims court is the best option for your situation. If small claims court is your best option, the attorney can look over your paperwork. You may have to pay more or decide to proceed without an attorney if counseling and review of your documents require more time. When you file your small claims documents, you will be asked to swear under oath that your small claims statement is true. You will also have to pay the necessary filing fees. You have the option of paying a higher fee for a jury trial. These fees generally must be paid in cash or by money order or company check. Most courts do not accept personal checks. All of these costs may be added to the amount you recover at trial, if you win.

Where do I go to file the lawsuit?

If there is a tort (accident) claim, you may file in the county where the accident took place or in the opposing party's resident county. If the dispute is related to a service or purchase, you may file in the county where the service or purchase took place (or was supposed to take place), or in the county where the business in question is physically located. Under some circumstances, more than one court can be used. For example, if the defendant lives in one county, but agreed to perform services in another county, you can select either county as the place to file your lawsuit.

Can my lawyer help me with my case?

Certainly. Your lawyer can help you get ready for your small claims court case, organize your evidence for you and advise you on what to say. If you win, a lawyer can also advise you on how to collect your judgment. However, a lawyer will not be able to be present with you in small claims court.

What will it cost me to file a claim?

Costs vary from county to county. You will have to pay a filing fee of approximately \$50-\$100, depending on the value of your claim and the court in which you file. If you are the small claims court defendant and want to contest a claim against you, you may have to pay a fee also; courts are not uniform on this, so check with the clerk's office.

How will the defendant know I have filed?

The claim and notice of your suit must be served on (delivered to) the defendant. The court will give you information on how the notice may be served. You may use the sheriff or a private process server to serve the defendant.

What do I do next?

Call the court clerk after two weeks to find out if and when the defendant was served. Knowing the exact date of service is important because in most courts it will be used to calculate the trial date. Always verify the trial date with the court clerk and be at the courthouse early; you may need time to park and find the room where your case will be heard. Some courthouses have long lines due to security checks.

What must the defendant do?

Within 14 days after receiving the notice of your claim, the defendant must do one of three things:

1. The defendant can acknowledge your claim as valid and pay the clerk of the court the amount of the claim, or provide delivery of the disputed property, plus any filing fees and expenses paid by the plaintiff. If the defendant pays or otherwise satisfies the claim, you must provide him or her with proof of the payment. Then, the defendant must mail proof of payment to the court.
2. The defendant may ask for a hearing and/or assert a counterclaim against you. If the defendant's opposing claim is more than \$10,000 however, the case would then have to be heard in a circuit court. If the defendant requests a hearing, the clerk will notify you (the

plaintiff) and the defendant by mail of the time and place set for the hearing. If the trial date is not convenient, either party may request a postponement. The request must be in writing and received by the court at least seven days before the hearing. If you do not appear in court at the time set for the hearing, your suit will be dismissed, and you cannot file it again.

3. If the amount against the defendant is greater than \$750, he or she may request a jury trial. If the defendant requests a jury trial, the clerk will notify you by mail as to what you must do next. If the court has a mandatory arbitration program, the clerk will inform you about the arbitration rules and fees. If the court does not have a mandatory arbitration program, you must file a written formal complaint form within 20 days of the request for a jury trial. If this happens, you will almost certainly need a lawyer. Your case will then proceed like any other regular lawsuit in the circuit court. Additional filing fees will be required at the time you file the formal complaint. If you do not file the complaint within 20 days, the action will be dismissed by the court.

What if the defendant fails to respond?

If the defendant does not respond to your claim filed in the small claims department, you should fill out a "Request for Default Judgment" form. Once you submit the form, the court clerk will enter a judgment against the defendant for the amount you are asking in your suit plus your court costs.

Your claim will be dismissed in 90 days if the defendant does not appear and you have not filed the request for default judgment. It is your responsibility to check with the clerk every two weeks after the notice is served to see if the other party has filed a response.

What happens in court?

Many judges will first present the opportunity for mediation. Mediation is a process in which a trained, neutral mediator facilitates communication between opposing parties in an attempt to reach agreement. If you and the defendant agree to mediation, a volunteer mediator will meet with you privately in a separate room.

If you do not reach an agreement or do not wish to mediate, the judge will listen to each side. This is called a hearing. Both the mediation and the hearing will take place on the same day. You should allow two to three hours for the entire process.

If you have a hearing, bring your witnesses. Also bring any pictures, diagrams, account books, bills, receipts, contracts, notes, dishonored checks or other evidence that will help the judge. Whatever you present in court will be all the judge knows about your case. If your case is complicated, it may help to give the judge a written summary of your position. The judge will examine the evidence and question the parties and their witnesses before making a decision. The decision or judgment may be announced then or later.

What happens during the hearing?

Usually, the court will go through a docket call. Answer when your case is called. Most judges will briefly explain the procedure to be used in your trial. If you are confused about anything he or she says, or if you have other questions, do not be afraid to ask the judge.

When the trial begins, the judge will ask you and your witnesses to swear to tell the truth. The judge will also swear in the defendant.

If you are the plaintiff, you will have the first chance to tell your story. Go through your prepared statement. Ask the judge if you may call on your witnesses, and present any documents or photos. After you and your witnesses have told the judge your story, the defendant will have a chance to tell his or her story. After the judge has heard the facts from both sides, including witnesses, and everyone has asked all their questions, the judge will decide who wins the case and the amount, if any, the winner should receive. If the judge wants more time to think about the case, he or she will tell you when you can expect a decision.

What happens after a decision is made?

When the judge makes a decision, he or she will fill out a judgment form identifying the winning party and the award. The losing party is then expected to pay the sum lost or to deliver the necessary property as directed.

How do I collect my judgment?

It is your responsibility to collect your judgment. The court cannot do this for you. It is up to you to find out where the defendant has assets (property) that can be seized to pay your judgment. If you have received a judgment and the defendant refuses to pay it, you may be able to have his or her wages or bank account garnished. The court does not provide garnishment forms. The forms may be purchased at a store that sells legal forms.

You also may put a lien on the defendant's real property, have some of his or her personal property seized, or have your personal property recovered by the sheriff. If you do not know where the defendant banks or where the property is, you can ask the court to require the defendant to come to court and answer under oath questions about his or her property. You must pay for these methods of enforcing your judgment, but this fee is recoverable from the defendant. You will also have to prepare and file additional legal papers with the court.

What if I lose my case?

If the judge decides against you, you lose the fees you paid to start the suit. You will also have to pay the defendant the fee he or she paid the court when the trial was requested and the prevailing party fee. Of course, if the defendant filed a counterclaim and won, he or she may get money from you.

Edited October 2011