

SMALL CLAIMS COURT MANUAL

This pamphlet is provided for procedural information only and is issued to inform, not to advise. It is not intended to apply to any specific situation¹. This pamphlet is meant to acquaint you with court procedure and to make sure that you have all the information needed to file a claim; however, **BEFORE YOU FILE, YOU SHOULD DO THE FOLLOWING:**

1. Make an effort to settle out of court. When you file, you will have to sign a statement that you have previously made a good faith effort to collect the claim.
2. Evaluate your claim. What are your chances of winning? If you win, can you collect the judgment? Be realistic. After all, you are spending your money on court costs.

WHAT IS SMALL CLAIMS COURT?

The 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 lawyers are not allowed.

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 (as opposed to formal civil court) is used for these same kinds of claims which are valued between \$750 to \$10,000 by people who do not want to use a lawyer and who want to get their case heard relatively quickly. If you want a jury trial, the case should NOT be filed 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.

WHERE DO I GO TO FILE THE LAWSUIT?

You can file your claim in Douglas County Circuit Court if you are able to answer "YES" to one of the following questions:

1. Did the incident happen in Douglas County? or
2. Does the defendant live in Douglas County?

HOW DO I FILE A SMALL CLAIMS LAWSUIT?

Before you file, try to settle your dispute as described above. 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.

¹ A similar pamphlet is available in Spanish. For the Spanish version, please ask the clerk for a copy or go online to: http://www.osbar.org/_docs/public/foreign/s_smallclaims.pdf for this pamphlet and other foreign language legal information.

If you have exhausted all reasonable steps to settle the dispute out of court, and you have determined who you are going to sue and where to file your suit, it is time to prepare everything you need to bring your lawsuit in small claims court. You should collect all the information that will be needed before you go to the courthouse. You will also need the following information:

- a) Your complete name, address and picture ID.
- b) The complete name and address of each person or business your claim is against. Correct names and addresses are vital to your case 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 <http://www.filinginoregon.com> to 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.

- c) The amount of damages (this amount must be \$7,500 or less).
- d) A simple and concise statement of the basis for your claim, including the date the claim arose and any other relevant dates.
- e) Filing fees.

Once you are prepared, you can begin by visiting the Small Claims Department at the courthouse. The small claims clerk will give you the appropriate forms to file your claim and can help you with limited information. By law, the clerk CANNOT give you legal advice.

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. These fees must be paid in cash, by check, money order or credit card. All of these costs may be added to the amount you recover at trial, if you win.

CAN MY LAWYER HELP ME WITH MY CASE?

If you need legal advice, you may call the Oregon State Bar's lawyer referral service. The attorney can advise you on whether or not your case qualifies for attorney fees and whether small claims court is the best option for your situation. A lawyer can help you get ready for your small claims court case, organize your evidence 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?

Please see the attached fee sheet for current fees. If you win, the defendant will be required to repay any fees you have paid to the court. If you lose, you will have to pay the defendant's fees.

HOW WILL THE DEFENDANT KNOW I HAVE FILED?

The claim and notice of your suit must be served on (delivered to) the defendant. See "WHAT DO I DO NEXT" for more information.

WHAT DO I DO NEXT?

You'll need to bring your original claim and three copies per defendant to the small claims clerk at the time you file your case (the clerk can make copies for you at 25¢ a page). The claim must be served upon the defendant. This is normally done by the Civil Department of the Sheriff's Office. The Sheriff's Office is required by law to charge a fee for their service. The sheriff's fee must be paid directly to them. The three copies you have will be distributed in the following way: one is served upon the defendant, one is kept by the sheriff's office and one is returned to you by the Sheriff's Office for your records along with your proof of service.

Other ways to serve papers are: (1) You can have someone over 18 and not a party to the case serve the papers for you and fill out an Affidavit of Service which is filed with the court. (2) The claim may be served by certified mail – return receipt requested (you may choose to add "Restricted Delivery"). Once the papers are mailed and a green return receipt card returned to you from the Post Office (signed by the defendant), you must file a proof of service with the court attaching the green signature card signed by the defendant.

No matter which service method you use, if someone other than the defendant accepts service for the defendant, this is called "substitute service" and you must immediately mail a certified copy of the Claim and Notice of Claim and copy of Notice of Defendant's Election to the defendant. Contact the law library for further information on types of service.

WHAT MUST THE DEFENDANT DO?

After the defendant is served, an answer is required within 14 days if personally served (timeframes are longer if served by mail or alternate service). The defendant can:

1. PAY the claim, plus plaintiff's costs; or
2. DENY the debt and request a hearing; or
3. DENY the debt and file defendant's own claim against plaintiff. This is called a COUNTERCLAIM and must involve the same facts; or
4. Demand a JURY TRIAL if plaintiff's claim exceeds \$750; or
5. Do nothing.

If the defendant requests a jury trial, the plaintiff will receive a notice to file a formal complaint. Complaints are normally done by attorneys. If the plaintiff chooses to represent him/herself, the clerk cannot supply a sample complaint. If a formal complaint is not filed within 20 days after the notice, then the clerk is required by law, to dismiss the case.

If the defendant does nothing, the plaintiff must request a judgment by default. This request must be in writing and on the form provided by the clerk. The request cannot be made until after 14 days have passed following service on the defendant. A judgment will not be entered automatically by the court. It is the plaintiff's responsibility to request it.

If the defendant pays money directly to the plaintiff, the plaintiff must report such to the clerk.

WHAT IF THE DEFENDANT FAILS TO RESPOND?

If the defendant does not respond to plaintiff's claim, the plaintiff may fill out a Request for Default Judgment form and a Small Claims Judgment Money Award form. Once the plaintiff submits these forms, the small claims clerk will enter a judgment against the defendant for the amount the plaintiff requested in his/her suit plus plaintiff's court costs.

Plaintiff's claim will be subject to dismissal if the defendant does not appear and the plaintiff has not filed the Request for Default Judgment. It is the plaintiff's responsibility to check with the clerk after the notice is served to see if the other party has filed a response.

WHAT HAPPENS IN COURT?

Douglas County Circuit Court has established a program of pretrial mediation conferences to offer you a final opportunity to maintain control over the outcome of your dispute before turning it over to a judge. Small claims cases are automatically selected for mediation as part of this program. Mediation is a procedure that brings both parties together to discuss their dispute with a neutral person who can help you create ways to settle differences, but leaves it to the parties to decide whether to settle the case or to go before the judge.

The procedure for mediation is simple:

The mediator will ask each party to describe briefly the situation which led to the dispute. The mediator needs to understand each party's individual concerns to help work through to a settlement of the dispute. The mediator will ask each party to talk directly to the other about each party's needs and concerns.

The mediator is concerned with your information and how you see the resolution of your dispute. The mediator will work with both parties to facilitate settlement. If any party chooses to bring witnesses, they may be included in mediation only if the mediator needs some independent clarification, which is rare. Whatever is said in the mediation conference, except for the final agreement, will be held in the strictest confidence and cannot be used against either party should the case go to trial.

The mediator will help the parties put their agreement into writing to present to the judge for approval.

Although reaching an agreement in mediation is voluntary, **YOU MUST APPEAR AT THE DATE AND TIME ON YOUR NOTICE TO APPEAR. FAILURE TO APPEAR AT THE TIME SET WILL CAUSE YOUR CASE TO BE DISMISSED IF YOU ARE THE PLAINTIFF, OR A DEFAULT JUDGMENT TO BE ENTERED AGAINST YOU IF YOU ARE THE DEFENDANT.**

In small claims cases, if the parties do not reach agreement during mediation, the trial will be held at a later date as though the mediation had never occurred. The mediator will keep confidential all the information discussed during mediation and will not be available for testimony.

If you have any questions, please call the small claims clerk at 541-957-2415.

WHAT HAPPENS DURING THE HEARING?

As the plaintiff, at trial, 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 not be

admissible. You should appear promptly in court on the day set for the hearing. You should bring your witness or other evidence to court. Physical evidence may include photographs, diagrams, contracts, checks, auto parts or any other item involved in the case.

If you are unable to appear at the date and time set, you may, if you have a good reason, request a continuance. The request must be in writing and received by the clerk at least 48 hours before the hearing. Business and ordinary personal conflicts are normally insufficient reasons to continue a case. If one party fails to appear without good reason, then the other party will win.

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. The hearing will be relatively informal. The judge is interested in the facts of your case. Please try to be objective and always exercise common courtesy.

When the trial begins, the judge will ask all parties and witnesses to swear to tell the truth. If you are the plaintiff, you will have the first chance to tell your story. Present a statement of your case. 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 and present his or her witnesses and evidence.

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 may 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 their award. The losing party is then expected to pay the sum lost or to deliver the necessary property as directed. There is no appeal from Small Claims Court.

HOW DO I COLLECT MY JUDGMENT?

A judgment is due and payable when signed by the judge. The winning party is the "judgment creditor"; the losing party is the "judgment debtor". The court does not collect the judgment for you and will not dictate any terms of payment (such as if the judgment debtor should pay in installments, etc.).

If the judgment debtor does not pay the judgment, then it will be necessary to pursue one of the remedies provided to judgment creditors under Oregon law. Garnishment (of either wages or bank accounts) is the most common procedure, although it is possible to seize certain personal property. If you do not know where the other party banks or where the property is, you can ask the court to require the other party to come to court and answer questions under oath about his or her property. You must pay for these methods of enforcing your judgment, but this fee is recoverable from the other party. You will also have to prepare and file additional legal papers with the court. You should be aware that judgment debtors are allowed to retain a portion of their property. Such a privilege is called an "exemption" and judgment creditors cannot take such to satisfy their judgment. A list of these exemptions is sent to the judgment debtor when the garnishment or attachment is served.

If you do use garnishment, the court does not provide garnishment forms. These forms may be purchased at a store that sells legal forms.

If you receive money directly from the judgment debtor, you must report such to the clerk. It is your responsibility to file a satisfaction with the court if the judgment debtor pays you in full. Satisfaction forms are available from the small claims clerk in Room 201.

A judgment bears interest at the rate of 9% per annum unless a valid contract exists which provides for a higher rate of interest. Judgments are enforceable for a period of 10 years. If you have not collected within that time, the judgment may be extended upon filing a Certificate of Extension.

WHAT IF I LOSE MY CASE?

If the judge decides against you and you are the defendant, you must pay the judgment along with any fees or costs to the plaintiff.

If the judge decides against you and you are the plaintiff, you lose the fees you paid to start the suit and you will also have to pay the defendant the fee he or she paid the court when the trial was requested and any other fees imposed by the judge. Of course, if the defendant filed a counterclaim and won, he or she may get money from you on that claim as well.