

MALHEUR COUNTY CIRCUIT COURT SMALL CLAIMS DEPARTMENT

SMALL CLAIMS INSTRUCTIONS

1. The purpose of Small Claims is to decide disputes promptly and economically. The hearings are informal with plaintiff and defendant appearing without attorneys. Ordinarily, the hearing and decision are within two months of filing the claim. **There is no appeal from a decision in Small Claims Court.** If you think you need an attorney, you must file a written request with the court at least five (5) working days before your hearing. The Judge may or may not allow your request. A copy of the request must be sent to the other party. You may consult with an attorney as to your legal rights, or in preparation of your case, and if a judgment is granted, you may hire an attorney to help collect the judgment.
2. A Small Claim shall be filed in the county where the defendant resides or where the cause of action took place.
3. The maximum amount that can be claimed in Small Claims Court is \$10,000.00. The filing fee for a Small Claim from \$0.00 to \$2500.00 is \$50.00. The filing fee for Small Claim amounts from \$2500.01 to the maximum of \$10,000.00 is \$90.00. The check for the filing fee should be made payable to the State Court. A check in the amount of \$36.00 for service fees should be made payable to the Malheur County Sheriff. If a private process server is used the fee may be between \$28.00 and \$36.00. If the defendant is to be served in another county you must contact the sheriff in that county to determine the service fee.
4. A Small Claim must be filed on the form prescribed by the Court.
5. The form must be filled out in its entirety; pay special attention to the following items:
 - A. Provide the date the claim was owed.
 - B. Provide the amount owed. The dollar amount must be the total owed, including prejudgment interest if any, and is the amount that if paid within the time allowed to answer the claim, will fully settle the claim.
 - C. Provide a simple statement about why the amount is owed.
 - D. Sign the form before the clerk in the Small Claims Department or before a Notary Public. Signing the form means you affirm the information on the form is true and that you made a bona fide effort to collect the claim before you filed in this court.
6. The Small Claim must be served on the defendant only by qualified persons (parties to the litigation are not qualified). Have the sheriff or another qualified process server serve a true copy of the Claim and Notice of Claim to the defendant in person. The sheriff of Malheur County charges \$36.00 for service. Persons other than a sheriff serving the Small Claim and other documents may charge any fee agreed to between the server and the person requesting service. **If the service on the defendant is made by substituted service, you must mail a true copy of the Claim and Notice of Claim to the defendant** stating the time, date and place of service, and file a proof of mailing with the court. A form is available from the clerk of the court.

EXPLANATION OF HOW THE NOTICE MAY BE SERVED: The notice and claim may be served upon the defendant by certified mail. The plaintiff shall mail the Claim and Notice of Claim by certified mail, addressed to the defendant at the last known mailing address of the defendant within the territorial jurisdiction of the Court. The envelope shall be marked with the words, **“Deliver to Addressee ONLY”**

and “Return Receipt Requested.” The date of delivery appearing on the return receipt shall be proof of the date on which the notice and claim were served upon the defendant. If service by certified mail is not successfully accomplished, the notice and claim shall be served by regular service procedures.

7. Within 14 (fourteen) days after receiving the Small Claim, defendant must do one of the following:

- **PAY THE CLAIM:** Payment of the amount of the claim plus the amount of all filing fees and service expenses. If the defendant pays the plaintiff directly, the plaintiff must notify the court in writing. If the defendant pays the court, the court will forward the payment to the plaintiff and plaintiff will be responsible to dismiss the case.
- **DEMAND A HEARING:** The defendant must pay a fee for this option. The fee for a claim of \$2500.00 or less is \$50.00. The fee for a claim filed that is \$2500.01 or greater is \$90.00. When a demand for hearing is filed, both parties will be notified by mail of the date they are to appear for mandatory mediation. Defendants may also file a counterclaim which will be heard at the same time. The counterclaim must involve the same controversy and cannot exceed the \$10,000 small claim limit. The claim and the counterclaim will be decided at the same time.

DEMAND A JURY TRIAL: This election can be made only if the amount or value claimed is more than \$750.00 < \$10,000.00. If the defendant demands a jury trial, \$60.00. When the demand for jury trial along with the \$60.00 fee is received, the court clerk will notify the plaintiff to file a formal complaint. The formal complaint must be filed within twenty (20) days of the date the clerk mails the notice to the plaintiff. When a formal complaint is filed the Small Claims case is closed, assigned a new number, reopened as a civil case and is no longer handled as a small claims issue. The defendant then has ten (10) days to file an answer to the formal complaint. After the plaintiff has responded to the formal complaint, the case will be referred to mandatory arbitration. Either side may appeal the arbitration award.

1. If the defendant fails to do one of the above within fourteen (14) days after service, Plaintiff may request a Default Judgment. The Request for Default Judgment form can be obtained from the court clerk and it includes an affidavit from the plaintiff that the defendant is not now in the Military Service. If the plaintiff does not make this final request, there is no Judgment and the claim may be dismissed.
2. If the plaintiff fails or neglects to affect service, request judgment or dispose of the Small Claim after 56 days, by order of the Court, the case may be dismissed for want of prosecution.

If you are the defendant and do not appear, a default judgment, including costs will be rendered against you. If the plaintiff and defendant are unable to reach an agreement at the mediation hearing they will be brought into the courtroom to appear before the Circuit Court Judge for trial.

Both parties should bring any records that will support their case, including account books, receipts, bills, contracts, photographs, bad checks, damaged goods, or anything else to substantiate your claim, or your defense. Both parties may subpoena witnesses. Subpoena forms are available from the court clerk. For a fee, a process server will serve the subpoena, or you may request a non-interested party to serve the subpoena.

If the parties arrive at an agreement through the mediation process, the mediator will fill out a Mediation Agreement to be signed by both the plaintiff, the defendant and the Judge. When the prevailing party has been paid the creditor must complete a Satisfaction of Mediation Agreement form and file it with the court.

COLLECTING ON THE AGREEMENT OR JUDGMENT: If you win the case, you are the creditor, if you lose the case, you are the debtor. If the debtor fails to comply with the Mediation Agreement the creditor must file an Affidavit of Noncompliance Mediation Agreement. Upon filing the Affidavit of Noncompliance a Judgment will be entered in favor of the creditor. Once you have obtained a Judgment, you may then request that any personal property owned by the debtor (which is subject to be levied on) be taken to satisfy the judgment. For example: garnishment of wages or attaching checking and /or savings accounts.

A. To garnish the wages of the debtor:

1. Obtain the writ of garnishment forms and complete the necessary information. These forms may be obtained from stores which have legal documents. They are **NOT** available from the court. You will need to provide the court with the original and four (4) copies of the Writ of Garnishment and 1 copy of the other garnishment forms. Copies should be made before submitting to the court.
2. After completing the garnishment forms and copies, bring them to the court so that they may be issued. The fee is \$35.00
3. After the writ is issued, it is your responsibility to arrange service. The Sheriff will charge \$25.00 for service. If the garnishee is a financial institution you will need to call them regarding their search fee.
4. The court does not have jurisdiction outside the State of Oregon. If you wish to have wages garnished, etc. out of Oregon, you will need to see an attorney.

MALHEUR CIRCUIT COURT STAFF CANNOT GIVE YOU ANY LEGAL ADVICE. IF YOU HAVE ANY QUESTIONS IN THE PREPARATION OF ANY LEGAL DOCUMENT, YOU WILL NEED TO CONTACT AN ATTORNEY.

B. To attach the savings and/or checking accounts of the debtor:

1. The procedure is the same as garnishing wages. You should check with the bank to see if they also have a fee. This fee needs to accompany your writ.

- C. If you do not know where the debtor works or where they bank:
1. Obtain a “*Notice of Demand*” form from stores which have legal documents. (Either a “*Notice of Demand*” or a return of service of an unsatisfied garnishment must be submitted to the court before the following steps may be taken). The “*Notice of Demand*” must be mailed by either certified or registered mail. The debtor must sign for the document. The signature slip must be attached to the “*Notice of Demand*” form when filed with the court. If they do not sign or accept the mailing, it is ineffective service.
 2. File a “*Motion and Order Requiring Appearance of Judgment Debtor*” with the court. These forms are available from stores which have legal documents. This will require the debtor to appear in court and, under oath, answer any questions concerning any wages, employment, property, etc.
- D. If you wish to have your small claim judgment transcribed to Circuit Court (to put a lien on real property), you must file the request with the court in writing and pay the fee of \$15.00

IT IS THE RESPONSIBILITY OF THE CREDITOR TO REQUEST A SATISFACTION OF JUDGMENT FORM WHICH IS TO BE FILED WITH THE COURT AFTER FULL PAYMENT HAS BEEN RECEIVED.

A. In order to protect the rights of the judgment debtor as well as the judgment creditor, specific legal forms and procedures must be followed before any collection remedies can be initiated. Only certain types of property can be used to satisfy a judgment. For these reasons, you should consult an attorney for assistance. If you do not have an attorney and cannot afford to hire one, you may contact the Legal Aid Office 1-888-245-4091, or the Lawyer Referral Service of the Oregon State Bar at 1-800-452-7636.

REMINDER: Small claims staff personnel are not lawyers. The law specifically prohibits the clerks from giving legal advice or advising you in any way in the preparation of your claim, or advice on how to respond to a claim.

FOR FURTHER INFORMATION CONTACT:

Malheur County Circuit Court
Small Claims Department
P O Box 670 Vale OR 97918
Phone: 541-473-5171

SERVICE: Malheur
County Sheriff's Department (for
service within Malheur County ONLY)
151 B St W, Vale, OR 7918
Phone: 541-473-5126