

LINCOLN COUNTY CIRCUIT COURT SMALL CLAIMS INFORMATION

FILING THE CLAIM

A case may be filed in the small claims department if you are seeking to recover money, damages or personal property in an amount of \$10,000 or less. Lincoln County is the proper county in which to file the case if the defendant lives in Lincoln County, if the property damage or other basis for claim occurred in Lincoln County, or if the claim is based on a contract which was to be performed in Lincoln County. You can also file an action to enjoin a nuisance in the small claims department. There are additional requirements for filing such an action.

The plaintiff (the person filing the claim) must file the claim on a form prescribed by the court and must fill in the following:

1. The defendant's name and address. If the defendant is a business, check with the corporation commissioner for the owner or registered agent's name for service. The address where the defendant can be served must be provided. A post office box is not sufficient.
2. The date the claim was owed;
3. The amount owed. The dollar amount must be the total amount 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.
4. A simple statement about why the money is owned; and
5. The plaintiff's signature. The form must be signed before the clerk or a Notary Public. Signing the form means you swear 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.

FILING FEES

If the claim is \$2500 or less:

Plaintiff filing fee	\$53.00
Plaintiff additional fee if trial.....	\$105.00
Defendant requesting a hearing or filing a counterclaim.....	\$53.00
Defendant demanding a jury trial	\$158.00

If the claim is over \$2500:

Plaintiff filing fee	\$95.00
Plaintiff additional fee if trial.....	\$63.00
Defendant requesting a hearing or filing a counterclaim.....	\$95.00
Defendant demanding a jury trial	\$158.00

Counterclaim over \$10,000.00, additional fees

ADVICE

The court clerks may not give legal advice. They cannot tell you how to prepare or respond to a claim, what you should include in the claim, or who you should file against. If you need help, you should contact a lawyer. Although a lawyer cannot appear in a small claims hearing without the court's permission, a lawyer can give you advice at any time.

SERVING THE PAPERS

The plaintiff may pay a fee and have the sheriff or other qualified process server serve a true copy of the claim and notice of small claim on the defendant in person. If substitute service is used, a true copy of the claim and notice of small claim must be mailed to the defendant telling the defendant the time, date, and place of service. A proof of mailing must be filed with the court.

OR, mail a true copy of the claim and notice of small claim by certified mail addressed to the defendant at the last known address of the defendant. Mark the envelope "Deliver to Addressee Only" and "Return Receipt Requested". After receiving confirmation of delivery, file proof of mailing with the court and attach a copy of the return receipt. The defendant must sign the "green card" for service to be complete.

DEFENDANT'S CHOICES

The defendant has 14 days (if the defendant is a public body or Attorney General and the plaintiff is an inmate, the defendant has 30 days) from the date of service to do one of the following:

1. Pay the claim and court costs to the plaintiff. The plaintiff must notify the court in writing that the claim has been paid.
2. Demand a hearing. The court will send a notice to both parties of the time and date of the hearing.
3. Demand a hearing and file a counterclaim. The counterclaim must involve the same dispute. If the counterclaim is less than \$10,000, both the plaintiff's claim and the defendant's counterclaim will be decided at the small claims hearing. If the counterclaim is more than \$10,000, the defendant must file a motion, and pay an additional fee to have the case transferred to Circuit court.
4. Demand a jury trial if the amount of the claim is over \$750. Plaintiff must file a formal complaint and must serve a copy of the complaint on the defendant by mail at the address on defendant's answer. The plaintiff's claim is not limited to the amount of the Small Claim, but the formal complaint must relate to the same controversy. The defendant must file an appearance to the formal complaint within 10 days after the date on which the summons and copy of the formal complaint would be delivered to the defendant in due course of mail. The case will then proceed as any other Circuit Court case including arbitration.

JUDGMENT

The case will be decided at a small claims hearing, trial or arbitration and a judgment in favor of one of the parties will be entered, OR the court will enter a judgment of dismissal if no action is taken by the parties within a reasonable time. If the defendant is not served within 63 days the court will send a notice of dismissal to the plaintiff, and will enter a judgment of dismissal if the defendant is not served within 30 days of the notice; or if the defendant is served but does not appear, the court will send notice to the plaintiff that a default judgment must be filed or the case will be dismissed. If the defendant claims the right to a jury trial or asserts a counterclaim that exceeds \$10,000, and does not prevail the court shall award the plaintiff reasonable attorney fees.

If the defendant is a public body and the plaintiff is an inmate, the plaintiff must file and serve the public body or Attorney General with a notice of intent to apply for an order of default at least 10 days before the court approves the default. Before the court can enter a default judgment, the inmate must submit to the court an affidavit of proof of service of the notice and claim and of the notice of intent to apply for an order of default.

INMATE SMALL CLAIMS ACTIONS

2011 Senate Bill 77 changed the law for certain small claims actions filed by inmates. An inmate who brings a small claims action against a public body must serve the notice and claim (and all subsequent filings) on the public body.

If the public body is the Department of Corrections or another state agency, the inmate must also serve the notice and claim on the Attorney General.

The public body or Attorney General must admit or deny the claim as required by ORS 46.455 within 30 days after the date of service.

The Department of Corrections and other state agencies (including their officers, employees, and agents) may appear in the small claims action through an attorney or paralegal employed by the Department of Justice.

Upon the request of the public body or Attorney General, the court must transfer an inmate's small claims action to the regular department of the circuit court regardless of the amount in controversy and notwithstanding ORS 46.405.

An inmate must file and serve the public body or Attorney General with a notice of intent to apply for an order of default at least 10 days before the court approves the default. Before the court can enter a default judgment, the inmate must submit to the court an affidavit of proof of service of the notice and claim and of the notice of intent to apply for an order of default.

An inmate cannot file an action against another inmate in the small claims department.

APPEAL

No appeal is allowed in small claims cases. A judgment on a small claims hearing is final.