

SMALL CLAIMS COURT



1st DISTRICT COURT

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When an individual or business treats another person unfairly and owes him or her money, one can file a lawsuit in Small Claims Court for up to \$5,000. This pamphlet provides information to assist a person in filing a small claims suit.

What is a Small Claims Lawsuit?

In the small claims division of the District Court, a person may file a lawsuit against anyone who owes him or her money. The person who files a lawsuit is called the plaintiff. One can sue a person or business that has caused damage to one's property or possessions. The maximum a person can collect in small claims court is \$5,000 (\$1000.00 for traffic accident claims under Michigan's no-fault mini tort law).

Small claims court is designed to operate informally and without attorneys present. **IF YOU**

FEEL YOU NEED AN ATTORNEY TO REPRESENT YOU, THE MATTER MUST BE FILED IN THE GENERAL CIVIL DIVISION OF THE COURT. In small claims court, the plaintiff represents oneself, speaks directly with an attorney magistrate or Judge, and provides one's own evidence and witnesses. The plaintiff does not need to know the law before appearing for a hearing.

When deciding whether to file a claim, one must consider whether the person being sued is collectable. In other words, it is difficult to collect any money when the person being sued has no income.

How to Start a Small Claims Lawsuit

If a dispute is not resolved informally, a person can file a claim against a person or business in the small claims division of the District Court. A small claims lawsuit must be filed in the city or county where the transaction or dispute occurred or where the person or business being sued resides. In the case of multiple defendants, the suit may be filed in the city or county where one of the defendants resides. If the claim is more than two (2) years old, a person should check with an attorney; it may be barred by a Statute of Limitations on Lawsuits.

A person must fill out an affidavit and claim form to file a small claims case. When filling out this form, one must list the name and address of the person(s) or business being sued, the reason for the claim, and the amount of the claim.

There is a filing fee to start a small claims lawsuit, and a person must be prepared to pay the filing fee at the time he or she files a claim. This cost amount can be added into the judgment amount if an attorney magistrate or Judge decides in the plaintiff's favor.

After filing a claim, the defendant must be served by either certified mail from the court or by

personal service. There is an additional fee associated with service. A list of process servers is available through Michigan Professional Process Servers State Directory (800)992-4845 or at www.MCODSA.com.

The party being sued may offer to settle out of court after being served with a small claims lawsuit. If the dispute is settled out of court, the plaintiff must either voluntarily dismiss the lawsuit or obtain a judgment. To obtain an enforceable judgment, the terms of an agreement must be in writing and signed by both parties. A copy of the agreement must be filed with the court.

If You Are Sued in Small Claims Court

The person who is served with a small claims lawsuit is called the defendant. He or she must appear for the hearing date at the time listed or file a request with the court for a new date. If the defendant has a claim against the plaintiff, he or she can file a counterclaim. One must file a written counterclaim with the court, and the court will serve the counterclaim to the other party by certified mail. On the date of the hearing, the defendant brings any evidence to support his or her denial. If the defendant wants an attorney to represent him or her, one must file a demand for removal form with the court before the hearing date. When a party makes this request, the case is transferred from small claims to the general civil division of the court.

IF YOU FAIL TO APPEAR FOR THE HEARING, THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST YOU. In other words, an attorney magistrate or Judge may grant a judgment for the plaintiff without hearing the defendant's statement. **THE ENTRY OF A JUDGMENT MAY APPEAR ON A PERSON'S CREDIT REPORT.**

Preparing for the Hearing

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

1. If the party filing the lawsuit DOES NOT APPEAR and the defendant DOES APPEAR, the case may be dismissed.
2. If the defendant DOES NOT APPEAR, the person filing the lawsuit may ask for a “default” judgment. In other words, an attorney magistrate or Judge decides in the plaintiff’s favor and he or she obtains a judgment without a hearing because the person being sued was not present to challenge the claim.

On the date of the hearing, both parties bring all evidence to help prove their side of the claim, such as witnesses, sales receipts, guarantees, leases, contracts, and accident reports. When a damaged article is too big to bring to court, photographs may be presented as evidence.

It is important to remember a small claims case is heard by an attorney magistrate or Judge; a person has no right to a jury trial, waives one’s right to legal representation, and the hearing is not recorded.

Either party has the right to request the case be heard in the general civil division of the District Court. The court notifies the person filing the lawsuit if the defendant makes this request. In the general civil division of the District Court, both plaintiff and defendant have the right to an attorney. Whichever party loses the case may be responsible for court costs and attorney fees.

The Hearing

The hearing usually takes place at the court where the claim is filed. It is important for both parties and their witnesses to appear on time and

bring all relevant papers or other evidence to the hearing. If the person filing the lawsuit is not in court when the case is called, the case may be dismissed. If the defendant is not in court when the case is called, a default judgment may be entered against him or her. If a default judgment is rendered against a defendant who fails to appear, the defendant cannot appeal but may file a motion to set aside the default judgment for good cause.

Once the case is called, an attorney magistrate or Judge will ask the plaintiff to state one’s claim. The plaintiff explains in his or her own words why the person or business being sued is liable for the amount claimed. At this time, a person may show the attorney magistrate or Judge his or her evidence and introduce any witnesses.

When the plaintiff finishes, the defendant has an opportunity to explain his or her side of the dispute. If the plaintiff thinks the defendant is leaving something out or misstating facts, he or she must tell the attorney magistrate or Judge.

An attorney magistrate’s decision may be appealed by either party within **seven** days of the hearing. A claim of appeal form must be filed with the court. The case is rescheduled before a Judge and both parties explain their case again. A Judge’s decision is final and cannot be appealed to a higher court.

Collecting Money

If a person obtains a judgment against the defendant, the court provides instructions regarding post-judgment collections. The defendant may pay the judgment plus court costs immediately after the hearing, **but** if he or she does not have the money to pay right away, an attorney magistrate or Judge may allow a reasonable time for the defendant to pay by implementing a payment schedule.

If the defendant fails to pay the judgment when ordered, the plaintiff **must** go back to the court and file additional forms to collect a judgment, such as garnishments against one’s wages, bank account, or state income tax refund, or a request to seize property. **THIS CANNOT OCCUR UNTIL (21) DAYS AFTER THE JUDGMENT IS ENTERED.**

The plaintiff must notify the court in writing when he or she receives full payment of a judgment. This enables the court to maintain complete and accurate records.

Current Small Claims Filing Fees

Claim up to \$600	\$25.00
Claim \$601 to \$1,750	\$45.00
Claim \$1,751 to \$5,000	\$65.00
A COURT CERTIFIED MAILER	\$10.00

TELEPHONE: (734) 240-7090 or TOLL FREE (888) 354-5500, extension 7090