

# Small Claims Basics

Small claims court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is called the plaintiff. The person who is sued is called the defendant. You are not allowed to have a lawyer represent you at the hearing in small claims court. But you can talk to a lawyer before or after court.

You can sue in small claims court if you are:

- At least 18 years old, OR
- An emancipated child.

If you are not mentally competent, or you are under 18 years old (and not emancipated), a judge must appoint a "guardian ad litem" to represent you in small claims court. A guardian ad litem is an adult appointed by the court to represent you ONLY in the case in question.

## How Much Can You Sue for in Small Claims Court?

In general, a natural person (an individual) cannot ask for more than \$10,000 in a claim. Businesses and other entities (like government entities) cannot ask for more than \$5,000. This limit on businesses does not apply to sole proprietors, who are treated as natural persons. You can file as many claims as you want for up to \$2,500 each. But you can only file 2 claims in a calendar year that ask for more than \$2,500.

There are some exceptions to the \$10,000 limit for individuals:

- If you are filing a claim for bodily injuries as a result of a car accident against a person who has car insurance that includes a "duty to defend," you can only sue that person for \$7,500.
- Also, as a natural person, you can only sue a guarantor for up to \$6,500 (\$2,500 if they do not charge for the guarantee). A "guarantor" is a person or company that promises to be responsible for what another person owes. (If you are an entity other than a natural person and the guarantor charges for its services, you may file a claim for up to \$4,000.)
- But, you can sue the Registrar of the Contractors (the executive officer of the Contractors State License Board) as a guarantor for up to \$10,000.

Collections agencies cannot sue in small claims court to collect on debts that are assigned to them.

## Types of Small Claims Cases

There are different kinds of cases you can file in small claims court. They include:

- Property damage or personal injury from a car accident;
- Landlord/tenant security deposits;
- Damage to your property by a neighbor;
- Disputes with contractors about repairs or home improvement jobs;
- Collection of money owed;
- Homeowner association disputes; and
- Many other issues.

## Deadline to File Your Claim

The deadline to file a lawsuit is called the statute of limitations. Most lawsuits **MUST** be filed within a certain amount of time. In general, once the statute of limitations on a case "runs out," the legal claim is not valid any longer.

The period of time you have to sue someone varies depending to the type of legal claim. Here are the statutes of limitations for some common types of legal disputes:

- If you are suing because you **got hurt**, you can file a claim for up to 2 years after you were hurt.
- If you are suing because a **spoken agreement** was broken, you have 2 years to file after the agreement was broken.
- If you are suing because a **written agreement** was broken, you have 4 years to file after the agreement was broken.
- If you are suing because your **property was damaged**, you have 3 years to file after your property was damaged.
- If you are suing because of **fraud**, you have 3 years to file after you find out about the fraud. Fraud is when you lose money because someone lied to you or tricked you on purpose.
- If you are suing a **government or public agency**, you usually have 6 months to file a claim with that agency. They have 45 days to make a decision. If no decision is made with 45 days, then the claim is considered denied. If they reject your claim, you have 6 months to file a claim with a small claims court. If you do not receive a rejection or acceptance of your claim in those 45 days, you may have more time to file your claim

but, to be safe, act within the 6 months or talk to a lawyer to find out for sure how much time you have to file your lawsuit.

It is not easy to figure out if it is too late to file (and even knowing whether a contract is written or oral can be very difficult). If you are not sure, get advice from a lawyer if you can, and if not, file your case and let the judge decide.

### **Filing Fees in Small Claims Cases**

The filing fee is based on the amount of your claim and the number of claims you have filed in the past 12 months:

Currently, the filing fees, if you have filed 12 or fewer claims in the past 12 months, depend on the amount of money you are asking the court to award. If you are asking for \$0-\$1500.00, the fee is \$30; \$1500.01-\$5,000.00 the fee is \$50; and \$5000.01-\$10,000.00 the fee is \$75. If you have filed more than 12 claims in the past 12 months, the filing fee is \$100 (for any claim amount). Filing fees change, so make sure you check to see what the current filing fees for small claims cases are at the time of your filing.

### **Going to Small Claims Court**

If you are suing someone, you must go to court. You will go to court between 20 and 70 days after you file your claim.

You cannot send anyone else (even a lawyer) to represent you in small claims court. But there are some exceptions:

- You may not have to go to court if: (1) you are serving on active duty in the armed forces, (2) you were assigned to your duty station after your claim arose, and (3) your assignment is for more than 6 months.

If you are being sued, you must go to court if you want your side of the case to be considered. If you do not go to court, a judgment may be entered against you. This would be a judgment based on the evidence that the side suing you provided, without you having a chance to provide any evidence.

## Who goes to court when a business is sued?

- If you are the only owner of a business, you must go to court unless the claim can be proven by evidence of a business account that a regular employee with knowledge of that account can explain. The employee most knowledgeable about the account can go to court for the business.
- If your business is a partnership, only 1 of the partners must go.
- If the business is a corporation, an officer or director must go to court, or if the claim can be proved by evidence of business records, the employee most knowledgeable about the records can go. That person cannot be hired just to represent the corporation. And, that person cannot be the lawyer for the corporation.

## Your small claims hearing

Many cases are usually scheduled for the same time and the calendar can be very crowded. This makes it impossible for any one case to take a lot of time because the court has to get through all the cases on the calendar. This is why it is so important to be well prepared so you can present your case quickly and efficiently. The judge will listen to both sides of the story. To help tell your side, take evidence to support your claims, like:

- Witness testimony (in most cases this requires the witness to be present in court, but in limited circumstances, the testimony may be admissible through declaration);
- Photos;
- Bills;
- Receipts;
- Contracts; and
- Other relevant documents that support your side.

The judge may make a decision at your hearing or mail it to you later. The judge may need to make additional inquiries into the facts before deciding the case, or research a legal point, so if the judge says that he or she is "taking the matter under submission," you will get the decision in the mail.

Instead of a judge, you may have a commissioner or temporary judge at your hearing. They both serve in the same role as judges. A commissioner is hired by the court to sit as a judge and hear certain types of cases that the law allows commissioners to hear, such as traffic infractions and small claims cases. A temporary judge (called a "judge pro tem" or "judge pro tempore") is someone who has been a lawyer for at least 10 years and is specially trained to hear and decide

small claims cases. If you do not want a temporary judge, you can ask the court to have a judge hear your case. You may have to come back another day.

If the person being sued does not show up for the hearing, the plaintiff still needs to prove his or her case. If the defendant can show a good reason for missing the court date, such as a medical emergency, the defendant may be able to get the judgment canceled and a new trial date set.

### **Appealing a Small Claims Court Decision**

You cannot appeal if you were the person who filed the claim. If someone else files a claim against you and you lose, you can appeal. This means that if you are the plaintiff suing a defendant and you lose, you cannot appeal the court's decision. But if the defendant filed a defendant's claim against you (sued you back) and wins against you on the defendant's claim, then you CAN appeal. When you appeal the part of the lawsuit against you, the entire court's decision (not just the part against you) is reviewed all over again. The superior court does not consider the decision of the small claims court in deciding the appeal. The trial is called a "trial de novo" or trial from the start. This means that you have to prove your side all over again, including bringing all the evidence you want the court to consider. You CAN, but do not have to, have a lawyer represent you on an appeal.

### **To file an appeal**

If you were at the hearing, you must file a form with the superior court called *Notice of Appeal* (Form SC-140) You have 30 days to do this after the date the clerk mails the *Notice of Entry of Judgment* (Form SC-130 or Form SC-200). The current cost to file a *Notice of Appeal* is \$75.

### **What happens if someone else appeals?**

You will have a new trial and you cannot enforce your judgment while the appeal is pending. You will have to bring your evidence and tell your side of the story again. This time, you can bring a lawyer to represent you.