

SMALL CLAIMS COURT DO-IT-YOURSELF GUIDE



Much of the information included in this guide has been taken from the
Michigan Courts Website at:
http://courts.michigan.gov/scao/selfhelp/smallclaims/sc_help.htm

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WHAT IS SMALL CLAIMS COURT?

Small claims court was set up for people like you to represent themselves and settle their disputes without having to hire an attorney. In fact, attorneys are not permitted in small claims court.

In small claims court, you can sue another person or a business for up to \$3,000.00. In some cases, you can also ask the judge to order the other person or business to do something (like turn your heat back on) or to stop doing something (like stop knocking down your fence). This is called “injunctive relief.”

You do not need to know anything about the law to bring a case to small claims court. The judge knows the law. You should tell the judge your story in your own words. Both sides have the right to show evidence to the judge and to have witnesses tell what they know. The judge listens to everybody, looks at all the evidence and asks both sides questions. Then he or she decides who is right. The judge’s decision is final. Neither of you can appeal it.

WHAT KIND OF CASES CAN BE STARTED IN SMALL CLAIMS COURT?

Any time you or your property has been damaged in some way or you are owed money or satisfaction by another person or business, you can file a lawsuit in small claims court for up to \$3,000 or injunctive relief. Here are some examples:

- Your ex-landlord kept your security deposit when you moved out and you did not do any damage or owe him any money. You can take your ex-landlord to small claims court to get the deposit back.
- You are a landlord and your tenant moved out leaving more damages than the security deposit covered. You can sue the tenant in small claims court for the amount of damages.
- Your neighbor backed into your fence and now will not pay to fix it. You can sue him or her in small claims court.
- Someone owes you money for work you did or for something he or she bought from you, but now will not pay. You can sue in small claims court.
- Your car is damaged in an accident and the driver of the other car is more than fifty percent at fault. You can sue in small claims court for the part of the damages that are not covered by your insurance policy, but the limit on the amount of money you can get in small claims court is \$400 not \$3,000.

HOW DO I START THE PROCESS?

First, you have to start your case at the district court office for the county where the person you are suing lives or where the thing you are suing about took place. Your case can be thrown out if it is not started in the right court.

Next, you need to fill out a court form called an “affidavit and claim form.” The form is easy to fill out and we have provided an example on page 9. You can get this form online at http://courts.michigan.gov/scao/selfhelp/smallclaims/sc_help.htm#start. Or

you can get it at the clerk's office in the district court. Just tell the clerk that you want to start a small claim's case.

INSTRUCTIONS FOR FILLING OUT THE AFFIDAVIT AND CLAIM FORM

Look at the sample form at the end of this booklet as you review the instructions below. The sample has been filled out by Rita Renter who is suing Louie Landlord because he locked her out of her apartment and threw out her things. Rita is suing for money because of the illegal eviction. She also wants back into her place.

Please type or print neatly. You must file four copies plus one additional copy for each added defendant (the person(s) you are suing). Numbers 1 through 12 must be completed before your claim can be filed with the court. Please read the instruction for each number. Then fill in the correct information for that number.

1. On the lines provided, print the name and address of the party who is suing (this may be someone other than you). This person is called the plaintiff.
2. On the lines provided, print the name and address of the party who is being sued. This person is called the defendant.
3. Check the box that best describes your relationship to the plaintiff. For example, if you are the plaintiff, check the box "plaintiff;" if you are a partner in business with the plaintiff and are suing for the partner, check the box "partner;" if you are a full-time employee of the plaintiff and are suing for the plaintiff, check the box "full-time employee." If you are not the plaintiff and do not have direct and personal knowledge of the facts in this dispute, you cannot complete this form for the plaintiff.
4. Check the box that best describes the plaintiff. For example, if the plaintiff is an individual, check the box "an individual;" if the plaintiff is a partner in a business partnership, check the box "partnership;" if the plaintiff is a corporation, check the box "corporation;" if the plaintiff is a private business owner without a partner, check the box "sole proprietorship."
5. Check the box that best describes the defendant. For example, if the defendant is an individual, check the box "an individual;" if the defendant is a partner in a business partnership, check the box "partnership;" if the defendant is a corporation, check the box "corporation;" if the defendant is a private business owner without a partner, check the box "sole proprietorship."
6. Print the date that the dispute occurred. For example, if the defendant owed money on a certain date and did not pay on that date, print that date here. Or, if the defendant damaged something that belonged to you, print the date that the damage occurred.
7. Print the amount of the money owed or you feel is owed to cover any damage. The amount cannot be more than \$3,000.00. If the amount owed to the plaintiff is more than \$3,000.00 and you file this form with the court, the plaintiff gives up the right to any amount over \$3,000.00. The plaintiff cannot file another form to get a judgment for the balance. If the plaintiff wants a judgment for an amount over \$3,000.00, a lawsuit should be filed in the civil division of the district court.

8. Check this box if this matter is related to another case. Provide the name of the court and case number, if known.
9. Explain the reasons for the claim. Include what happened to cause the dispute.
10. Check the boxes that are most accurate.
11. Check the box that is most accurate.
12. Sign your name and hand this form to the court clerk. The court clerk will fill in the rest of the information, will give you your copy, and will explain what to do next.

WHAT IF I HAVE PROBLEMS FILLING OUT THE AFFIDAVIT AND CLAIM?

If you have questions when filling out the affidavit and claim form, you should ask the clerk of the district court for help. The clerk can help you fill out the blanks in the form and give your information about court procedures, but remember the clerk cannot give you legal advice.

WHAT DO I DO AFTER I FILL OUT THE AFFIDAVIT AND CLAIM?

- If you are not filling out the form in the court and you want to mail it, call the court for the instructions. The court will explain to you how to get the signature of a notary and how to pay the filing and service fees (see next section).
- You should pay the court clerk for filing it. The fees are \$25 for claims up to \$600, \$45 for claims from \$600 to \$1,750, and \$65 for claims higher than \$1,750 to \$3,000.
- After making the claim, the court will notify the other party that you have made a Claim against his or her and of the date that they should be in court. This can be done by registered or certified mail or you can ask for personal service which consists of a process server that gives the demand directly to the defendant. The defendant can respond before the court date. If you wish to send it by mail, the clerk of the court will send it for you and will charge you the necessary fees. The defendant must be summoned before the expiration date of Article 14. If this form is not presented to the defendant before the due date, you may ask the clerk of the court to renew your claim. You should ask this before the expiration date.
- Take along the same number of copies of each piece of any written evidence you have to back up your claim such as repair bills, receipts, leases, bills of sale, etc. You should keep the originals to show the judge when you get to court.
- Give all the affidavit and claim forms and copies of your evidence to the clerk. The clerk will staple the copies to the affidavit and claim forms and will set your court date. This is called filing your case. Your court date is often 30 to 45 days from the date you file.
- Ask the court clerk for the pamphlet "Small Claims Court." Read it so you understand how to prepare for your hearing and how to collect a money judgment if the court gives you one.

HOW MUCH DOES IT COST TO START A SMALL CLAIMS COURT CASE?

You must pay the court clerk a fee for filing the form and other required fees, such as postage. If you win your case, you may be able to receive reimbursement for these fees as part of the judgment. The filing fee depends on how much you are suing for and the service fee depends on how the defendant receives notice about the suit being filed. The filing fee is \$25, if you are requesting \$600.00 or less in item 7. If you are requesting more than \$600.00 but not more than \$1,750.00 in item 7, the filing fee will be \$45.00. If you are requesting more than \$1,750.00 in item 7, the filing fee will be \$65.00. You should call the clerk before you go to the office to ask how much service will cost. It is much cheaper and just as legal to give the defendant notice of the lawsuit by using certified mail. If you choose to use personal service (have a process server hand the form to the defendant), the fee and method of payment varies and will be explained to you by the court.

WHAT IF I AM TOO POOR TO PAY THESE FEES?

If you are very poor or receiving public assistance, welfare or social security, you can ask the court not to charge you the fees to file the case. You will need to fill out a special form and give it to the clerk when you start your case. The form is called an affidavit and order suspension/waiver of fees/costs. An example of this form can be found at the end of this booklet, or online at:

<http://courts.michigan.gov/scao/courtforms/smallclaims/dc84.pdf>

CAN THE PERSON THAT I AM SUING START A COUNTER-SUIT AGAINST ME?

Yes, the person you are suing can start a counter-claim against you if he or she thinks that you owe him or her money or satisfaction. The defendant does this by filling out a small claims court affidavit and claim form, adding the words "Counter-Claim" over the words "Affidavit and Claim" at the top of the form, and writing the case number from your court papers in the blank at the top of his or her form. He or she then takes the form to the court for filing. The defendant does not have to pay a filing fee or service fee, but a copy of his or her Counter-claim has to be mailed to you (the plaintiff).

The judge will listen to your claim and the Defendant's Counter-Claim at the same hearing. So you will have to be ready not only to show the judge why your claim is right, but also why the defendant's claim is wrong.

HOW DO I GET READY FOR COURT?

Before you go to court and even before you file, you should get your case together.

Get all your evidence together. Evidence is anything that has to do with your case. Evidence can be things like photographs, receipts, written agreements, letters or

notes to or from you and the Defendant, and so on. Some people have brought dead rats and cockroaches into court for evidence. Be creative, but make sure your evidence has to do with your case.

Get your witnesses ready. Witnesses are people who know things about your case. Witnesses can be anybody: friends, relatives, neighbors, building inspectors, mechanics and so on. Be sure to talk to people ahead of time so that you know what they are going to say to the judge.

Make sure that your witnesses will be in court. The best witness in the world is no good if that witness does not show up for court. Make sure that your witnesses will be in court for you. If there is anyone important who might not show up, ask the District Court Clerk for a subpoena, you have to pay a witness fee (\$6 for half a day) plus mileage to the courthouse. The clerk at the court can help you fill out the subpoena. Remember to do this well before your court date.

Practice what you want to say in Court. Go over what you want to say in court. Make notes on important things that you want to remember to tell the judge. It sometimes helps to have a friend, who does not know all the facts, listen to your story to see if you make sense.

WHAT IF I DO NOT SHOW UP FOR THE HEARING OR AM LATE?

If the plaintiff does not show up and the defendant does, or if neither party shows up, the claim will be dismissed. The entry of this judgment will appear on your credit report.

If you cannot appear in court, you should inform the opposing party to ask for a continuance. Continuance should only be requested in the case of illness, emergency, or the unavailability of a witness. Then, you should write to the secretary-magistrate of the court to ask for the continuance. Do not wait until last minute. If the other party asks for a reasonable continuance, it may be better for you to accept it, it may save you some inconvenience later.

WHAT IF THE DEFENDANT DOES NOT SHOW UP FOR THE HEARING?

If the defendant does not appear, the plaintiff may ask for a "default" judgment. This means that if the judge decides the plaintiff has a good claim, the plaintiff can obtain a judgment without a hearing because the defendant did not appear to challenge the claim.

WHAT SHOULD I DO THE DAY OF THE HEARING?

Dress up. How you look is important in court. Wear good clothes, be neat and clean. Do not chew gum. Too little makeup is better than too much.

Show up at the courthouse a little early. Some courts want you to sign in with the clerk so that the judge knows you are there.

Be in the courtroom on time. The judge can be late but not you.

Make sure that you have your evidence with you. Evidence that you leave at home does you no good in court. Have it with you or forget it.

Have notes on what you want to say, so that you won't forget to say something important. But do not just read your notes to the judge.

Relax. Everybody is nervous in court.

Remember, you should be very polite to everybody, even if they are lying. Do not interrupt. However, if either party thinks someone is leaving something out or is misstating facts, they should be sure to tell the judge. Address the judge by "Your honor" and stand up when you talk to the judge.

In the courtroom. When the judge or the judge's clerk calls out the name of your case, go up to the judge's bench. If the defendant shows up, the judge will ask if he or she wants the case to be heard in small claims court. Just as you agreed, by filing the case in small claims court, to give up your right to an attorney, a jury trial and an appeal of the court's decision, the Defendant must also agree to give up these rights. If the defendant does not agree, then your case will have to be tried in regular district court where you might want an attorney. But if the Defendant does agree to have the case heard in small claims court, the hearing will begin.

The judge will look over your court file. Then the judge will probably ask you and the Defendant if you have talked about a SETTLEMENT.

A settlement is when two people agree on how to work out the problem between themselves. They tell the judge what they have agreed upon and the judge signs a judgment based on that agreement.

If you have not reached an agreement with the Defendant, the judge will ask you to tell him or her in your own words just what happened and what you think the Defendant owes you and what you think the defendant should have to do.

You will be able to show the judge your evidence and have your witnesses tell their stories. The judge will ask you and your witnesses questions and will probably give the Defendant a chance to ask questions too.

Then the defendant will have a chance to tell the judge his or her side of the story, show the judge the evidence and have his or her witnesses testify. Again the judge will ask questions and will probably give you a chance to ask questions too.

When you and the defendant are both done, the judge will make his or her decision. This decision is final; neither party can appeal to a higher court once the judge has made a decision in the small claims division; although, on petition by either party, the same judge may reopen the case. Either party may appeal a magistrate's decision. The case will be rescheduled before a district judge and both parties will explain their case again. The judge's written and signed decision is called a judgment.

WHAT IF WE RESOLVE THE CASE BEFORE WE GO TO COURT?

If the defendant pays you in full before the hearing, call the court clerk to let the court know that you will not need the hearing after all. The clerk will probably want you to send a letter or sign a court form asking to have your case dismissed.

If you and the defendant agree on the amount of money owed, but the Defendant wants time to pay it off, you should still get a judgment just to protect yourself.

You can do this two ways. You and the defendant can go to the hearing and tell the judge what your agreement is. Then the judge will fill out and sign a consent judgment for you. You and the defendant will have to sign it.

The second way to get the judgment is for both you and the defendant to go to the district court office together. You then explain to the clerk that you have worked things out and want to sign a consent judgment. The clerk will help you fill it out and will take it to the judge for him or her to sign. This way you get your judgment but you do not have to go to court.

WHAT HAPPENS IF I AM AWARDED THE JUDGMENT, BUT THE DEFENDANT DOES NOT PAY?

If you obtain a judgment against the defendant, the court will provide you with instructions regarding post-judgment collections. The defendant may pay the judgment plus court costs immediately after the hearing, but if he/she does not have the money to pay right away, the judge may allow a reasonable time to pay and may set up a payment schedule.

If the defendant fails to pay the judgment when ordered, you must go back to the court and file additional papers to collect on the judgment by having the defendant's wages or bank account garnished or their property seized. This cannot occur until 21 days after the judgment is entered. The court clerk can help you fill out these forms. There are additional filing and service fees that you will have to pay, but these costs will be added to what the defendant owes you as well as interest.

REMEMBER

Do not be afraid to go to small claims court if you believe that a person or business owes you money. Small claims court is your court and you have the right to use it. But you should also remember that you have to agree to give up certain rights before you can use small claims court, such as:

- You cannot have a lawyer.
- You cannot have a Jury.
- You cannot sue for more than \$3,000.00
- You cannot appeal the judge's decision.