

How To Sue in Small Claims Court

What Is Small Claims Court?

Small claims court is the real "People's Court." Small claims court provides a place where you can go to get back money that someone owes you. In small claims court, trials are informal. Most people who appear in small claims court do not have a lawyer. The purpose of small claims court is to provide an informal, uncomplicated proceeding to resolve small disputes which do not involve enough money to warrant the expense of formal litigation. There is only one major restriction in small claims court, the amount involved cannot exceed \$10,000.

If someone owes you money, and you cannot get them to pay you, do not try to take the law into your own hands. Do not start a fight. If you cannot resolve the problem any other way, you may settle your differences by taking them to court.

What Type Of Case Can Be Brought In Small Claims Court?

If you have a problem that you want to resolve, first consider whether it is the kind of dispute you can bring in a small claims court.

Not all disputes can be heard in small claims court. Some disputes should be settled without a lawsuit. Small claims court cannot hear disputes involving more than \$10,000. No matter how important the case is to you, and no matter how well you convince the judge that you deserve to recover more, the judge in small claims court simply cannot rule on a dispute for more than \$10,000, plus court costs. If you wish to recover more than \$10,000, you must consider another court, and in most cases, the assistance of an attorney. If the amount you are asking for is over \$10,000, you cannot file in small claims court. You cannot just say you will take less to get into this court. In many cases, however, a claim may be reduced to enable you to file in small claims court. If the transaction giving rise to your dispute can be divided into parts, you can sue for damages based on some of the divisible parts. For example, if you purchased several different items in one transaction, you may be able to sue for damages to some, but not all of those items.

Small claims court can only award money. It cannot, for example, order a mechanic to fix your car correctly. The court could only award you the monetary damages you suffered because your car was not repaired the way that was promised. Similarly, the court cannot order your ex-husband to stop harassing you. The court cannot order a store to deliver the television set you paid for but never received. You cannot ask the court to order the other party to do anything, or to refrain from doing something. If you need an order to make someone do something or to stop doing something, other courts are available. If you win in small claims court, all you get is money (up to \$10,000 plus court costs).

Some examples of the most common types of disputes which find their way into small claims court are:

1. You loan money to a friend, and now he refuses to pay you back.

2. More than a month has gone by since you moved out of your apartment. You gave your correct forwarding address when you moved out. Now management refuses to return your security deposit and will not give you a statement of what they have done with your deposit.
3. You have your car repaired. After you get it back, you discover that you have been charged for repairs that were not, in fact, made.

You buy a new appliance that has a warranty. It breaks down shortly after you bought it, through no fault of your own.

Who Can Sue in Small Claims Court?

Any person who is over 18 years old can file a claim in small claims court. A minor can use the court by having a parent, relative or "next friend" over 18 years old go with him to file a claim and later attend the trial. An association, partnership or corporation may also file a claim in small claims court. Unlike other courts, a corporation does not need an attorney to file a claim in small claims court. A corporation may appear in small claims court through an employee or officer, even if the person is not a lawyer. Some entities, however, may not use small claims court.

Are There Alternatives To Small Claims Court?

Whenever you have a dispute, is a lawsuit the first thing you should think of? Should you immediately drive down to the courthouse and file suit? The answer is probably no.

During any given year, many cases are filed in small claims court which could have been resolved without a lawsuit. If you do file a lawsuit, you will find that you must spend time preparing your case. You will also have to pay certain fees to have your case processed. A trial in small claims court can be a time-consuming and emotionally draining experience.

You should always try to settle a dispute without going to court. In many cases, there are alternatives to going to court. In a dispute with your landlord, you may be able to get the matter resolved by the Apartment Association. In a dispute with a business, the Better Business Bureau may be helpful. The Dry Cleaners Association may be able to resolve a problem with your dry cleaner. In a dispute over wages or involving deceptive trade practices, a call to the attorney general's office may be worthwhile. Sometimes a local television station or newspaper will have a consumer action department. Occasionally, such departments are extremely effective in recovering money for consumers and are sometimes successful in recovering money where a suit in small claims court would fail.

The steps set out below may help you to settle a dispute without suing:

1. First, carefully analyze the nature and cost of the wrong. For example, if the laundry has ruined a piece of your clothing, estimate the value of the article ruined. Determine how much you have been damaged. How much money would it take to make you whole, or to put you in the position where you would have been had the other party done what he or she promised to do. If your case involves a consumer transaction, obtain a copy of the Texas Young Lawyers Association handbook entitled Deceptive Trade Practices to assist you in analyzing your claim.

2. Once you know what you want, a good way to start an attempted settlement is to call the store or the person whom you feel is responsible. Speak to a person in authority, not a salesperson. Generally, a store manager or an officer with authority to make decisions is best.
3. Calmly explain your side of the story and how you feel you were wronged. Do not gripe! You are not registering a complaint but are asking that the store or person compensate you for the wrong you feel they have done you.
4. NEVER become abusive or upset. A calm and logical approach will accomplish far more than abusive outrages, no matter what your feelings are on the subject. Yelling and shouting will not increase the amount that you are entitled to recover and will only create hard feelings.
5. Demand something specific. Ask the store or person to replace the garment, or return your money, or some other specific compensation. Tell them exactly what you want to resolve the issue.
6. If the store manager or person in charge is unresponsive, or if you are unable to reach him or her by telephone, then write a letter explaining your complaint. . Send the letter by certified mail, return receipt requested. Remember to keep a copy of the letter. Try to be as clear and concise as you can. There is no need for long winded discussions, or fancy legal language. And make sure you mail the letter to the correct address.

If a letter is unsuccessful in resolving the dispute, and you have tried everything else within reason, you should seriously consider filing suit.

Should You Check With A Lawyer?

If your attempts to settle the dispute are unsuccessful, you should determine whether your case is one which should be handled by an attorney, or whether you want to pursue the matter alone.

In some cases, you will be entitled by law to recover attorney's fees. In those cases, you may be able to get a lawyer to represent you and charge you a contingency fee; that is, charge you a fee only if you win. In such cases, this can open up other courts to you which you otherwise may not be able to use effectively without a lawyer representing you. Even in small claims court, a lawyer can often increase your chance of winning or advise you of opportunities to collect additional damages. For example, in certain consumer and landlord tenant disputes you can recover three times your damages. An attorney may be able to advise you about these laws, or refer you to other publications, such as the Texas Young Lawyers Association Tenants' Rights Handbook, that help you understand your rights. To find out more about available booklets call the Texas Young Lawyers Association at 1-800-204-2222.

To find an attorney to assist you, talk with relatives and friends to see who they recommend. You may want to contact local referral services, or call the Texas State Bar referral service at 1-800-252-9690. Low income individuals may also be eligible for free legal assistance from local legal service offices or law school clinic programs.

So, do you need an attorney? If the amount involved is significant, or if you are not comfortable representing yourself, the assistance of an attorney may be a good idea. In other cases, you should be able to competently represent yourself in small claims court. Remember, this really is a "People's Court."

Whom Do You Sue?

You may not realize it, but suing the right person is very important and not as easy as you think. Before you sue, you must determine the nature of the entity you are filing your claim against. Basically, there are three ways a person may do business. First, as a sole proprietor. Second, as a partnership. Third, as a corporation. To sue a sole proprietor, you file against the person running the business, no matter what name he or she is using. Suppose that Sara Smith opens a dress shop called "The Dress Shop." Whom do you sue? The answer is Sara. To find out who "The Dress Shop" really is, check with the "assumed name" department in the clerk's office.

To sue a partnership you should get the names of the partners. Under the law, each of the partners are responsible for the obligations of the partnership.

To sue a corporation, on the other hand, you file against the corporation. A corporation is a separate legal entity. To properly sue a corporation you should first contact the secretary of state and find out who the "agent for service" is so that you know who to serve with the papers. Call 1-512-463-5555 and ask for the business tax department to see if the business is listed. If it is, get the proper name of the business and the name of the registered agent. This is the person you will serve with your legal papers.

Once you have determined the proper legal entity to sue, make sure to get the full name and address. A small error in spelling or an incorrect address could cost you months when your papers cannot be served.

Where Do You File Suit?

You must normally file suit in the county where the party that is being sued, that is the defendant, resides, or where the services you are complaining about were performed. The justice of the peace in each county is also the judge for small claims court. The small claims court will be listed in the telephone directory as justices of the peace. If your telephone book has government offices listed separately, look under the listings for justices of the peace in the appropriate county.

If there is more than one justice of the peace in a county, then a small claim normally must be made in the court whose precinct covers the area where the defendant resides.

Under some circumstances, more than one court can be used. For example, if the defendant lives in one precinct, but contracted to perform services in another county, you can select either county as the place to bring suit. If there is more than one justice of the peace in the same city, or in the same precinct, you can file suit in either court. If you still have a question about which court to use, call or visit the office of the justice of the peace. Generally, if you call the justice of the peace's office with the address of the party you are filing suit against, the court can give you the precinct in which you should file your claim. Most court clerks are very helpful.

Have You Waited Too Long To File Suit?

Under the law, there are limits on how long you have to bring any lawsuit. Lawyers call these a "statute of limitations" To see if you have waited too long, determine how long it has been since you have suffered the wrong for which you are going to sue. The law will not allow you to sue if you wait too long. In many cases, you must bring your lawsuit within two years of when the problem arises. It is recommended, however, that you file suit within six months to a year after you have suffered a wrong. In most cases, this will allow you ample time to try to settle the dispute before you bring your lawsuit. Do not let the matter grow stale.

Legal time limits can get very complicated. If your claim arose more than two years ago you may want to consult an attorney and discuss this matter with him or her before you file your suit.

How Do You File Suit?

You have exhausted all reasonable steps to settle the dispute out of court. You have determined who you are going to sue and where to file suit. Now you should prepare everything you need to bring to your lawsuit in small claims court. You should collect all the information that will be needed to start your lawsuit before you go to the courthouse. Otherwise, you will waste time going back and forth to complete the process. Collect your records, including copies of contracts and agreements. You should also collect the following information:

1. your complete name and address;
2. the complete name and address of each person or business your claim is against. Correct names and addresses are vital to your case because the court cannot grant a judgment against a defendant who is improperly named in the complaint. Therefore, you must find out before you go to court the name and address of the person or business your claim is against. If the business is a partnership, you should name both partners individually and the partnership by its correct legal name. If the business is a corporation, you should state its exact name. If the business is incorporated, call 1-800-252-1386 and ask for the Business Tax Department to see if the business is listed. If it is, get the correct title of the business and the name and address of its registered agent. If the business is a sole proprietorship, you should find out both the name under which the business is operated and the name and address of the owner. You can find out this information by going to the Assumed Names Department at the County Clerk's office;
3. the amount you intend to claim in damages (this amount must be \$10,000 or less); and
4. a concise statement of the basis for your claim, stated plainly and without technicalities, including the date the claim arose, and any other relevant date. You should write this statement in advance.

Once you are prepared, call the justice of the peace court which you have determined to be the correct one. Make certain that you will be going to the right court and that you have all the necessary information. Find out how much money you will need to bring with you to pay the fees necessary to start your lawsuit. The exact procedure followed in each small claims court may be slightly different. The fees also are changed from time to time. A telephone call may be well worth the effort.

You should personally go to the court to start the suit. Ask to see the clerk in charge of filing small claims. Ask the clerk to prepare a small claims statement for you. Written pleadings are not required in small claims court. You must complete a small claims statement.

You must swear under oath that your small claims statement is true. You will have to pay the clerk the necessary fees. If you want a jury trial you must pay an additional fee. These fees generally must be paid in cash, money order or company check. Most courts do not accept personal checks. All of these costs may be added to the amount you recover at trial, if you win.

Tell the clerk where the defendant may be found and the approximate time of day he or she is likely to be found at that location. This is important, because the defendant must be served before the court can grant you any relief.

Ask the clerk how the court sets the trial date. Procedures may vary in different courts. In some courts, the trial date may be set by court order, and you will be responsible for sending the defendant a letter giving him or her notice of the trial date. If your court follows this procedure, you should send the letter by certified mail, return receipt requested.

Call the clerk after two weeks to make sure that the defendant has been served and find out the exact date he was served. This date is important because in most courts it is used to calculate the trial date. No matter what procedure the court follows, ALWAYS VERIFY THE TRIAL DATE WITH THE CLERK. REMEMBER THIS DATE AND BE IN COURT AT THAT TIME. If the defendant was properly served and has not answered your suit, you will usually win by default simply because you were in court on the trial date.

Find out what your case number is. You will need this number, so you must write it down. If the defendant has not been served within 90 days, you should call the clerk and ask whether a new citation must be issued.

Remember, you cannot recover anything unless citation has been served on the person you are suing. The small claims court cannot help you until the other party is served. After waiting two weeks, you may wish to start calling the sheriff or constable until they tell you that the citation has been served.

Remember to always be polite. Do not get the clerk, the judge, his staff, the sheriff or the constable angry with you. Cooperation with these officials is a must. Your case is one of thousands of cases on file. These officials can only spend a limited amount of time on your case without neglecting other cases. Also, remember that if you do speak to the judge about procedural matters, do not try to take advantage of the conversation to impress or persuade the judge about the merits of your case. It is improper for the judge to hear one side of the case without the other side present.

How Do You Prepare Your Case?

Once you have appeared before the clerk to start your lawsuit, you should begin to prepare your case for trial.

You should already have taken the first step by writing down a clear and concise statement. If you have not done so, do it now. Check all relevant dates. Compare your memory of events to any documents you may have. This statement will assist you in clarifying the facts of your claim. Remember, you have the burden of proving all of the facts which establish that you should recover money because of the defendant's acts or failure to act. You must prove the amount of your damages.

Next, gather all documentation which you feel will have a bearing on the dispute. On the day of the trial, you should bring all: (1) records; (2) receipts; (3) canceled checks; (4) copies of contracts; (5) agreements; (6) photographs and any other items directly related to the case which will help you establish the facts of your story. Most courts require that you bring two copies of all relevant evidence and estimates of your damage. Each document should support some part of your story. If there is any doubt, take the document to court. And don't forget to bring the subject matter of the dispute. If the laundry ruined your shirt, bring it. If your car is damaged, have it in the parking lot. The best evidence you have is the damaged good.

At this point you also should determine if there are any witnesses who can come to court with you and help you tell your story. You should avoid witnesses who only know what someone else told them, that is, only have second hand information. Try to get witnesses who know relevant facts because they were there. The value of witnesses' testimony depends upon intelligence, speaking ability, appearance, and the presence or lack of bias and self-interest. The testimony of persons who might be biased, such as relatives and people who benefit if you won the case, will not be given as much weight as the testimony of a disinterested person. Once you have determined who your witnesses are, contact them and ask them to relate the story to you as they would before the judge so that you will not be surprised by their testimony once you get to court. If you feel the witnesses will help tell your story, ask them if they will assist you by giving their testimony in court.

If a witness is important to your claim but will not voluntarily come to court, then you have the right to subpoena him and force him to court. If a subpoena is necessary, go back to the county clerk as soon as you have a trial date and ask the clerk to issue the subpoena. You must provide the complete name for the witness and a good address where the witness may be served with the subpoena. The subpoena may require the witness to bring to court any documents in his control which help prove your claim. You must pay an extra fee for getting a subpoena served on a witness.

Once you have organized your case by writing a statement, gathering documents and selecting witnesses, then the exact issues in controversy will probably become clearer to you. You should then sit down and prepare what you will say when you get to court. You should also decide in what order you will present the evidence you have accumulated. List the questions you expect to ask each witness. Make an outline of what you want to say when you testify. Sometimes people forget to say things that are important to their case in a trial atmosphere. During trial, you should check off each item as you cover it.

You should also determine whether you prefer the judge to hear the case or whether you want a trial by jury. You should make this decision based upon whether you think a jury will be more sympathetic to the case than the judge. If you request a jury, you will have to pay a small jury fee.

What Happens At The Trial?

In most courts, once the defendant is served with notice, the trial date will be set. In other courts, the date may be set by order and you will be responsible for giving notice of the trial date to the defendant.

Telephone the clerk and double check your trial date. Find out the time that the court will hear your trial. Make sure you are there at the time the trial is scheduled to begin. If you are not on time, you may have your case dismissed. Once the case is set for trial, only legal excuses for not going to trial will be accepted. If you are there, but not ready, your case may be dismissed.

When you arrive, take a seat in the courtroom. Procedures vary from court to court. Usually, the court will go through a "docket call." Answer when your case is called. Some judges will ask you whether you are ready to proceed with your case. You should answer "ready." He will then ask the person you are suing the same question.

Most judges will briefly explain the procedure to be used in your trial. If you are confused about anything he says, or if you have other questions, do not be afraid to ask the judge. When the trial begins, the judge will ask you and your witnesses to swear to tell the truth. The judge will also swear in the person you are suing before he tells his side of the controversy.

You will have the first chance to tell your story. Go through the statement you previously prepared. Call your witnesses one at a time to testify. If you have photographs, have someone testify about what each photograph shows. For example, if you have photographs of a damaged item, have someone testify that the photograph accurately depicts how the item looked at the time the damage occurred. If you have documents, have someone testify about what each document is. If you have brought anything with you, now is the time to show it to the court.

Take your time so that the judge can understand the points you are trying to make. If the judge does not understand you, or wants something made clearer, he may ask you some questions.

You will have an opportunity to tell your story without being interrupted by the other side. When you are finished, however, the person you are suing will have a chance to ask you and your witnesses questions.

After both you and your witnesses have told the judge what you know, the person you are suing will explain why he thinks he should not have to pay you any money. It may be his position that you are wrong in the way you say the events occurred. Or he may say that your story is correct but that you are demanding too much money. He also has a chance to tell his story without interruption. After he is finished, you can ask both him and his witnesses questions. The judge may also ask them questions.

You cannot make statements to the witnesses. Ask them questions. You cannot argue with the witnesses about their testimony. If you think the person you are suing or his witnesses are not telling the truth, you should ask questions which would expose this fact to the judge.

Be polite and courteous to the witnesses and others in the courtroom. Obey the court's instructions. Be brief and to the point. State your position in a respectful tone.

Don't try and play Perry Mason. This is not the time to "object" to everything the other side says. A nonlawyer generally cannot back up objections with legal argument. In fact, many small claims court judges will not even entertain formal objections. You will probably find it better not to make objections during the trial of your case.

Be sure that you present facts to the court that establish that the defendant owes you money and show how much money he owes you. The burden of proof is on you.

If the person you are suing does not appear in court at the appointed time, and he has received proper notice of this trial, then the judge will grant judgment in your favor for the amount you prove that you are due.

If you want a jury trial, the same procedure described above will be followed, but before you begin telling your story, both you and the person you are suing will be given a list of the names of potential jury members. You will be allowed to question these people and then decide which of them you do not wish to be on the jury. You may disqualify three of them for any reason (called a "peremptory challenge"). You may disqualify others if you show the judge that there is some fact which by the law disqualifies a person from serving as a juror or which convinces the judge that a person is unfit to be on the jury. For example, you may discover that one of the potential jurors is a close relative of the person you are suing. This fact would normally be enough to disqualify this person and would not count as one of your three peremptory challenges. This procedure will be explained to you in more detail by the judge if you ask him.

After the judge has heard the facts from both sides, including the witnesses, and everyone has asked all the questions he wants to ask, the judge will then decide who wins the case and the amount, if any, the winner should receive. He may want more time to think about the case. If so, he will probably tell you when you can expect a decision. If the judge does not decide the case while you are there, remember that you will need to know what the "case number" of your case is. This number will enable the clerk to find the result quickly when you call later to find out the judge's decision.

If you or the person you are suing has chosen to have a jury trial, the jury, and not the judge, will usually decide whether you have won your case. If the jury decides that you have won, it will also decide the amount of money you should receive from the person you are suing.

You Have A Right To Appeal

The statute creating the "Court of Small Claims" allows either party the right to appeal to the county court if the amount of the dispute exceeds \$20, exclusive of costs. If you feel that the decision was unfair and you have originally asked for more than \$20, you may appear in front of the county court judge and go through the trial as before, completely retrying the case in front of a new judge. If you desire to appeal, you must file a Notice of Appeal in the county court within 21 days after the case was decided in the court of small claims. Ask the clerk of the small claims court for help if you need it.

You should also be aware that the party you are suing can appeal if he chooses. If this happens, be sure to appear at the second trial or the judge in the county court may rule against you. The clerk at the county court will notify you if the defendant has appealed.

An appeal to county court involves a much more formal proceeding than the one in small claims court. In many cases, it will be necessary to have an attorney assist you with an appeal.

What Do I Do After I Win?

If you have convinced the judge or jury that your side of the story is correct, and that you are entitled to some money from the person you sued, the judge will enter a "judgment" in your favor. But this doesn't get you any money. Sometimes the hardest part of small claims court is getting your money. In the vast majority of cases the person you sued will simply pay you after you win. If he or she does not, however, you must take legal steps to try to enforce your judgment.

There are a number of legal devices that you should consider after you have won in small claims court. The first thing you should do is file an "Abstract of Judgment." This is the device that makes your judgment public record and gives it legal effect. It also gives you a "lien" on any "non-exempt" real estate the person owns in the county you filed in. In Texas, a person's homestead is exempt. If they own any other property, for example, rental property, your abstract of judgment gives you a lien on that property and you could force its sale to satisfy your judgment.

If the person doesn't own any non-exempt real estate, however, your abstract of judgment will not help you. Therefore, you should consider a "writ of garnishment." This device allows you to obtain any money that is owed to the person you sued. The most common type of money that a writ of garnishment is used for is a bank account. If you know where the person you sued banks, you can go back to the clerk of the court and obtain a writ of garnishment to force the bank to turn over the money in the account to you.

You can also use a writ of garnishment to go after money owed to a person who is self-employed. For example, if you sue a contractor and he doesn't pay the judgment, you can use a writ of garnishment to get money owed to the contractor by other customers.

Texas law also allows you to obtain what is called a "writ of execution." This device orders the constable to take the debtor's "non-exempt" personal property and sell it to pay your judgment. In Texas, however, much of what the average person owns is "exempt." Exempt property includes most personal property, up to \$30,000 in value for a single person and \$60,000 for a married couple. If you sued a business, however, its property may not be "exempt."

Finally, there is a device called a "turn-over order." This permits the judge to order the person to turn over non-exempt property to you to satisfy the judgment. For example, if you know the person you sued is receiving a large sum of money from a construction job he is just completing, you can use a turn-over order to have the court order him to pay some of that money to you.

Texas law is very favorable to debtors and it can be hard to collect, even after you win. In most cases, however, you will get paid, and there are ways to try and force even the most stubborn debtor to pay up.

This information is not intended to be a substitute for the legal advice of a licensed attorney. If you have any questions regarding a particular issue or topic we suggest you seek legal counsel.

The above information is adapted from the brochure "How to Sue in Small Claims Court," prepared by the Texas Young Lawyers Association and published by the State Bar of Texas. Contact the State Bar of Texas at 1-800-204-2222 for a copy of the publication.