Self-Help Legal Information Packet: Filing a Small Claims Case

Self-Help Legal Information Packets are provided for the benefit of justice courts and individuals seeking access to justice through the court system. They do not constitute legal advice, and the court is not responsible for the accuracy of the information contained in the packet.

© Texas Justice Court Training Center 2019. TJCTC is a division of Texas State University, and an Educational Endeavor of the Justices of the Peace and Constables Association, funded through a grant from the Court of Criminal Appeals.

What is a Small Claims Case?

When a person or company feels like someone else owes them money or has personal property that belongs to them, they can come to justice court and file a lawsuit called a **small claims case**. The person or company who files the case is called the **plaintiff** and the person or company they file the case against is called the **defendant**.

What Can I File a Small Claims Case For?

You can file a small claims case if you have a claim that is within the justice court's **jurisdiction**, meaning the type of cases that court can hear. The four most common reasons that plaintiffs file small claims cases are:

1) The defendant made a promise and then didn't honor the promise, which caused the plaintiff to lose money (breach of contract);
2) The defendant owes money to the plaintiff and will not pay;
3) The defendant did something that caused damage to the plaintiff's property or caused injury to the plaintiff; or
4) The defendant is in possession of personal property that belongs to the plaintiff.

What Can I Not File a Small Claims Case For?

You **cannot** file a small claims case if:

1) The amount of money you are trying to recover is more than $10,000,
2) You are trying to recover a piece of personal property that is worth more than $10,000 (a hearing may be necessary

after you file a case for the judge to determine if the property is worth more than $10,000),

3) You are trying to recover or obtain title to **real property** (land), or
4) You are suing for defamation, libel, or slander (things the defendant has said or published about you that you believe to be false and harmful).

You also **cannot** get an order from a justice court to make a party do something or stop doing something. For example, you could **not** get an order from the justice court to make the defendant perform services that you paid for but didn't receive, stop posting things about you on Facebook, or cut down a tree that is hanging over your property.

Who Do I File a Small Claims Case Against?

You must file the case against the person or company that is responsible for your **damages** (lost money) or that has your personal property. If you are suing a business that is not a corporation, you should check with the county clerk to see who the owners or partners of the business are. If the business is a corporation, you will need the name of the registered agent, president, or vice-president of the corporation.

To determine the legal nature of a business, you may:

1) Go to the Assumed Names Records maintained by the County Clerk
2) Contact the Corporation Division of the Office of the Secretary of State at 512-463-5555, or go to their web page at http://www.sos.state.tx.us/help.shtml, to find information and assistance, or

3) Contact the Office of the State Comptroller at 1-800-252-1386.

When Can I File a Small Claims Case?

You can only file your claim for a certain amount of time after the incident occurs. This is called the **statute of limitations**. In a breach of contract case, the time period is four years, unless the contract gives a different time period. In most other cases, the time period is two years.

If you file a case where the statute of limitations has run out, you will lose the case. If you are unsure if the statute of limitations has run out in your case, you may wish to consult an attorney.

Where Do I File a Small Claims Case?

Small claims cases are filed in a justice court and the case will be heard in front of the justice of the peace. You can technically file the small claims case in any justice court in Texas. However, if you file in the wrong **venue** (location), the defendant can have the case moved to the right location. If that happens, you may have to pay the filing fees again, so it is a good idea to file the case in the right venue to start with.

So, what is the right venue? Generally, a case can be filed:

1) In the precinct and county where the defendant lives,
2) In the precinct and county where the contract was going to be performed, if it is a contract case,
3) In the precinct and county where the damage to property or injury to the plaintiff occurred, or

4) In the precinct and county where the personal property the plaintiff is suing for is located.

How Do I File a Small Claims Case?

The first step in filing a case (unless you are suing a doctor for medical malpractice, in which case you should consult with an attorney) is to file a **petition**, which is a form that says who you are suing, why you are suing them, how much you are suing them for, and provides contact information.

You will also have to file a civil case information sheet, indicating what type of case you are filing. The court will have petition and civil case information sheet forms for you to use.

When you file the petition, you will have to pay a filing fee. Also, the petition and **citation** (the notice from the court to the defendant that they have been sued) must be **served on** (delivered to) the defendant. This can be done in person or by certified mail or registered mail, and if it is done by mail there must be a return receipt requested, with restricted delivery.

IMPORTANT - You are not allowed to serve the paperwork yourself! You can either hire a private process server to serve the paperwork, or pay for the constable, sheriff, or clerk of the court to serve the paperwork. The fee for this service varies from county to county, see the court for details.

If you win your case, you will be awarded the fees that you had to pay, in addition to any other money you are entitled to recover.

What if I Can't Afford to File a Case?

Courts **must not** deny you access to justice simply because you cannot afford filing fees or service fees. If you are unable to pay those fees, fill out a **Statement of Inability to Afford Payment of Court Costs** form – the court **must** provide this form to you.

You must swear to the information that you provide on this form and can face legal consequences if you do not fill it out to the best of your ability. Fill out the form completely and truthfully!

Do I Need a Lawyer to File a Case?

While you are allowed to have a lawyer in a small claims case, the rules and procedures are designed to be simple and straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted in court by a family member or other person who is not being paid to assist you. This person can help you understand the proceedings and advise you, though that person cannot speak for you in court.

The court is required to make the Rules of Civil Procedure available to you at no cost. Rules 500-507 are the rules that specifically apply to small claims cases.

The court is **not** allowed to give you advice on whether you will win a case or not, whether you should file a case, who you should file a case against, or what steps you should take to win your case or collect your judgment.

Questions the court **can** answer for you are questions like "What do I need to do to have a jury trial?" or "How many days do I have to file an appeal?"

Questions the court **cannot** answer for you are questions like "Can I sue someone for this?" or "Who should I sue?" or "Is it a good idea to get a jury for this case?" or "Am I going to win?"

If, after reviewing these materials and the rules for small claims cases, you still are not sure what to do, it may be best to consult an attorney.

What Happens After I File a Small Claims Case?

IMPORTANT - Make sure to keep your address updated with the court and the other party so that you will receive any paperwork or notices sent to you.

The court will generate the **citation**, which tells the defendant that they are being sued. The citation then must be served on the defendant. You can either pay the service fee for the constable or sheriff to serve the citation (or submit a Statement of Inability showing you cannot afford the fee) or hire a private process server to serve it on the defendant.

Once the defendant is served with the citation, they have 14 days to file an **answer**, which is their response to your lawsuit. They are required to send you a copy of their answer. If the defendant does answer, the court will set your case either for trial or for a **pre-trial hearing**.

At a pre-trial hearing, you can discuss any issues such as the need for an interpreter, or for the court to **subpoena** a witness (order them to come to trial to testify).

What if the Defendant Doesn't Answer?

If the defendant doesn't file an answer within the 14 day period, you can ask the court for a **default judgment hearing**, where you can prove to the court that you are entitled to money or personal property and be awarded a judgment.

To get a default judgment, you will also need to provide the last known address of the defendant to the court in writing, as well as an **affidavit** (document signed in front of the clerk or a notary, that you swear to be true) stating either:

1) the defendant is on active duty in the U.S. military,
2) the defendant is not on active duty in the U.S. military, or
3) that you do not know if the defendant is on active duty in the U.S. military.

This affidavit must also state in writing how you know whether the defendant is on active duty in the U.S. military or why you are unable to determine the defendant's military status.

You can verify military service at https://scra.dmdc.osd.mil/.

What is Discovery?

Discovery is the exchange of information between people or companies involved in a lawsuit before the case goes to trial. For information about discovery after a judgment, please see the section on "What if I Win My Small Claims Case?" Discovery must be approved by the judge before the other party has to provide any information or answer any questions.

If you have discovery questions that you want the defendant to answer, submit them to the court with a request for discovery.

Requesting the court to do something is called a **motion**, so you would be making a "motion for discovery."

The judge will only approve "reasonable and necessary" discovery, so if you have discovery requests, make sure they actually relate to the case. For example, asking for copies of emails that the defendant sent to a subcontractor about the deck work they did for you is likely reasonable, and asking for a copy of all emails from the defendant over the last three years is likely not.

If you receive a discovery request that has been approved by the judge, you must respond with the requested information or you can file an objection with the court. If you object, the court will hold a hearing to decide if you have to provide the information. **Do not** just ignore a discovery request, you could face penalties from the judge, possibly including dismissal of your case!

How Do I Send Paperwork to the Defendant?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the defendant as well as to the court. You can send those papers to the defendant by:

1) delivering it to them in person,
2) mailing it to them using certified or registered mail,
3) using a delivery service such as FedEx or UPS,
4) faxing it to them, or
5) sending it by email if the defendant provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the defendant.

What if We Reach an Agreement?

If the case goes to trial, usually there will be a "winner" and a "loser," resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. If you come to a settlement agreement, the court can enter a judgment reflecting how much money is awarded. However, the court cannot put specific orders in the judgment, such as payment plans or deadlines. If you wish to have those in your settlement agreement, you would need to create a written contract, signed by both parties. If the defendant does not honor that written agreement, you could file a new lawsuit for breach of contract.

Can I Have a Jury Trial?

Yes. Either side in a small claims case may request a jury trial. You must make a request in writing to the court at least 14 days before the date set for trial and pay a jury fee of $22.

If no one requests a jury, the trial will be heard by only the judge, which is called a bench trial.

What if I Need More Time for Trial?

The court will send you a trial notice at least 45 days before the trial date. If you need more time or you have a conflict with that date, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement. **Do not** just decide not to show up on your trial date! That will probably result in your case being dismissed.

What Happens at the Trial?

Be sure to bring all of your witnesses and documents with you on your trial date! If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Next, you will be able to give an opening statement if you wish, where you explain to the judge and jury what the case is about.

After that, you will call any witnesses you have, and ask them questions so they can **testify**, or tell their story, to the judge or jury. The defendant will also be able to ask your witnesses questions. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Next, the defendant can present any evidence and call any witnesses that they may have. You get to ask questions of any witnesses they call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case, but must remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

What Happens if I Lose My Small Claims Case?

If the judgment is in favor of the defendant, you can file a **motion for new trial** within 14 days of the judgment. That means that you want a "do over" in the same justice court. You would need

to show that justice wasn't done in the original case. If you file a motion for new trial, you must send it to the defendant within one day of filing it with the court.

Another option is to file an **appeal**, which is a request for the county court to hear your case. You can file an appeal within 21 days of the judgment, or if you filed a motion for new trial that was denied, you can appeal within 21 days of that denial.

If you properly file an appeal, the county court will hear the case over from scratch (de novo) and the judgment of the justice court will go away. There will be a new judgment from the county court based on the evidence presented there.

To appeal, you will have to file either:

1) An **appeal bond** (promise from another person, called a **surety**, to pay the bond amount to the defendant if you don't pursue the appeal) in the amount of $500;
2) A cash deposit of $500, which may be awarded to the defendant if you don't pursue the appeal; or
3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must send notice of the appeal to the defendant within seven days.

Once your appeal is filed with the county court, you will be required to pay the filing fee for the county court or file a Statement of Inability to Afford Payment of Court Costs.

What Happens if I Win My Small Claims Case?

If the judgment is in your favor, you will almost surely not walk out of court with a check in the full amount of the judgment. The

defendant might file a motion for new trial or an appeal. If they don't, it is your responsibility, not the court's, to pursue enforcement of the civil judgment. Below is a brief description of some of the tools that you can use to enforce a judgment.

WARNING: Not all of these tools may be useful in any given situation. If you are unsure which of these to use, you may wish to consult with an attorney.

Post-Judgment Discovery: You can send questions to the defendant that they must answer describing what assets they may have that could be used to satisfy a judgment. The defendant gets at least 30 days to respond to these discovery requests. It is not required to get the judge's approval for post-judgment discovery.

Abstract of Judgment: If the defendant owns real property (land), you can get an abstract of judgment from the court that issued the judgment and file it with the county clerk in the county or counties where the defendant owns the property. This puts a **lien** on the property in your name, which means if they sell the property, you could receive some of the proceeds to satisfy the judgment.

Writ of Execution: This is an order for the constable to go out and seize the defendant's personal property and sell it to satisfy the judgment. **IMPORTANT** – many items of personal property are **exempt**, meaning it is not legal for the constable to seize them and sell them.

To get a writ of execution, you file an application with the court that issued the judgment, at least 30 days after judgment.

Writ of Garnishment: This is used when another person or company has money or property that belongs to the defendant, and they are ordered to give it to you to satisfy the judgment.

Almost always this is used to take money from a bank account held by the defendant.

To get a writ of garnishment, you file an application including an affidavit (sworn statement) explaining why you are entitled to the garnishment with the court that issued the judgment.

IMPORTANT – if the person or company has no money or property belonging to the defendant, you may be responsible for paying attorney fees related to their response. Be very sure that a writ of garnishment is the best option before getting one.

Resources

Texas Lawyer Referral Service - (800) 252-9690

To check military status – https://scra.dmdc.osd.mil/

Texas Justice Court Training Center information for self-represented litigants – www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site: www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance: www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases – www.texaslawhelp.org