

HOW TO FILE A CLAIM IN SMALL CLAIMS COURT

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DO YOU HAVE A CLAIM THAT QUALIFIES FOR SMALL CLAIMS COURT?

Answer the following questions to determine if your claim qualifies for small claims court.

1. Are you suing for anything other than money? For example, are you suing for an injunction?
2. Including interest, is the amount of money you are suing for in excess of \$5,000.00?
3. Are you in the business of loaning money for profit, such as a bank, credit union or savings and loan?

If you answered "Yes" to any of these questions, you are not eligible to file in Small Claims court.

If you answered "No" to all of the questions, the following information may be helpful in filing your claim in the Justice of the Peace court.

PROCEDURE FOR FILING A SMALL CLAIM IN THE JUSTICE OF THE PEACE COURT

YOU MAY WISH TO VISIT THE JP COURTS' WEB SITE AT:

<http://www.jp.hctx.net/default.htm>

Step 1 - You should give notice to the Defendant.

In most cases, the courts recommend first sending the opposing party a letter by certified mail, giving them notice that if they fail to pay damages within 30 days, legal action will be initiated. (See sample letter)

Step 2 - Determine in which Justice of the Peace Precinct it is appropriate to file your claim.

There are eight precincts in Harris County. You need to file in the appropriate courthouse for the precinct where the defendant lives or in the precinct where the controversy occurred. If you're not sure what precinct is appropriate, call the precinct nearest you and ask. (See Precinct List)

Step 3 - Obtain a Petition from the appropriate Precinct.

Pick up the one-page small claims petition at the appropriate Precinct, or call them and ask them to mail you one. A helpful information packet is also available at some courts. (See Precinct information page)

Step 4 - Fill out the Petition

The one-page small claims petition is easy to fill out. Be sure to fill it out completely before you file it with the courthouse. The following information must be in the petition.

Plaintiff: The legal name of the person or entity bringing the suit.

It is important that you provide the court with your day-time phone number and/or address. You must also notify them of any changes in your phone number or address.

Defendant: The legal name of the person or entity you are suing.

It is your job as a plaintiff and it is important that you understand that for any potential judgment you may perceive to be valid, it is necessary for you to sue the defendant in his or her proper legal capacity, of which there are typically three. Should you file against the wrong entity, you will have to begin again and possibly have to pay trial expenses caused by filing against the wrong party. (See Legal Capacity section)

Name of individual serving: This is always a person's name. If you are suing a corporation or other entity you must obtain the name of the agent for service. (See Legal Capacity page for information on how to locate an agent)

Damages: This is the amount you are suing for. This must be a dollar amount, and it cannot exceed \$5,000. This is the relief you are asking the court to grant you, so it must be in the petition.

Cause of Action: The act causing debt or damage. When filling out the petition, you must give a full description of the cause of action. The Defendant must be totally aware of why he is being sued. Be comprehensive enough with the allegations so that a third party having no knowledge of the suit could read the petition and understand your claim for damages. State the nature of the claim in a concise form without technicality, including important dates.

Signature: You must sign your name. If you file the petition in person, there is no need to notarize your signature. However, if you decide to mail in your petition, you must have your signature notarized.

Proof: You may attach copies of invoices, receipts or documents you intend to bring to the court. However, it is advisable that you keep personal copies of everything you turn over to the court.

NOTE: Before turning the petition in to the clerk, be certain that the petition is complete.

Step 5 File the Petition

File the petition in the appropriate precinct and pay the service fee. An additional fee is required to reach each defendant named in the lawsuit who needs to be served with a petition by the court. All fees in total will probably be around \$100. You must pay with in cash or money order. No personal checks are accepted. (See Fee Schedule)

Step 6 Defendant is served

When you have completed and filed the petition, a citation along with a copy of your petition will be served to the defendant notifying him that a suit has been filed against him in J. P. court.

Citation: The citation is an order signed by the judge. It orders the defendant to appear in court to file a written answer to the lawsuit on or before the Monday following the expiration of ten days from his receipt of the citation at 10:00 a.m.

Step 7 Defendant must file a written answer.

After the defendant is served, the defendant must file a written answer either denying any civil liability or acknowledging the debt. If he does not contest the petition, the defendant can make a separate agreement with the plaintiff that the judge will sign either before or at the hearing. If the defendant does not answer, the court will more than likely render judgment in your favor.

Step 8 Hearing is set by the Court

The earliest date on which a trial can be set is the 1st Monday following the expiration of 45 days. The court usually sets it within three to six months after the defendant is served with the citation.

Step 9 Request Subpoena of witnesses

If you have witnesses to your law suit who will not come to the court voluntarily, you may ask the court to subpoena those individuals prior to trial. Allow at least a week for service of the subpoena.

Subpoena: An order signed by the judge, ordering a person to appear in court as a witness or to bring documents. However, the order is limited to a 200-mile radius.

Notarized statements from individuals are of very little value. Personal appearances and testimony are much more beneficial. Any expert witnesses whose testimony you are going to need should be present in court. That's what a subpoena is for.

Step 10 Hearing

As a plaintiff, you have the burden of proof to show by the preponderance of the evidence. This means that you must demonstrate to the court that more likely than not, the defendant you are suing is the proximate cause of your damages in the legal capacity in which defendant is sued. All damages and evidence necessary to meet your burden should all be available at the time of filing and not later than the date of trial.

A judgment is nearly always made the same day of the hearing. If the defendant does not answer, the court will more than likely render judgment in your favor.

Step 11 Judgment

Once you have a judgment, the court does not collect the money for you, nor can the court force an indigent to pay the judgment. If you receive a judgment against the defendant, the court can issue various instruments to assist you in collecting the judgment. You may request an Abstract of Judgment, Writ of Execution, Writ of Garnishment and Turnover Order.

DEFINITIONS

The following are documents you may file after you have obtained a judgment from the court. These documents are designed to help you collect the money awarded to you in your judgment.

Abstract:

An abstract puts a lien on any real property the defendant may own in a particular county where the Abstract is recorded. This can be obtained ten days after the judgment has been signed.

Writ of Execution:

The Writ of Execution may be obtained thirty days after the judgment has been signed. This document authorizes the Sheriff or Constable to seize any assets belonging to the defendant that are subject to this writ. Those assets are then auctioned at a public sale and those proceeds are applied to the judgment.

Writ of Garnishment:

The Writ of Garnishment is also available thirty days after the final judgment has been signed. This Garnishment proceeding is a separate suit where you are the plaintiff and defendant's bank and/or a third party holding assets of judgment debts becomes the defendant. You are actually suing the bank and/or assets. You are ordering the bank or third party to freeze the monetary assets or non-exempt property and to appear and make answer to the Garnishment suit. An attorney is recommended for this.

Turnover Order:

A Turnover order is available before and or after the judgment is signed and its purpose is to provide a court-ordered means of reaching property which cannot easily be reached through ordinary legal process and which is not exempt from attachment, execution, etc. An attorney should be used because the courts clerical staff will not be able, by law, to assist you in drafting the documents that are necessary. This post judgment collection remedy is the most effective way of collecting judgment in most cases.

THREE DIFFERENT TYPES OF LEGAL CAPACITY IN WHICH YOU CAN SUE A DEFENDANT

A. Personally: Where an individual is responsible to you for damage he may have caused you as an individual.

B. Proprietor or Partnership: A business that is not incorporated, but does have on file with the County Clerk as assumed name, e.g. John Smith d/b/a Greenhouse Supplies.

* Records of assumed names certificates are kept in the Harris County Administration Building.

C. Corporation: The business which has allegedly caused you damage is incorporated and therefore, it is necessary to know the individual's name who is able to accept service on behalf of the corporation.

*To obtain this information you may call the Secretary of State whose phone number is 1-800-252-1386, ask for the Corporate Charter Division. Also for updated information, you may call the Secretary of State, The Comptroller's Office, whose number is 512-463-5555. Or you may go online and do your search at:
<http://www.sos.state.tx.us/corp/index.shtml>

NOTE: As a plaintiff, you also must sue in the legal capacity in which you were damaged.

FREQUENTLY ASKED QUESTIONS

1. Do I need an attorney to represent me in small claims court?

Answer: This type of suit does not warrant hiring an attorney; however, you are free to do so if you wish, as is the defendant. As the amount of the lawsuit increases, so does the need to have an attorney.

2. What is a Petition?

Answer: On the petition, you name the party or parties you are suing, the amount of the damages you are seeking and give an explanation of the lawsuit. It is recommended to attach copies of invoices or documents you intend to bring to the court so the defendant has an idea of the basis of the lawsuit, especially when you are suing a business.

In addition to making you swear in the petition that your claims are true, some courts will require you to sign a sworn acknowledgment that you understand the rules and process.

2. What happens if I file in the wrong precinct?

Answer: If you file in the wrong precinct, there is the possibility the defendant will challenge the location of the court hearing. If the case is transferred, you are responsible for the transfer fee.

3. Do I have to notarize the Petition?

Answer: If you file the petition in person, there is no need to notarize it. If you mail your petition, then it must be notarized.

4. Whose responsibility is it to serve the Defendant?

Answer: It is the court's responsibility. However, in your petition you must give the address where the defendant can be found. The more accurate the information in your petition, the more likely it is that the court will be able to serve the defendant quickly.

5. How important is it for the Defendant to be served?

Answer: It is essential. The defendant must have notice of the lawsuit and be given an opportunity to defend himself.

6. What should I do if I am not contacted regarding my court date?

Answer: You should wait about six weeks. If you have not heard anything within six weeks, call the precinct and check on the status of your case.

8. How long will it take to get a judgment?

Answer: A judgment is nearly always made the same day of the hearing.

Note that most courts will require that you send a demand letter to the Defendant BEFORE you file suit. Such a form letter is found below.

SAMPLE LETTER

[Date]

[Your Name] CMRRR No. _____
0000 Ripped Off Street
Houston, Texas 77000

Bad Guy Defendant
0000 Takum Drive
Houston, Texas 77000

Re: Damage to my property at 0000 Ripped Off Street by Bad Guy Defendant on
[Date]

Dear Mr. Defendant:

On {Date} I hired you to {issue with Defendant}. {Describe what Defendant's actions cost you} I am requesting reimbursement {describe what you want Defendant to do to avoid suit and settle}. Contact me if you have any questions.

If I do not hear from you within 30 days from receipt of this letter, I will file a petition with the Justice of the Peace Small Claims court in Harris County.

I look forward to working with you toward a resolution of this matter.

Very truly, [Your Name] Enclosure