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## **HOW TO SUE SOMEONE IN SMALL CLAIMS COURT**

If you feel an individual or a business has treated you unfairly and you believe you are owed money, there is something you can do about it. Acting on your own behalf, without the expense of an attorney, you can sue in small claims court for damages up to \$3,000. This brochure outlines the procedures you will need to know.

### **What is small claims court?**

The small claims court was established in 1968 as a division of the district court system. It was designed to resolve disputes quickly and inexpensively. However, in using small claims court, you will forfeit the right to a jury trial, the right to appeal an undesirable decision by the court, and the right to an attorney. A judge, or often a magistrate, will hear both sides and decide who is right. You have the right to have your case heard by a judge.

### **What actions may be brought to small claims court?**

Most non-criminal matters involving damages up to \$3,000 may be brought to small claims court.

Certain cases cannot be brought in small claims court: fraud, libel, slander, assault and battery, and other intentional torts. No suits against the state of Michigan are allowed in this court. Also you cannot sue in small claims court to make someone do something or stop doing something--only money awards are allowed.

The following are only a few examples of small claims court lawsuits:

- An auto repair service unsatisfactorily repairs your vehicle
- A dry cleaner damages your clothing
- A landlord refuses to return a security deposit
- You seek to recover up to \$500 in damages not paid for by an insurance company in an automobile accident where the other driver was more than 50 percent at fault.

### **How to start your lawsuit**

Before you consider going to small claims, you should be clear as to who you are suing and how much money you are requesting.

Unless the person or business you want to sue has substantial income or assets, it is probably not worthwhile to sue. Even if the judge holds in your favor, it would be difficult or impossible to collect on the judgment. Some income such as Social Security cannot be garnished to satisfy a court judgment. A significant number of small claims court judgments are never paid in full. The attached court brochure explains how a small claims court judgment is collected.

If you file a suit, you are called the plaintiff. The person or business you are suing is called the defendant. You can sue in the court district where the person you are suing lives or does business, where the business you are suing is located, or where the action giving rise to the dispute occurred.

Start by calling the district court in the county or city where the person or business is located. (The district court telephone number is listed in the telephone book under the governmental offices listing.) During the first telephone conversation with the district court, be sure to ask exactly how much the filing fee is, if there will be additional fees, and if you will need copies of your supporting evidence (usually documents). If you win the case, you will be entitled to be reimbursed for the costs of filing your suit. *Be sure to include the filing fee and any additional fees as part of the total amount in your claim.*

To file a claim against a person or business you must appear in person at the district court office. *Be prepared to pay all fees in cash.* You will be given instruction sheets explaining how the small claims division functions. Also, you will be given a form called “Affidavit and Claim” to fill out.

You will need to know the exact name and address of the person you are suing. If you are suing a business, you should know its *legal name*. Remember that businesses sometimes operate under an assumed name. You can call the county clerk’s office in the county where the business is located or the Corporation Division of the Bureau of Commercial Services (517-241-6470) for assistance in determining the legal name of the business.

### **Before the hearing**

The hearing is usually within 30 days from the time you filed your suit. During this time, the court will notify the defendant that you have filed a claim. This is called “serving the defendant” with a summons. At that time, the person or business you are suing has two options. The first is their right to ask that the case be heard in a higher court, which is the general district court. You will be notified if the defendant makes such a request. In the higher court, both parties have the right to be represented by an attorney; in the small claims court, attorneys are not allowed.

It is also possible that the defendant will offer to settle the dispute before the hearing. If you reach such a settlement, make sure that all the terms are put in writing and signed by both of you. Then file a copy of the agreement with the court. Once accepted by the court, the agreement becomes an official judgment of the court and enforceable by law.

The court will notify both you and the defendant of the date you both must appear in court.

After you file your case, you should carefully organize your presentation and evidence. It is a good idea to outline the major points you wish to make as you will want to present all the important facts clearly. Evidence can include such items as: bills of sale, receipts, leases, accident reports, photographs, repair bills or estimates, promissory notes, or contracts. Evidence may also be statements made by witnesses. If you do not have access to some of the evidence, you may ask the court to issue a

subpoena to produce the evidence. Additionally, if it is necessary to ensure a witness attends the hearing, a subpoena may be requested for that purpose. These subpoena requests should be made early in the 30-day period. The court may help in filing a subpoena request, but you would need to first ask for assistance.

If it is impossible for you to attend the hearing, be sure to let the court clerk know as soon as possible. The court may set an alternative hearing date. It is strictly up to the court.

## **The hearing**

Unless another location is specified by the court, the hearing will take place in the court where you filed your claim. Be there on time, and bring all your evidence and witnesses with you. Written statements by witnesses not present in the courtroom are generally not admissible as evidence so any witnesses who can testify in support of your case should be present. It is important that you take your time and in your own words tell what happened and why you think the defendant owes you money. Keep your testimony focused on the facts of the case. Show the judge the papers and evidence you brought, and introduce any witnesses, and advise the court what they can testify about. The witnesses will be allowed to tell the judge what they know about the case in their own words.

After you have finished, the defendant will have the opportunity to tell the other side of the case. Listen carefully! It is up to you to make sure all the facts are presented to the judge fairly and completely. If you think the defendant is leaving something out or not telling the truth, tell the judge, but not until the court tells you it's your turn to speak. The judge will want to hear all the facts before making a decision. Remember, this is *not* the time or place to express your anger. Try to be calm and polite, but firm.

If your case is heard by a magistrate, and you or the defendant are dissatisfied with the court's decision, either of you may request the case be reheard by the judge. Remember, *the judge's decision is final*. Neither you nor the defendant can take the case to a higher court once the judge has made a decision in the small claims division; there is no appeal.

You must attend the hearing, or your claim will be dismissed. If the defendant fails to attend the hearing, the court will usually grant a "default"

judgment. This means that the court decides in your favor even though the other side of the case has not been presented.

If the judge decides to rule in your favor, that means the defendant is required to pay you the amount ordered by the judge plus a small amount in court costs. If the defendant fails to pay within 21 days after the judgment, there are various options open to you. For a small fee, the court may be able to issue a writ of “garnishment”. This would mean that your payment would be taken out of the defendant’s wages or bank account. It is a good idea to try to learn the defendant’s social security number, place of employment, and employment identification number at your hearing.

If you were unable to obtain this information at the first hearing, you might consider bringing the defendant back into court to do just this. You would request that the court issue a “discovery subpoena,” or Order to Appear, which will require the defendant to appear in court and disclose information necessary for a writ of garnishment or attachment. At this time, it will be possible to find out about the defendant’s bank accounts and other assets. Again, this is a simple process and the court clerk will have the form for you to fill out. Unfortunately, court rules do not authorize this discovery power until after the court has awarded you a monetary judgment.

If the defendant has no job or bank account, you might choose to request a “writ of execution.” In this case, some property of the defendant might be seized and sold in order to pay your judgment.

If these avenues are not effective, you may be permitted to use these devices at a later time when the defendant has the ability to pay the judgment.

Small claims court judgments are good for six years. They can be renewed before the end of the six year period.

### **Points to remember**

1. Do not be afraid to go to small claims court. It is your court. If you feel you have a claim against an individual or a business which you cannot settle otherwise, take them to court. It is your right.

2. A big advantage of small claims court is you can argue the case yourself. Lawyers are not permitted to appear in these courts.
3. If you win your case, the defendant is obligated to pay you.
4. Decisions in the small claims division of district court cannot be appealed to a higher court.
5. Stand when speaking to the judge and never interrupt a witness or the judge.
6. Because of the requirement that the court remain impartial, neither the judge nor the court staff may render legal advice, but the clerk can answer questions about filing your documents.

### **Mediation: an alternative to court**

One possible alternative to using the Small Claims Court is the process of community mediation, which is available in all counties. Statistics from a recent study at Michigan State University revealed that an agreement to settle a dispute was reached in 82% of mediation cases and when a judgment was obtained, it was more likely to be paid (and sooner) than a judgment in Small Claims Court. Mediation is quick, convenient, cheap and effective. You can find out more about mediation in your county by calling (800) 873-7658.

*If you are a senior, you can get specific questions answered at the Legal Hotline for Michigan Seniors. Call 1-800-347-5297 (372-5959 for the Lansing area.)*

*The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank you.*