

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



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## 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. The court will likely have petition 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](http://www.tjctc.org/SRL)

Office of Court Administration Self-Represented Litigant Site:  
[www.txcourts.gov/programs-services/self-help/self-represented-litigants/](http://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](http://www.texasbar.com), and then click on “For The Public.”

Forms and Information, including for other types of cases - [www.texaslawhelp.org](http://www.texaslawhelp.org)

**JUSTICE COURT and SMALL CLAIMS COURT**  
**(Instructions and information regarding filing a civil suit)**

Justice Court suites are filed for the return of property or money judgments. Financial Institutions such as banks, credit unions and saving and loans or secondary credit card companies should file all their cases in this court.

Small Claims suites are for money only judgments. Financial Institutions are not allowed to file cases in this Court. Also an action in this court may not be brought by an assignee of the claim or other person seeking to bring an action on an assigned claim; or a collection agency.

1. The amount of debt, damages, or personal property for which you may sue in Justice or Small Claims Court may not exceed \$10,000.00.
2. In all civil cases, the defendant has the right to be sued in the county in which he resides. You must have a physical address (not just a post office box) for the Defendant in order for him/her to be served by an officer. Should you be filing a suit in a county where it is convenient for you, there may be a motion by the defendant to transfer venue. (a request to transfer the case to the county in which he resides.)
3. It is your duty as a Plaintiff it is important that you understand in order for any potential judgment you may receive to be valid, it is necessary that you sue the defendant in his or her legal capacity as listed below:

**PERSONALLY:** a person who is allegedly responsible to you for damage he/she may have caused you as an individual. (e.g. John Doe)

**PROPRIETOR OR PARTNERSHIP:** a business that is not incorporated, but does have a file with the County clerk and Assumed Name. (e.g. John Doe dba Greenhouse Supplies)

**CORPORATION:** If a business, which has allegedly causes you, damage is Incorporated, you must know the individual's name that is able to accept Service on behalf of the corporation. You may obtain the name of the authorized Agent for service from the Secretary of State at 800-252-1386 (e.g. Greenhouse, Inc serve John Doe)

4. If you are a corporation in the business of loaning money, either primarily (banks, credit unions, savings and loans) or secondarily (credit cards), an Attorney must represent you in this Court. If you are not included in one of the above categories, an attorney is permitted but not required.
5. Once you have filed a suit, this Court will give you a receipt showing your case number and the Judges business card with the office phone number so that you



may contact the court periodically to determine the progress of your case. **IT IS OF THE UTMOST IMPORTANCE THAT YOU REFER TO YOUR CAUSE NUMBER WHEN CALLING OR TRANSACTING BUSINESS WITH THE COURT.** Any changes of address or phone number must be supplied to the Court. It is imperative that you supply us with your daytime phone number.

6. When you have completed the petition stating the facts and circumstances of your suit, a citation, along with a copy of your petition will be served to the defendant notifying him/her that a suit has been filed against him/her in this Court. The citation will order the Defendant to appear in this Court or to file a written answer to the suit on or before the Monday following the tenth day after his/her receipt of the citation. If he fails to do so, you then become eligible for a default judgment.
7. If the defendant answers the suit, a trial date will be set. The Plaintiff and Defendant will be sent notice by mail of the court date. We discourage motions for continuance, however, if it becomes necessary, any requests for continuance must be in writing and timely filed, at least 5 working days prior to the trial date: to wit, written request supported by an affidavit.
8. If you have witnesses to your suit who will not appear in Court voluntarily, you may ask the Court to subpoena those individual prior to trial. This request should be filed at least two weeks prior to trial so that the witness may be located and served. Notarized statements from witness are of very little value because the statement cannot be cross examined. The witness should appear and testify, it is much more beneficial to your case.
9. This Court does not collect the judgment for you, nor can we force the defendant to pay the judgment. If you receive a judgment for your claim against the defendant, you may request an Abstract of Judgment and /or Writ of Execution to help you in your collection of this judgment.

An abstract of Judgment may be obtained ten (10) days after the judgment is signed. This puts a lien on any real property the defendant may own in the County where the abstract is filed. The Abstract must be filed with the County Clerk in order for this lien to be public record. This Abstract may be filed in every county that the defendant owns property.

A Writ of Execution may be obtained thirty (30) days after the judgment is signed. This document authorizes the Constable or Sheriff to seize any assets belonging to the defendant **THAT ARE NOT EXEMPT**. Those assets are then sold, and the proceeds are applied to the judgment.

10. As a plaintiff YOU have the burden of proof to show by the weight of evidence that the defendant is the proximate cause of your damages in the capacity which defendant was sued. All damages and evidence necessary to meet your burden should be available at the time of filing.
  
11. If you have any other **procedural questions**, please ask the Court Clerk and she will try to answer them. **NO LEGAL QUESTIONS MAY BE ANSWERED BY THIS COURT.**

**FILING FEES:**

Small Claims and Justice Court .....	\$46.00
<b>SERVICE FEE:</b> .....	\$75.00
(this is for Franklin County; Prices vary from County to County.)	
<b>JURY FEE:</b> .....	\$5.00
<b>ABSTRACT OF JUDGMENT</b> .....	\$5.00
<b>ISSUANCE OF WRITTS</b> .....	\$5.00
<b>SERVICE FEE:</b> .....	\$125.00
<b>SUBPOENAS</b> .....	\$5.00
<b>SERVICE FEE:</b> .....	\$75.00