

## **WHAT CAN YOU SUE FOR?**

In Small Claims Court, you can sue for damages to personal property, money owed, or for delivery of personal property which is worth \$5000.00 or less. If you sue for money damages, the maximum you may claim is \$5000.00.

## **HOW DO I FILE A COMPLAINT?**

The District Court Clerk's office has complaint forms for you to fill out to begin the process. The information you must provide on the complaint includes the name and address of the Plaintiff (the person filing the complaint) and the Defendant (the person being sued), the amount of money being claimed or a description of the property to be recovered, and a brief description of why the Plaintiff believes the Defendant owes him money or the property claimed.

## **HOW LONG MAY YOU WAIT BEFORE FILING A COMPLAINT?**

The length of time you have to file depends upon the type of claim you are bringing. If a written agreement has been broken or breached, you have five years after it was broken to file your complaint. If an oral agreement or contract, rent, or injury to goods is involved, then you usually have three years to file your claim.

## **ARE ATTORNEYS INVOLVED IN SMALL CLAIMS?**

No attorney or persons other than the Plaintiff and the Defendant are allowed to take part in filing, prosecuting, or defending a small claims case. If an attorney becomes involved in a small claims case, the Judge will transfer the case to the Civil Division of the District Court.

## **WHERE DO YOU FILE?**

You may file in the county where a contract was to be performed, where property was damaged, or where the Defendant resides. If you are unsure of which county, file it in the county where the Defendant resides.

## **HOW MUCH DOES IT COST?**

The filing fee for a small claims case is \$65.00 which must be paid at the time of filing. The cost of serving notice to the Defendant is extra. If the Plaintiff wins his case, the Defendant may be ordered to pay the Plaintiff the filing fee and the cost incurred to serve the Defendant.

## **WHO CANNOT SUE IN SMALL CLAIMS COURT?**

Collection agencies or any person, firm, partnership, association, or corporation engaged in the business of lending money for interest **may not** sue in small claims court.

Other than corporations who lend money for interest, Arkansas corporations with 3 or fewer stockholders, with 85% or more of the voting stock held by persons who are related within the third degree, or those defined as closely held corporation may appear in small claims court if they are represented by an officer of the corporation. Their Articles of Incorporation must be on file with the court for the Judge to examine.

### **CAN A SMALL CLAIMS CASE BE TRANSFERRED TO ANOTHER COURT?**

If an attorney becomes involved in the case, the Court will automatically transfer the case to the Civil Division of the District Court. If the Defendant counter sues for more than \$5000.00, the Court may transfer the case to Circuit Court.

### **ONCE A CASE IS FILED, WHAT DO YOU DO?**

When the complaint is filed, the clerk will assign a court date for the Judge to hear your case. It is the responsibility of the Plaintiff to have the Defendant served with a copy of the complaint.

There are three acceptable ways to have the complaint served. The first is by having the Sheriff of the county where the Defendant lives serve a copy of the complaint to them. The Sheriff will charge a fee to do this and if the Plaintiff wins his case the Defendant may be ordered to pay him those costs.

The second form of acceptable service is through a private Process Server. The clerk has a list of those approved by the Court to serve papers for the Court. The Process Server will charge a fee to do this and if the Plaintiff wins his case the Defendant may be ordered to pay him those costs.

The third acceptable form of service is by Certified Mail. If Certified Mail is used, it must be by return receipt signed by the addressee only. If the Plaintiff wins his case the Defendant may be ordered to pay him the cost for service by Certified Mail.

### **WHAT HAPPENS ONCE THE DEFENDANT IS SERVED?**

Once the Defendant is served, he has 30 days to file a written response with the Court. This response may be in the form of an Answer, a Counterclaim, or a Setoff. The clerk has these forms for the Defendant to complete. An Answer is the Defendant's response to the Plaintiff's Complaint. The Defendant may answer that he agrees with the Plaintiff's Complaint, that he agrees partially with the Complaint, or that he totally denies the Complaint. A Counterclaim is a claim for damages by the Defendant against the Plaintiff and arises from the same set of circumstances on which the Plaintiff filed his lawsuit. A Setoff is a special type of counterclaim which arises out of a different set of circumstances than those on which the Plaintiff filed his lawsuit.

If the Defendant files a Counterclaim or Setoff, he must file it with the Clerk and he must bear the cost of service of the Plaintiff with a copy of the papers. If the

Defendant wins his case on the Counterclaim or Setoff, he may be granted the recovery of those costs from the Plaintiff.

### **WHAT HAPPENS IF A PARTY FAILS TO SHOW UP ON THE DATE THE COURT HAS SET TO HEAR THE CASE?**

If the defendant fails to appear or answer, the Judge will enter a Default Judgment for the Plaintiff based upon the damages he presents to the Court.

If the Plaintiff fails to appear, the Court will dismiss the Plaintiff's case. If there has been a Counterclaim filed by the Defendant, and the Defendant has appeared, the Court will enter a Default Judgment for the Defendant on the Counterclaim based upon the damage he presents to the Court. In some cases the Court may allow the Plaintiff to re-file his case but the Plaintiff will be required to pay a new filing fee and costs of service.

### **WHO HAS THE BURDEN OF PROOF?**

The burden of proof is on the Plaintiff on his Complaint and on the Defendant on his Counterclaim. A case is proven by a preponderance of the facts presented. A preponderance of the facts means that the party with the burden of proof must present more convincing evidence in favor of his argument than is offered against his argument.

### **HOW DO YOU PROVE YOUR CASE?**

#### **1. Witnesses**

Find all witnesses who can testify for you and bring them to Court with you on the date set for trial. If they refuse to cooperate, you may obtain a subpoena from the court clerk. A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter.

#### **2. Subpoenas**

If subpoenas are requested, the Plaintiff or defendant must provide a list of witnesses, addresses, and telephone numbers to the clerk. There are additional costs for issuing and serving subpoenas.

#### **3. Evidence**

Besides witnesses, you should find other evidence to prove your case. You must bring all of the evidence with you to Court on the date of your trial. Anything not brought with you will not be considered by the Judge. You may bring written documents, pictures, or anything else you think may help prove your case. If a witness has told you something that is helpful to your case, you **can not** tell the Judge what the witness said or present a written statement of what the witness said. The witness must be present to speak for himself.

## **HOW SHOULD YOU CONDUCT YOURSELF IN COURT?**

All questions and statements should be directed to the Judge. **Do not** talk to the **other party**. The Judge will ask for the evidence and the witnesses when he is ready. **Do not interrupt** the Judge and avoid saying or doing anything to anger or irritate the Judge or the other party.

Show up prepared to present your side. The purpose of small claims court is to provide an inexpensive and speedy method of hearing your case.

## **CAN YOU APPEAL THE JUDGE'S DECISION?**

Yes. The appeal must be filed within 30 days from the date the small claims judgment is entered on the Court's docket. All appeals are filed at the Circuit Court of the county where the small claims court is located. A transcript must be obtained from the small claims clerk and the judgment will have to be certified also the file will have to be copied and filed with the Circuit Clerk. There are fees for these services as well as a filing fee at the Circuit Court.

## **ONCE YOU GET A JUDGMENT, WHAT DO YOU DO?**

The Court only decides who should prevail in a given lawsuit. Courts are only responsible for deciding suits and not for enforcing their decisions. It is the winner's responsibility to make sure the loser pays the amount the Judge orders. If you have trouble collecting the money the Judge has found you are entitled to, there are two possible actions available to you: a writ of garnishment and a writ of execution.

A writ of garnishment is an order to someone who is holding money for the Defendant such as a bank or an employer. If the writ of garnishment is issued to an employer to obtain some of the Defendant's wages, the maximum you may get is 25% of the Defendant's wages. Sometimes a Defendant's low wages may prevent you from being able to garnish his wages or may allow you to receive only a small amount of money at a time.

The writ of garnishment is filed with the small claims clerk and the clerk has the forms to be used. There are additional fees that must be paid and these costs will be added to the amount the Defendant owes you.

After the writ of garnishment is served upon the bank or employer, the employer or the bank has (30) thirty days to file a response with the Court. If they fail to file a response, you may request in writing for the Judge to set a hearing to enter a judgment against the employer or bank for the full amount specified in the original judgment plus costs.

A writ of execution is an order telling the sheriff to take property owned by the Defendant and sell it at public auction for you to get your money. You should only use a

writ of execution if there is no other means of collection your money because it is a very complicated process. The small claims clerk has the forms to do a writ of execution. Not only are there additional fees for the writ and service, you are responsible for all costs incurred by the Sheriff's office including storage while the property is held.

### **CAN YOU CALL THE COURT FOR ADVICE?**

**The court clerk can not give legal advice. The clerk can only answer procedural questions. If you have legal questions, please consult an attorney.**

### **INSTRUCTIONS FOR FILLING OUT COMPLAINT FORM**

1. Fill out completely the Plaintiff and Defendant Information including full addresses and telephone numbers. Without full addresses you may not be able to perfect service on your defendant(s).  
**\*\*Remember if you are filing the complaint you are the plaintiff\*\***
2. Fill out the rest of the information to the best of your ability and sign the complaint.

**Also any copies or forms or anything you wish for the Judge to look at before court you will have to give the court a copy to give to the Judge and you will need to give the court a copy for each defendant listed.**

**\*\*\* THE COURT DOES NOT MAKE COPIES\*\*\***

SCHEDULE FOR FEES IN SMALL CLAIMS/CIVIL

TO FILE SMALL CLAIMS .....	\$65.00
TO FILE CIVIL CLAIMS .....	\$80.00
<u>TO HAVE A CLAIM SERVED VIA:</u>	
CERTIFIED MAIL .....	\$12.00 PER DEFENDANT
SHERIFF FEE .....	\$50.00 PER DEFENDANT
<u>OTHER FEES:</u>	
WRIT OF GARNISHMENTS .....	\$10.00 PER GARNISHEE
TRANSCRIPTS .....	\$10.00
CERTIFIED COPY OF JUDGMENT .....	\$10.00
CERTIFICATE OF AUTHENTICITY OF JUDGMENT .....	\$10.00
WRIT OF EXECUTION .....	\$10.00
SERVICE OF WRIT OF EXECUTION BY SHERIFF .....	\$120.00
<u>SUBPOENAS</u>	
COURT FILING FEE .....	\$10.00
WITNESS FEE .....	\$30.00
SHERIFF FEE FOR SERVICE .....	\$50.00
WRIT OF EVICTION/POSSESSION .....	\$65.00