

WHAT IS SMALL CLAIMS COURT?

Information Provided by
GRANT MALOY
CLERK OF THE CIRCUIT COURT AND COMPTROLLER
SEMINOLE COUNTY, FLORIDA

ATTENTION:

WHEN FILING A LAWSUIT, PLEASE PROVIDE THE FOLLOWING:

- One (1) self-addressed, stamped envelope (for you, the Plaintiff)
- One (1) stamped envelope addressed to the Sheriff's Office in the County where the Defendant currently resides (not needed if the Defendant resides in Seminole County)

WHAT IS SMALL CLAIMS COURT?

Small claims court is a common term used to describe a procedure, which simplifies the court process used for resolving civil disputes valued at \$8,000 or less, excluding court costs, interest and/or attorney's fees, if applicable. Small claims cases are heard in the civil division of the county court.

In Florida, the special rules of procedure, which are used in small claims cases, are called the Florida Small Claims Rules, and may be abbreviated as "Fla. Sm. Cl. R." These rules serve to make the small claims court process simpler, speedier and more informal than the regular civil court process. These rules are published in the Florida Rules of court and can usually be found at any public library or law library. If you are not familiar with the Florida Small Claims Rules, you should read them for your own information prior to going through the small claims process.

A basic goal of the small claims process is to enable any person or business to resolve their small civil disputes through the court system without having to go through a trial.

WHO MAY SUE IN SMALL CLAIMS COURT?

Any person eighteen (18) years of age or older may file a lawsuit in small claims court. A person under eighteen (18) years old may also sue in small claims court, but only if his/her parent(s) or guardian(s) files the suit for him/her. A business, whether owned by an individual, partnership or a corporation, may also file a lawsuit in small claims court.

WHEN TO USE THE SMALL CLAIMS COURT

If someone owes you money and will not pay you or, has your property and will not return it, you may be able to resolve the problem by taking your case to small claims court. However, prior to filing a lawsuit in small claims court, you should consider talking with the other person or sending him/her a letter(s) to attempt to reach a solution to your dispute. If your attempts to reach a satisfactory settlement fail, then you might consider going to small claims court.

When considering whether to file a lawsuit in small claims court, you should ask yourself the following questions:

- Have I tried all possible and/or reasonable means to reach a resolution to this problem?
- Do I have a valid legal claim against the other party?
- Do I have, or can I get, the necessary evidence I need to prove my claim in court?
- Is the amount of money or property in dispute \$8,000 or less? (i.e. is the small claims court the proper court to sue in?)
- Do I know the correct legal name and address of the other party?

If the answers to the above questions are all "yes", then you might have a good basis for filing a lawsuit in small claims court.

An attorney could advise you on the validity of your claim as well as on what evidence you will need to prove your claim. Therefore, if you feel it is necessary to use an attorney, feel free to contact one. In most cases you may ask the court to include the attorney's fee in the amount of the judgment if you win your case.

WHERE TO FILE YOUR CASE

The law gives the person or company who is suing the right to file suit in any one of several places as listed below. If you sue in any place other than one of these places, the court may enter an order transferring the case to another county. You might then be responsible for paying filing fees in that new county. A proper location may be one of the following:

- Where the contract was entered into;
- If the suit is on an unsecured promissory note, where the note was signed or where the maker of the note resides;
- If the suit is to recover property or to foreclose a lien, where the property is located;
- Where the event giving rise to the suit occurred;
- Where any one or more of the defendants being sued resides;
- Any location agreed to in a contract;
- In an action for money due, if there is no agreement as to where suit may be filed, where payment is to be made.

HOW TO FILE YOUR SMALL CLAIMS SUIT

Begin by filling out a complaint form, called a "Statement of Claim", at the clerk's office. You must have the proper name and address of the party you are suing (see below for style of case, corporations, partnerships, etc.) The clerk, at your request, can assist you in preparing the Statement of Claim and any other documents, which you may be required to file to start the lawsuit. However, this does not include filling out the Statement of Claim, that is your responsibility. The Statement of Claim should include a brief, clear, concise explanation of the issues surrounding your lawsuit and the amount for which you are suing.

If the claim is based upon a written document(s) (such as a promissory note, sales contract, lease, repair bill, etc.), you should consider having copies of it to attach to the Statement of Claim and copies for each defendant.

A filing fee will be due when you file your lawsuit. The fee will be based on the value of your claim.

**GENERAL INFORMATION FOR FILING A SUIT IN SMALL CLAIMS REGARDING: STYLE OF CASE,
CORPORATIONS, PARTNERSHIPS, SOLE PROPRIETORSHIPS AND FICTITIOUS NAMES**

STYLE OF CASE

It is important that the names of the plaintiff(s) and defendant(s) are listed on the Statement of Claim (the complaint) correctly (known as the style of the case). Below is information you should know if you are considering suing someone other than an individual(s).

CORPORATIONS

Corporations may own property in its name, may buy and sell, or bring and defend suit(s). Corporations are treated under the law as an individual with all the same rights and responsibilities. The law sets forth certain requirements in forming corporations which include designating a certain person(s) legally responsible to accept service of process (see “Procedures for Notifying Defendant” for explanation of service of process). These people are called **registered agents** (sometimes referred to as corporate officers).

A plaintiff should make every effort to learn if a business he/she is suing is a corporation, the names of the corporate officers and the registered agent. This may be done by calling the division of Corporations in Tallahassee, Florida at (850) 488-9000 or by researching SUNBIZ.org.

EXAMPLE OF A CORPORATION LISTED AS A DEFENDANT

American Universal Whatzit Corporation
By serving Ed Berryhill, Registered Agent
1000 First Street
Yourtown, Florida 32749

PARTNERSHIP

A partnership is an unincorporated business owned by two (2) or more people. Anyone bringing suit against a partnership should consider suing ALL responsible parties in the partnership.

EXAMPLE OF A PARTNERSHIP LISTED AS A DEFENDANT

Jim Smith and Harry Jones d/b/a
Fantastic Cleaners
2000 Elm Street
Yourtown, Florida 32749

SOLE PROPRIETORSHIP

A sole proprietorship is an unincorporated business owned by one (1) person. If this type of business is sued, the name of the owner and the name of the business should appear in the style of the suit.

EXAMPLE OF A SOLE PROPRIETORSHIP LISTED AS A DEFENDANT

Mary Akron d/b/a
Tiffany Decorating Shop
329 S. Flamingo Court
Yourtown, Florida 32749

FICTITIOUS NAMES

Fictitious names are names of businesses which do not reflect who owns the business. Example: Fantastic Cleaners and ABC Decorating Shop would be fictitious names since the owner(s) name does not appear. Harris' Auto Body Shop would not, if a man named Harris owned it. People doing business under a fictitious name are required to register with the Division of Corporations, Department of State, Post Office Box 6327, Tallahassee, Florida 32314. If you are contemplating suing a business that is not a corporation and are unsure how the business should be listed (style) in the suit, you may call the Division of Corporations in Tallahassee, Florida at (850) 488-9000. NOTE, a sole proprietorship name may be listed under a fictitious name. Refer to the examples shown above on how the style should read for a fictitious name when it is either a sole proprietorship or a partnership.

PROCEDURES FOR NOTIFYING DEFENDANT(S)

After you have completed the Statement of Claim form, the next step is to have the defendant(s) officially notified that a lawsuit has been filed against him/her/them. This notification procedure is called "Service of Process." The Statement of Claim is attached to a "Notice to Appear" form (a summons) and these papers are sent to the defendant(s). This can be accomplished in one of two (2) ways.

One (1) method of service of process is by **mail**. You can have the clerk send the lawsuit papers to the defendant(s) by certified mail with a return receipt requested so that the delivery is restricted to the defendant(s), or someone authorized to receive mail at the residence or principal place of business of the defendant(s).

There is a fee that you must pay the clerk if you want service by mail. Again, if you win your case, you may be able to recover your court costs from the losing party. In Seminole County, certified mail service cannot be utilized to serve a corporation nor can it be used to serve process on defendant(s) who reside outside the State of Florida pursuant to Rule 7.070, Florida Small Claims Rules.

If mail service is not desirable or if it proves to be unsuccessful, you may want to pay the Sheriff's Office to attempt **personal service**. This means that the sheriff will try to serve/deliver the suit papers to the defendant(s) at their home or place of employment for a specific fee. If the defendant(s) live(s) in another county, you can have the sheriff of that county attempt service for you.

It is suggested you review **Chapter 48, Florida Statutes**, for complete information regarding “Process and Service of Process,” or you may wish to consult an attorney.

NOTICE TO APPEAR

You should, at the time you file your small claims lawsuit, receive a case number and notice of the date, time and place the “preliminary hearing” will be held. The preliminary hearing (sometimes called a pretrial conference) is **not** a final hearing or trial. The purpose of a preliminary hearing is to determine the real issues in dispute.

If the defendant(s) fails to appear at the preliminary hearing, the court might enter a default against them after it is shown to the judge that the suit was filed in the proper county and the defendant(s) was/were legally notified. If the judge feels there is sufficient evidence to show the damages claimed in the lawsuit are accurate, the Final Judgment might be entered by the court against the defendant(s), after an affidavit is filed.

If the defendant(s) **does/do** appear at the preliminary hearing and **admits** they owe you the money/property, the case could possibly be settled. If the defendant(s) need(s) time to pay you and you agree to the terms, the court may enter a stipulation. The stipulation will spell out the terms and conditions for settling the case later.

If the defendant(s) appear(s) at the preliminary hearing and **deny/denies the claim**, the judge will ask them why they do not feel they owe(s) the money/property. If they do not have a valid legal defense or reason for not owing the money, a judgment could be entered against them at this point. If the defendant(s) appear(s) to have a legal defense, the judge will usually ask the parties again if they could possibly reach a compromise settlement without going to trial. If not, the judge will normally use the remainder of the preliminary hearing as a “pretrial conference.”

WHAT WILL HAPPEN AND HOW TO PROCEED AT THE TRIAL

You should be present and prepared to present your case at the time and date set for your final hearing (trial). You should have with you all of the evidence you are going to present at the trial. Evidence may be marked and kept by the Clerk’s office, therefore make sure any evidence presented is not something that you need to leave with. Your witnesses need to appear in person. If you have reason to believe that your witnesses will not appear voluntarily, you may need to have them subpoenaed. The appropriate form is available at the clerk’s office. **Allow ample time for service of the subpoena(s)**. This will afford your witnesses time to make appropriate arrangements to accommodate a court appearance.

At the trial the judge will ask you, the defendant(s), and the witnesses to tell the facts of the case and to present the evidence and proof. The judge may or may not ask questions of each party after they tell their side of the story. Generally speaking, a small claims trial is informal and the judge will simply try to get all of the facts from the parties to make a decision.

Following are some general suggestions on how to conduct yourself during the trial:

1. **Be on time.** If you do not show up on time and the judge has already called your case, it might get dismissed.
2. When presenting your case before the judge, **stick to the issues** in dispute and avoid being long-winded.
3. **Be polite** and **courteous** at all times. Do not interrupt the judge, the defendant(s) or any of the witnesses at any time. There should be no shouting or name-calling during the trial.
4. If you do not understand something during the trial, when it is your turn to speak, ask the judge.
5. Offers to compromise or settle the dispute **during** the trial may be made by the defendant(s) or suggested by the judge. Do not quickly turn down offers to settle. Think about them. Sometimes it may be in your best interest to accept a settlement.

At the end of the trial the judge will normally announce their decision. However, sometimes the judge will want to take additional time to review the evidence or research case law before they enter a final judgment. This is called taking the case “under advisement.” When this occurs, you will receive a copy of the final judgment in the mail after the judge makes their decision.

If either party is unhappy with the court’s decision, they may file a **written** “motion for a new hearing” with the court. The court will rule on the motion by deciding whether or not there are grounds for a new hearing.

An unsatisfied party also has the right to appeal a judgment to the Circuit Court. There will be extra costs involved in filing an appeal. It should be noted that the procedures for appealing a judgment are often very detailed and complex; therefore, consider consulting with an attorney.

JUDGMENTS

A judgment having been obtained, the battle is only half won. Next comes collecting it.

Assuming that the defendant(s) choose(s) not to pay the plaintiff voluntarily, the plaintiff must seek to discover what assets the defendant(s) has/have that can be reached. Once such assets are found, proceedings must be undertaken to reach them to satisfy the judgment. The following section will provide you information and remedies for collecting on judgments.

COLLECTING ON JUDGMENTS

A judgment has been entered in your favor. How do you now go about collecting on this judgment? What remedies for collection are available to you? Following are brief explanations of the most frequently used methods of collection. If, after reviewing this information, you feel you need legal advice, we suggest that you contact an attorney.

RECORDING A CERTIFIED COPY OF A JUDGMENT

Obtain a certified copy of your judgment from the clerk of the court (cost is \$1.00 per page plus \$2.00 to certify the document) and record it in the county where the judgment debtor, hereinafter referred to as the defendant, owns real or personal property. There will also be a cost to record the judgment. To locate real estate, you would examine the property records, recording division, office of the clerk of the court. Since real estate records are complicated, requiring knowledge of how the records are kept, you may wish to employ a person skilled in such matters to research the records for you. If the defendant owns real estate in more than one (1) county, you may wish to record the judgment in each of these counties. When a certified copy of the judgment is recorded, the judgment, in most instances, can act as a cloud or defect on the title of the real estate and the personal property located in that county. To sell the property, the cloud must be removed. This means all judgments clouding the title of the property must be satisfied.

EXECUTIONS

Once you get your judgment, you should consider getting a judgment lien by recording a Judgment Lien Certificate with the Department of State. To get the proper form you must go to the internet to the department's website: www.sunbiz.org or you may call the Department of State at (850) 245-6039.

GARNISHMENTS

Garnishment is the taking of property of a defendant that is in the hands of a third party, the garnishee (for example, an employer), and applying the property to satisfy the judgment. The plaintiff secures by garnishment the right to have the debt owed by the garnishee to the defendant paid by the garnishee to the plaintiff.

Perhaps the most familiar form of the garnishment is the process by which the plaintiff attaches the wages of the defendant, compelling the employer (garnishee) to turn earnings over to the plaintiff. **NOTE** – Earnings subject to garnishment are limited to 25% of the defendant's disposable earnings (earnings after taxes and social security withholdings) for that week, or the amount by which his/her disposable earnings for that week exceed 30 times the federal minimum hourly wage in effect at the time the wages are payable, whichever is less.

Garnishment is not limited to wages. Any money, chattels (articles of personal property) or effects of the defendant held by a third party may be subject to garnishment. Money in bank accounts may be garnished, as may household furnishings, automobiles or any type of personal property that is in possession of someone other than the defendant.

It should be noted that a defendant is entitled to certain exemptions that would affect a garnishment action if this option is being considered.

EXEMPTIONS

1. If determined by the Court to be the Head of a Household, the defendant's salary or wages would be exempt.
2. Land on which the defendant makes his/her homestead.
3. One thousand (\$1,000.00) worth of personal property.

If you wish to proceed with a garnishment action, you would file a Motion for Garnishment (obtained from the Summary Claims Division, Office of the Clerk of the Court). There is a fee involved for filing a garnishment action. However, you could possibly recover this fee from the defendant. Once filed, a Writ of Garnishment is issued to be served on the garnishee, along with the "Notice to Defendant of Right Against Garnishment of Wages, Money and Other Property"; and, "Claim of Exemption and Request for Hearing" forms. The garnishee would file an answer stating money owed the defendant or personal property being held, if any. Since, by law, you can recover only a percentage of the money each time you garnish, you may find it necessary to file several times before the entire amount of the judgment is recovered.

It should be noted that none of the remedies will assure you of immediate recovery of the money due you from the judgment.

SATISFACTION OF JUDGMENT

When your Final Judgment is paid in full (i.e., satisfied), you are required to acknowledge, and record a Satisfaction of Judgment. (Florida Statute 701.04) The Satisfaction of Judgment form is available from the clerk's office.

CONCLUSION

In closing, we hope that you have found this booklet helpful in navigating the small claims process. Please contact our office at 407-665-4300 with any questions or concerns.