

SMALL CLAIMS GUIDE

DISCLAIMERS

This Consumer Guide to Small Claims will *NOT*...

1. Provide you with any legal advice;
2. Make you an authority on Small Claims;
3. Guarantee you will win your case or collect judgment;
Take the place of an attorney; or
4. Even answer all of your questions.

But the Consumer Guide *SHOULD*...

1. Help you understand the Small Claim's process;
2. Provide step-by-step guidance through numerous procedures;
Increase your chances of collection (if you win).

WHAT IS SMALL CLAIMS COURT?

Small Claims Courts were created by the Ohio Legislature to permit easy access to Court for persons with disputes involving relatively small amounts of money. Cases are typically heard by a Magistrate.

WHAT DOES IT COST?

The filing fee is \$60.00 for claims up to \$3,000 and \$120.00 for filings \$3,000.01 to \$6,000 if you file against one defendant, and \$20.00 for each additional defendant. If you win your case, the defendant(s) will probably be ordered to pay the court costs back to you in addition to the amount of your judgment.

IS A LAWYER REQUIRED?

A lawyer is not required in most circumstances. If you are a business filing a claim you may want to seek legal counsel for advice as to whether you need to be represented by legal counsel or not. If your business is registered as an Ohio Limited Liability Company (LLC) or Corporation (Inc. or Co.) you are required to be represented by a licensed attorney in order to proceed with your case. One objective of Small Claims is to make it possible for individuals to argue their own cases without the added expense, and the procedures are not as strict as those in regular court.

NEED A LAWYER?

If you need an attorney but do not know where to turn, call the Dayton Bar Association (937) 222-6102. The Bar's *Lawyer Referral Service* will provide a name from a list of attorneys.

WHAT KINDS OF CASES ARE HEARD?

Small Claims can only decide claims for money. The Small Claims Magistrate cannot order a defendant to do anything other than pay a specific sum of money. So, you must be able to put a price tag on any damages you have suffered as a result of the defendant's actions. (See section below on determining your damages.)

Small Claims does NOT have jurisdiction in such actions as libel, slander, repossession or any other kinds of cases which do not involve actual monetary damages. If you have a dispute with your mechanic, for example, you can base an action on your bills or the estimated cost of redoing his work. However, you cannot ask the court to make the mechanic fix your car or release it before payment of a bill. Typical cases involve contract disputes, rental security deposit claims, accident damages, etc. Small Claims is also used by many merchants to sue consumers who have defaulted on loan agreements. The following are examples of some of these typical cases.

RENT DEPOSITS

If your case is against a landlord for not returning a rent deposit, you could ask for and be awarded double damages if you can prove:

1. You gave proper notice before leaving and left a forwarding address; and
2. Thirty days after you moved, the landlord still had not returned your deposit nor provided an itemized statement of damages to you.

If you can prove the landlord's damage claim (although sent within 30 days) is false, you may still claim double damages.

The right to double damages for wrongfully withheld security deposits is detailed in Section 5321.16 of the Ohio Revised Code.

DECEPTIVE SALES

Ohio's basic consumer protective law, *The Consumer Sales Practices Act* (CSPA), includes a set of "substantive rules". These rules explain the specific consumer rights on various kinds of transactions. Small Claims has the authority to hear cases in which a consumer claims a rule has been violated and to grant judgments equal to the greater of \$200 or triple the amount of actual damages.

DETERMINE YOUR DAMAGES

Since you can only collect money from a Small Claims action, it is very important that you put the right price tag on your claim. For example, if you are suing for damages to your car from an accident, you will have to determine the value of your car just before the accident and what it is worth to you after the accident. To determine the value before the accident, you could use a “blue book” or some other such guide to appraise your car’s worth. To determine your car’s worth after the accident, you could get repair estimates. (Photographs may be helpful to the Magistrate.)

For example, you determine your car was worth \$1,500.00 before the accident. After the accident you feel your car is worth only \$500.00. Therefore, your damage claim would be \$1,000.00.

FILING YOUR CASE

Make sure you know the true, legal name of the person or business you intend to sue. If you sue the wrong party, the case may be dismissed (thrown out), or you could wind up with an uncollectible judgment.

A common mistake is for a tenant to sue the resident manager for the return of a rent deposit when he/she should have sued the owner of the building. A similar mistake would be for a customer of a repair shop to sue the mechanic instead of the shop owner.

A similar problem can result from suing a business name (such as NM’s Car Repair) without making sure it is the legal name. Unless the business is actually incorporated under that name, there may be no chance of collection, even if you win.

An unincorporated business (sole owner or partnership) must be sued in the personal name of the owner or partner, i.e. Joe Smith dba Smith’s Auto (dba means “doing business as”). Only a corporation (NM Car Repair, Inc.) can actually be sued in the company’s name. If you are unsure whether the business is incorporated, call the Ohio Secretary of State at (614) 466-3910. If incorporated, get the name and address of the statutory agent. You may discover the business name is totally different from the actual corporate name, and it is the corporate identity you

should be suing.

Finally, as a general rule, you should seek to sue a person or business in the city in which he/she or it resides or does business.

HOW AND WHERE TO FILE

Once you have determined whom you are going to sue and how much, go to the Clerk of Courts Office to fill out a Small Claims complaint form, or download a Small Claims complaint form from the Court's website. The complaint form must be filed at the Clerk's Office. The Clerk's Office is located inside the Miamisburg Civic Center at 10 N. First Street, Miamisburg, OH. You will pay the appropriate court fees when you file your case, or you may also pay and file through our **E-file system** to avoid mailing or a trip to our courthouse. The Clerk and Deputy Clerks are not attorneys and cannot give you legal advice.

NO SERVICE... NO CASE

Until the defendant has been served (received) a court summons, nothing can happen. The best case in the world is worthless if you cannot obtain service on the defendant. Listed below are the three ways service can be attempted.

1. Certified mail is tried first. Should the Postal Service return that letter to the Clerk of Courts marked as refused or unclaimed, you will be notified of the "failure of service". The next move is up to you.
2. You can ask the Clerk to try serving the defendant with "regular mail" if the certified mail is returned from the post office refused or unclaimed. If the summons letter is not returned it is assumed to have been served.
3. If all else fails, a Court Bailiff/Sheriff will attempt personal service of the summons for an additional fee.

BEWARE!

Unfortunately, filing suit in Small Claims does not guarantee the case will be heard there. Any

defendant has the right to ask that the case be taken out of Small Claims and put into the Municipal Court's Civil Docket.

The Court usually grants such requests or "motions". If this happens to your case, it will be scheduled before the Municipal Court Judge or Magistrate and this may make it harder for you to continue without an attorney. While you would still have the right to represent yourself in Municipal Court, the Ohio Rules of Evidence apply as dictated by the Ohio Supreme Court, and you will not enjoy the relaxed rules of Small Claims. Therefore, you may want to consider consulting with an attorney before going into Municipal Court on your own.

OBSERVE

If you have the time, visit the Court as a spectator some time before your Court date. Watch and listen carefully. You will learn some valuable lessons about presenting your own case.

COUNTERCLAIMS OR CROSS CLAIMS

A counterclaim is a claim which you have against the person who is suing you. A cross claim is a claim which you may have against another person who is a co-defendant.

If you have a counterclaim or cross claim you wish to file on a Small Claims matter, you **MUST** file the counterclaim or cross claim with the Small Claims Clerk at least **SEVEN (7) DAYS** prior to your trial date. If you do not file your counterclaim or cross claim as set forth above, the Court cannot hear evidence on your counterclaim or cross claim.

If you send a counterclaim or cross claim to the Small Claims Clerk by mail, it **MUST** be received by the clerk at least **SEVEN (7) DAYS** prior to trial. A paper is not filed with the Clerk until it is physically received by the clerk.

Your counterclaim or cross claim must be on 8.5" x 11" paper and must contain the following information.

1. The caption (Plaintiff's name and address vs. Defendant's name and address).
2. The case number.
3. A paragraph setting forth what you are asking for.

4. Your signature at the bottom.
5. A check for \$60.00 made payable to the Miamisburg Municipal Court for a counterclaim or cross claim not exceeding \$3,000; or a check for \$120.00 for a counterclaim or cross claim from \$3,000.01 to \$6,000.

PREPARING YOUR CASE

Organize

Organize the case before going to Court. Plan just what you will say and organize your testimony and arguments so the Magistrate will be able to understand what happened and why you have been injured or wronged. Bear in mind, you will have to convince the Small Claims Magistrate not only that you are right, but that you are also entitled to a specific sum of money from the defendant.

Rehearse

Try out your presentation on a friend or relative before going to Court.

Gather Evidence

Collect all documents related to your case: receipts, cancelled checks, estimated bills, contracts, photos, etc. If the case involves damages to your car, you may have to show the Certificate of Title in Court to prove ownership. (It is not mandated.) You **MUST** bring three copies of anything you will be submitting into evidence on your trial date. The Magistrate and the Defendant will need a copy of anything you chose to submit as evidence to the court and you will need to keep a copy for your records as well.

Round Up Witnesses

Line up your witnesses. If a witness is reluctant to testify, you can have him/her subpoenaed. Subpoenas are arranged for at the Clerks Office (there is a fee) and must be requested at least seven days before the trial.

If you plan to call an “expert” witness (anyone whose testimony will involve an expert opinion) you should be prepared to pay that person for his/her service.

SUMMARY JUDGMENT

Unless otherwise ordered by the Court, Motions for Summary Judgment shall be heard on briefs and other materials authorized by Civil Rule 56 without oral argument fourteen (14) days after service of the motion upon opposing party. The adverse party, prior to the date of hearing, may serve and file opposing affidavits. In the absence of a motion for an extension of time, or request for oral argument, the motion shall be deemed submitted for decision as of the 14th day.

APPEARING IN COURT

1. Be on time. Court starts promptly at the time written on your forms. If you are late, you may automatically lose.
2. The Magistrate will start by calling the “roll” of all cases set for the day. If a plaintiff (the one who is suing) is absent, the case may be dismissed without prejudice to be refilled. If a defendant (the one being sued) is absent, the Magistrate will probably grant a “judgment,” which means the plaintiff has won. REMEMBER: If you are absent (or even late), you may lose, whether you are the plaintiff or the defendant.
3. After roll call, the Magistrate will begin hearing the cases.

PRESENT YOUR BEST CASE

Each side gets a chance to present testimony and evidence. If you filed the suit, you are the plaintiff and speak first. Present your case in an orderly manner. Include all relevant facts and be sure to state the amount you are claiming. Explain how you arrived at this amount. Show the Magistrate any documents or other evidence you have. Bring three copies of any documents you will be admitting into evidence at the trial.

The other side may have a chance to question (not argue with) you on any points you have raised in your testimony. The Magistrate may also ask you clarifying questions. Remember, you are under oath and must answer as completely as possible.

If you have witnesses, they will then have the chance to explain what they know about the case. They may also be questioned (cross-examined) by the other side. Remember that “hearsay” is permitted in Small Claims Court and the Rules of Evidence do not apply. After the plaintiff has finished, it is the defendant’s turn.

You may have the chance to question each witness for the other side. Do not interrupt or argue. Permit the defendant or his/her witness to complete testimony and then the Magistrate may give you a chance to ask them questions. The Magistrate may also ask questions to clarify the case, and then announce his/her decision or take the matter under advisement and issue a written decision at a later date.

IF YOU LOSE

If the Magistrate finds against you, there are procedures for appealing the decision. The success of the appeal will hinge upon whether the Magistrate made any legal errors in reaching the decision.

If you intend to appeal:

1. In accordance with the Ohio Rules of Civil Procedure, Rule 53(E)(2), when the Magistrate's Decision has been filed, you have fourteen (14) days to file an "objection" detailing the errors you believe the Magistrate has made. Any other party may serve and file objections within ten days of the date on which the first objections were filed.
2. You are not permitted to file supplemental exhibits, affidavits or testimony. You must provide the Court with a transcript of the proceedings. A transcript may be obtained at your own expense from the Court Reporter. The price of the transcript will be determined by the length of the proceedings. A deposit of \$75.00 is required upfront to order a transcript. The transcriptionist will type up to the deposit amount and will contact you with any additional fees if needed. If you do not order a transcript, the Judge will accept the Findings of Fact of the Magistrate as true. If the Judge accepts the Findings of Fact as true, there is a very high probability that the Magistrate's decision will be affirmed.
3. The Report and your objection will be reviewed by the Municipal Judge and you will be notified of his/her decision.
4. If the Magistrate's position is upheld by the Judge, you can appeal the Judge's ruling to the Second District Court of Appeals. At this point, however, the matter becomes more complex and costly, requiring a transcript of the original hearing (which you must provide to the Court of Appeals at your own expense), and possibly requiring the services of an attorney. Before taking this step you should consult with an attorney as to the merits of your arguments.

IF YOU WIN

The losing defendant becomes a "judgment debtor". If you are fortunate, the debtor will pay and

the case will become a fond memory. If not, however, you will need to study the next section of this booklet, “Collecting a Judgment”.

COLLECTING A JUDGMENT

Once the Court judgment has been awarded, the plaintiff is now a “judgment creditor”, and the defendant is a “judgment debtor”.

No Court (not just Small Claims) automatically forces a debtor to pay. The Court has confirmed that the debtor has a legal, enforceable obligation to pay, but then it becomes the creditor’s job to collect that debt. There are, however, several kinds of actions you can take through the Court to collect. These are the same kinds of actions commercial creditors (banks, furniture stores, etc.) use, including garnishment of wages, attaching property, and attaching bank accounts.

JUDGMENT DEBTOR EXAMS

The judgment debtor examination is the Court’s way of helping judgment creditors learn about the judgment debtor’s assets (information which then can be used to collect the judgment).

Step By Step

Each of these collection steps will require you to return to the Clerk’s Office, fill out more forms, and pay more fees.

Before you collect from the debtor, you must first know something about his/her finances. If you are familiar with where the judgment debtor banks, works, lives or does business, you may know enough to proceed with collection.

DEBTOR’S QUESTIONNAIRE

In addition to the standard judgment debtor exam available to all judgment creditors, the Small Claims plaintiff has an additional, simplified process which may save considerable time. You may wish to try this method before moving to the more time-consuming judgment debtor hearing process.

1. Obtain a Request for Debtor Questionnaire from the Clerk’s Office or court website. The form must be filed at the Clerk’s Office, and the filing fee is paid at this time. Fill in the form with the case number, your name and the name of the judgment debtor.

2. The Clerk will mail this form to the judgment debtor, asking for a list of his/her assets, liabilities, and personal earnings by certified mail.
3. The judgment debtor will be given one week to return the information to the Clerk. He/she will be informed that failure to respond within the week.
4. The judgment debtor's exam answers will be mailed to you.

DEBTOR'S EXAM

While the by-mail process may be more convenient, you may find the information you receive is not specific enough to proceed with collection. By filing a motion for a formal judgment debtor examination, you can get the Court to make the judgment debtor attend a hearing to answer your questions.

1. Forms are available at the Clerk's Office or court website (Debtor's Examination).
2. File the form at the Clerk's Office, along with the filing fee. The Clerk will assign an appearance date.
3. If the debtor is served but fails to appear, you may ask the Court to issue a citation and force appearance.
4. When the debtor appears, you will have the right to ask questions needed to determine where you might find enough assets to pay your judgment.

You should have your questions prepared in advance to determine the following:

1. Name, address, and phone number of employer
 2. Net (take-home) pay amount
 3. Bank account locations, account numbers, and balances
 4. Social Security number
 5. Date of birth
 6. Ownership of any real estate (address, market value, liens)
 7. Ownership of any vehicles (make, model, year, liens)
5. The debtor will be under oath. You will ask your questions and write down the answers.
 6. Once you have this information, proceed to collections as outlined below.

GARNISHMENT

If the debtor is employed or has a checking or savings account, you may “garnish” the employer or the bank. Garnishment is a process which lets the creditor claim and take money owed to the debtor by another person. The employer is holding the employee’s money during that time, and through the garnishment process, may be required to pay a portion of those wages to the creditor. Garnishment as a process consists of the following:

1. Mail a fifteen day notice of intent to garnish to the judgment debtor. Forms are available at the Clerk’s Office or court website. This notice is not needed for a bank account.
2. After the fifteen days, if no money has been received, obtain, complete and file a garnishment form (available at the Clerk’s Office or court website). You will need a copy of the form for each garnishee (the person who will be asked to turn over to you the judgment debtor’s money). In all cases, you will need the correct mailing address for the garnishee (debtor’s employer or bank).

LIMITATIONS AND EXCEPTIONS

Income from sources such as Social Security, Unemployment Compensation, etc. is exempt and protected from garnishment. It is also possible for the judgment debtor to block any action against a bank account if it can be shown that the money in the account came from these types of sources.

The amount that can be garnished from any employer (by creditors collectively at one time) is regulated by law.

EXECUTION

If the judgment debtor fails to pay within fifteen days of the judgment, the judgment creditor may, through the Court, seize the debtor’s property, sell it, and collect the judgment from the proceeds. This process is called “attachment and sale” and is referred to by the law and attorneys as “execution on property”.

Although the concept is rather simple, the laws on execution have made it a bit more complicated. Execution against personal property to collect a Small Claims judgment will usually make sense only when the property involved is worth considerably more than the amount of the judgment.

EXEMPTIONS

Ohio law defines certain property as being “exempt” from execution. Prior to processing an execution, therefore, the judgment creditor must have some reasonable expectation that the property to be attached and sold is not exempt.

In the case of personal property (household goods, cars, jewelry, etc.) the exemptions are defined in terms of the debtor’s “interest” (in dollars) in that property.

For example, the law exempts the debtor’s “interest, not to exceed one thousand dollars (\$1,000.00) in one motor vehicle”. That means if the car is attached and sold, the first \$1,000.00 of the sale proceeds must go back to the judgment debtor. Thus, a judgment creditor seeking to collect a \$500.00 judgment would gain nothing at all from execution on a car which ultimately sold for \$999.00. The judgment could not be fully collected unless the car sold for at least \$1,500.00.

An additional obstacle to collecting your money through execution could arise if the judgment debtor owes money on the property to someone else (for example, a bank). In that case, you could be second or third in line when it comes time to collect from the sale proceeds.

BEFORE EXECUTION

Determine just what property you intend to execute upon. Remember, the property will have to sell for more than any exemptions, in order for you to benefit. You should also confirm this is actually the property of the judgment debtor. If a car is involved, it would have to be titled to that person or company. If you have the license number of a car, you can confirm ownership with the Ohio Bureau of Motor Vehicles. Send them the license number of the car and a check or money order for \$1.50 and ask for ownership information about the car. Write to:

Ohio Bureau of Motor Vehicles
Records Division
P.O. Box 16520
Columbus, OH 43216

You must also satisfy yourself that the property involved has a value in excess of any exemption limits and liens.

The proceeds from the sale are divided as follows:

FIRST: Any exemption amounts claimed by the debtor

SECOND: Paying costs of the sale
THIRD: Paying the judgment, plus court costs and interest
FOURTH: Surplus goes to the debtor

COST FOR FILING A SMALL CLAIM SUIT

The cost for filing a Small Claim suit is \$60.00 for claims up to \$3,000 and \$120.00 for claims \$3,000.01 to \$6,000. If you are filing against more than one defendant, there will be an additional cost of \$20.00 for each additional defendant.

RULES FOR FILING A SMALL CLAIM SUIT

1. The amount claimed cannot exceed \$6,000.00, and you may not separate your claim into multiple suits.
2. You must know the address of the party you file suit against.
3. If you are a minor, under 18, you must have your parent or guardian file the suit for you.
4. You may not sue a minor. You may sue a minor through his parent or legal guardian.
5. No person, firm, or corporation may file more than twenty-four small claim suits within one calendar year.
6. The party filing suit must prove his case by a preponderance of the admissible, credible evidence.
7. The date of hearing is the date of trial.
8. The Clerk's Office employees are not attorneys. They cannot give legal advice. If you require legal advice, you must obtain the advice from an attorney.
9. Corporations may qualify under Section 1925.17 O.R.C. An officer of the corporation may represent the corporation, but cannot ask questions.
10. Be prepared to spend all morning in court.
11. Costs detailed herein are subject to change without notice.