

WHAT IS THE SMALL CLAIMS COURT?

Small Claims Court is not a building or a courtroom or, technically, even a separate court. Rather, it is a common term used to describe a procedure, which simplifies the court process used for resolving civil disputes that involve relatively small amounts of money (\$5,000 or less --- excluding court cost, 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 Rules of Summary Procedure (R.S.P.). Consequently, the small claims court is frequently referred to as the "summary procedure" court. Even though this is the proper name for the court, the term "small claims" court is the most commonly known and used name for the process.

The Rules of Summary Procedure 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 the Florida Statutes Annotated. These publications can usually be found at any public library or law library. If you are not familiar with the R.S.P., 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 but without having to go through formal and complex court procedures.

WHO MAY SUE IN SMALL CLAIMS COURT?

Any person eighteen (18) years of age or older may file a small claims lawsuit. 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, a 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, it is recommended that prior to considering small claims court, you should first try to talk with the other person or send him/her a letter(s) to attempt to reach a solution to your

dispute. If your attempts to reach a satisfactory settlement with a person owing you money or property fail, then you should consider going to small claims court.

When considering whether or not you should file a small claims lawsuit, you should ask yourself the following questions:

1. Have I tried all possible and/or reasonable means to reach a resolution to this problem?
2. Do I have a valid legal claim against the other party?
3. Do I have, or can I get, the necessary evidence I need to prove my claim in court?
4. Is the amount of money or property in dispute \$5,000 or less? (i.e., Is the small claims court the proper court to sue in?)
5. 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 probably have a good basis for filing a small claims lawsuit.

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, 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. You should ask the attorney about this also.

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 would then be responsible for paying filing fees in that county. A proper location may be one of the following:

1. Where the contract was entered into;
2. If suit is on an unsecured promissory note, where note is signed or where maker resides;

3. If the suit is to recover property or to foreclose a lien, WHERE THE PROPERTY IS LOCATED:
4. Where the event giving rise to the suit occurred;
5. Where any one or more of the defendants being sued reside;
6. Any location agreed to in a contract.
7. 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

All lawsuits are begun by filling out a complaint form, called a "Statement of Claim," at the county court clerk's office. The clerk, at your request, will assist you in preparing the Statement of Claim and any other documents, which you may be required to file to start the lawsuit. This does not include filling out the Statement of Claim. This is your responsibility. On the Statement of Claim, write a brief, clear, concise explanation of the issues surrounding your lawsuit. Also, declare the amount for which you are suing in the space provided.

At the time you fill out the Statement of Claim form, you must have the proper name and address of the party you are suing. Please see below for general information for filing a suit in summary claims regarding the style of case, corporations, partnerships, sole proprietorships and fictitious names. Additionally, if the claim is based upon a written document(s) (such as a promissory note, sales contract, lease, repair bill, etc.), you must have copies of it to attach to the Statement of Claim, and COPIES FOR EACH DEFENDANT.

You will have to pay the court clerk a filing fee when you file the lawsuit. The amount of the filing fee is based upon the amount of your lawsuit.

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

STYLE OF CASE

It is important, both to the Court and the parties involved in a lawsuit, that the style of a case be correct. The style of a case is the way the names of the plaintiff(s) and defendant(s) are listed on the Statement of Claim (the complaint). Below is information you should know if you are contemplating 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 rights and responsibilities given an individual. The law has set 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 must 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.

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 sue 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's 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 or partnership 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 either a sole proprietorship or a partnership.

PROCEDURES FOR NOTIFYING DEFENDANT

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 by certified mail with a return receipt requested so that delivery is restricted to the defendant, or someone authorized to receive mail at the residence or principal place of business of the defendant.

There is a fee that you must pay the clerk if you want service by mail. Again, if you win your case, you may 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 him/her at his/her home or place of employment for a specific fee. If the defendant lives 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 fails to appear at the preliminary hearing, the court will enter a default against him/her after it is shown to the judge that the suit was filed in the proper county and the defendant was legally notified. If the judge feels there is sufficient evidence to show the damages claimed in the lawsuit are accurate, a Final Judgment will be entered by the court against the defendant who defaulted, after an affidavit is filed.

If the defendant does appear at the preliminary hearing and admits he/she owes you the money/property, the case could be settled. If the defendant needs 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 appears at the preliminary hearing and denies the claim, the judge will ask him why he does not feel he owes the money/property. If the defendant does not have a valid legal defense or reason for not owing the money, the judge will tell him and a judgment could be entered against him/her at this point. If the defendant does appear 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. Notarized statements are not admissible as evidence at your trial as they cannot be cross-examined. 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. He may or may not ask questions of each party after they tell their side of the story. Generally speaking, the small claims trial is informal and the judge will simply try to get all of the facts he needs from the parties to make a decision.

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

1. First of all -- be on time. If you do not show up on time and the judge has already called your case, it might be 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 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 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 his decision. However, sometimes the judge will want to take additional time to review the evidence or research case law before he enters 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 his decision.

If either party is unhappy with the court's decision, they may file a written "motion for a new hearing" with the court. This must be done within ten (10) days after the judgment is rendered. 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, an attorney should always be consulted if an appeal is contemplated.

JUDGMENTS

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

Assuming that the defendant chooses not to pay the plaintiff voluntarily, the plaintiff must seek to discover what assets the defendant has 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 your 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 to copy plus \$2.00 to certify) and record it in the county where the judgment debtor, hereinafter referred to as the defendant, owns real or personal property. There will 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, acts 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. If the full amount of the judgment has not been collected within ten (10) years, to extend your time for collecting on the judgment for an additional period of 10 years, you must rerecord a certified copy of the judgment PRIOR TO THE EXPIRATION of the 10-year lien period. **NOTE – THE LIEN OR EXTENDED LIEN WILL NOT BE EXTENDED UNLESS THE AFFIDAVIT WITH THE CURRENT ADDRESS OF THE PERSON WHO HAS THE LIEN IS SIMULTANEOUSLY RECORDED. THIS PROCEDURE ALSO APPLIES TO CERTIFIED COPIES OF THE JUDGMENT RECORDED IN OTHER COUNTIES.** Judgments are good for twenty (20) years or until paid in full, whichever shall occur first.

EXECUTIONS

Once you get your judgment, you should first obtain 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.

A Writ of Execution may be obtained from the clerk of the court to enforce the judgment. The execution is a command to the sheriff directing him/her to seize, advertise and sell to the highest bidder, property of the defendant to satisfy the amount of the judgment plus the cost of seizing, advertising and selling. The sheriff may continue to seize and sell property until the full amount of the judgment plus the costs are paid. This may require that items belonging to the defendant be sold at different times in order to satisfy the judgment. You may bid for the property at the sale. Once yours, you may keep the property or sell it. The property or, if sold, the money would represent a portion of the money due you from the judgment. The clerk's office will provide a form to you entitled "Instructions for Levy."

The sheriff will ask you to submit a list of property owned by the defendant that can be seized. He/she will ask you to advance the costs necessary to seize, store, advertise and sell the property. These advances are considered costs, which you are entitled to recover from the defendant out of the proceeds of the sale. Sometimes the defendant will pay the judgment immediately after the property is seized. Frequently automobiles are seized for sale to satisfy a judgment. Information regarding automobile registration and licensing may be obtained by writing the Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, Neil Kirkman Building, Tallahassee, Florida 32399-0500.

GARNISHMENTS

Garnishment is the taking of property of a defendant that is in the hands of a third party, the garnishee, 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 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 effect 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 are entitled to recover this fee from the defendant. Once filed, a Writ of Garnishment is issued to be served on the garnishee, along with "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 Statutes 701.04) The Satisfaction of Judgment form is available from the clerk's office.