

SMALL CLAIMS COURT

What Is Small Claims Court?

Nebraska law requires that every county court in the state have a division known as Small Claims Court (Nebraska Revised Statute §25-2801). Small Claims Court provides a forum for settling legal disputes involving \$2,700 or less.

There are no lawyers allowed in Small Claims Court. The parties involved in the dispute represent themselves, including filing the petition, calling witnesses, and presenting the case. All Small Claims cases are tried before a judge rather than a jury.

If you are the person filing the petition against someone, you are the plaintiff. The defendant is the person being sued. Parties in Small Claims Court may be individuals, partnerships, corporations, unions, associations, or any kind of organization. The claim must be filed in the Small Claims Court of the county where the defendant lives or where the circumstances occurred which gave rise to the claim. If you are filing a claim in Lancaster County, go to the second floor of the County Courthouse at 575 South Tenth Street in Lincoln. The telephone number is (402) 441-7132.

What Types Of Cases Can Be Filed In Small Claims Court?

Any type of claim may be filed in Small Claims Court as long as the loss can be measured in dollars and the amount does not exceed \$2,700. Typical Small Claims lawsuits include a landlord-tenant dispute over the damage deposit, a consumer complaint against a mechanic or repairman, or a dispute arising from an automobile accident or a contract. No party may file more than two cases within a calendar week, nor more than ten claims a year in Small Claims Court.

Should I Sue?

Everyone contemplating a Small Claims lawsuit must weigh the time and effort required to follow through on the case against the amount of money you hope to win. Some people feel that although the amount of money is not large, they want to pursue their claim for issues of “principle.” This is a personal decision. Try to evaluate your case objectively. Put yourself in the shoes of the judge who might decide your case. If you were asked to reach a decision in your case based on both parties’ versions of the facts, would you arrive at a verdict in your favor? Evaluate your case by considering these questions:

Do I Have the Defendant’s Address?

You must be able to locate the defendant in order to sue because you must arrange for the defendant to be served with a copy of the petition. If the defendant has disappeared, you may not be able to sue until you locate her.

Will A Counterclaim Be Filed Against Me?

The person or business you are suing has a right to make a claim against you for money damages. These types of claims are called counterclaims. In deciding whether to sue, consider any claim the defendant may have against you. If the judge decides you are wrong and the defendant is right, you may find yourself in a worse position than if you had never sued. You could be ordered to pay the defendant a money judgment and pay court costs too.

Does The Defendant Have Any Assets?

Once you win a Small Claims Court case, you must take steps to collect a judgment if the defendant does not pay you. Collection may take the form of garnishing the defendant’s wages or bank account or attaching his or her property. Sometimes the defendant has no assets which can be attached or income which can be garnished. Since we don’t have debtor’s prison in this country, you may have reached a dead end even though you won your case.

Do I Have The Evidence I Need To Win?

In order to win a Small Claims lawsuit, you must have proof. Have you kept the receipts, canceled checks, a contract, letters, bills, or other documents required to prove your case? Is your essential witness leaving town? You need to collect and organize your evidence early in the game so you can decide if you can prove your case.

Are There Alternatives To Small Claims Court?

Yes. You can try to settle the case out of court, you can participate in mediation, you can file a complaint with a government agency, or you can retain an attorney to represent you in county court.

Settlement.

It is a good idea to attempt to settle a dispute before going to court or even before you file your petition. An early settlement saves time and filing fees and you are more likely to get your money because the defendant has not spent time and money preparing for court.

An attempt to settle the case gives the judge the impression that you are a fair and reasonable person. You will more likely convince the judge that your previous conduct has been fair and reasonable if you have made an honest effort to settle your dispute before filing the case. Judges, with their crowded court dockets do not like to see court time wasted on matters that could have been settled privately.

The first step in settling a dispute is to telephone the other party. Do not make the call when you are angry. Be brief and businesslike and stick to the facts. Tell the other party your position and exactly what you want. You must decide what kind of settlement you will accept before you make the telephone call. Don't accept vague promises from the other party. Clarify what specific action will be taken or the amount of money that will be paid and determine how and when this is to be accomplished.

If your settlement attempts do not get the desired results, the second step is to write a demand letter. Student Legal Services often helps students write demand letters or writes the letter on behalf of the student, using law office stationery. As with the phone call, your letter should stick to the facts and clearly state what you want. It is usually a good idea to ask for cooperation by a certain date. Be sure your letter is dated and photocopied before you mail it. You may need a copy of the letter to present to the judge in Small Claims Court if your attempt to settle is unsuccessful. Do not admit responsibility or guilt or state anything that might hurt your case if you end up in court.

In many situations, it is best to get a settlement agreement in writing, signed by the parties. This is especially true when you are agreeing to let the other party pay you money in installments. It is a good idea to have an attorney help you draft a settlement agreement. If you have already filed your Small Claims petition before you reach a settlement, you can file a dismissal of your petition and attach a copy of your settlement agreement to the dismissal.

Mediation.

If settling the dispute by yourself is not possible, consider mediation. Mediation is a process which brings two or more parties together to resolve their dispute through negotiation. A trained mediator facilitates the process of negotiation by sitting down with the parties and helping them develop possible solutions to the problem. The mediator does not decide the issues for the parties but encourages them to reach a mutually agreeable solution. Sometimes an agreement is put in writing and parties sign it. The final written agreement may be enforced as a legal contract.

When two UNL students have a dispute and want to try mediation, Student Legal Services refers them to The Mediation Center in Lincoln where they are charged a small fee based on income. Participation in mediation is always voluntary and it often results in a solution that is more satisfactory than a court judgment. There are mediation centers throughout Nebraska that can be located by contacting The Mediation Center at (402) 441-5740 or visiting the web site at <http://www.themediationcenter.org/>

Anyone who files a lawsuit in the Lancaster County Court will be given an opportunity to participate in mediation *on the day of court*. Instead of the judge deciding the case, the people in dispute sit down with two mediators in a private room to work towards an agreeable solution. If they are unable to reach an agreement, they can still have the judge hear the case and decide.

Getting a Government Agency to Help.

There are many government agencies available to help you settle many kinds of disputes. Some agencies provide investigation and arbitration boards. Some are very effective and some are not. Finding the right government agency usually involves a few telephone calls. Don't be discouraged if your first phone call doesn't locate the right agency. Ask if they can refer you to someone who can assist you. Student Legal Services has listings of government agencies and can try to help you find the right one. Once you find an agency to help you handle your problem, get the information necessary to pursue your claim including the estimated length of time it will take to follow through on your case. Write down the name and title of the person you talk to in case you need to call him or her later. Find out exactly what the agency can and cannot do for you.

Suing in County Court Rather than Small Claims Court.

There are several types of cases that should be filed in County Court rather than Small Claims Court. If you are seeking an award of money in excess of \$2,700 you should not file in Small Claims Court since the judge cannot award you more than that amount.

If you want to be represented by an attorney you cannot sue in Small Claims Court. If your case turns on a complex legal technicality you may want to hire an attorney to argue your case. If you are not fluent in the English language or you have trouble speaking in public, you may want to have an attorney represent you in County Court. Self-representation is allowed in County Court but the legal rules of evidence are in effect, unlike Small Claims Court. Your opponent is free to be represented by an attorney in County Court.

Once a plaintiff has filed a case in Small Claims Court, it is possible for the defendant to file a motion to remove the case to County Court. Such a motion is usually written and filed by the defendant's attorney and it must be filed at least 48 hours prior to your Small Claims Court trial date. If the motion is granted, the case will be transferred to County Court.

How Do I File A Claim In Small Claims Court?

To start a Small Claims Court lawsuit you must go to the County Courthouse and complete a petition form, sign it before the clerk, and pay the filing fee and service costs. You may mail a completed petition form to the clerk if you have signed it before a Nebraska Notary Public. In Lancaster County the filing fee is \$23.00 and serving the petition on the defendant by certified mail costs \$5.73. If you arrange to have the constable or sheriff serve the defendant with the petition, this will cost \$20.00 to \$30.00. The judge will not hear your case unless the defendant has been properly served with the petition. You may request in your petition that these court costs be added to the amount of money the defendant owes you. When you file your case, the clerk will give you a trial date and time about four weeks from the date you file.

How Do I Prepare For My Small Claims Court Trial?

Preparing your case before you go to court is as important as what you say during your trial. The judge hears many cases in one day and has an interest in making sure cases proceed smoothly and rapidly. The judge will look upon you and your case more favorably if you are organized and prepared and do not waste the judge's time with insignificant details of your story or complaints about your opponent's moral character. Don't wait until the day before your trial to prepare. Thinking about your case a few weeks in advance of the trial date can mean the difference between winning and losing. Here are some things to do:

Consult An Attorney.

If you are going to consult an attorney concerning your case do it in the early stages. An attorney can help you understand the law pertaining to your situation and give you some tips on what kind of proof you will need to show the court

Locate and Organize Your Documents.

Several weeks before your trial date, gather together all the written documents, letters, and photographs which support your position and put them in a file. If you know of state or city laws that pertain to your case, obtain photocopies and add them to your file. Make a copy of everything you intend to give the judge.

Notify Witnesses of the Trial Date.

You must decide whether or not you need to call witnesses at the trial. Unless you are 100% sure the witness will show up, it is best to file a subpoena with the Small Claims clerk to insure her appearance on the trial date. You may also require the witness to bring documents in her possession. You should request a subpoena at least two weeks prior to the trial because the subpoena must be served on the witness. Avoid an unpleasant surprise at trial by making sure you know what a potential witness will say about your case before you arrange for a subpoena. A witness fee of \$8.00 is generally awarded to a witness who contributes relevant evidence. The court decides which party will pay this witness fee. Sometimes the losing party must pay witness fees and sometimes each party pays the fees for the witnesses he or she subpoenaed. Witnesses can be questioned by the judge and the other party after they have responded to your questions.

Prepare Affidavits.

Written statements or affidavits of persons not present in court may be received by the judge. An affidavit is a statement that has been signed before a Notary Public. Such statements or affidavits are not given as much weight as the personal testimony of a witness because the judge and opposing party have no opportunity to question the person making the out-of-court statement.

Prepare a Fact Sheet and Questions.

Think about your case and write down the main facts in chronological order with the date beside each event. Leave out minor details. Think about each witness, including yourself, and decide the main points you want their testimony to include. Then write out questions to ask each witness to bring out these points. Try to anticipate what testimony the other party and his or her witnesses will give. Write out questions to ask them which will bring out facts supporting your side of the story.

What If I Am The Defendant In Small Claims Court?

The defendant has the same responsibility for case preparation as the plaintiff. First, the defendant must decide if it is necessary to file a *counterclaim* against the plaintiff. If the defendant wants the judge to offset any money the plaintiff may owe the defendant, a counterclaim must be filed. This should be done at least a week prior to the trial date since the plaintiff must receive a copy of the counterclaim two full days before the trial. The clerk of the Small Claims Court has forms for a counterclaim. Even if a counterclaim is not called for, the defendant must still prepare to defend against the plaintiff's claim. This preparation should involve the same steps as the plaintiff, including gathering documents, finding witnesses, and writing questions.

How Can I Move The Trial Date?

Continuing the case to a later date will only be allowed when a good reason is given. If both parties agree on a new date, it is only necessary to inform the court. Otherwise, the party who wants the continuance must talk to the clerk of the Small Claims Court in person or in writing prior to the trial date.

What Happens In Court?

If you are nervous about appearing in court it might help to observe other people in Small Claims Court the week before your own trial. Small Claims Court in Lancaster County is held on Thursday mornings at the County Courthouse, usually in Courtroom #21 on the second floor. A Small Claims Court case generally proceeds as follows:

1. Greet your witnesses that you have called the night before to make sure they are present and ready to testify.
2. Arrive at court on time and check the docket list outside the courtroom to make sure your case is on the list.
3. Bring your file to court with you including your evidence and prepared questions.
4. In Lancaster County Small Claims Court, this is the point at which the mediators stand up in court, explain the *mediation* process, and ask if anyone wants to try it. Those who want to try mediation go to a room with the mediator. If mediation does not work, the parties return to court.
5. If you have decided not to try mediation, wait for the bailiff to call your case. When your case is called, walk up to one of the counsel tables in front of the judge's bench and sit down.
6. The judge will direct the activity in the courtroom from here on. Some judges proceed more informally than others. Try to remain calm and listen carefully to what is being said. Be polite to the judge. A Small Claims lawsuit is a very emotional experience for most people. It is to your advantage to control your temper and project the appearance of a reasonable person seeking a fair settlement of the dispute.
7. The plaintiff presents evidence first. You will give all your written and physical evidence to the bailiff who will mark it as exhibits 1, 2, etc. You will explain this evidence to the judge and let her look at it.
8. Next, the plaintiff calls witnesses to testify. The plaintiff may also testify and does in most cases. The order in which witnesses testify is not important as long as it is logical. You may expect a question from the judge at anytime. The judge may also allow the defendant to ask the witnesses questions.
9. When the plaintiff is finished, it is the defendant's turn. The same procedure is followed.
10. When both parties have concluded their evidence and made their arguments to the judge, the trial is over. The judge may ask a few more questions.
11. The judge usually will not give her decision immediately after the trial. Both parties will be informed of the outcome of the trial a few days later by mail.

What Is A Default Judgment?

The judge enters a default judgment in favor of the plaintiff in cases where the defendant receives a copy of the plaintiff's petition but fails to show up in court at the time set for trial. The plaintiff will be required to present the basic facts supporting his claim before the judge will award a default judgment. The Plaintiff would be wise to wait 30 days to take collection action on the default judgment because after 30 days it is too late for the defendant to appeal. If the *plaintiff* fails to appear in court on the trial date, the case will be dismissed.

How Do I Appeal A Small Claims Court Decision?

If either party is dissatisfied with the judgment of the Small Claims Court, he or she may appeal to the District Court. Certain steps must be taken to preserve the right to appeal. It is permissible for the party seeking an appeal to be represented by an attorney. Since the appeal proceedings can become fairly complicated, it is wise to consider having an attorney represent you in your appeal.

The party appealing must, within 30 days after rendition of judgment, file a notice of appeal with the clerk of the County Court and serve a copy of the notice upon the other party. A docket fee of \$79 and a \$50 cash bond must also be paid to the clerk. The bond will be refunded if the appealing party wins or pays the other party upon losing the appeal. The District Court judge hears the appeal as if it were a new trial and without a jury.

How Do I Collect My Judgment?

Collecting your money from the other party is sometimes the most difficult and frustrating part of pursuing a claim. The court does not perform this task for you; the party winning the judgment is solely responsible for collecting it.

Contact the losing party immediately after the judgment is rendered and request payment. Make arrangements as to the date, amount, and method of payment. Arrange to be paid as quickly as possible since the longer the payment process is delayed the less likely it is that you will receive the full amount of the judgment. If the losing party fails to live up to the terms of your agreement regarding payment send a letter of reminder immediately. It should state that unless payment is made, you will be forced to take whatever action is necessary to collect your money. Remember to date and copy the letter before sending it. If your letter does not get results, you must choose another collection method.

Collection Agency. A private collection agency can be found by looking in the yellow pages. A collection agency usually charges a percentage of the amount collected. The percentage may range from 30% to 50% of your money.

Garnishment. You may garnish either the losing party's wages or bank account. If you know where the party banks, garnishing the bank account is one of the easier methods of collecting your judgment. The Small Claims Court clerk has the forms you need to file a garnishment. It costs \$5.00 to file a garnishment or execution and you must wait 30 days after the judgment is rendered.

Execution Against Property. This method of collection can be tricky and you are better off consulting an attorney if you must use this method. Certain property such as a home, appliances and a car may be exempt from execution. Also, you must check for any liens against the property. Because of the complexity involved, executing against real estate is usually only used as a last resort.