pro seniors
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Small Claims Court

What Is Small Claims Court?

Small Claims is a division of a municipal or county court designed to provide easy court access to non-lawyers. The cases are heard by a magistrate, a lawyer appointed to resolve the dispute. The parties involved in the dispute are allowed to object to the magistrate's decision and appeal to municipal or county court.

Do I Need A Lawyer To Represent Me?

By law, the appearance of an attorney on behalf of any party is permitted, but not required. In fact, the goal is to make the court accessible to non-lawyers. When you file your own complaint and represent yourself in court, you are appearing pro se, which is a Latin phrase meaning "for oneself."

What Kinds Of Complaints Are Heard In Small Claims?

The court can only hear cases seeking to recover money owed. The most you can ask for is $6,000. A counterclaim (a claim filed by the opposing party against you) also cannot exceed $6,000. The court cannot hear cases for slander, libel, replevin (action for the return of specific personal property), malicious prosecution, abuse of process actions, punitive damages or other cases where more than money is pursued.

What Is The Cost To File And Where Do I File?

In Hamilton County, Ohio, the cost is $49 to file a complaint against one person with certified mail service and another $10 charge for certified mail service on each additional person sued. This cost varies by county. File your complaint at the Municipal or County Clerk of Courts Office in the county where the defendant (the person you are suing) lives or is doing business. The Small Claims Complaint Form is available at your local Clerk of Courts Office. To file the complaint, you must know the address of the person you are suing.

How Can I Prepare For My Court Date?

If the court is successful in notifying the defendant, your case will be heard on the court date given to you. It is critical that you give the court the correct address of the defendant. If the defendant cannot be notified or served, then you cannot go forward with your case.

Organize your case before going to court. Gather all the documents you plan to use, such as rental agreements, contracts, auto titles and the like. Prepare in advance what you will say and how to explain your case in an organized manner. If you know of others who have firsthand knowledge of the incident, consider bringing them to the hearing to testify. You can subpoena, or require a witness to testify, but you will have to fill out a subpoena at the Clerk's Office and pay a witness fee, $6 in Hamilton County, plus a service fee at least seven days prior to the hearing.

Be on time for the hearing. Most courthouses have security, such as metal detectors, which may have long lines. You do not want to lose simply because your case was called and you were not in the courtroom. If you filed the complaint, your witnesses will testify first. You will also be given the chance to question the other side's witnesses. You can object if you feel a witness on the other side has said something improper. However, the magistrate controls the discussion and can also ask questions. At the end of the testimony, the magistrate will give a judgment and say how much money is owed, if any, to whom and why.

What Recourse Do I Have If I Lose?

If the magistrate rules against you and you want to challenge the magistrate's decision, you will need to do the following: immediately, while standing in front of the magistrate, ask him or her to prepare a report on the decision. Check with the Court Clerk to find out when the report has been completed and filed. Within 14 days of the filing of the report, you must file an objection with the court detailing why you believe the magistrate was wrong. Mail a copy of your objections to the other party in the case. If you disagree with the Magistrate's determination as to what the facts are in your case, you must order a transcript of the proceedings and file a copy of the transcript along with your objections. However, a transcript can be costly. Once filed, a municipal or county court judge will review the case along with your objections and make a ruling.

If the judge upholds the decision, you can appeal the judge's decision to the court of appeals. On appeal, however, the matter becomes more complex. Consult an attorney as to your chances of winning. Also, check the local rules of your particular court.

If I Win, How Do I Get My Money?

Unfortunately, getting your judgment is only your first step. The court does nothing on its own to force the defendant to pay the judgment. Unless the defendant voluntarily pays you within 30 days of the judgment being filed, you will need to take additional steps to collect your money. These steps may include a judgment debtor exam, garnishment of wages, attaching property (live executions) and attaching bank accounts. There are additional costs to pursue these collection efforts. See the Clerk of Courts for details about how to proceed.

What Is A Judgment Debtor Exam?

A judgment debtor exam is an opportunity to find out where the defendant works, what he or she earns, the make, model, year, license and title number of any vehicles, location of any real estate he or she may own and any other assets he or she may have. This procedure can also be accomplished by mail or in person. Using this information, you may be able to garnish the defendant's bank accounts and wages, attach his or her property and, if needed, file for execution or sale of the assets. The procedure for sale, however, is a bit more complicated, and you may not want to attempt it unless the property involved is worth considerably more than the amount of the judgment.

How Can I Collect Using A Garnishment?

A "garnishment" is money taken from a person's wages to pay a creditor. To garnish a person's wages, you will need to send the debtor a "Notice of Garnishment of Personal Earnings" 15 days before the proposed garnishment. You do not need to file this notice if you are garnishing a bank account.

If you have not been paid within 15 days of the judgment being filed, you may complete and file a garnishment form with the Clerk's Office. Be sure you have the correct name and address of his or her employer. The garnishment is successful if the Clerk receives an answer from the garnishee indicating that they are withholding money. The money being held will be paid into court, and the Clerk will issue you a check. Creditors cannot attach the debtor's entire paycheck. The most the creditor can ever obtain is 25% of the debtor's take home pay per pay period. However, a garnishment on wages can remain in effect until the judgment is paid in full. There are certain assets, such as Social Security, Unemployment Compensation, pension and Welfare Benefits, which are exempt from garnishment. Check with the Clerk for details.

Pro Seniors helps older Ohioans solve legal and long-term care problems and fight Medicare fraud. Our Legal Helpline provides free legal information and advice for Ohio residents aged 60 and older.

This fact sheet provides general information, not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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