

THE DISTRICT COURT OF MARYLAND

The District Court of Maryland has exclusive jurisdiction in civil matters of claims involving \$5,000 or less. Claims involving amounts above \$5,000 and below \$25,000 may be filed in the Circuit Court as well as in the District Court. The District Court does not have jurisdiction of claims involving amounts in excess of \$25,000 except in Landlord-Tenant matters or in replevin.

The procedures for handling all claims filed in the District Court are the same. However, special rules provide for a simpler procedure for the trial of small claims.

What is Maryland Small Claims Court?

Small Claims Court is a division of the District Court of Maryland. It handles disputes involving no more than \$5,000, and does so with less formality than other Maryland courts. The Court's rules of procedure and evidence are relaxed to make it easier for persons to represent themselves without hiring attorneys, although parties may have attorneys represent them if they choose. An officer of a corporation may appear on behalf of the corporation in a civil suit involving a claim not exceeding \$5,000. The cases are decided by the judge. There is no jury.

A lawsuit may be filed in Small Claims Court in the District Court if:

- *The suit is for money only (not for the return of property or performance of a service, for example).
 - *The suit is for no more than \$5,000 plus interest and costs.
 - *The person filing suit (plaintiff) is at least 18 years old. If the plaintiff is not 18 years old, another person who is at least 18 years old must sue on the plaintiff's behalf.
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BEFORE YOU SUE

Settlement Procedures

Many cases come to trial needlessly because the parties have not attempted to communicate with each other. Before filing suit, you should make every effort to resolve the dispute by settling it out of court.

There are drawbacks to going to trial. It may be time consuming, and even if you win your case, you may have trouble collecting the money. Also, if you win, the defendant may appeal the decision, and you may have to go through a new trial in Circuit Court. Therefore, you may decide to settle for a lesser amount rather than go to trial. If you cannot settle the claim before filing suit, you may still settle after filing suit. In deciding the amount you will accept as a settlement, remember to consider any amount already spent in court costs.

Before filing suit, it is advisable to send a letter to the intended defendant warning that you will sue unless your claim is satisfied within a stated period of time. The letter should be sent by certified mail, with return receipt requested.

Should you see an attorney?

There are times when it may be necessary or advisable to consult an attorney, for example:

- *If your case involves personal injury and medical expense. You should see an attorney in almost all such cases, for they may not be appropriate for Small Claims Court.
- *If your case involves damages resulting from a traffic accident. If the defendant is insured, he probably will be represented by an attorney provided by the insurance company, and you may also wish to have an attorney.
- *If you have difficulty filling out the forms or have unanswered questions about preparing your case.

An attorney may be available under the terms of one of several programs now in effect. Check with the Lawyer Referral Service listed in your telephone book or with Legal Aid.

WHEN TO FILE SUIT

File your case as soon as it is reasonably possible. If you wait too long, the defendant may be able to defeat your claim by raising the "statute of limitations", the law which requires that suits be brought within a certain period of time. In Maryland, most cases must be filed within three years of the time when it was first possible to sue, but some must be filed sooner and some may be filed later.

HOW TO FILE SUIT

In order to commence an action, you must file a Complaint which will be supplied to you by the clerk of the court and you must pay certain court costs. There are also fees for delivery of the papers to each defendant. If you are uncertain as to how to complete the form, you may seek the assistance and advice of the clerk, as to procedural matters only.

WHERE TO FILE SUIT

You should file your complaint in a contract action in the county where the defendant resides, carries on a regular business or is employed. If there are multiple defendants, you may file in the county where any of them could be sued. A corporation which has no principal place of business in the State may be sued where you reside. In a tort action you may file the suit where the cause of action arose. The defendant may claim improper venue. This is done by a motion filed with the Court and delivered to you.

The Court may transfer the case to any county in which it should have been brought.

RIGHT TO A JURY TRIAL

There is a right to a trial by jury where the amount in controversy exceeds the sum of \$10,000. The plaintiff may request a jury trial at the time of filing the complaint.

The defendant may elect a trial by jury by filing a written demand within 10 days after the time for filing a Notice of Intention to Defend.

COMPLETING THE FORM

Name of Defendant

When filling out the form, you must have the correct name of the defendant. If you are suing:

***A business which must be licensed.** you may find the legal name on a certificate posted on the premises, or you may try to obtain the name from the appropriate licensing office of the state or local government. Do not hesitate to ask the business for such information.

***A corporation.** you generally must include both the legal name of the corporation and the name and address of the Resident Agent, President, Secretary, or Treasurer, who must receive the suit papers. You may obtain these names from the Maryland State Department of Assessments and Taxation in Baltimore.

***An individual,** and need more information about his or her name and address, you may be able to obtain it from the Motor Vehicle Administration if you know the person's license plate number.

***As a result of a traffic accident,** you must sue the driver, not the owner's insurance company.

The Circuit Court may have records which help you. Any persons or corporations doing business under a name other than their own must file a certificate with the local Circuit Court naming the owners of the business. If they fail to do so, they may be sued under their business name.

Contract or Tort?

Your suit will be in "Contract" or "Tort". You must check the appropriate box on the form. You are suing in:

*Tort--if your property is damaged or if you are injured through the negligence or wrongful act of the defendant (example: traffic accident).

*Contract--if someone has failed to comply with a written or oral agreement with you. For example, you agreed to pay the defendant for goods and/or services, and you believe the goods or services were of inferior quality or not what you bargained for, or the defendant agreed to pay you for goods or services which you provided and you are not paid as agreed.

You may want to sue two or more defendants in the same suit. To do this, list the names and addresses of each defendant.

Amount of Claim

When deciding the amount of your claim, remember that in Small Claims Court you may not sue for more than \$5,000 plus interest and costs. Consider all the costs you incurred because of defendant's wrongdoing. For example, if the case is based on a car accident, include towing and repair costs, the cost of renting a car, if that was necessary, and other expenses.

Normally you cannot recover:

*The cost of hiring an attorney, unless your suit is based on a written contract that provides for attorney's fees if the contract is breached.

*The cost of replacing damaged property. Generally, you may recover the cost of repairs or the "fair market value" of the property immediately before it was damaged, whichever is less. "Fair market value" is the amount for which the item could have been sold on the open market.

Even if you are owed more than \$5,000, you may want to avoid formal court proceedings, and limit your claim to \$5,000 so you may sue in Small Claims Court.

Any judgment rendered will be good for 12 years, and may be renewed for an additional 12 years. Therefore, there is a long period of time during which to try to collect.

Affidavit Judgment

If you have documents which you believe prove the defendant owes you a definite sum of money, complete the box on the form requesting an "affidavit of judgment", and attach copies of the documents. If the judge believes the documents are adequate, he or she will rule in your favor without further proof if the defendant does not appear in Court and has not notified the Court of an intention to defend the case.

It is usually difficult for a non-lawyer to know if documentation is adequate. Therefore, although the plaintiff does not have to be in court for the judge to award an affidavit judgment, it is best that you be present in case the judge wants further evidence.

In order for the judge to award an affidavit judgment to the plaintiff, the following three conditions must exist:

*The judge is satisfied that the attached documents are adequate to prove a definite sum is owed.

*The defendant did not notify the Court he or she would be present to defend the case.

*The defendant does not appear in Court. If the defendant does appear and establishes to the satisfaction of the judge that he has a defense, the case will be rescheduled.

Normally, the judge handles the affidavit judgments before the cases requiring trials. Therefore, it is possible that you will spend less time in court if your case is suitable for

affidavit judgment. If the judge determines that the documents are not sufficient, he may deny your demand for judgment and set a new trial date.

If the defendant pays any part of the claim before the trial date, you must notify the Court and reduce your claim.

Notifying the Defendant

Trial cannot be held until the defendant has been served with a Summons to appear and a copy of your Complaint. The Summons and Complaint are sent to the defendant by certified mail, restricted delivery, return receipt requested, unless you ask the sheriff to serve (deliver) the papers, or unless you wish to have the papers served by a "private process server"--any person over 18 years old not directly involved in the case, who will deliver the papers personally and return to the Court an affidavit that he or she has completed service.

If the Court or sheriff has attempted to serve the defendant without success, you will be notified. You may then, for an additional fee, renew the Summons and attempt to serve the defendant. You may decide to give the Court a different address for the defendant or try another method of service.

The Court should notify you if service has not been made, as well as whether the defendant who has been served intends to appear at trial. If the defendant files his Notice of Intention to Defend, the Court may reschedule the trial date.

Your trial cannot be held unless the defendant is properly served. If you have filed for affidavit judgment, judgment cannot be entered if defendant has not been served.

Dismissal

You may dismiss your claim at any time before the defendant files a Notice of Intention to Defend. This dismissal is without prejudice. After that, and before judgment is entered, you may dismiss with prejudice. This means you cannot again file this claim.

PREPARING FOR TRIAL

Before the trial you should prepare your case thoroughly. The judge can decide the case based only on the evidence presented by you and the other party. Therefore, you should come prepared to supply as much information as possible.

It is important to have written estimates of costs relating to your claim. Defendants, as well as plaintiffs, may want to be prepared with estimates if the amount of damages is in dispute. An estimate submitted by an "expert" can be used as persuasive evidence if it is submitted on a form entitled "Property Damage Affidavit", which is available from the clerk.

As part of your preparation for trial, you may want to summarize your side of the case briefly in writing, to be referred to during the trial. Many people find it very

helpful to attend Small Claims Court before the date of the trial in order to observe the proceedings.

Unlike other courts, Small Claims Court does not give either party the right to use a process called discovery before the trial to obtain information from the other party about his or her case. Be sure to:

*Collect all documents relating to the case, including written contracts, correspondence, estimates for repair or replacement, warranties, canceled checks, photographs, and any other similar materials that you may want to show the judge and enter into evidence.

*Arrange your material either chronologically or in the manner in which you plan to discuss your case.

*Plan to bring the item in dispute with you to court, if possible.

*Discuss the case with potential witnesses who have personal knowledge of any aspect of the case and who may be able to provide evidence in your favor at the trial. The evidence may be a written, signed statement, or --even better-- the witness's personal testimony at the trial. Personal testimony lends more weight to your case than a written statement.

If there is someone you believe can provide essential information and that person is unwilling to appear in court or to give a written statement, you should ask the clerk to issue a subpoena for his or her appearance. You must do this ten (10) days before the trial date.

If the person is considered an "expert witness" (i.e., an auto mechanic in a damaged automobile case), you may have to pay him for spending time in court.

NEW TRIAL AND APPEAL

You have 10 days after the Court makes its decision to request a new trial. Such requests are rarely granted.

In Small Claims Court, you have 30 days to file an appeal to the Circuit Court, where a completely new trial will be held. You will not be required to furnish a transcript. You may request the Court to provide you a cassette recording of your trial. There is a fee involved.

COLLECTING YOUR JUDGMENT

The plaintiff may have trouble collecting the money that was awarded. If the defendant fails to pay voluntarily, the plaintiff should ask about the following procedures, which may involve the payment of a fee and which the plaintiff must initiate:

***Execution-** You may ask the Court to levy on and sell certain goods which you believe the defendant owns. A deposit is required, assessed as costs, to cover moving, towing, storage fees and the costs of advertising and of the auction. The deposit will be refunded if the sale brings sufficient return. If you ask the Court to levy on real estate, you must request the clerk to file a lien in the Circuit Court of any Maryland county. (This is not necessary in Baltimore City.) It will attach to any real estate (land) or

interest in real estate the defendant has or may acquire in that county, unless the interest is owned jointly with the defendant's spouse, and the judgment is against only one of them. After doing this, the plaintiff may ask the Court to order the sale of the land. The lien attaches whether the land is sold voluntarily or as the result of a court order.

Certain goods may not be seized. Household goods not to exceed \$500 in value are exempt. In addition, cash or property not to exceed \$3,000 in value are exempt if the defendant chooses to exempt and requests in writing within 30 days of levy or execution. In addition, in certain sales the defendant receives the first \$100.

***Writ of Garnishment-**You may ask the Court to seize money in bank accounts which you believe the defendant has. The garnishment may be served by restricted delivery mail, private process, or by the sheriff. The bank will "confess assets" to the Court, and the Court may order that these be paid to you.

The defendant may choose to exempt \$3,000 but must so notify the Court within 30 days of the service of the Writ of Garnishment.

***Garnishment of Wages-**You may ask the Court to garnish wages of the defendant if he is employed. The garnishment may be served by registered mail or by the sheriff, constable, or private process server. After it is served, the lien or claim against the garnishable wages continues until the judgment is paid in full. However, if there is a prior garnishment, no wages will be deducted under a later served garnishment until the entire amount of the earlier wage garnishment has been paid in full. The law makes a certain amount of the defendant's wages exempt from garnishment.

***Oral Examination in Aid of Execution-**Upon the plaintiff's request the Court may order the defendant to appear in court to answer the plaintiff's questions regarding location of assets that might be attached or seized under the above procedures. This procedure cannot be used until after 30 days from the date of the judgment. You may also use interrogatories to learn of assets.

If the defendant pays you the amount of the judgment, you must give the defendant a statement that the judgment is satisfied and you must file this with the clerk.

IF YOU ARE SUED

If you are a defendant who is sued in Small Claims Court, you will find it helpful to read the other sections of this booklet in order to be aware of actions the plaintiff may take and to learn to prepare the case.

As a defendant, you will receive a Complaint describing the reason for the suit and a summons notifying you to appear in court for the trial. Even if you believe you do not owe the money the plaintiff is claiming, you must appear in court to explain your side of the story, and you must file a Notice of Intention to Defend.

Within 15 days after receiving the summons, notify the Court in writing that you intend to appear and contest the case. You may do this by filling out the Notice on the Complaint form and mailing it to the Court. If you appear for trial without having sent the written notice of your intention to defend, the case may be postponed.

If you cannot appear at the time designated, you may request a continuance (postponement of the hearing to a future date). If you do not appear, or the continuance has been denied, the judge may rule against you for the amount claimed (default judgment), and you will then owe the plaintiff the entire amount requested.

If you believe the claim against you is justified and you owe the money, you may try to settle with the plaintiff for a lesser sum and/or an installment payment arrangement in order to avoid having to go to trial.

CROSS-CLAIMS, COUNTERCLAIMS, THIRD PARTY CLAIMS

If you have a claim against the plaintiff and you want to sue the plaintiff, you may file a **counterclaim** within 25 days after receiving the summons. For example, if the plaintiff is suing for damages to his or her automobile which resulted from an accident with your automobile, you may counterclaim for damages to your vehicle if you believe the plaintiff was at fault.

If you are one of several defendants, you may sue another defendant in a **cross-claim** if you believe the other defendant is liable to you for the money the plaintiff claims you owe. For example, if you and the other defendant jointly owe money to the plaintiff and the other defendant had promised to pay the entire debt, you may want to file a cross-claim against the defendant.

If you believe someone who is not named as a defendant in the suit against you owes you money that should be used to satisfy any judgment the plaintiff may win from you, you may file a third party claim at least 10 days before trial. An example of this is if your car struck the plaintiff's car, but a third person caused you to strike the plaintiff's car.

If the counterclaim, cross-claim, or third-party claim is for more than \$5,000, the entire case will be moved from Small Claims Court and more formal rules of evidence and procedure will apply and the need for an attorney is greater.

For more information on the small claims process or other District Court procedures, please visit the District Court's website at: www.courts.state.md.us

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