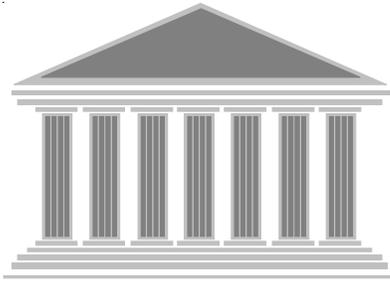


Commonwealth of Massachusetts

The Attorney General's Guide To Small Claims Court



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If you have a dispute you have been unable to resolve on your own, or by going to mediation through the Attorney General's office, you may want to consider going to court. A claim can be filed in a Small Claims session for:

- matters involving claims of \$2,000 or less, or
- matters involving any sum of money for property damage caused by a motor vehicle.

Small Claims sessions are somewhat less formal than other court hearings and are customarily heard by a Clerk-Magistrate. The filing fee is much smaller than for other court filings. You may hire an attorney to represent you; however, you are entitled to represent yourself. You may also bring a non-lawyer to help you present your case. If you are under 18, you need to be accompanied by a parent or guardian who can sue on your behalf.

The idea of any court proceeding is that an impartial person or persons will listen to the facts presented by both parties, and then make a decision based on the

laws that apply to the situation presented. **By choosing to go to Small Claims, you, the PLAINTIFF, give up your right to a jury trial.** The case will be heard by a Clerk-Magistrate in the first instance. The party you are suing, the **DEFENDANT**, may appeal the case and have a trial in front of a jury if he or she loses. You may appeal only in very limited situations — where the defendant has filed a counterclaim against you, and you have lost on that claim.

Small claims cases are heard in every Massachusetts District Court, the Housing Courts in Hampden County, Worcester County and Boston, and in the Boston Municipal Court, too. You may file your case in the district court where you live, where the defendant lives, or where the defendant has his place of business or employment. In landlord-tenant Small Claims cases, you may sue in the district where the property is located.

PROCEDURE

- ◆ **A Small Claims case is started by going to the Clerk's Office in the court house.**
- ◆ **There you will need to fill out a form called a Statement of Claim and Notice.** On this paper, which has multiple copies, you will need to put your name and address, and the name and address of the party you are suing. You will need to find out the "legal name" and correct address of the party; that is, if it is a business corporation, you will need to find out the correct corporate name, which you may get from the Secretary of the Commonwealth's office at (617) 727-9640. If the party you are suing is a business which is not a corporation, you may check at the city or town hall where the business is located for the business certificate information, so that the name will be correct on the form.
- ◆ **On the form you will need to state the reason you are suing.** The law requires that you be concise, but comprehensive. This means that you should be as brief as you can, while still providing a complete story with specifics as to what happened and why you think you are entitled to relief. The defendant will receive a copy of this form after

you have filed it with the court clerk. At the end of the case, the court may award you money for the “damage” you have suffered, which may include costs you had to pay such as postage, car rental, and so on. If you sue under the Consumer Protection Act, General Laws, Chapter 93A, § 9, you may ask the court to award double or triple damages, but *only if you first send a “demand letter” to the defendant*, stating your view of the situation, and requesting compensation, at least 30 days before you file your Small Claims case.

- ◆ **You will then need to pay a “filing fee” to the court, \$30.00 for claims under \$500, or \$40.00 for claims greater than \$500.** The court will mail out two copies of the Statement of Claim and Notice, one by certified mail and one by regular mail, to the address you indicated for the defendant. The court will also send you or give you a “docket” or case number, and a date for your hearing. Once the defendant receives a copy of the Statement of Claim and Notice, he or she may file an Answer with the Clerk, in the form of a letter, setting out why he or she believes you are not owed anything, although this is not required. You may want to check with the court before the date set for trial to see if such an Answer is on file. The defendant may also file a counterclaim against you, either in the Answer, or otherwise in writing.
- ◆ **As the plaintiff, you will present your case first.** You should describe events in the order in which they happened. You should try to be as brief, clear and well organized as you can be. You may want to practice at home first, so that you are ready and comfortable when it is your turn to speak. **After you present your case, the defendant will present his or her case in the same manner.** It is important that neither of you interrupt the other, and that you are courteous to each other and to the Clerk-Magistrate. Direct your presentation to the

Clerk-Magistrate, not to the defendant. You should answer any questions of the Clerk-Magistrate to the best of your ability, and if you do not understand something that the Clerk says, ask to have it explained to you.

- ◆ **After both of you have presented your sides of the case, each party may ask questions of the other side, including the other side’s witnesses.** The Clerk-Magistrate will most likely take the matter “under advisement,” which means that he or she will not rule at the end of the trial, but will think the matter over and send you a ruling within a week after the trial.

The defendant may offer to settle the case without going to trial. You can agree to this settlement. However, you may want to ask the court to hear the details of the agreement, so that it may be entered as an official “judgment,” which the Court may enforce later if necessary.

- ◆ **The court will send you a Notice of Judgment and Order form telling you its decision.** If you lose, no money is due you, and the case is over. If judgment is in your favor, the court will state its order for the defendant to pay on the Notice of Judgment and Order form. If the defendant loses, he or she has ten days to file an appeal, and must post \$100 cash or \$100 bond and pay a \$25 filing fee for the appeal, unless the court believes the defendant is financially unable to do so.

TIP: The best way to find out what goes on in a Small Claims session is to arrange to go to a session near you. You will see how the courtroom is set up and become comfortable with how you will need to present your case. In any court session, each party gets to tell his or her story in turn, presenting the facts through his or her own testimony, the testimony of any witnesses and through any other evidence, such as documents or photographs, presented.



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