

Answering your questions about small claims court

What's the purpose of small claims court?

Small claims court provides an informal way to resolve minor lawsuits and other legal problems, but it requires assessing the legal and factual merits of the case, including the possibility that the defendant might file a counterclaim against you. Small claims court is jurisdictional; if the claim meets any of the following situations, you must use small claims court:

- someone injures you, damages your property, or violates a contract to which you're a party, and the amount you seek is \$5,000 or less;
- you want to repossess property valued at \$5,000 or less. This is called a replevin action;
- you already have a legal judgment for \$5,000 or less against someone and you want to enforce the judgment by seizing funds or property that the other person possesses (such as wages). This is called a garnishment (for money) or an attachment (for property);
- you're a landlord seeking to evict a tenant. Any amount of rent may be owed. The \$5,000 limit doesn't apply. (For information about the procedural requirements unique to eviction actions, see the State Bar consumer information pamphlet "Landlord/Tenant Law.")

How do you sue in small claims court?

Before you start any legal action, try to settle your dispute. If you can't settle and you feel small claims court is appropriate, go to your county courthouse and obtain the necessary forms from the clerk of court. You also may obtain forms from the State of Wisconsin Web site, www.wicourts.gov, for all counties except Milwaukee County. Forms for Milwaukee County small claims court are contained on the PDF network at www.milwaukeecounty.org.

Make sure you're suing in the right county. Your county is the right place if:

- the person or business you're suing (the defendant) resides or does a substantial amount of business in your county;
- your claim arose in your county; or
- the property involved in your claim is located in your county.

If your claim arises from a consumer credit transaction (between a merchant and a customer who obtained real or personal property for personal, family, or household purposes, and in which a finance charge in excess of 5 percent is, or may be, imposed) the merchant must use the county where the customer resides, or where the collateral securing the transaction is located, or where the customer is personally served, or where the customer sought or acquired the property, services, or credit, that is the object of the transaction.

To start your action, fill out the forms, called the summons and complaint. You're the plaintiff. Make sure you list the defendant's name and address correctly. Check one of the three boxes on the form to show the type of lawsuit: money, eviction, or return of property. (Interest normally is 5 percent on liquidated claims. After a court enters judgment at the completion of the lawsuit, interest accrues at 12 percent per annum, as provided by statute.)

You will need one copy for the court and one for each defendant, and one to which the process server can attach the affidavits of service.

Ask the clerk for help if you need assistance completing the forms, but keep in mind that the clerk can't give legal advice. Small claims procedures vary from county to county. By law, each county must make a pamphlet available to explain small claims court procedures. Be sure

This pamphlet, which is based on Wisconsin law, is issued to inform and not to advise. No person should ever apply or interpret any law without the aid of a trained expert who knows the facts, because the facts may change the application of the law. 09/09



you understand and follow these procedures, because failure to do so may result in your case being dismissed or judgment being taken against you by default on any claim made against you.

How much does it cost to sue in small claims court?

Various fees and surcharges must be paid, and many are subject to change. Presently the filing fee is \$94.50; Milwaukee County has a different fee structure.

There's often a charge for having the summons and complaint served. It must be delivered to the defendant by an adult other than yourself. The sheriff charges at least \$42 per defendant. Fees charged by private process servers may differ. Some counties allow service by mail through the clerk of court for \$2 per defendant. If the mailing is returned undelivered to the clerk of court, the case will be adjourned for service of process by a process server.

If you want to require a witness to come to the trial, you have to issue a subpoena. The subpoena must be served in the same fashion as the summons and complaint, and with the same fees for the process server. In addition, you have to pay each witness a daily fee and a per-mile rate for travel. Check with the clerk of court for current costs.

What is the procedure once the case is started?

A "return date" will be set as the first step. Both you and the defendant must appear in court at the scheduled day and time. (Some counties require only a written response or a telephone call from the defendant instead of a personal appearance.) Bring along proof that the defendant was served and that he or she owes you the money or property you claim.

If the defendant doesn't show up or respond, you may get a default judgment. In other words, you win. The defendant who does appear will have to admit or deny the accusations in the summons and complaint. The defendant may admit all or part of your claim and ask for time to pay. Many cases are settled at this stage.

A hearing is the next stage in a contested matter. In many counties, a court commissioner will conduct a hearing at a later date. Both you and the defendant may present evidence and call witnesses. The hearing is informal and the court commissioner will help identify the issues. Rules of procedure and evidence aren't strictly enforced. The court commissioner's decision may be given orally or in writing. It becomes final within 11 days if given orally, and within 16 days after the decision is mailed if in writing. A written decision must be mailed within 30 days of the Hearing.

Along with the court commissioner's decision, you'll receive instructions on how and when you may challenge the ruling. Either party has the right to challenge it and demand a trial before a judge or jury. The demand for a trial must be made in writing within 10 days of the court commissioner's oral decision, or within 15 days after the mailing of a written decision. The party requesting a jury trial must pay \$89. In small claims court, the jury is limited to six persons.

The judge may hold a pretrial conference in an effort to settle the case. If the case goes to trial, the court commissioner's ruling won't be considered.

Note: In some counties a judge, not a court commissioner, handles small claims hearings. Be sure to ask the clerk of court for information on how your county handles small claims.

Do you need a lawyer for a small claims case?

It all depends on the complexity of your case and whether it's contested. Generally you don't need a lawyer to file a small claims action. But if the defendant hires a lawyer, you may want to do the same to protect your interests, especially if your case is tried before a judge or jury. If you win your case, the court may order the defendant to pay the following attorney fees to you:

Judgment	Attorney Fees
\$1,000 or more	\$300
Less than \$1,000	\$100

You must pay the rest of your lawyer's fees yourself.

Note: If you obtain a default judgment or if the other side voluntarily dismisses the lawsuit, you get one-half of the attorney fee.

What happens if you win your case?

If you win, you're entitled to the money or property the judge decides is due you, plus out-of-pocket expenses such as the fees discussed before.

If you win a money judgment, the judge will order the defendant to fill out a financial disclosure form and mail or deliver it to you or the clerk of court. The defendant must list his or her residence, employers and their addresses, financial institutions where he or she has funds on deposit, real estate owned, automobiles, cash on hand, and other assets or sources of income. The completed form must be sent to you or the clerk, or the judgment paid, within 15 days from the date the judgment is entered.

If the defendant doesn't pay, you have several options. You may docket the judgment at the courthouse by paying a \$5 fee. The docketed judgment then acts as a lien on the defendant's real estate. You also may start a garnishment action to obtain a portion of the defendant's earnings or bank deposits, subject to the earnings and bank deposit exemption statutes. If the defendant fails to file the required financial disclosure form, you can ask the court to hold the defendant in contempt.

To preserve your right to enforce the judgment, a party should always docket the judgment in the county in which the judgment was

taken and file a transcript of the judgment in any other county in which the losing party has, or may have, real estate. The fee for issuing a transcript by the county of original jurisdiction is \$5. The fee for filing a transcript of judgment in another county is \$5.

What happens if you lose?

If you lose altogether or don't get all the money or property you wanted from a judgment or from an order of dismissal entered in a case tried before a circuit judge, you may take your case to the court of appeals. The appeal fee is \$195, plus a \$15 record transmittal fee. You must also pay for the preparation of the transcript. Since an appeal is complicated, it's best to seek legal advice.

The burden of proof on an appeal to the Wisconsin Court of Appeals is extremely high. The Wisconsin Court of Appeals does not retry cases. Instead, it examines appealed cases as to errors the lower court might have made relative to various standards established under the law.

This is one in a series of consumer information pamphlets sponsored by the State Bar of Wisconsin's Communications Committee and produced by the Communications Department. Single copies are available by sending a self-addressed, stamped envelope with your request to: Public Information Pamphlets, State Bar of Wisconsin, P.O. Box 7158, Madison, WI 53707-7158. These titles also are available for viewing on the State Bar's consumer Web site, LegalExplorer, at www.legalexplorer.com.

Bulk copies and display racks also are available, for a charge, by writing to the above address.

- | | |
|----------------------------------------|------------------------------|
| Arrest | Hiring/Working with a Lawyer |
| Bankruptcy | Landlord/Tenant Law |
| Buying/Selling Residential Real Estate | Marital Property |
| Custody and Placement | Personal Injury |
| Divorce | Probate |
| Durable Powers of Attorney | Revocable Living Trusts |
| Guardians Ad Litem in Family Court | Small Claims Court |
| Health Care | Starting a Business |
| | Traffic Accidents |
| | Wills/Estate Planning |



**STATE BAR
of WISCONSIN®**

(800) 728-7788

(608) 257-3838

P.O. Box 7158, Madison, WI 53707-7158

E-mail service@wisbar.org

On the Web at www.legalexplorer.com

© State Bar of Wisconsin