

# Small Claims Court in Washington State

June 2010

9940EN

---

**This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, June 2010.**

**© 2010 Northwest Justice Project — 1-888-201-1014**  
(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)

**Table of Contents:**

---

**Section 1 : Introduction..... 1**

- A. What is Small Claims Court? ..... 1
- B. What if I don't speak English? ..... 1

**Section 2 : How do I Sue in Small Claims Court? ..... 2**

- A. What kind of disputes may I take to small claims court? ..... 2
- B. May I add any expenses into the amount I am suing for? ..... 2
- C. How much time do I have to file a case in small claims court after a problem occurs? ..... 3
- D. Can I sue the government in small claims court? ..... 3
- E. What if I'm suing a business and it tries to get the case moved out of small claims court? ..... 3
- F. Should I try to settle my case before filing my claim in court? ..... 3
- G. How can I settle out of court? ..... 3
- H. What if I reach an agreement with my opponent after I've filed my claim in court but before I have my court hearing? ..... 5
- I. What if the person I want to sue is out of state? ..... 5
- J. Once I decide to sue in court, what do I do to file my claim? ..... 5
- K. How do I notify my opponent? ..... 7
- L. How much time do I have to notify my opponent? ..... 8
- M. When do I get my trial date? ..... 8
- N. How do I prepare for trial? ..... 8
- O. What if I absolutely can't make it to court on my trial date? ..... 9
- P. What should I bring to court the day of the trial? ..... 9
- Q. What do I do when I get to court for my trial? ..... 10
- R. What happens at the trial? ..... 10
- S. What do I say at my trial? ..... 10
- T. Does the person I am suing get a chance to talk? ..... 10
- U. When will the judge announce whether or not I won? ..... 11
- V. What happens if I miss the trial? ..... 11
- W. What happens if my opponent misses the trial? ..... 11
- X. If I win, how do I collect the money? ..... 11
- Y. What do I do when I receive the money from my opponent? ..... 12

Z.	What should I do if I won, but the person I sued won't pay me? .....	12
AA.	What if my opponent does not have enough money to pay? .....	13
BB.	If I lose, may I appeal? .....	13
CC.	If my opponent won a Counterclaim against me, saying I owe money, and I appeal, do I have to pay while the court is considering my appeal? .....	14
DD.	If I won and my opponent appeals – and also tries to stop me from collecting the debt while the appeal is in progress – what do I do? .....	14
<b>Section 3 : What to Do if Someone Sues You in Small Claims Court .....</b>		<b>15</b>
A.	How do I know if someone is suing me? .....	15
B.	What do I do when I receive a Notice of Small Claim form? .....	15
C.	Should I contact the person who is suing me? .....	15
D.	What if the person who is suing me and I come to an agreement before going to court? .....	15
E.	What if I receive the Notice of Small Claim form fewer than 10 days before the trial?.....	16
F.	What if I think the person suing me is actually the person who did something wrong?.....	16
G.	How do I file a Counterclaim? .....	16
H.	How do I mail or deliver a copy of the Counterclaim to my opponent? .....	16
I.	How do I prepare for trial? .....	17
J.	Do I have to prove I am innocent? .....	18
K.	What happens if I absolutely can't make it to court on my trial date?.....	18
L.	What should I bring to court the day of the trial?.....	18
M.	What do I do when I get to court for my trial?.....	18
N.	What happens at the trial? .....	18
O.	What happens when my case is called? .....	18
P.	What should I say when it is my turn to talk? .....	19
Q.	When will the judge announce a decision? .....	19
R.	If I lose the case, what happens?.....	19
S.	If I lose, may I appeal? .....	20
T.	If I appeal, may I keep my opponent from trying to collect while I appeal? .....	21
U.	How can I get more legal help?.....	21

## **Section 1: Introduction**

### **A. What is Small Claims Court?**

Small claims court is a department of the district court. Small claims court is meant to be a quick, inexpensive way to resolve disputes about money that you've been unable to work out on your own. In small claims court, someone may sue another person, a business, or -- in some cases -- the government for up to \$5,000. Lawyers usually may not participate. There are no juries, motions, or objections. The person who sues pays only a small charge for filing the lawsuit. You may get a trial much sooner than in other courts. Most trials are short, lasting about 20 minutes, but you may have to wait while other cases are heard.

Although small claims court is meant to be easy for everyone to use, many people are still nervous about going to court. This publication is intended to help you learn about the law that applies to small claims court. **Section 2, How to Sue in Small Claims Court**, explains how to start a lawsuit in small claims court. **Section 3, What to Do if You are Sued in Small Claims Court**, explains what to do if someone sues you in small claims court. The person who sues, the one who starts the lawsuit, is called "the plaintiff." The one who is being sued is called "the defendant." Whether you are the plaintiff or the defendant, we recommend you read both sections.

Small claims court procedures vary from one county to another. There may be some things in this publication that do not apply exactly to your local small claims court. Filing fees vary, too, and may change. Contact your local court clerk to get a copy of its procedures.

Some counties also have a video that shows how to prepare and present a small claims court case. Many people find this video helpful. Ask the court clerk if this video is available.

### **B. What if I don't speak English?**

If you don't speak English or if you have a speech or hearing impediment you should ask for an interpreter in court. Some small claims courts provide interpreters, but others do not. People who are not U.S. citizens may use the court. If you are the plaintiff (the one who begins the lawsuit), ask for an interpreter when you file your claim. If you are the defendant (the one being sued), ask for an interpreter when you file your answer to the lawsuit. The court may provide one for free, although you may need to show you cannot afford one. When you go to court for your trial and the judge calls your case, be sure to say again that you need an interpreter.

Your interpreter helps you present your side of the case and also helps you understand what the other participants say. Remember that details are important. If you think the interpreter is not translating what you want to say, tell the judge or your interpreter. Speak clearly and slowly. Tell the judge or your interpreter if there is anything you don't understand.

## Section 2: How do I Sue in Small Claims Court?

### A. What kind of disputes may I take to small claims court?

- **Arguments involving money, \$5,000 or less**, that you have with a person, a business, or – in some cases – the government.

◆ For example:

Your landlord refuses to return your \$1,000 security deposit.

Your neighbor won't pay \$2,600 he agreed to contribute toward the cost of a shared fence between your yards.

Your new \$350 stove will not work. The dealer who sold it to you refuses to refund your money.

- **Not disputes for more than \$5,000**

If you want to sue for more money, go to a different court or drop some of your claim to stay within the \$5,000 limit. You may not split the same claim into two different lawsuits that total more than \$5,000.

- **Not disputes in which you sue to make someone do something** -- such as perform a service or return property.

◆ For example:

If you are fired, you may not sue your ex-employer to get her to rehire you (but you may sue for unpaid wages).

You may not sue for the return of a car (but you may sue for the money value of the car).

You may not sue your landlord to make him repair your toilet, (but you may sue for money -- the difference between what your apartment is worth with a working toilet minus the amount the apartment is worth without a working toilet).

### B. May I add any expenses into the amount I am suing for?

You may add expenses into your suit only if they came up as a result of the original problem. For example, if your car was damaged, you may sue for the cost of repair **plus** the cost of renting a car during the repair. You may include the costs of filing the lawsuit and having the legal documents delivered to your opponent. Generally, however, you may not add in lost wages or travel expenses connected with preparing the lawsuit.

**C. How much time do I have to file a case in small claims court after a problem occurs?**

You must usually file **within 2 or 3 years** after the problem occurred. If the problem involves a written agreement that was broken, you have **6 years** to file. File your claim as soon as possible. That way witnesses' memories are still fresh, and you are more likely to have the evidence you need to make a strong case in court.

**D. Can I sue the government in small claims court?**

You can only sue government bodies or agencies in certain situations. You may not sue the State of Washington at all. To sue a government body – a city or county, for example -- you usually have to file an “administrative claim” first. To do this, contact the clerk of the governing body you want to sue and ask how to file an administrative claim. If the governing body denies your administrative claim against it, take the written denial to small claims court. Tell the clerk your administrative claim was denied and that you now want to file in small claims court.

**E. What if I'm suing a business and it tries to get the case moved out of small claims court?**

A business or corporation is not allowed to have a lawyer represent it in small claims court. For this reason the business may try to get the case moved to a regular courtroom. If the business plans to ask the judge to move the case out of small claims court, the business must notify you of a hearing date. Go to the hearing and tell the judge you do not want the trial moved. Explain that moving the case is unfair because you don't have a lawyer. In a regular courtroom the business will have a lawyer to speak for it, but you will not.

**F. Should I try to settle my case before filing my claim in court?**

Yes. Try to come to an agreement with your opponent before you file your claim in court. Settling out of court is a good idea for the following reasons:

- Going to court, even small claims court, can be stressful. Settling out of court saves you time, money, and frustration.
- You might lose in court. Your opponent will have a chance to answer your claim, and the judge might agree with your opponent. Your opponent might even bring a claim against you (a “Counterclaim”), asking you to pay money.
- Even if you win, you might not be able to collect your money. You might have to hire and pay a lawyer or collection agency to get the money for you. If your opponent has little or no money, you will probably not be able to collect.

**G. How can I settle out of court?**

- 1) Contact the other party yourself and try to work out an agreement. Give compromise a try.
- 2) Get someone to act as a “mediator,” a neutral third party who helps you and your opponent settle. Local dispute resolution centers often have mediators who work

for free. The Washington State Attorney General's Office or your local Better Business Bureau might be able to help mediate.

- 3) Write and send a "demand letter" if you cannot arrange to speak with your opponent. In the demand letter, tell your opponent what the problem is. Explain how you want it solved. Say that you plan to sue in small claims court if you can't come to an agreement. Often a well-written demand letter shows your opponent that you are serious. A demand letter gives the other person or business a chance to re-consider. For detailed instructions on how to write a demand letter, see below. You can find an example of a demand letter at the end of this publication.

#### **How to write a demand letter**

- Type the letter using a computer or typewriter.
- Be polite. Using insults will not help your case.
- Write a summary of the problem. Use enough detail to be clear. Include names and dates as needed.
- Stick to the facts. Include only what relates directly to the problem.
- State clearly what you want the opposing party to do: pay for repairs, return a security deposit, etc.
- State why the opposing party should do what you want. If you know what law (statute or case law) applies, include a reference to it. If you don't have a legal reference, explain why what you propose is fair.
- Explain what you will do if the other party does not meet your demand. State what you want simply, without threatening. For example: "I believe that what I am asking for is fair and hope that you will recognize this. If, however, you do not do (fill in the blank), then I am prepared to file a claim against you in small claims court."
- End the letter by asking your opponent to respond to you – preferably in writing. Ask your opponent to please answer as soon as possible so that you both can resolve the issue and put it behind you.
- Both print and sign your name at the bottom.
- Finally, keep a copy of your letter and any response you get from the other side.

◆ **If you fail to settle out of court, bring the demand letter with you.** The demand letter lets the judge know that you tried to reach an agreement before coming to court.

- 4) If a car accident is involved, you may be able to get the other party to settle out of court if the other driver is uninsured and won't pay you for damages. If it's reasonable to think the other party was possibly at fault, you can start a procedure

to have the state suspend that person's license to drive. The other party might agree to pay you in order to avoid a license suspension. To use this procedure:

- Fill out an accident report and get a written estimate of damages.
- Send these to the Washington Department of Licensing in Olympia within 180 days of the accident.
- If the other party agrees to pay you, sign a form that reverses the license suspension.

◆ **Be careful about using this procedure.** It can lead to the license suspension of any **uninsured** driver who may be even partly liable for the accident. If you or the car owner is uninsured, you might be at risk of having your license suspended, too. If you're unsure whether to use this procedure, consult a lawyer.

#### **H. What if I reach an agreement with my opponent after I've filed my claim in court but before I have my court hearing?**

If you settle before your court date, follow these steps:

- Prepare a written agreement with your opponent.
- Deliver a copy of this agreement to the court clerk. Tell the clerk to dismiss the case.
- If your opponent agrees to pay at a later date, ask the court in writing for a "continuance" (a delay). Deliver a Notice of Continuance to the other party by certified mail or in person. For details on how to notify the other party by certified mail or in person, see the section below: *How do I notify my opponent?*
- If your opponent pays before the new hearing date shown on the Notice of Continuance, go to the courthouse and tell the clerk to dismiss the case. If you dismiss the case, however, the court will not refund your filing fee and service costs. You might consider adding these costs to the settlement agreement.

#### **I. What if the person I want to sue is out of state?**

If the person you're suing lives in a different state, you cannot sue in small claims court. In that case you must file a regular lawsuit in district court. There you can use the Long Arm Statute<sup>1</sup> to sue an out of state opponent. Suing in district court is more expensive and complicated than suing in small claims court.

#### **J. Once I decide to sue in court, what do I do to file my claim?**

##### **1. Find the right court.**

Go to the district court in the district where your opponent lives or where the business you're suing does business. You can find the location of district courts in the blue pages in the front of

---

<sup>1</sup> [RCW 4.28.185](#)

your phone book or online ([http://www.courts.wa.gov/court\\_dir](http://www.courts.wa.gov/court_dir)). The small claims court is a department of the district court. The district court clerk will be able to tell you whether a particular address is within the boundaries of the court that you have contacted.

If you can't find your opponent's home address after a reasonable amount of effort, you may sue in the district where your opponent works, using that address.<sup>2</sup>

If the dispute involves a traffic accident or a bad check, you may sue in the county where the traffic accident or bad check incident occurred.<sup>3</sup>

## 2. Get a Notice of Small Claim form.

Ask the court clerk for a Notice of Small Claim form. In some counties, you can ask the court clerk to mail you a blank Notice of Small Claim form. In those counties, you can fill out the form, have it notarized, and mail it back to the court. Other counties require you to sign the completed form in the presence of the court clerk and file the form in person. Ask your local court clerk what procedure is correct in that court. The court clerk may explain the appropriate procedure and supply the basic forms. However, the clerk is not allowed to complete these forms for you, give legal advice, or try to predict how the judge might rule.

You can also get general small claims court forms from the Washington State Courts website at [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms). However, do not use these forms until you check with your local small claims court. Some counties require special forms.

## 3. Fill out the Notice of Small Claim form.

On the Notice of Small Claim form there is a space to list the "plaintiff" and the "defendant" in the case. Put your name in the space for "plaintiff." (The plaintiff is the one who files the lawsuit.) Put the name of the person or business you are suing in the space for "defendant." (The defendant is the one being sued.) List your address and your opponent's address in the spaces below your names. You must have a street address for your opponent. A P.O. Box number is not enough. Include a phone number if available.

You may sue more than one person, listing the name and address of each person. If you are suing a married person, it is usually best to name both the husband and wife in the claim. If you are suing as the result of a traffic accident, name both the driver and the registered owner of the vehicle. If your lawsuit is about a business dispute, name the business, the business owner, and any business employee involved. **If you name the wrong person(s) or business in your claim, the judge will dismiss the case against those defendants.** However, you may later re-file against the right defendants, as long as you file in time.

If you're suing a corporation, be sure you have the correct name of the corporation. List the office address of the corporation or the address of its "registered agent."<sup>4</sup> A "registered agent" is the person or company you must notify that you are suing the corporation. For more information, see below: *How do I notify my opponent?* All corporations doing business in Washington State must register the names and addresses of their agents with the Washington Secretary of State.<sup>5</sup> To get the name and address of a corporation and its registered agent, call the Washington

---

<sup>2</sup> [RCW 3.66.040](#)

<sup>3</sup> [RCW 3.66.040\(4\)](#), [RCW 4.12.025\(2\)](#)

<sup>4</sup> [RCW 4.28.080](#)

<sup>5</sup> [RCW 23B.05.010](#)

Secretary of State at (360)753-7115. Choose option #5 on the pre-recorded menu. You can also visit the website (<http://www.secstate.wa.gov/> under Corporations). A corporation doing business in Washington State which fails to register an agent may be served through the Secretary of State.<sup>6</sup>

The Notice of Small Claim Form has a space to briefly write what your claim is about and how much money you are suing for.

◆ Wait to sign the form until you are ready to give it to the court clerk. Some counties require the clerk to be able to watch you sign it.

**After you’ve filled out the Notice of Small Claim form, take the following steps:**

- a) Get at least two copies of the completed form. Make them yourself or get them from the clerk.
- b) Give the original form to the court clerk.
- c) Pay the clerk a small fee to file the claim (\$14 – \$29).
- d) Sign the form in the presence of the clerk (if required in your county).
- e) Either mail a copy of the Notice of Small Claim form or have it delivered in person to your opponent. See below: *How do I notify my opponent?*

**K. How do I notify my opponent?**

You must let your opponent know that you’ve started a lawsuit by having the Notice of Small Claim delivered to your opponent. (Delivering the Notice of Small Claim form to your opponent is called “service of the claim.”) You may mail the form to your opponent or have the form delivered by a person.

The Notice of Small Claim form must be delivered to your opponent or an adult who resides permanently with your opponent. If you are suing a business, a corporation, a government agency, or an absentee landlord, you must deliver the form to a “registered agent” or a “managing agent,” such as a secretary or rental manager.<sup>7</sup>

**1. Have the Notice of Small Claim form delivered in person.**

◆ You may not deliver the form yourself.

- Have the sheriff’s office deliver the form. Or hire a professional “process server” to deliver the form. Look in the yellow pages to locate professional process servers. The fee is usually \$15 to \$30.
- You can have a friend over 18 years old deliver the form – as long as the friend is not a witness and is not personally involved in the case in any way.
- The person who delivers the form **must** have your opponent sign a Certificate of Service

<sup>6</sup> [RCW 23B.05.040\(2\)](#)

<sup>7</sup> See [RCW 4.28.080](#), *servicing an agent* and [RCW 23B.05.040\(2\)](#), *registering an agent*

when making the delivery. If your opponent is not at home, an adult who lives with your opponent (spouse, roommate, etc.) may also sign the Certificate of Service form. If you are suing a business, a corporation, a government agency, or absentee landlord, have a “registered agent” or a “managing agent” (such as a rental manager) sign the Certificate of Service form. You can make a copy of the blank Certificate of Service form included in this packet for this purpose.

- Although not required, it is also a good idea to have the person who delivers the form file an affidavit with the court saying that the Notice of Small Claim form has been served. An affidavit must be signed before a notary public.
- After the Notice of Small Claim form has been delivered and the Certificate of Service signed (or the affidavit signed), make sure that the Certificate of Service (or affidavit) is filed with the clerk at the courthouse.
- We recommend that you have the Notice of Small Claim form delivered by the sheriff’s office or a professional process server to minimize the chances of making a mistake. If a mistake is made, your case may be delayed. The judge might even dismiss your case.

**OR**

**2. Mail the Notice of Small Claim form to your opponent.**

- Mail the form at the post office counter. Ask for Registered Mail or Certified Mail. Ask for Return Receipt Requested. That means your opponent must sign a receipt when your opponent receives the form in the mail. This receipt will be mailed back to you.
- When you get the Return Receipt with your opponent’s signature (or the signature of someone who lives with your opponent, or the signature of a “registered agent” or a “managing agent”), make a copy of it. Take the copy to the court clerk. Keep the original receipt and bring it to your trial.

**L. How much time do I have to notify my opponent?**

Make sure the Notice of Small Claim form reaches your opponent at least **10 days** before the court date. If you are mailing the Notice of Small Claim form to your opponent, mail it at least **13 days** before the court date. If you cannot have the Notice of Small Claim form delivered within these required time limits, you must return to the clerk, get another Notice of Small Claim form and have it delivered within the time limits.

**M. When do I get my trial date?**

You should get your trial date when you deliver the Notice of Small Claim form to the court clerk.

**N. How do I prepare for trial?**

**1. Gather evidence.**

- Get the important papers and documents you need to prove your case. For example -- a contract, a sales receipt, a photograph (of the broken appliance, house damage, car

accident damage, etc.), a diagram, a drawing, a renter's agreement or lease, a canceled check, repair bills or written damage estimates. Once you are in court, someone personally familiar with the evidence must identify it and explain what it is.

In addition to the evidence related to your claim against your opponent, bring any evidence you may need to defend yourself in case your opponent has filed a "Counterclaim" against you. (The Counterclaim might state that your opponent doesn't owe you money because you are at fault. Or the Counterclaim might even state that you owe your opponent money.)

- If you had property taken or damaged, write down how much it would cost to replace it from different stores.
- Bring originals, if possible. Bring an extra copy in case the court wants to keep any of your documents. If your case involves a faulty product, bring it to court if possible.
- **You may only submit evidence during the trial, not after the trial.** Therefore, if you are not sure whether you will need something as evidence, bring it anyway.

## **2. Contact witnesses who can support your case.**

Ask them to appear at your trial. (In Washington you cannot order ("subpoena") a witness to come to small claims court.) Your witnesses must have personal knowledge of the facts they're asked to testify about. The witnesses must have seen or heard the damage, accident, or dispute **in person**. Good witness statements often help more than written evidence.

## **3. Get a preview.**

If you want to see how small claims court works, ask the court clerk when other small claims trials will be held. You can watch a trial yourself to see what happens in other lawsuits and how judges rule. If your court has a video about small claims court, ask the clerk for the video.

## **4. Practice.**

Practice presenting your case. Make sure your presentation is organized and short. You may want to write a list of important points you don't want to forget. Include questions to your opponents and to your witnesses. Let your witnesses know in advance what questions you are going to ask them.

## **O. What if I absolutely can't make it to court on my trial date?**

Request in writing a "continuance" (a delay) from the judge. At least contact the court clerk. If you miss your trial without first contacting the court, you will probably lose your case automatically. The judge may dismiss the case or you may lose by default.

## **P. What should I bring to court the day of the trial?**

- All your evidence, including written documents and physical evidence.
- The original Certificate of Service or the post office Return Receipt. These papers must have the signature of your opponent (or a spouse, roommate, "registered agent," or "managing agent").

- Your witnesses.

**Q. What do I do when I get to court for my trial?**

Check in with the court clerk when you arrive at the courthouse for your trial. The clerk will tell you which courtroom to go to. You might find the list of cases to be heard that day posted outside the courtroom. Or you might hear the list of cases read aloud at the start of the session. If you do not see the list of cases or hear it read, see the court clerk.

**R. What happens at the trial?**

The judge will refer to you as the “plaintiff” (the person who brought the case). The judge will refer to your opponent as the “defendant” (because your opponent is “defending” himself or herself against you).

The judge usually begins by describing the court’s procedure. Typically at this time all plaintiffs, defendants and witnesses must swear to tell the truth. Then the first case is called. Wait for the judge to announce your case. Then go forward with your evidence and witnesses.

**S. What do I say at my trial?**

As the person suing, you must prove that your opponent owes you money. Your opponent doesn’t have to prove that he or she doesn’t owe you money. If you don’t have enough proof – if the judge only has your word against your opponent’s word on which to base a decision – you may lose. Don’t take your case for granted.

**1. Explain the details of your case.**

- Describe what happened.
- Show the judge all the evidence you brought with you.
- Explain why you think your opponent owes you the amount of money you are suing for.
- Explain that you delivered the Notice of Small Claim to your opponent on time. You can show the judge the Certificate of Service to prove it.
- If you have witnesses, tell the judge you would like to have your witnesses testify. The judge will tell you that you may question your witnesses. Ask them the questions you prepared about what they saw or heard happen and about why you are right in this case.

**2. Be prepared to answer questions.**

The judge, and then the defendant, may ask you and your witnesses’ questions. Answer the questions carefully. Do not insult the other side. Try not to become too emotional.

**T. Does the person I am suing get a chance to talk?**

Yes. After the judge finishes questioning you and your witnesses, the judge will ask your opponent to present the other side of the story. **Do not interrupt.**

Your opponent may have filed a “**Counterclaim.**” A “Counterclaim” is a claim your opponent filed against you after receiving the Notice of Small Claim. A Counterclaim might say your

opponent doesn't owe you money because you have done something wrong. Or a Counterclaim might say you owe your opponent money.

If your opponent has filed a Counterclaim, the judge will also listen to your opponent's evidence about that claim. You will have a chance to defend yourself against your opponent's Counterclaim. But make sure to wait until the judge tells you may speak again before you ask questions.

◆ If your opponent has a Counterclaim against you, but you never got a notice about it before the trial, tell the judge.

#### **U. When will the judge announce whether or not I won?**

After hearing both sides, the judge may announce a decision immediately. Or the judge may need more time to study the case. If that happens, the judge will give a written decision within a few weeks. If the judge decides in court that day, and both sides are present, you or your opponent should ask the court to order a payment plan.

#### **V. What happens if I miss the trial?**

If you don't have a very good reason for missing your trial and fail to notify the court, you will lose automatically ("by default"). The judge will dismiss the case. You may not have the case rescheduled.

However, if you have a very good reason for missing the trial, you can file a Motion to Vacate Judgment. File the Motion to Vacate Judgment as soon as possible after the default judgment. File it with the district court clerk. See the Northwest Justice Project packet: [Motion to Vacate Judgment/ Order](#). This is available on the Washington LawHelp at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). You may wish to ask a lawyer for help.

If you miss the trial and your opponent filed and served a "Counterclaim" (a claim saying you did something wrong or owe money) against you, you might lose the Counterclaim automatically, too. If your opponent's Counterclaim said you owed your opponent money, the judge might decide you must pay the money to your opponent.

#### **W. What happens if my opponent misses the trial?**

If your opponent doesn't show up in court, your opponent may lose automatically ("by default"). You must prove that your opponent was served with the Notice of Small Claim. See above: *How do I notify my opponent?* The judge may then decide that your opponent must pay the amount of money you claimed and proved is owed to you.

#### **X. If I win, how do I collect the money?**

**The court does not collect the money for you.** If you win, you might work out a payment plan with the person you sued. A good way for you to collect the money is for your opponent to write you a check. Your opponent can also pay cash. Give your opponent a written receipt with your signature if you get paid in cash.

## **Y. What do I do when I receive the money from my opponent?**

When you have received all the money the court has told your opponent to pay you, notify the district court clerk in writing that you've been paid. In some counties you can do this by signing in the appropriate place on the Small Claims Judgment form. Then file the signed form with the court. Other counties have special forms available from the small claims department, usually called a Satisfaction of Judgment form.

## **Z. What should I do if I won, but the person I sued won't pay me?**

Sometimes even if the judge makes a decision in your favor, you may not be able to collect. The person you sued may not have enough money to pay, for example.

If the person you sued does have the money to pay you but won't willingly pay, you can take additional steps to collect.

Take additional steps to collect if there is no appeal and the judgment is not paid **within 30 days** of the decision -- or according to the payment plan set by the court.

### Additional steps for collecting the money

1. Ask the court to "certify" the judgment. The form to do this is available from the district court clerk for a small fee.
2. File papers for a small fee to have your opponent's wages or bank account "garnished." "Garnishing" means that money is taken from your opponent's bank account or wages and paid to you. Or you can have some of his or her property seized and sold to pay the debt (called "execution").

You may need to ask or hire a lawyer for help. You can add the lawyer's fees and the cost of certifying the judgment to the amount your opponent is supposed to pay you.<sup>8</sup>

3. Another option is to put a "lien" on your opponent's real estate:
  - Buy a transcript of the certified judgment from the district court clerk for a small fee (about \$5).
  - File the transcript in superior court for an additional small fee (about \$15). This filing puts a "lien" on your opponent's real estate located in the county of that superior court.
  - File the transcript of the certified judgment in as many counties as you think your opponent owns real estate. The lien makes a sale of the real estate more difficult. The lien remains on the property even after it is sold. However, the lien does not guarantee you will be paid.

A certified judgment is good for 10 years. So you may be able to collect later. The longer you wait, though, the harder it is to collect. After the 10 years have passed, you may have the judgment renewed for one more 10-year period.

4. If your claim arose from a car accident and your opponent was uninsured, you can put

---

<sup>8</sup> [RCW 6.17.110\(2\)](#)

pressure on him or her to pay. If your opponent hasn't paid you within 30 days of the judge's decision, you may have your opponent's license suspended. Ask the court clerk for a certified copy of the judgment and contact the Department of Licensing in Olympia.

5. You can go to a collection agency for help in collecting your money. Keep in mind, however, that the agency will usually keep half of anything it collects for you. Debt collection lawyers often charge large fees for collecting your money, too.

**If you do not know what property or wages the losing side has**, you may make your opponent come to court again. You can ask questions about the amount and location of his or her wages. You can ask about bank accounts, personal property and real estate as well. You will probably need the help of a lawyer to do this.

### **AA. What if my opponent does not have enough money to pay?**

You may not be able to collect at all. Not all property and wages may be taken to enforce a judgment. If the losing side does not have many possessions or much money, he or she may file a "Claim of Exemption" to protect a certain small value of possessions. That amount might include a house, furniture, car, clothes and some wages. For more information, see the Northwest Justice Project publication: [Debtors' Rights in a Lawsuit](#). This publication is available on the website at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

### **BB. If I lose, may I appeal?**

If you brought the claim but lost at trial, you may appeal only if your claim was for \$1,000 or more. If your opponent brought a "Counterclaim" against you (saying that you did something wrong or owed money), you may appeal the Counterclaim if it was for \$250 or more.

If you appeal, the superior court (not the small claims court) will consider your appeal. The superior court will only look at the written record and evidence from your original small claims court trial.<sup>9</sup> That means, unless the superior court says so, you may not bring new evidence or speak to support your claim again. There will be no jury, no attorneys, or new claims, unless the superior court allows them.

**If you want to appeal, take the following steps within 30 days of the judge's decision about your case:**<sup>10</sup>

1. Get a Notice of Appeal form from the district court clerk. Fill it out. Make at least two copies. File the original Notice of Appeal in the district court.
2. Notify your opponent that you are appealing. Have a copy of the Notice of Appeal delivered (or "served") to your opponent. To notify your opponent about the appeal, follow the same steps you took to notify your opponent of your original claim. See above: *How do I notify my opponent?*
3. If a person delivered a copy of the Notice of Appeal to your opponent, file the Certificate of Service (or affidavit) in the district court **within 30 days**. If you mailed the Notice of Appeal, file the Return Receipt for the Certified Mail or Registered Mail **within 30 days**.

---

<sup>9</sup> [RCW 12.36.055](#)

<sup>10</sup> [RCW 12.36.020](#)

4. Get a transcript (an official written record) of the small claims court judgment. You must pay a small fee for the transcript, usually about \$40.<sup>11</sup>
5. Post a bond at the district court. The bond is to be executed with two or more personal sureties (someone who ensures that the money will be paid), or a surety company (if the court approves), for twice the amount of the judgment plus costs or twice the amount of your claim (whichever is more).<sup>12</sup> This bond will be used to pay any judgment against you if you lose your appeal.<sup>13</sup>
6. Pay a filing fee for the appeal to the superior court, usually \$200. You may pay cash, by money order, or by cashier's check – payable to the Clerk of the Superior Court. If you are low-income, ask the clerk whether you may “waive the filing fee,” that is, not have to pay the fee because you are low-income. In addition to paying the filing fee, you might also have to pay a fee for preparing the appeal (an “appeal preparation processing fee,” of about \$40).
7. Within 14 days after you file the Notice of Appeal, the district court clerk will file the transcript (the official written record) of your small claims case with the superior court.<sup>14</sup> The superior court will give your case a new number. The district court clerk will let you know that you have a new number given to your case. Once the district court clerk tells you this is done, contact the superior court for further instructions.

**CC. If my opponent won a Counterclaim against me, saying I owe money, and I appeal, do I have to pay while the court is considering my appeal?**

If you don't want the small claims judgment enforced while you appeal it, ask the court to stop the collection.<sup>15</sup> After you've taken all the steps to file the appeal in superior court, make a “motion” asking that the court “stay” – or stop – all further action in the district court relating to your case. Ask a lawyer how to make such a motion.

**DD. If I won and my opponent appeals – and also tries to stop me from collecting the debt while the appeal is in progress – what do I do?**

If you're trying to collect from your opponent, your opponent might appeal and ask the court not to let you collect while the appeal is in progress. To do that, your opponent must make a motion to stay the collection. You can appear in court and say you do not want the collection stopped during the appeal, but if you finally lose the appeal you might have to pay back what you've already collected from your opponent.

---

<sup>11</sup> [RCW 3.62.060\(7\)](#)

<sup>12</sup> [RCW 12.36.020\(2\)](#)

<sup>13</sup> [RCW 12.36.090](#)

<sup>14</sup> [RCW 12.36.050\(1\)](#)

<sup>15</sup> [RCW 12.36.030](#)

## **Section 3: What to Do if Someone Sues You in Small Claims Court**

### **A. How do I know if someone is suing me?**

If someone sues you in small claims court, you will receive a Notice of Small Claim form. You may receive this form by mail or in person at your residence or business. You will find your name listed as the “defendant.” You will find the name of the person suing you as the “plaintiff.” The person who is suing you must send you this Notice of Small Claim form.

### **B. What do I do when I receive a Notice of Small Claim form?**

The Notice of Small Claim will specify a trial date. Unless your case is settled and dismissed by the court, YOU MUST SHOW UP FOR TRIAL. If you do not, you will probably lose automatically, and the person or company suing you (called the plaintiff) will try to collect from you. Your wages might be garnished and some of your property seized. Collection costs incurred during collection, including attorney's fees, could then be added to the judgment.

### **C. Should I contact the person who is suing me?**

It is a good idea to contact the other side to see if you can settle – come to an agreement outside of court. Try asking your opponent for a compromise. Tell the other person you’d like to solve the problem without going to court.

Your opponent might agree to use someone to act as a “mediator,” a neutral third party who helps you and your opponent settle out of court. Local dispute mediation centers often have mediators who work for free. The Washington State Attorney General’s Office or your local Better business Bureau might be able to help mediate.

If you get a **demand letter** from the person who is suing you, that means your opponent is probably trying to come to an agreement with you out of court. A demand letter states your opponent’s view of the problem and what he or she thinks you should do about it. The demand letter will probably ask you to answer in writing.

### **D. What if the person who is suing me and I come to an agreement before going to court?**

If you come to an agreement with your opponent before going to court, prepare a written agreement together. Both you and your opponent must sign the agreement. The person who sued you must then tell the court clerk to dismiss the case against you. Make sure to check yourself to see that the clerk dismissed the case.

If you agree to pay at a later date, your opponent will ask the court for a “continuance” (a delay). The person who sued you must then deliver to you in person or by mail a Notice of Continuance. The Notice of Continuance will show a new trial date. If you pay before that new trial date, your opponent should tell the clerk to dismiss the case. Make sure to check with the court clerk to see whether the clerk dismissed the case against you.

**E. What if I receive the Notice of Small Claim form fewer than 10 days before the trial?**

If you receive the Notice of Small Claim form fewer than 10 days before the trial date, contact the district court clerk. The judge should delay the trial for at least 10 days.

**F. What if I think the person suing me is actually the person who did something wrong?**

If you think the person suing you did something wrong to you or failed to follow through on some part of an agreement, you can file a “Counterclaim” against that person. If you think the person suing you actually owes you money, file a Counterclaim, stating that your opponent owes you an amount of money.

File the Counterclaim with the court clerk as soon as possible after you get your opponent’s Notice of Small Claim form. **Do not wait until the trial to tell the judge about what you believe your opponent has done wrong.** If you do, the judge may feel that the person suing you did not have enough notice of your Counterclaim – did not know about it soon enough before the trial. In that case the judge may not listen to your arguments.

**G. How do I file a Counterclaim?**

1. Go to the court listed at the top of the Notice of Small Claim form as soon as possible after you get the Notice.
2. Tell the court clerk that you wish to file a Counterclaim. The form to do this will probably be the same Notice of Small Claim form used by the plaintiff to begin the case.
3. Explain on the form what you think the person has done wrong or why you don’t think you owe him or her any money. If you think the person owes you money, explain your reasons for this also.
4. **Make at least two copies of the Counterclaim form.** Give the original to the clerk at the court where your opponent filed the case against you. The clerk may also give you extra copies of the form.
5. **You will have to pay a filing fee to the court just as you would if you were starting the case yourself.**
6. You **must** make sure your opponent gets a copy of the Counterclaim form. Either mail a copy of the Counterclaim form to your opponent, or have the form delivered to your opponent in person. See next section: *How do I mail or deliver a copy of the Counterclaim form to my opponent?*

**H. How do I mail or deliver a copy of the Counterclaim to my opponent?**

Try to serve your Counterclaim on your opponent at least **10 days** before the court date. If you mail the Counterclaim form to your opponent, try to mail it at least **13 days** before the court date

to make sure it arrives on time. **You may** have the Counterclaim delivered in person. **You may not deliver the Counterclaim yourself.** We recommend that you take it to the sheriff's office and have one of the staff there deliver it. Or you can hire a professional "process server." (You can find professional process servers in the yellow pages.) You can also ask a friend who is over 18 years of age to deliver it. If you have a friend deliver it, make sure the friend is not personally involved in the case in any way.

- The person who delivers the Counterclaim **must** have your opponent sign a Certificate of Service form when making the delivery. An adult who lives with your opponent (spouse, housemate, etc.) may also sign the Certificate of Service form. You can make a copy of the blank Certificate of Service form included in this packet for this purpose.
- Bring the signed Certificate of Service form with you to the court.

## **I. How do I prepare for trial?**

### **1. Gather evidence.**

- Get the important papers and documents you need to defend yourself in the case. Bring anything that shows why you do not owe what your opponent says you owe. For example – a contract, a photograph, a diagram, a drawing, a renter's agreement or lease, a canceled check, repair bills, or written damage estimates.
  - Bring originals if possible. Bring extra copies in case the court wants to keep anything you have.
  - **You may only submit evidence during the trial, not after the trial.** Therefore, if you are not sure whether you will need something as evidence, bring it anyway.
2. **Contact witnesses who can support your case.** Ask them to appear at your trial. (In Washington you cannot order ("subpoena") a witness to come to small claims court.) Your witnesses must have personal knowledge of the facts they're asked to testify about. The witnesses must have seen or heard the damage, accident, or dispute **in person**. The more personal witnesses you have, the better.
  3. **Get a preview.** If you want to see how small claims court works before your trial, ask the court clerk when other small claims trials will be held. You can always sit in on a trial to get an idea what yours will be like and get an idea about how judges rule. If your court has a video about small claims court, ask the clerk for the video.
  4. **Practice.** Before your trial, practice what you want to say. Make sure your presentation is organized and short. You may want to write a list of important points you don't want to forget. Include questions to your opponent and to your witnesses. Let your witnesses know in advance what questions you are going to ask them.

## **J. Do I have to prove I am innocent?**

In the American court system a person is considered innocent until he or she is proven guilty. That means the person suing you must prove that you are guilty – that you owe him or her money. But you will have to defend yourself. You must defend yourself against your opponent’s evidence and witnesses.

## **K. What happens if I absolutely can’t make it to court on my trial date?**

If you don’t show up in court, you may lose automatically (“by default”).

If you failed to appear and lost automatically, you might possibly get a second chance. However, you must have a very good reason for not showing up on the trial date. File a Motion to Vacate the Judgment as soon as possible after the default judgment. File this motion with the court clerk. See the Northwest Justice Project packet: [Motion to Vacate a Judgment/Order](#). This packet is available on the web at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

You might need to consult a lawyer for help with this motion.

## **L. What should I bring to court the day of the trial?**

- All your evidence, including written documents and physical evidence.
- Your witnesses.
- A signed Certificate of Service form (if you filed a Counterclaim).

## **M. What do I do when I get to court for my trial?**

Check in with the court clerk when you arrive at the courthouse for your trial. The clerk will tell you which courtroom to go to. You might find the list of cases to be heard that day posted outside the courtroom. Or you might hear the list of cases read aloud at the start of the session. If you do not see the list of cases or hear it read aloud, see the court clerk.

## **N. What happens at the trial?**

The judge will refer to your opponent as the “plaintiff” (the person who brought the case). The judge will refer to you as the “defendant” (because you are “defending” yourself against your opponent).

The judge usually begins by describing the court’s procedure. Usually at this time, all plaintiffs, defendants and witnesses must swear to tell the truth. Then the first case is called. Wait for the judge to announce your case. Then go forward with your evidence and witnesses.

## **O. What happens when my case is called?**

When your case is called, the person suing you will have the chance to speak first. **Do not interrupt!** The judge may then ask your opponent or your opponent’s witness’s questions. The judge may then give you the chance to ask your opponent and his witnesses’ questions as well.

Then you will have your turn to talk.

**P. What should I say when it is my turn to talk?**

When it is your turn to talk –

- Describe what happened from your point of view.
- Show the judge any evidence you brought with you.
- Explain why you think you do not owe your opponent money or why you owe less than your opponent says you owe.
- If you filed a Counterclaim (saying your opponent did something wrong or owes you money), explain it now.
- If you have witnesses, tell the judge you would like to have your witnesses testify. When the judge says you may question your witnesses, ask them the questions you prepared about what they saw and heard happen. Ask them the questions which show why you are right in the case.

**Q. When will the judge announce a decision?**

After hearing both sides, the judge may announce a decision immediately. Sometimes the judge needs more time to study the case. If so, the judge will announce a decision in writing within a few weeks. If the judge decides in court the day of the trial, and if both sides are in court, you or your opponent may ask the court to prepare a payment plan.

**R. If I lose the case, what happens?**

You can pay your opponent at once or agree to a payment plan. When you've paid in full, your opponent must let the district court know that you've paid. After you've paid, check to make sure your opponent did this and that the case was dismissed.

If you're unable to pay and do not have many possessions or much money, you may file a "Claim of Exemption" to protect a certain minimum value of your possessions. For instance, you may be able to protect your house, furniture, a car, clothes and some wages. For more information about the collection process and the limits placed on it by law, see the Northwest Justice Project publications, [Debtors' Rights in a Lawsuit](#) and [How to Claim Personal Property Exemptions](#). These publications are available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

If you are able to pay but don't pay within 30 days of the decision (or according to a payment plan set by the court), your opponent has some options to try to collect:

- Your opponent might make you come to court again and answer questions about the amount and location of your wages, bank account, personal property and real estate.
- Your opponent might file papers to have your wages or bank account "garnished," that is, not paid to you but paid to your opponent instead.
- Your opponent might file papers to have some of your property seized and sold to pay what you owe (called "execution").

- Your opponent might put a “lien” on your real estate. The lien makes a sale of your real estate more difficult. The lien remains on the property even after it is sold.
- If your opponent’s claim arose from a car accident and you were uninsured, your opponent may have your driver’s license suspended.

### **S. If I lose, may I appeal?**

If you lost on the claim your opponent brought against you, you may appeal if that claim was for \$250 or more. If you brought a Counterclaim against your opponent and lost, you may appeal only if your Counterclaim was for \$1,000 or more.<sup>16</sup>

If you decide to appeal, the superior court will consider your appeal. The superior court will look at the record and evidence from the original trial in small claims court.<sup>17</sup> There will be no jury, attorneys, new pleadings, new testimony or new evidence.

If you want to appeal, take the following steps **within 30 days** of the judge’s decision in small claims court:<sup>18</sup>

1. Get a Notice of Appeal form from the district court clerk. Fill it out and file the original Notice of Appeal in the district court.
2. Notify your opponent that you are appealing. Have a copy of the Notice of Appeal delivered (or “served”) to your opponent. Then file a Certificate of Service (or affidavit) OR a Certified mail or Registered Mail Return Receipt within 30 days. (To notify your opponent about the appeal, follow the same steps you took, if you filed a Counterclaim. See above: **How do I mail or deliver a copy of the Counterclaim form to my opponent?**)
3. Pay the district court a small fee for a transcript of the small claims court judgment (usually about \$40).<sup>19</sup>
4. Post a bond at the district court. The bond is to be executed with two or more personal sureties (someone who ensures payment of the money), or a surety company (if the court approves), for twice the amount of the judgment plus costs or twice the amount of your claim (whichever is more).<sup>20</sup> This bond will be used to pay any judgment against you if you lose your appeal.<sup>21</sup>
5. Pay the superior court filing fee in cash, money order, or cashier’s check, payable to the clerk of the superior court (usually \$200). You may be able to waive this filing fee (ask that you not have to pay it) if you are low-income. There may also be an additional appeal preparation processing fee. Within 14 days of filing the Notice of Appeal the district court clerk will file the transcript at the superior court, which will

---

<sup>16</sup> [RCW 12.40.120](#)

<sup>17</sup> [RCW 12.36.055](#)

<sup>18</sup> [RCW 12.36.020](#)

<sup>19</sup> [RCW 3.62.060\(7\)](#)

<sup>20</sup> [RCW 12.36.020\(2\)](#)

<sup>21</sup> [RCW 12.36.090](#)

assign a new number to your case.<sup>22</sup> Once the district court clerk tells you this is done, you need to contact the superior court for further instructions.

**T. If I appeal, may I keep my opponent from trying to collect while I appeal?**

If you don't want the small claims judgment enforced during your appeal, ask the court to "stay" or stop the collection.<sup>23</sup> After you've filed the appeal in superior court, make a motion in superior court asking that court to "stay" all further proceedings in the district court on the judgment. Talk with a lawyer about how to make such a motion.

If you ask the superior court to "stay" the collection, your opponent may show up in court and argue against the stay. The court might agree with your opponent and go ahead with the collection. However, if you win your appeal, your opponent may have to pay back what was collected from you.

**U. How can I get more legal help?**

- If you are low-income, you can get legal advice from the Coordinated Legal Education and Referral (CLEAR) line at 1-888-201-1014. Someone there can also tell you if there are free legal services in your county. If you live in King County, call 211.
- The Northwest Justice Project has other written information that might be helpful. There are packets about landlord-tenant law, bankruptcy, divorce, domestic violence, wills, and more. You can find these packets on the internet at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).
- You can also get written information from the Washington State Bar Association (206-727-8213) or the Washington State Attorney General's Office (toll free 1-800-551-4636).
- If you think that you need a lawyer and your local legal services office cannot help you, you may be able to find a lawyer who will charge a reduced fee for your first appointment. Check in the yellow pages of your telephone directory under "**Attorneys.**" There may also be a listing for a referral program operated by your local bar association.

---

<sup>22</sup> [RCW 12.36.050\(1\)](#)

<sup>23</sup> [RCW 12.36.030](#)

## Sample Demand Letter

Jill Landlord  
69 Main St.  
Tacoma, WA 98425

Dear Ms. Landlord:

It has now been over two weeks since I moved out of your rental property located at 38 Sycamore, Elbe, WA 99302. I gave you written notice on May 10, 2008 that I would be moving out on May 31, 2008. I was out of the apartment by the end of the day, May 31. When I moved into your apartment I paid you a damage deposit of \$500. According to the Residential Landlord Tenant Act, you must by law return my damage deposit in full or provide a written explanation as to why any of it is withheld within 14 days of my moving out. RCW 59.18.280. The statute also provides that you are liable for twice the amount of the deposit plus court costs and attorney fees for not complying with the above damage deposit requirements.

In our telephone conversation earlier today, you claim that you do not have to refund my deposit due to damage to the property. The damage you claim, however, is ordinary wear and tear, which you cannot hold against me under the RLTA. I have pictures of the apartment as it was when I moved out and a witness who will attest that the apartment was as clean when I moved out as it was when I moved in. I also have a copy of the checklist we both signed when I moved in; it shows that most of the conditions you complain about existed at the time I moved in.

Please send me a check or money order for \$500 by July 1, 2008. If I do not receive my deposit refund by that date I will file a case against you in small claims court for the entire amount of money provided for in the Residential Landlord Tenant Act.

Sincerely,

Joe Tenant  
1234 Main Street, #B  
Tacoma, WA 98425

DISTRICT COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
v. **Plaintiff(s),**  
\_\_\_\_\_  
\_\_\_\_\_  
**Defendant(s).**

**SMALL CLAIM NO.**  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**  
**[Completed by the person who handed**  
**the Notice of Small Claim to the**  
**Defendant(s)].**

I DECLARE:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served \_\_\_\_\_ [Name of Defendant] with a NOTICE OF SMALL CLAIM:
3. Service was made pursuant to Limited Jurisdiction Court Civil Rule 4(d)

CHECK ONE:

- by delivery to the person named in paragraph 2 above.  
 by delivery to \_\_\_\_\_ [Name], a person of suitable age and discretion residing at the respondent's usual abode.

/

/

