

SMALL CLAIMS COURT

Small Claims court is a useful option if you need the court's help with a dispute of up to \$7,500. The filing fees are small (\$30 - \$75 depending on the amount of damages requested). The rules of evidence are informal, and attorneys are not allowed to attend the hearing, so the costs of bringing the case are low.

WHAT: One common kind of case brought in Small Claims Court is the request for the return of a security deposit by renters. Another is a request for damages or the return of money paid to a contractor that doesn't finish a job or who does shoddy work. Lawsuits for the return of money that has been borrowed and not repaid, or about faulty merchandise, are also common.

Small Claims Court is generally used to get an order for someone to pay you money. There are some types of orders that can't be granted in Small Claims Court, such as eviction orders, which are decided in Superior Court. However, if a landlord is just asking for damages like unpaid rent from a tenant that has already vacated the property, the landlord can use Small Claims Court.

WHO: Before you file a Small Claims Court case, you (the plaintiff) need information about the person you want to sue (the defendant), and where to serve them. If the defendant is an individual, you just need that person's name and address. If the defendant is someone doing business under another name, such as "Delicious Bake Shop", you need to find out the name and address of the actual owner of the business. You can find that out by researching "Fictitious Business Names" on the County website <http://www.clerkrecordersearch.org/>, or by going to the County Recorder's office. If you want to sue a corporation, you need to use the official name of the corporation as the defendant, and to serve an officer or the "agent for service of process". You can find out that information on the Secretary of State website: <http://kepler.sos.ca.gov>.

WHERE: Small Claims cases must be filed in the proper court, which means in the right county, and also, if there is more than one Small Claims Court in the county, then in the right courthouse. The Small Claims Courthouses in Santa Clara County are in Palo Alto, Santa Clara, and Morgan Hill. (There isn't one in South San Jose any more). See the court website for which courts cover which cities. One place you can file is where the defendant lives. In specific kinds of cases, there are also other options, such as where the incident occurred, if it's a case involving damage to a person or property, such as a traffic accident case; or where the contract was signed by the buyer, if it's a consumer case.

WHEN: In Small Claims Court as well as other courts, an action must be brought within the statute of limitation period that applies to that kind of case. The statutes of limitation for some common actions are four years for breach of a written contract, two years for breach of an oral contract, and two years for personal injury (but there is a 100 day limitation for claims against public entities). The laws about when the statute of limitations starts running can be complex. Also, sometimes a claim can be brought with

more than one legal theory, in order to use a different limitations period. If there is any question about whether your claim is timely, it's advisable to talk to an attorney about it.

HOW: In order to start a Small Claims Court case, you need to file a "Plaintiff's Claim and Order to Go to Small Claims Court". After you fill out the form, you will file it with your filing fee (\$30 - \$75), and the clerk will give you a hearing date. The papers then need to be served on the defendant or defendants. The Small Claims Court clerk can serve it by certified mail for you (you pay the fee), if you think the defendant will sign for the certified mail. That usually works for companies, but for individuals, it's safer to have them served in person. You will need to arrange for that yourself.

On the hearing date, you will need to take a summary of the information you want to tell the judge or commissioner, and any evidence you have, including witnesses. Since evidence in Small Claims Court is informal, you can take a medical bill, for instance, and it will be accepted as evidence, without needing a custodian of records testify that it is actually the bill. When you get to court it is likely that the judge will ask you to meet first with a mediator and the defendant to see if you can resolve the case. If you can't, the judge or commissioner will then have the hearing. Most people get nervous in court, so it is helpful to write out what you want to say in advance.

Attorneys aren't allowed in the Small Claims Court hearings. However, you can meet with an attorney beforehand to discuss the case, and for help with filling out the paperwork, and with how to present the case effectively.

AFTER THE HEARING: At the end of the hearing, the judge or commissioner may tell you the decision right then, or they may send it to you later. If you are the Plaintiff and you lose the case, that's the end of it. If you are the defendant and you lose, you can appeal the case to Superior Court. There will be a second new trial (a trial de novo). Attorneys are allowed at that re-trial. The judges try to keep the re-trials very short.

If you are the Plaintiff and you win, you will need to collect the Judgment. If you are lucky, the losing defendant will just pay you the money. If not, you may need to garnish the person's wages or bank account, put a lien on their house, or take other collection action. An attorney may be able to help you with the collection.

FURTHER INFORMATION: Each Small Claims Courthouse has a self-help center, and there is information on the court's website that is helpful:
<http://www.scselselfservice.org/small/default.htm>.

SALLY COOPERRIDER
JOHNSON AND NIXON
142 George St.
San Jose, CA 95110
(408)287-7717