

# A CITIZEN'S GUIDE TO SMALL CLAIMS COURT

## SMALL CLAIMS COURT GLOSSARY

- **Plaintiff:** the person alleging he or she is owed money or property
- **Defendant:** the person or party who allegedly owes money or property
- **Counterclaim:** if a defendant disagrees with the original claim and instead believes he/she is owed money or property, he/she may file a counterclaim
- **Subpoena:** a legal document issued by the court, that compels a witness to appear in court

## MAXIMUM CLAIM

- The amount in question in a small claims case cannot be more than \$7,000.
- It must be a fixed amount that's easily determined, like a balance on a bill. Small claims court cases do not address "damages" claimed for some sort of wrong.
- Claims may be filed in the county where the defendant lives or where he or she may be served.

## JUDGMENT AND RESOLUTION

- The judgment is the written decision of the judge. The winning side is entitled to collect the disputed amount, plus court costs. Collection of payment is the responsibility of the parties involved. If the losing party fails to pay, there are some other options. For example, you may be able to place a lien on the defendant's property, hire a professional debt collector to assist you with collection, or sell your judgment to a debt collector.

## APPEAL

- If either side is dissatisfied with the court's judgment, the case may be appealed to district court. The appeal must be in writing and must be made within 10 days of the original judgment.
- The appeal addresses questions of law only, to confirm that the law was correctly applied to the case. The district court judge will not retry the case or accept new evidence, testimony, etc.

**Montana Small Claims Court is a quick, inexpensive, and informal way to resolve disputes over small amounts of personal property or money. Juries and lawyers are not necessary. Small claims cases are handled in justice courts, in accordance with Title 25, Chapter 35 of the Montana Code Annotated.**

**There are some basic rules to know, and some guidelines to follow. The information within this brochure provides some guidance through the process. A step-by-step checklist is also available at:**  
<https://dojmt.gov/office-of-consumer-protection/small-claims-court/>.

## OTHER RELEVANT SUPPORT

- Title 25, Chapter 35 of the Montana Code Annotated.
- <https://dojmt.gov/office-of-consumer-protection/small-claims-court/>

*Brochure provided by the Montana Department of Justice's Office of Consumer Protection.*

**FEEES**

- A fee is required to file a complaint or a counterclaim. Once a complaint is filed, the court issues an order to appear at trial and a process server delivers the order to the defendant.
  - There is a fee for the service of the order. It is possible to recover some of these fees as part of the resolution of a case.
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**TIMELINES**

- A hearing must be set within 40 days of the date the claim is filed.
  - A defendant must be given at least five days notice before a hearing.
  - The parties may ask the court for more time. Typically such a request must be made before the date of the hearing.
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**SUPBOENAS**

- A party may ask the court to issue subpoenas for witnesses. To be effective, subpoenas must be issued well before the hearing date.

**COUNTERCLAIMS**

- If a defendant believes the plaintiff owes him money, he may file a counterclaim.
  - The counterclaim must involve the same dispute as the original complaint.
  - It must be served on the plaintiff at least 72 hours before the scheduled date of the trial.
  - The amount of the counterclaim cannot be more than \$6,500.
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**SETTLEMENT OPTIONS**

- Sometimes it is possible to settle disputes before trial and avoid small claims court altogether. If the case is settled, the agreement should be put in writing and signed by both parties. The parties should give a copy of the agreement to the clerk of small claims court and ask that the complaint be dismissed.
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**LIMITS ON NUMBER OF CASES FILED**

- A party may not file more than 10 claims in a calendar year, except claims involving shoplifting.

**JURIES**

- Juries are not used in small claims court. If a party prefers a jury trial, the case must be removed to justice court. The request must be made within 10 days after the complaint is served on the defendant. The clerk of court can explain the process.
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**ATTORNEYS**

- Attorneys are not necessary for small claims proceedings. One party may not be represented by an attorney unless all parties are represented by attorneys.
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**IN COURT**

- Once under oath, the parties involved present the facts truthfully, in the order in which they occurred. The plaintiff tells his or her side of the story, then it's the defendant's turn.
- Both sides may present evidence and call witnesses. Each side may also question the other person and his or her witnesses and may ask questions about evidence.