

How to File a Small Claims Case Small Claims Procedures (Plaintiff)

IMPORTANT NOTICE TO PLAINTIFF:

1. You must serve the defendant within 30 days of commencing a small claims action with the circuit court.
2. The return of service must be filed with the Court within seven days after receipt.
3. If the defendant does not respond within 14 days of service you must make application to the Court for a default judgment.

Failure to do any of the above or failure to obtain a written extension will result in your case being **dismissed** after 63 days. A new case must be filed to reactivate the claim once a judgment of dismissal is entered unless otherwise approved by the Court.

FORMS AND DEFINITIONS

Forms to file a small claims claim are available at the court's information window for a nominal fee or on our web site at: <http://courts.oregon.gov/Deschutes/> .

Definitions:

Plaintiff:	person filing the suit	AKA:	also known as
Defendant:	person being sued	DBA:	doing business as
Creditor:	person who receives the money		
Debtor:	person owing the money		

All persons must be listed by their proper names, correctly spelled. *For example: John P. Doe and Jane M. Doe, not Mr. & Mrs. John Doe.* Include the mailing and residence or business address of all parties.

If any person involved in the dispute is under the age of 18 years, in the military service, or is mentally incapacitated, you may want to consult an attorney for assistance.

If a business is a **corporation**, identify it as such. The name and address of the registered agent or an officer of the corporation should also be provided. *For example: John's Auto Shop, Inc., an Oregon corporation, Registered agent: John P. Doe.* If you need information about the corporation, call the Corporation Division at (503) 986-2200.

If a person or business is a **partnership**, list the name of the partnership after the name of each partner. *For example: John P. Doe and Jane M. Smith, dba J & J Auto Shop, a partnership.*

FILING A SMALL CLAIM

If you are the person filing the claim, you are the **plaintiff**. The party you are suing is the **defendant**. You must try to settle out of court before you file a small claim. If you file a claim, you will have to swear to the court that you have made a reasonable effort to settle the matter first. To initiate a claim, plaintiff must file the Small Claim and pay the required filing fee. To file the claim in Deschutes County, defendant must live in this county or the incident must have taken place in this county. The claim may be filed for any amount or property value of **\$10,000** or less, and the claim form must be signed in the presence of a court clerk or notary public.

FILING FEE

There will be a filing fee based upon the amount of the claim. Please check with the court clerk and/or visit <http://courts.oregon.gov/Deschutes/> for the current fees. Make your check payable to the **State of Oregon**. The maximum claim in Small Claims is \$10,000.00.

SERVING THE DEFENDANT

When filing the claim, you must provide an address, other than a post office box, where a copy of the claim can be delivered to (“served on”) the defendant. The Notice of Small Claim must be served on the defendant. **You cannot serve the papers yourself.** Service can be:

1. **By the county sheriff or a process server** of your choice. Contact the Sheriff’s Office or a private process server to obtain the current fees for service.
2. **By a competent person 18 years or older** who is a resident of Oregon and who is neither a party to the action nor an officer, director, employee of, or attorney for any party to the action.
3. **By certified mail.** If you serve the defendant by certified mail the envelope must be marked with the words “**Deliver to Addressee Only**” and “**Return Receipt Requested.**” You should request Restricted Delivery for the Post Office. The return receipt (green card) must show the date it was received, and must be signed by the defendant. It must be returned to the court. If service by certified mail is not successful, you must then use the county sheriff or a process server as described above.

If substitute service was made (if the documents were actually served upon someone other than the defendant), you must complete a Notice of Substitute Service, available from the court clerk or the court website, and mail a copy of that form to the defendant.

AFTER THE DEFENDANT HAS BEEN SERVED

The defendant has 14 days (**if the defendant is a public body and the plaintiff is an inmate, the defendant has 30 days**) after service in which to do one of the following:

1. Pay the claim in full to you, including your court costs;
2. Deny the claim and request a hearing;
3. Demand a jury trial (for claims over \$750);
4. Deny the claim, request a hearing and file a counterclaim;
5. Make a settlement offer directly to you; or
6. Do nothing.

If the defendant requests a hearing, the court will notify you by mail of the date and time to appear for the hearing.

If the defendant requests a jury trial, you will receive a notice telling you that a formal complaint is required. (Formal complaints are usually prepared by an attorney. **The court does not supply forms or samples of formal complaints.**) You must file the formal complaint with the court within 20 days of the notice or the case will be dismissed. Additional filing fees will be due and the case may then be referred to arbitration.

If the claim is settled prior to the entry of judgment, you **MUST** file a Motion and Order to Dismiss with the court.

DEFAULT JUDGMENT

If the defendant does nothing, you may request a default judgment on the 15th day after the date of personal service on the defendant, or in the case of substitute service, on the 15th day after notice was mailed to the defendant.

If the defendant is a public body and the plaintiff is an inmate, the plaintiff must file and serve the public body or Attorney General with a notice of intent to apply for an order of default at least 10 days before the court approves the default. Before the court can enter a default judgment, the inmate must submit to the court an affidavit of proof of service of the notice and claim and of the notice of intent to apply for an order of default.

A request for default judgment must be in writing. (A form is available from the clerk's office or the court website.) If everything is in order, the clerk will enter a default judgment against the defendant.

INMATE SMALL CLAIMS ACTIONS

2011 Senate Bill 77 changed the law for certain small claims actions filed by inmates. An inmate who brings a small claims action against a public body must serve the notice and claim (and all subsequent filings) on the public body.

If the public body is the Department of Corrections or another state agency, the inmate must also serve the notice and claim on the Attorney General.

The public body or Attorney General must admit or deny the claim as required by ORS 46.455 within 30 days after the date of service.

The Department of Corrections and other state agencies (including their officers, employees, and agents) may appear in the small claims action through an attorney or paralegal employed by the Department of Justice.

Upon the request of the public body or Attorney General, the court must transfer an inmate's small claims action to the regular department of the circuit court regardless of the amount in controversy and notwithstanding ORS 46.405.

An inmate must file and serve the public body or Attorney General with a notice of intent to apply for an order of default at least 10 days before the court approves the default. Before the court can enter a default judgment, the inmate must submit to the court an affidavit of proof of service of the notice and claim and of the notice of intent to apply for an order of default.

An inmate cannot file an action against another inmate in the small claims department. Justice courts have no jurisdiction for actions filed by inmates.

THE COURT DOES NOT COLLECT THE MONEY FOR YOU

If you get a judgment and the defendant refuses to pay it, you may be able to have the defendant's wages or bank account garnished. To do so, you must have a "**Writ of Garnishment**" issued to the debtor's employer or to a bank where the debtor maintains an account.

A **Writ of Garnishment** form and a **Claim of Exemption** form can be obtained from an office supply or stationery store. You must have both of these forms. You must bring the completed forms to the clerk to be issued. Please check with the court clerk and/or visit the court website for the current fee to file a writ of garnishment. Service of the writ may be made by certified mail with a return receipt requested, or by the Sheriff or a process server.

All payments are to be paid directly to the judgment creditor or the creditor's attorney; the court cannot accept payment from a judgment debtor. The most common way a small claim judgment is collected is by use of a Writ of Garnishment. You may want to contact an attorney to advise you of your options for collection.

If you wish your judgment to become a lien against real property, you must request the judgment be issued and transcribe it to Circuit Court. Please check with the court clerk and/or visit the court website for the current fee to transcribe a judgment to Circuit Court.

Once the judgment has been paid, you are legally responsible for notifying the court in writing using the **Satisfaction of Judgment** form, available from the court clerk or the court website.

There is no appeal from Small Claims Court. If you have further questions, you may wish to consult an attorney.