

If the following information does not answer your questions, you may call the Oregon State Bar (503) 684-3763 or go the website www.osbar.org. The website Oregon.gov has several useful resources including Oregon Revised Statutes and Oregon Administrative Rules. The court clerk may answer questions about Small Claims filing procedures, but is prohibited from giving legal advice

SMALL CLAIMS PROCEDURES AND INSTRUCTIONS

Small claims are filed to resolve disputes between parties without an attorney. The maximum amount claimed cannot exceed \$10,000.00.

Court staff are **NOT** permitted to give legal advice

The party filing the claim is the plaintiff; the party being sued is the defendant. To initiate (start) the case, the plaintiff must fill out the Claim and Notice of Claim form and pay the required filing fee. For claims up to \$2,500 the fee is \$50.00 and for claims \$2,501-\$10,000 the fee is \$90.00. The claim may be filed for any amount or property value of \$10,000 or less.

1. FILING IN THE PROPER COUNTY

In order to file a case in Washington County Courts, one of the following requirements must be met:

- a. Does the defendant(s) live in Washington County? -OR-
- b. Did the incident happen in Washington County? -OR-
- c. When the claim is based on a contract, the defendant must have contracted to perform an obligation under the contract in Washington County.

2. WHO SHOULD YOU NAME AS A DEFENDANT?

When filing a claim, it is necessary that the name of the Defendant(s) be correct. Some possible ways to name a Defendant(s) are:

- a. As an individual (be sure of spelling)
- b. As an individual doing business as,
- c. As an individual formerly doing business as,
- d. As an individual, individually doing business as
- e. As an individual, individually and formerly doing business as, or
- f. As a corporation (must have name of the Registered Agent to serve). You may call the Oregon Corporations Division at 503-986-2200 to get this information.

It is up to you to determine this information. The court cannot do this for you.

FILING A SMALL CLAIM FOR A BUSINESS OR AGAINST A BUSINESS

If you will be filing a claim against a business, please check with the Corporation Commissioner's office in Salem, phone no. 1-503-986-2200 so that you will have the correct information ready when you fill out your claim form. They have both Corporation and Assumed Business Name records.

IF THE DEFENDANT IS A CORPORATION -

Put down the full Corporation name and address as the Defendant, and then show, over at the right side of the form, the name and address of the Registered Agent for the Corporation. The Registered Agent is the person who will actually be served with the copy of your claim, together with an Answer form. An example is:

EASY PAY WAY, INC.
666 6th Avenue
Hillsboro, Oregon 97123

Serve Registered Agent: John Brown
711 Bank Building
Portland, Oregon 97225

IF THE DEFENDANT IS AN ASSUMED BUSINESS NAME (D.B.A.) - LIKE A PARTNERSHIP -

Name all the partners, D.B.A. (doing business as) the business name, as Defendants. Each of the partners (also called parties of interest or owner) will be served with a copy of the claim and an Answer form. An example is:

JOHN WAY & JIM WAY

**BE SURE YOU SHOW
CLEARLY WHERE EACH
PARTNER IS TO BE SERVED**

D.B.A. WAY'S EASY PAY
666 6TH AVENUE
HILLSBORO, OREGON 97123

IF THE DEFENDANT IS A CORPORATION - WITH AN ASSUMED BUSINESS NAME -

In this instance, the Corporation name becomes the owner or party of interest, and service of the claim will be made upon the Registered Agent of the Corporation. An example is:

EASY PAY WAY, INC.
D.B.A. WAY'S EASY PAY
666 6TH STREET
HILLSBORO, OREGON 97123

Serve Registered Agent: John Brown
711 Bank Building
Portland, Oregon 97225

The filing fee (check or money order) should be made payable to the State of Oregon.

The service fee (in a separate check or money order) should be made payable to the Sheriff of the County in which the papers will actually be served. In the case of a registered agent or multiple Defendants, you might be serving papers in a county other than the county where you are filing your claim. If you will be serving papers in more than one County, you will need to include a service fee for each Sheriff.

If you will be filing a claim for a business, you must follow the same rules as far as clarification of name is concerned. If you are a Corporation, your full Corporation name should be shown as the Plaintiff. If you are a partnership or a sole proprietorship, the owner or owners must be named D.B.A. your assumed business name.

3. SERVICE

The plaintiff must notify the defendant that a case has been filed. This is known as service. There are four ways the defendant can be served after the claim is filed:

- a. Take a copy of the claim to the Sheriff's Office and have a Sheriff deputy serve the defendant. The Sheriff's Office charges a fee for service.
- b. Hire a private process server of your choice. Service fees vary. You may look up a private process server in the Yellow Pages under "process servers".
- c. Have a competent person 18 years or older who is a resident of Oregon and who is neither a party to the action (plaintiff or defendant).
- d. Send the service papers via certified mail, specify "Deliver to Addressee Only" and "Return Receipt Requested". Check with the post office for the cost. Proof of service by certified mail needs to be filed in court by filing the proof of service including the original green card containing the defendant's own legible signature, date of receipt and case number. If certified mail is not successful in getting the Notice of Claim to defendant, then service must be made by methods a, b or c.

If the defendant will be served outside of Washington County you will need to contact the appropriate Sheriff Office in the area you wish to serve.

If **SUBSTITUTE or OFFICE** service was made {service upon someone other than the Defendant(s)}, you must mail a COPY of the "NOTICE OF CLAIM" given to you by the Court and a copy of the "Return of Service" to the defendant(s) IMMEDIATELY and file a Certificate of Mailing with the court. If service was done by substitute service you must submit the Certificate of Mailing to the court in order to complete the service process.

An original proof of service must be filed with the court for your case to proceed. If proof of service is not received within 60 days of filing your claim, after written notice to you, the case may be dismissed.

4. THE DEFAULT PROCESS

The plaintiff in a small claims case may file a request for default judgment if the defendant has not filed a response within 14 days from the date the claim was served on the defendant. The Request for Judgment form can be obtained at the civil clerk's counter, by sending a stamped self addressed envelope to Washington County Courts, Attn: Small Claims Department, 150 North First Avenue, Hillsboro, OR 97124, or by downloading the form from our website. The request will be reviewed and a judgment will be entered by the clerk. If this request is not received within 30 days from the date of service the case may be dismissed after written notice to you. Money judgments for \$3,000 or more are docketed in the judgment docket. Docketing creates a lien on real property in the county where it is docketed. If your judgment is under \$3,000 you may still collect any way Oregon Law allows, see section 9 for options. The court may take

up to two weeks to process your default request. If the defendant responds during this period a hearing will be set.

The Court **WILL NOT** notify you as to whether or not the Defendant(s) responds in the time allowed, so please keep in contact with the **Small Claims Department at (503) 846-8888 ext. 2354.**

YOU MUST NOTIFY THE COURT IN WRITING OF ANY PAYMENTS OR SETTLEMENT MADE ON YOUR CLAIM.

It is **IMPORTANT** that you keep the Court advised of your current address.

5. THE DEFENDANT'S RESPONSE

The defendant(s) has 14 days in which to do one of the following:

- a. Pay the claim in full, including court costs, and file proof of payment or delivery with the court.
- b. Deny the claim and request a hearing
- c. Deny the claim, file a counterclaim and request a hearing,
- d. Demand a jury trial (claims over \$750)

If the defendant(s) requests a hearing, you will be notified by mail of the date and time to appear for that hearing. If you cannot appear at the time set, you must specify a good reason **IN WRITING** to the court at least fourteen days prior to the hearing date.

If the defendant makes a demand for a jury trial, the plaintiff must file a formal complaint in the manner provided by ORS 46.465 within 20 days after the court sends notice to file a formal complaint. You must file your formal complaint with the court within 20 days or the case will be dismissed. Please be aware that additional filing fees will be due from you.

THE COURT DOES NOT SUPPLY FORMS OR SAMPLES OF FORMAL COMPLAINTS.

6. MEDIATION HEARING

The Circuit Court for Washington County has established a program of mediation for small claims cases. After a defendant(s) files their Notice of Defendant's Election denying the claim and/or asserting a counterclaim against the plaintiff, the court will schedule the parties a mediation hearing. All disputed cases will be referred to the mediation program.

Mediation has many benefits for the parties:

- a. Mediation is a process that brings you and the other party together to discuss your dispute with a trained neutral mediator.
- b. Mediation offers the parties a final opportunity to maintain control over the outcome of the dispute before turning it over to a judge.
- c. Mediation is confidential.
- d. A mediated agreement is enforceable but will not appear as a judgment on a debtor's credit report unless there is non-compliance with the agreement and a judgment is entered.

If the parties decline to mediate or if they are unable to resolve the dispute through mediation, a trial will be set at a later date.

7. PREPARING FOR TRIAL

- a. All small claims hearings are informal in nature so that the parties may handle their own cases in court without the need for an attorney. Attorneys cannot appear without special permission of the court. Each side in order, the plaintiff first, and defendant second, will have a chance to explain their side of the case to the Judge and present evidence and witnesses. The judge will be interested in hearing only the facts. In your testimony, be brief and to the point. You may read a written version or speak from notes, but do not expect the judge to read a written statement.
- b. Plaintiff(s) must prove their case and defendant(s) must prove their counterclaims. If this is not done, the court will not continue the case until a later date, but will instead find against the party failing to prove their case.
- c. The maximum jurisdiction of Small Claims Court is \$10,000. If your claim is for more than this, you should consider filing a regular civil lawsuit in Circuit Court.
- d. If you are asking for money damages, you must itemize and prove your actual loss. The court will not entertain "guesses" or rough estimates.

- e. Bring the following to support your claim:

Records, documents, bills, original contracts, photos, estimates, etc.

Make copies of any material that you may wish to submit to the court and bring the copies with the originals to court. You may make copies for the defendant's reference.

When you appear at the [Washington County Courthouse](#) for your trial, you will need to check the bulletin board at the entrance of the courthouse to find the appropriate courtroom. The docket that is hung is in order by time and then alphabetical. So find the time you are scheduled to appear and then look for your name. Please be prepared to present your case at the time listed on your trial notice. Also please remember a dress code may be enforced in the courtroom:

**Shirts and shoes are required.*

**Caps and hats must be removed upon entering the courtroom.*

**Food and drinks, are not allowed in the courtroom.*

**Weapons are not allowed in any portion of the courthouse.*

**Pagers, cell phones and all other electronic devices which may disrupt court proceedings must be turned off.*

**Audio and tape recording is not permitted.*

8. DEMAND LETTER

Once you receive your notice of entry of judgment you must send the debtor a written demand for payment. This letter to the debtor must be served by certified mail, return receipt requested. Keep a copy of this letter and also keep the receipt card from the post office which the debtor must sign. Your demand letter should state that you are making a demand for payment within 10 days and give the debtor the total balance due.

9. HOW TO COLLECT AFTER JUDGMENT

If a judgment is not paid immediately or within the time requested by the holder of the judgment, the following alternatives are available to you:

- a. **Writ of Garnishment** (if you know where the defendant works or banks) can be issued by the court or an attorney. Forms are available from any place that provides legal forms. You should ask for Forms No. 1128 (Writ of Garnishment), Form No. 529 (Debt Calculation), Form No. 530 (Garnishment Response), Form No. 1140 (Challenge to Garnishment) be sure they are the forms effective January 2002. The Court will require a filing fee when filing these forms. If Washington

County Sheriff or a process server will be serving your garnishment you need the original pages plus 3 copies of the Writ of Garnishment form only. The Sheriff will charge a fee for service.

- b. **Transcription of Judgment:** In order for a small claims judgment creditor to attach real property of a debtor, a judgment under \$3,000 must be transcribed to the judgment docket of the Circuit Court. To have a small claims judgment transcribed to Circuit Court, you will need to file a request in writing with the court. There is a filing fee to have your judgment transcribed.
- c. **Judgment Debtor Exam:** If you do not know where the debtor(s) assets are located or where they work or bank, you may request a Judgment Debtor Exam. This process allows you to question the debtor about assets. This hearing is not scheduled in front of a judge. You will need to file a Motion (Form No. 1114) and Order (Form No. 179) and attach a copy of the demand letter and the receipt card. If the demand letter gets returned undeliverable, keep it as you received it and then attach it to the motion. Judgment Debtor exams are scheduled on Tuesday, Wednesday, Thursday or Friday at either 10am or 2pm. You may fill in the date on your form, but be sure that the date is far enough out that you will be able to get the documents served and give the debtor proper notice of the hearing date and time. Once the forms are completed, you will need to file the originals with the court clerk and they will be submitted to a judge for signature. After the Order has been signed a certified copy will be made for you to serve the debtor with. You must serve the debtor personally and provide the court with proof of service prior to the hearing date. You may obtain the necessary forms from any stationary store that sells legal forms.
- d. **Show Cause** (if the defendant fails to appear for the judgment debtor exam)

WHEN ENTERING INTO THIS PROCESS YOU NEED TO RESEARCH WHAT THIS PROCESS CAN DO FOR YOU AND WHAT THE PROPER STEPS TO TAKE ARE. THIS INFORMATION IS THE ONLY INFORMATION THE CLERKS ARE ABLE TO ASSIST WITH. THEY WILL NOT BE ABLE TO ANSWER QUESTIONS OR ASSIST ANY FURTHER WITH THIS PROCESS.

This process will bring the defendant into a courtroom before one of our judges to answer questions regarding their assets. You will need to file a Motion For Order to Show Cause (Form #1248), Affidavit For Issuance of Order to Show Cause (Form #777) and an Order to Show Cause (Form #778). You will need to contact the court calendaring office in order to request a hearing date prior to filing your documents. You may reach them at (503)846-8888 or by going to room 120J of the Justice Services Building. Once you have a date you need to put that in your order and file your paperwork with the court. The court clerk will submit the forms to a judge for signature. Once this paperwork is signed you will need to have the paperwork served on the debtor personally. Proof of service must be

filed with the court immediately in order to proceed with the show cause hearing date.

- e. **DMV License Suspension:** If a debtor fails to satisfy a small claims judgment for damages arising out of a motor vehicle accident within 60 days of judgment, the creditor can request in writing that the court send a certificate to the Driver and Motor Vehicles Services (DMV) stating that the judgment has not been satisfied. The DMV will then suspend the debtor's license to drive until the court notifies them that the judgment has been settled or satisfied. The request must be in writing and must include the drivers license number of the debtor.

10. SATISFACTIONS

A Satisfaction is a form filed by the judgment creditor to acknowledge that the debt has been paid and is no longer owing. Satisfaction forms are available at the court or can be purchased at stationery or book stores that sell legal documents. A satisfaction is a notarized document. A court clerk can witness the signature of a creditor if shown proof of identification.

A judgment debtor may have difficulty getting a judgment satisfied by a creditor for various reasons. It then takes a judge's order to satisfy the judgment. There is no court fee to file a judicial satisfaction.

Please feel free to visit our website for additional information regarding court procedures and to obtain forms the address is: **<http://www.courts.oregon.gov/washington>**

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