

If you feel an individual or business owes you money, there is something you can do about it. If your community has a mediation program, you and the person you are having a dispute with can try to work the problem out with the help of a neutral mediator. If you choose not to resolve your problem informally through mediation, you can file a lawsuit in small claims court for up to \$6500. If your claim is for more than that amount, and you still elect to file in the small claims division, you give up the right or “waive” your right to collect more than that amount.

Some laws set their own limit on the amount a person may collect. For instance, you may sue to recover for damage to your motor vehicle arising out of an accident if the other driver is at fault. However, you are limited to that amount not covered by insurance up to \$3000.

When you file in small claims you give up (waive) the following rights:

The right to be represented by an attorney.

The right to have a jury trial.

The right to sue or counter sue for more than \$6000.

The right to appeal the final decision of the Court.

### **What is a Small Claims Lawsuit?**

In the small claims division of the district court you can bring a lawsuit against anyone who owes you money. You can sue a person or business which has caused damage to your property or possessions. The maximum you can collect through a judgment in small claims court is \$6500. Small claims courts are designed to operate informally and without attorneys present. If you feel you need an attorney to represent you, the matter must be removed to the general civil division in district court. In small claims court you represent yourself, speak directly to the judge or magistrate, provide your own evidence, and have any witnesses you wish to speak for you. You do not need to know the law before you appear for a hearing. You simply tell the judge/magistrate why you feel that someone owes you money and the person or business you are suing has the opportunity to tell their side of the case. After hearing both sides, the judge/magistrate will decide whether money is owed to any party, and if so, how much.

When deciding whether to file a claim, consider whether the person you are suing has any income. Even if the judge/magistrate grants you a judgment, if the person you sued has no income, it will be difficult for you to collect money. Collection of a judgment is often the most difficult part of any lawsuit. You might want to check this out before you invest your time and money in filling a claim.

### **How to Start Your Lawsuit**

If you choose to file a small claim against the person or business in the small claim division of district court, your case must be filed in the city or county where the transaction took place or where the person or business you are suing is located. **If you file in the wrong court, the case may be transferred to the appropriate court AT YOUR EXPENSE. This usually means paying an additional filing fee to the appropriate court and having your hearing delayed.** If you are suing more than one person or business, the suit may be filed in the district court in which any of the persons live or where any of the businesses do business. If you are suing a company or a store, you must write out whether it is someone doing business under an assumed name (e.g. John Doe doing business as-DBA-Doe Storage), or whether it is a partnership or corporation. To obtain information on someone “doing business as” or under an assumed name, you can contact the County Clerk’s office at the Mecosta County Court House. To obtain information on a resident agent of a corporation, contact the Commerce Department in Lansing (517-373-0496). You should find out this information BEFORE going to court to file your claim.

At court, tell the clerk you want to file a small claims case. You will be given an affidavit and claim form to fill out. On the form, you name the person or business you are suing and list the reasons why you are suing and the amount you are suing for.

The cost for filing a small claim is as follows:

\$0 - \$600 claim = \$30 fee

\$601 - \$1750 claim = \$50 fee

\$1751 - \$6500 claim = \$70 fee

This fee must be paid to the clerk at the time of filing. You may choose to have the defendant served by certified mail, which is an additional \$15.00 (restricted) and \$8.00 (non-restricted) at the time of filing. Or you can choose to have the defendant personally served by a Court Officer who may require pre-payment for the services. The filing fees and costs of service may be included in the amount of judgment if awarded in your favor. **IF YOU DO NOT WIN THE SUIT, THESE FEES ARE NOT RETURNED.**

After you have filed your claim, the court will schedule the hearing date 30-45 days from the date of filing and forward the defendant's papers by certified mail (restricted delivery to the addressee only, return receipt requested) or personal service indicating the date they are to be in court. Keep in mind that it is always advisable to contact the court prior to the hearing date to determine whether the defendant has been served. If the mailing is returned to the court unclaimed, refused, etc., the court will notify you by a "Notice of Non-Service". You will then have the opportunity to choose the personal service option. This may require the court to adjourn your hearing date in order to give enough time for service. The defendant may respond before the hearing. This response needs to be in writing and will be placed in the file. The defendant may offer to settle out of court after learning you have filed a suit. If you settle the matter out of court, you can either voluntarily dismiss your lawsuit or obtain a judgment, depending on your circumstance.

#### **If You Have Been Sued in Small Claims Court**

If you are served with court papers from the small claims court, you are called the defendant. You have several ways to respond to the affidavit and claim you have received.

If you want to deny the claim, **you must appear in court on the hearing date**, bringing with you any evidence you have to support your denial. If you want an attorney to represent you, **you must remove the case to the general civil division before the hearing. The case will be transferred from small claims court to the general civil division.**

If you have a claim against the person who is suing you, you can also file a counterclaim. Your written counterclaim should be filed with the court and served on the person suing you.

If you fail to appear for the hearing, the court may enter a default judgment against you. This means the judge may grant a judgment for the plaintiff without hearing your statement.

The entry of a judgment against you may appear on your credit report.

#### **Preparing for the Hearing**

On the hearing date, any of the following may happen:

If both the person filing the lawsuit and the defendant appear, the judge may recommend that the parties go to mediation and the case may be adjourned. If either party does not want to try mediation, the hearing may proceed.

If the party filing the lawsuit does **not** appear, and the defendant does appear, the case will be dismissed.

If the defendant does not appear, the person filing the lawsuit may ask for a “default” judgment. This means that if the judge decides you have a good claim, you can obtain a judgment without a hearing since the person or business you are suing did not appear to challenge your claim.

When you go to court for hearing, take with you all evidence you believe proves your claim. This might include a sales receipt, guarantee, lease, contract, or accident report. If a damaged article is too big to bring with you, photographs can be presented as evidence. Any witnesses you would like to speak on your behalf should appear for hearing scheduled for the judge. A witness must have personal knowledge of your case. Keep in mind that the magistrate may require the hearing date be adjourned in order to give enough time to hear your case.

Remember, a small claims case will be heard by a judge or magistrate; you have no right to a jury trial, and the hearing will not be recorded.

**Either party has the right to ask that the case be heard in the general civil division. In the general civil division, both you and the defendant have the right to be represented by an attorney. Whoever loses the case may be asked to pay for court costs and attorney fees.**

### **The Hearing**

The hearing will take place at the court where you filed your claim. It is important to be there on time; if you filed the lawsuit and are not in court when your case is called, a dismissal may be entered. Bring all your relevant papers or evidence and make sure your witnesses will be on time.

The court clerk will call your case and you and the defendant will appear before the judge or magistrate. The judge/magistrate will ask you to state your claim. Take your time and tell what happened in your own words and why you think the person or business you are suing owes you money.

Show the judge/magistrate your evidence and introduce any witnesses you have. The witnesses will be allowed to tell the judge/magistrate what they know about the case.

When you have finished, the person or business you are suing will have an opportunity to explain their side of the case. Listen carefully. If you think the defendant is leaving something out or is misstating facts, be sure to tell the judge/magistrate.

**A judge’s decision is final. Neither you nor the defendant can appeal to a higher court once the judge has made a decision in the small claims division. Either party may appeal a magistrate’s decision. An appeal needs to be in writing and filed with the court within 21 days from the date the judgment is signed by the judge. Your appeal will be presented to the judge, who has the option to grant or deny your request. If your request for a new hearing is granted, the case would be rescheduled before a judge and both parties would explain their case again.**

### **Collecting Money**

If you obtain a judgment against the defendant, the court will provide instructions regarding post-judgment collections. The defendant may pay the judgment plus court costs immediately after the hearing, but if he/she does not have the money to pay right away, the judge may allow a reasonable time to pay and may set up a payment schedule.

If the defendant fails to pay the judgment when ordered, you must go back to the court and file additional papers to collect the judgment by having their wages or bank account garnished or property seized. This cannot occur until 21 days after the judgment is entered.