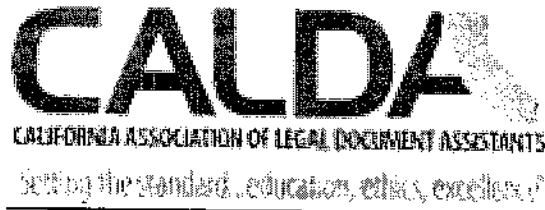


SMALL CLAIMS



FILING A SMALL CLAIMS PROCEEDING



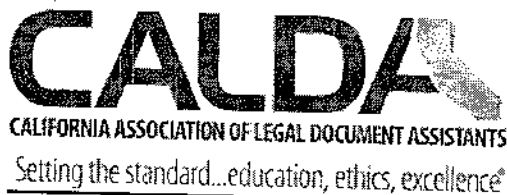
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This guide will help you understand the basic process of filing a small claims proceeding. We have tried to answer many of the most frequently asked questions to assist you in understanding the process. You may use a Legal Document Assistant (LDA) to help you prepare your paperwork but if you have any legal questions be sure to seek legal advice from a licensed attorney.

WHAT IS SMALL CLAIMS COURT?

Small Claims Court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. The person who sues is called the "plaintiff." The person who is being sued is called the "defendant." Generally, neither party can be represented by an attorney. An individual can sue another individual or a business. A business, in turn, can sue an individual or another business. In order to file or defend a case in Small Claims Court you must be at least 18 years old and be mentally competent.

FILING YOUR CLAIM

A natural person cannot file a claim that exceeds \$10,000. There are some exceptions to this amount, which can be found in Sections 116.220 and 116.224 of the Code of Civil Procedure. If you are filing a claim for more than \$2,500 you are required to file a declaration, under penalty of perjury, stating that you have not filed more than two small claims actions, in which the amount of the demand exceeds \$2,500, within the calendar year. To file your claim, you must fill out a Plaintiff's Claim and Order to go to Small Claims Court (**Form SC-100, revised January 1, 2012**). If your claim is based on a fee dispute with an attorney, you should attach the Attorney-Client Fee Dispute Attachment to Plaintiff's Claim (**Form SC-101**) to your claim. If you wish to include a declaration further describing your claim, relevant events or witness statement(s), Form MC-031 may also be used. Individuals who do business in California under a fictitious business name and desire to file an action regarding a business matter must prepare and file a Fictitious Business Name Declaration (**Form SC-103**). You may also have to fill out additional local forms, depending on the local rules of the county in which your claim is filed. At the time your papers are filed with the court, a filing fee will also be required. This fee is based on the number of claims you have filed in that calendar year, and the amount of your claim. These fees are the same for every county in the state. If you are unable to pay the fees, you may be eligible for a fee waiver. Contact your local court for requirements. Also, check your court's local rules regarding the number of copies required for filing. In some counties, two or more copies are required.

SERVING YOUR CLAIM ON THE OTHER PARTY

Before you can go to court, you must prove to the court that the defendant has been properly served. Therefore, you must have somebody serve each defendant with a copy of your claim. This is known as "service of process," and can be done by personal service or substituted service, by the Sheriff or private process server, or the court clerk can serve the documents for you by mail with return receipt requested (additional fee may be required). Service must be effected 15 days before the trial date where services is within the county, 20 days if service is outside the county. The correct original Proof of Service form must be filed with the court at least five days before trial. (SC-104, personal service, SC104A, Proof of Mailing [Substituted Service], SC-104C, instructions for serving a business or public entity).

DEFENDANT'S CLAIM

The defendant is not required to file a response in a small claims action, but can file a claim against the plaintiff if he or she feels that the plaintiff owes him or her money. Defendant must file Defendant's Claim and Order to go to Small Claims Court (**SC-120**) and **SC-120A** (*Other Plaintiffs or Defendants*), if there are more than two plaintiffs or two defendants. Follow the same guidelines described in the section **FILING YOUR CLAIM** on page 2. Also include forms SC-103 and MC-031, and any local forms, if applicable, and pay the filing fees. The defendant is also required to serve the claim in the appropriate manner at least five days before the hearing. If the plaintiff served the defendant less than ten days before the hearing, the defendant may serve the plaintiff up to one day before the hearing. The defendant's claim does not have to be related to the plaintiff's claim.

PRESENTING YOUR CASE TO THE JUDGE

Show up for your hearing **30** minutes early. At your hearing, the judge will listen to both sides of the story. The plaintiff will have the first opportunity to speak, and then the defendant will have his/her turn. Sometimes the judge may interrupt a party and ask a particular question. To help tell your side of the story, you should bring evidence such as: witnesses, photos, bills, receipts, police reports, contracts or any other proof in your possession. Sometimes it is helpful to write out your testimony before you go to court, so that your presentation is clear and concise. This makes it easier for the judge to understand your side of the story. If you need papers in the possession of a third party, fill out form SC-107 – *Small Claims Subpoena for Personal Appearance and Production of Documents at Trial or Hearing and Declaration*, to request the desired documents.

The judge may make a decision at your hearing, or mail it to you later. Instead of a judge, you may appear before a commissioner or temporary judge at your hearing, both of which have the same authority as judges. A temporary judge (called a "judge pro tem" or "judge pro tempore") is an experienced lawyer who hears and decides cases. Both parties will be asked to sign a form, indicating they each agree to have a judge pro tem hear their case. If either party does not want a temporary judge, that party can ask the court to have a judge hear the case. If this is done, the matter is usually referred to another courtroom, and you may have to return

another day.

Post-Trial Checklist: SC-200 for information after trial.

For additional guidance through the small claims procedure go to the California Courts website at: <http://www.courts.ca.gov/selfhelp-smallclaims.htm>

For additional forms see the California Courts website at: <http://www.courts.ca.gov/forms.htm?filter=SC>

AFTER THE JUDGMENT – FILING AN APPEAL

A plaintiff cannot ask for an appeal unless, the defendant has counter-sued the plaintiff by filing a *Defendant's Claim* in response to the *Plaintiff's Claim*, and plaintiff loses. In that case, the plaintiff MAY appeal. Otherwise, if a plaintiff loses, the case is over. A defendant who has lost, can request an appeal. When an appeal is filed, the defendant is requesting that the decision made by the small claims judge be reversed. A new hearing is set, but this time the case is presented to a judge in the civil division of the Superior Court. A notice of appeal (**Form SC-140**) must be filed with the Small Claims Court, within thirty days of the date that the small claims decision was mailed to you. This date is noted on your copy of the decision. The court will mail you the date and time of your hearing on the appeal. The hearing on your appeal will be in the civil division of the Superior Court. At trial, you and the other side will have to present your case all over again.

AFTER THE JUDGMENT – COLLECTING A JUDGMENT

The judgment debtor must pay or initiate a payment plan on the judgment within thirty days after receipt of the Notice of Entry of Judgment from the court. The payment cannot be enforced until the time for appeal expires (thirty days after entry of judgment). If an appeal hearing is held, the judgment cannot be enforced until after the Superior Court's judgment is returned to the Small Claims Court (about ten days), and only if the decision of the Small Claims Court is upheld. For more information, review Sections 116.730 through 116.795 of the Code of Civil Procedure.

Judgments are enforceable for ten years, and are renewable every ten years thereafter. Once a judgment has been renewed, it cannot renew again until five years later. To renew a judgment, review Sections 683.110 through 683.220 of the Code of Civil Procedure. You must use **Forms EJ-190**, Application for and Renewal of Judgment and **EJ-195**, Notice of Renewal of Judgment. The Notice of Renewal of Judgment must be personally served on the debtor, or served by first-class mail. Liens created at the time of the original judgment must also be renewed.

If there is a lien on a debtor's property when the judgment is renewed, a certified copy of **EJ-190** must be filed with the County Recorder's Office to renew the property lien.

A debtor that fails to appeal, or file a motion to vacate the judgment, and who fails to voluntarily pay the judgment, is required to fill out a Judgment Debtor's Statement of Assets (**Form SC-133**), and send it to the creditor. In many counties, the court clerk will mail a **SC-133** form to the debtor with the original judgment. Unfortunately, many debtors do not fill out and deliver the **SC-133**. Often, this may force you to perform a debtor's examination. For more detailed information about collecting a judgment, refer to the CALDA brochure, *Collecting Your Judgment*.

THIS INFORMATION IS PROVIDED AS A PUBLIC SERVICE OF THE CALIFORNIA ASSOCIATION OF LEGAL DOCUMENT ASSISTANTS. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE. IF YOU HAVE ANY LEGAL QUESTIONS, YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY.

FOR FURTHER INFORMATION REGARDING OUR ORGANIZATION ,PLEASE WRITE OR CONTACT US THROUGH OUR WEBSITE: www.calda.org

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