

# Small Claims Court

## A Citizen's Guide

*Montana's Small Claims Court is an effective way for our citizens to inexpensively and quickly resolve disputes. The procedures are informal and there's no need to hire a lawyer. If you're interested in knowing more about how the process works, this brochure is a good place to start for both plaintiffs and defendants.*



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March 2021

## Small Claims Glossary

**Plaintiff:** The person alleging he or she is owed money or property is the plaintiff.

**Defendant:** The person or party who allegedly owes money or property is the defendant.

**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 subpoena is a legal document, issued by the court, that compels a witness to appear in court.

**Liquidated Claim:** A claim for an amount previously agreed on by operation of law or by the terms of the parties' agreement.

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*Prepared in accordance with MCA §25-35-601*

Small claims court is a quick, inexpensive, 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; however, small claims court rules and procedures are informal and thus not necessarily the same as in justice court.

There are some basic rules to know, however, and some guidelines to follow. This brochure provides some guidance through the process, along with a glossary and a step-by-step checklist.

### Maximum Claim

- The amount in question in a small claims case cannot be more than \$7,000.
- A claim must be a fixed amount, like a balance on a bill or another easily determined amount previously agreed upon by the parties. If unsure of the form of your claim, check with the small claims court before filing a suit in order to avoid forfeiture of fees.
- Claims may be filed in the county where the defendant lives or where he or she may be served.

### Fees

- A fee is required to file a complaint or counterclaim. Once a complaint is filed, the Court will issue an order to appear at trial

and, for a fee, a process server will deliver the order to the defendant. It is possible to recover some of these fees as part of the resolution of a case.

### Venues

Claims can be filed in the county where the claim arose or in the county where the defendant resides.

### 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 hearing date.
- Weekends and holidays count against timelines stating a specific number of days to take an action.



### 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.

### 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.

### Subpoenas

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

### 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.

### Attorneys

Attorneys are not necessary for small claims proceedings. A party may not be represented by an attorney unless all parties are represented by attorneys.

### 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.

### 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.



### 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.

### Limits on Cases

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

### Relevant Statutes

- Mont. Code Ann. §§ 25-35-501 to -807