

HOW TO FILE A SMALL CLAIMS AFFIDAVIT OR COUNTER AFFIDAVIT

Small Claims cases are governed by Utah Code: *Title 78A, Chapter 8*. The Supreme Court has adopted “simplified rules of procedure and evidence” called the Rules of Small Claims Procedures. If you have any questions not addressed in these instructions, refer to the Rules of Small Claims Procedures or the Utah Code. You should be able to locate a copy in your local library, on the State Courts’ Website at <https://www.utcourts.gov/resources/rules/srpe/>, or the Legislature’s Website at www.le.utah.gov (under Code).

INSTRUCTIONS TO THE PLAINTIFF

1. FILING SUIT. You are the “plaintiff” in this case and the person you are suing is the “defendant.” The maximum amount that you may sue for is \$11,000.00. Claims must be for money only. The Small Claims Department cannot be used to sue for possessions of property or to evict a tenant. You may not sue a government entity using small claims procedures. To sue a government entity you must comply with special statutory procedures and the Utah Rules of Civil Procedure. The debt must be owed to you. An employee may represent an employer, but you may not bring an action on behalf of anyone else. The Small Claims Department has jurisdiction over cases in which the defendant resides or the debt arises within the geographic boundaries of the court. You need to know the amount of the debt, what it is for, and the defendant’s name, street address and telephone number. The defendant’s social security number will be helpful. If you are suing a business, call the Department of Commerce at 801-530-4849 or <https://secure.utah.gov/bes/action/index> to obtain the business’ proper name and the name of its registered agent.

You must prepare the Affidavit, sign it in the presence of a notary public or court clerk, have your signature notarized, and file it with the court clerk. The Affidavit should be typewritten, but will be accepted if legibly handwritten. You must pay a filing fee (\$60 for claims \$2,000 or less; \$100 for claims from \$2,001 up to \$7,500; and \$185 for claims of \$7,501 to \$11,000) at the time you file the Affidavit. It is your responsibility to serve the defendant. You can serve the defendant by:

1. Mailing a copy of the Affidavit to the defendant by any method that requires the defendant to sign acknowledging receipt; or
2. Giving the Affidavit to the constable, sheriff’s department or a licensed process server for service on the defendant and paying for the service.

The Affidavit must be served on Defendant at least 30 calendar days before the trial. If you serve the defendant by mail, the date of service is the date that the defendant signs the receipt. Also, if you serve the defendant by mail, you must fill out and file with the court the Proof of Service form. The Proof of Service form must be filed with the court within 10 calendar days of service and must have the original receipt signed by the defendant attached. If the Affidavit is served by the sheriff’s office or constable, the sheriff or constable should file a Proof of Service with the court.

You will need to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk. Contact your process server and the court a few days before trial to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk. If no service has been made, your case may not be on the calendar for trial.

2. TRIAL. The clerk will set a trial date and give you a copy of the Affidavit with the trial date on it. If you fail to appear at trial, your case will be dismissed “with prejudice” and you may not be able to re-file your claim.

3. COUNTER AFFIDAVIT. If defendant files a Counter Affidavit against you, trial may be re scheduled. If you fail to appear at trial after a Counter Affidavit has been filed, judgment may be entered against you for the amount requested in the Counter Affidavit.

INSTRUCTIONS TO THE DEFENDANT

1. TRIAL. You have had a lawsuit filed against you. If you wish to contest the plaintiff’s claim, you must appear at trial on the appointed day. If you fail to appear at trial, judgment may be entered against you for the amount requested.

2. PAYMENT. If you do not dispute the claim, make arrangements with plaintiff to pay the claim and the court costs. If the plaintiff obtains judgment and pursues collection through the court, additional court costs and interest may be charged to you.

3. COUNTER AFFIDAVIT. If the plaintiff owes you money, you may file a Counter Affidavit on a form provided by the clerk. You must file the Counter Affidavit, pay the proper fee (\$50 for claims \$2,000 or less; \$70 for claims \$2,001 to \$7,500 and \$120 for claims \$7,501 to \$11,000) at least 15 calendar days prior to the trial date. The Court Clerk will mail a copy of the Counter Affidavit to the plaintiff. If you intend to file a Counter Affidavit, many of the “Instructions To The Plaintiff” will apply to you. Read them.

ADDITIONAL INSTRUCTIONS TO BOTH PARTIES

1. ATTORNEYS. Small Claims cases are informal. Parties are encouraged to represent themselves. However, you may hire an attorney if you wish. Parties with attorneys will not get preferential treatment.

2. SETTLEMENT. If the claim is settled prior to the trial date, call the court for instructions.

3. POSTPONING THE TRIAL. If you want to change the trial date, you must request a “Continuance.” Fill out the Motion for Continuance form available at the court or our website. The court must receive your Motion for Continuance at least five business days before trial. (This does not include the day you file the

continuance nor the date of the trial.) The Court Clerk can grant a continuance of up to 45 calendar days. A longer continuance may be granted only by the Judge. Each side can only get one continuance from the Court Clerk.

EVIDENCE AND WITNESSES. It is extremely important that you bring with you to trial all witnesses and papers necessary to prove your claim or defense. If you fail to do this, the case may be decided against you. Strict rules of evidence do not apply in trials of small claims. Irrelevant or unduly repetitious evidence will be excluded. A court may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their serious business affairs. The judge may allow hearsay that is probative, trustworthy and credible. “Hearsay” is testimony about what someone else has said. If at all possible, witnesses should testify about their first-hand knowledge. However, if possible, a party should have witnesses testify rather than rely on hearsay. Claims based entirely on hearsay will generally be disallowed. Evidence should be offered through the statements of live witnesses at trial, except that written statements such as repair bids, appraisals, repair bills and medical bills may be used instead of live testimony to establish the amount of a claim. If you intend to rely on such written statements, you should bring them with you. Be sure that statements are itemized, signed and submitted on the preparer’s original letterhead. If your case involves a damaged item, you should give the other party a chance to inspect the damage prior to trial. If you need the testimony of a witness who will not attend trial voluntarily, you should ask the court or your attorney to issue a Subpoena requiring that person to attend. It is your responsibility to have the Subpoena served and to pay the witness fee and service fee. A Subpoena must be served at least 15 calendar days before trial. You may have witnesses appear voluntarily without a subpoena, but the judge will not continue the trial if the witness fails to appear.

4. JUDGMENT. If judgment is granted, the winning party has the right to enforce the judgment. The losing party may be required to testify regarding assets and income. A lien can be placed on the losing party’s property, and non-exempt wages, bank accounts, stocks and other assets can be seized and sold by the sheriff or constable. A judgment accrues interest and the prevailing party may be entitled to recover court costs accruing after judgment. A judgment must be collected or renewed within 8 years of the date granted or it expires. When a judgment is paid, the winning party must file a Satisfaction of Judgment with the court.

5. APPEAL. Either party may appeal a Small Claims judgment within 30 calendar days of notice of entry of judgment. A Notice of Appeal must be filed with the court that issued the judgment and the appropriate fee paid of \$250 (\$10 to Justice Court and \$240 to District Court). However, collection efforts may still proceed unless a superseades bond is filed with District Court.