

TIP OF THE MONTH:

The Small Claims Court Process in Lane County: It's Not As Hard As You Think By Jim Straub, Oregon Rental Housing Association Legislative Director

This is a summary of information found on the Lane County Court website:

<http://courts.oregon.gov/Lane/SmallClaims/SmallClaimsPage.page>. Before filing a small claims court case, be sure to review ALL of the information available on this website. The following is presented as an overview of the process and is not intended to be all-inclusive. As always, ROA members with questions should contact the Helpline at 541-242-2850.

Small Claims Cases

Small claims are filed to resolve disputes between parties without an attorney. The maximum amount claimed cannot exceed \$10,000. There is no appeal of a small claims judgment. The small claims instructions and forms are available at the Information Booth on the second floor of the Lane County Courthouse, 125 E. 8th Ave, Eugene. The Civil Department of Lane County Circuit Court is open Monday - Friday, except court holidays, from 8:00 a.m. - 5:00 p.m.

How to File and Respond to a Small Claims Case

- The party filing the claim is the plaintiff; the party being sued is the defendant. To initiate (start) a case, the plaintiff must fill out the Claim and Notice of Claim form and pay the required filing fee. (See website listed above for most up-to-date fee information.)
- 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 to have a Sheriff's deputy serve the defendant. (Contact the Lane County Sheriff's Office at 541-682-4141 for the most up-to-date information about their service fee.)
b) Hire a private process server. Service fees vary. You may look up a private process server in the Yellow Pages under "Process Servers."
c) Have any competent person 18 years or older who is a resident of Oregon and who is neither a party to the action (plaintiff or defendant), nor an officer, director, employee of, or attorney for any party in the action serve the papers and file the proof of service with the court.
d) Send the service papers via certified mail, specify "Deliver to Addressee Only," return receipt requested. Check with post office for 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. 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.

- The defendant must respond to the plaintiff's claim within 14 calendar days after being served with a copy of the claim. (Specific details about how to respond are on the website.)
- 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 is provided in the court's small claim packet and is also available from the civil cashier at the courthouse. Notice of the entry of the judgment in the register is sent to the parties that have appeared.

Small Claims Mediation

When the defendant in a small claims case responds within 14 days after being served with the claim, the court will set a hearing date and notify the parties of that date by mail. On the scheduled court date the parties will be referred to a mediator to assist the parties to attempt to settle their case. If the parties reach an agreement, the agreement is presented to the judge for approval. If the parties are unable to reach an agreement, a judge hears the case after the mediation session. (The website contains a “frequently asked questions” about mediation section that is very informative.)

How to Prepare for Your Hearing

You should bring the following for your day in court:

- Exhibits - documents related to the case, if you have any, such as letters, leases, receipts, cancelled checks, work orders, repair estimates, diagrams, etc.
- Photos - they might help illustrate important sites.
- Witnesses - may be helpful if you have them.

Do NOT bring:

- An attorney - attorneys may not participate in small claims court or mediation sessions without permission of the court.

What Happens After Your Small Claims Hearing

The judge will make a final ruling at the hearing and sign a document called a judgment to reflect that ruling. If the case has been dismissed, the clerk will enter that judgment in the case register and close the case. If the judgment includes a money judgment, the clerk will enter that judgment in the case register and close the case. (The website has additional information about how to collect your money judgment.)

Frequently Asked Questions and Answers

Where do I file if the defendant lives out of state? You may file in the county in Oregon where the defendant contracted to perform a specific obligation.

How long do I have to file? Is there a statute of limitations for small claims? The court will accept any claim filed, but you may want to check with an attorney concerning the statute of limitations.

This person owes me more than the \$10,000 limit. Can I file two claims against them? The plaintiff must include all of the amounts claimed from the defendant arising out of a single transaction or occurrence. If the claim is less than \$10,000, then it may be filed as a small claims case.

How long does the whole small claims process take? How long before I go to court? Each case varies. The process can take anywhere from 2-8 weeks. The defendant has 14 days to respond to your claim. If the defendant files a response (called an "answer") the parties will receive a hearing notice. If the defendant demands a jury trial, the plaintiff will be contacted to file a formal complaint and may wish to consult an attorney immediately. If the defendant does not respond, the plaintiff may request a default judgment.

I don't know where the defendant lives; can he/she be served at work? Yes. Contact your process server for any restrictions on where the defendant can and cannot be served.

I can't appear at the hearing. Can another person appear on my behalf? No. If they are not a named party on the case (either defendant or plaintiff), they will not be allowed to testify as to the truthfulness of the matter before the court. An exception to this rule is if you are acting as an agent or representative of a business that has been named in a case.

We have a great Small Claims Court system in Lane County. I hear many Helpline callers say they are nervous about going to Small claims Court but as long as you are prepared, you should be fine. Most likely you will never end up in front of a judge, as Lane County has mandatory mediation. This is staffed by volunteer mediators who are there to deal with you fairly, not to put you in a "gotcha" situation. To improve your chances of winning your case and put your best foot forward, I recommend:

- Prepare, prepare, prepare. Take all your notes and paperwork. I always take my entire tenancy file with me, as you never know what could come up during the mediation process.
- Stick to the facts and don't let your emotions cloud your presentation and your case.
- Look and act professionally.
- If you win your case, ask for interest to be awarded too. It will almost always be granted but you have to ask for it.
- Do NOT refuse to participate in the mediation process. It will irritate the judge who will ultimately hear your case and possibly prejudice the court against you. Trust me, you will not get a more fair hearing in front of a judge than in front of a mediator.
- Be willing to compromise if possible. Judges don't like to hear failed mediation cases when they find out neither side was willing to work with the other to reach a resolution to the case.

The great thing about the fact that there are no attorneys allowed in small claims court is that the other side doesn't have an attorney either. It all comes down to what kind of case you can

make. So as long you are well prepared and present yourself and your case professionally, you should have absolutely nothing to fear from the Small Claims Court system in Lane County.