

Protecting Wisconsin Consumers for 75 Years

Small claims court

Does someone owe you money? Has your landlord failed to return your security deposit even though you did not damage the rental property? Did you pay for merchandise, but the store never delivered it and will not give a refund? You may want to consider bringing a lawsuit in small claims court. You may not need a lawyer and the rules are simpler than in most court proceedings.

Any individual or corporation doing business in Wisconsin can sue or be sued in small claims court. The court may require the appointment of a guardian for those less than 18 years of age.

Typical small claims

Small claims court may be used only for certain types of cases. For example:

- Claims for money where the amounts claimed do not exceed \$10,000 if the actions are for money judgments only or for the garnishment of wages (to enforce judgments from funds owed).
- Property damage or personal injury (tort actions) when the amount claimed is \$5,000 or less.

- Evictions, regardless of the amount of rent claimed.
- Repossessions of property (replevins) when it is a:
 - Non-consumer credit action where the value of the property does not exceed \$10,000.
 - Consumer credit transaction (personal property that was the subject of a lease or credit from a dealer) where the financed amount is \$25,000 or less.
- Eviction due to foreclosure.
- Return of earnest money for purchase of real property no matter the amount.
- Actions on an arbitration award for the purchase of real property regardless of the amount.

Although your claim may exceed \$10,000, the small claims court cannot award you more than \$10,000 plus costs.

Filing the lawsuit

For claims based on contract disagreements, file the lawsuit in the county court where the person you are suing lives. If the other party is a Wisconsin corporation, file the lawsuit in the

county where the corporation's main office is located. If the other party is an out-of-state corporation, you can sue in any county where the corporation does a substantial amount of business and maintains an address.

If there are several people involved in the lawsuit, you can sue in the county where any one of them resides. For information about a corporation and its agents, contact the:

**Dept. of Financial Institutions
Division of Corporate and
Consumer Services
PO Box 7846
Madison, WI 53707-7846
(608) 261-7577**

For personal injury or property damage claims, you can sue in the county where the injury took place or where the other party lives.

The main thing to remember is that you need the name of the person or company that you want to sue and a current Wisconsin address so that the papers can be served to start the action.

Should you hire an attorney?

In small claims court you can

handle your personal or business legal matters without an attorney; however, you can hire an attorney to represent you if you wish. If the other party has an attorney, your chances of winning might be better if you also have an attorney. If you do decide to hire a lawyer to represent you in a small claims court action, be sure to ask in advance about fees.

If you do not have a lawyer, you can contact the:

Statewide Lawyer Referral and Information Services

**Toll-free: 1-800-362-9082
(608) 257-4666**

The lawyer assistants in that office can get you in contact with an attorney based on your county and the issue. The attorney you are referred to will speak to you for \$20 for the first 30 minutes and charge their normal rates for anything beyond that time. You can also visit their website at www.legalexplorer.com for more information.

Try to settle first

To avoid the expense and time of going to court, you should try to settle the matter first.

Do not be reluctant to compromise. Contact the other party or their attorney, discuss the situation and try to solve the problem with an agreement you both can accept.

Even after a small claims suit is filed, you may still negotiate with the opposite party. Even in large civil lawsuit, over 90% of the cases are settled prior to trial.

Completing the forms

1. Go to the courthouse. The small claims court clerk will supply you with the necessary forms (a summons and a complaint form) to begin your action.
2. List your name as the plaintiff. You are the person filing the lawsuit.
3. The party you are suing is called the defendant. Make sure you have the correct name and address of the defendant. If the papers cannot be delivered to the defendant, you might have to start over and pay additional fees.
4. List the amount of money you request as damages.
5. Include a brief explanation about why you are suing the defendant.

After the forms are completed, they must be filed with the court. You will be charged a filing fee which differs from county to county. The filing fee must be paid in advance.

Copies of the forms must then be “served on” or delivered to the defendant. Many counties allow service by regular or certified mail if the defendant lives in that county.

The court will mail the forms for you, but will require a fee for this service. If mailed service is not allowed, or if the defendant lives outside the county, the defendant must be personally served. In these cases, you may have to take or mail the papers to the

county sheriff’s office in order to have them served on the other party.

There is a fee for this service. You may also serve the other party with the copies yourself.

Preparing your case

In preparing your case, keep in mind that your proof must be more convincing than the other side’s evidence. Consider the following:

- Think about how you are going to prove the defendant owes you money. Start by making a detailed list of what happened so the facts are clear in your mind.
- Gather all written information and paperwork that pertains to the situation – contracts, rental agreements, receipts, order forms, warranties, canceled checks, or credit card statements.
- Talk to people who may have witnessed important aspects of the dispute. For example, if you are suing your landlord for the return of your security deposit, ask a neutral person to testify concerning the condition of the rental unit when you started renting and when you left.
- If you are suing on the basis of defective merchandise or faulty repairs, it may be very helpful to have an expert witness testify on your behalf. You might present a notarized written statement from an expert concerning the nature of the defect and the decrease in value due to the defect. However, if it becomes

necessary to go to trial you will have to get the witness to testify in person. Full-time mechanics and repairers with several years of experience may qualify as experts.

Going to court

After your claim is filed, the court will probably set an initial informal conference to review the facts in your case. Many small claims court cases are settled at these informal conferences, so come prepared to argue your case.

Any evidence having reasonable value as proof may be offered. However, the judge or commissioner may refuse to hear evidence or arguments that are repeated or irrelevant. Keep to the key facts and do not discuss side issues unless a question requires it. Bring copies of each document for you, the judge and all parties.

If both parties appear at this first conference and cannot reach agreement, the matter will be scheduled for a hearing before a commissioner. In some highly populated counties, such as Milwaukee County, a court commissioner may informally hear and decide your case on the first court date.

If you are not satisfied with what is done at the informal conference or by a court commissioner, you maintain an absolute right to have your case heard by a circuit court judge in a full trial.

Collecting the judgment

If you win the case, ask the court to include court costs and any money you spent as part of

the settlement. The court can require reimbursement for fees such as the money paid to file the action, the cost to have the summons and complaint mailed or personally served, as well as any attorneys' fees.

A judgment will be entered in court stating what the opposing party owes you. In many cases, the opposing party will pay the judgment immediately. In other instances, you may find it necessary to take further informal action or consult an attorney who can proceed with more formal legal steps to collect the money to which you are entitled. The court will not force the defendant to pay what is owed you. It is your responsibility to collect your own judgment.

The court will order the debtor to provide a disclosure statement to you or to the clerk of court within 15 days of entry of the judgment. The statement must contain the debtor's name and address, his or her employer and the employer's address, any real property owned by the debtor, cash on hand, and financial institutions in which the debtor has funds.

If you are unable to satisfy the judgment by contacting the other party, contact the clerk of the court that heard your case. From the clerk, you can obtain the forms necessary for garnishment proceedings – if the other party receives wages or has bank accounts.

A judgment in your favor, if unsatisfied, remains in force as a lien on any real estate owned by the other party. If that property

were to be sold, you may be able to receive the amount of the judgment plus interest.

Remember, there is always the possibility that **the small claims court will not rule in your favor**. If small claims court does not rule in your favor, you may be responsible for paying a judgment which can include items such as attorney's fees.

Carefully consider all your options before proceeding with a lawsuit. If you do decide to bring a lawsuit in small claims court, prepare carefully to increase your chances of success.

For more information

For more information you can review the "Basic Guide to Wisconsin Small Claims Court Actions" document by visiting:

<http://www.wicourts.gov/publications/guides/smallclaimsguide.htm>

To find the circuit court website for your county, see the Wisconsin Court System's website at:

www.wicourts.gov/courts

Select: **Circuit Courts**

and then: **Court Web Sites**

(Some information taken from the Wisconsin Court System's publication "Basic Guide to Wisconsin Small Claims Actions")

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