

**QUESTIONS
& ANSWERS**

YOUR GUIDE TO THE SMALL CLAIMS COURT

**The Judiciary
State of Hawai'i**

This office shall NOT give legal advice to private parties or draft legal documents for them.

Anyone requiring such services should consult an attorney licensed to practice in Hawaii.

WHAT IS SMALL CLAIMS DIVISION?

It is a division of the district court in which certain types of claims between two or more parties are settled by a judge in a simple and informal manner. The law regarding the jurisdiction of the **Small Claims Division** is set forth in Chapter 633, Hawaii Revised Statutes 1976, as amended.

A person who files a claim is called a plaintiff; a person against whom a claim is filed is called the defendant.

WHERE MUST I GO TO FILE A SMALL CLAIM?

Small Claims packets are available in the Service Center office, located on the first floor, Hoapili Hale, Room 141A, 2145 Main Street, Wailuku, Hawaii 96793.

WHAT ARE THE SERVICE COUNTER HOURS?

8:00 A.M. to 4:00 P.M. Mondays through Fridays.

MAY I FILE ANY KIND OF CLAIM IN THE SMALL CLAIMS DIVISION?

NO. The Small Claims Division has power to handle only the following:

- A. 1) Cases for the recovery of money where the amount claimed is not more than \$5,000.00 net over and above any amount for interest and costs that may be awarded by the court.

- 2) A defendant named in the Statement of Claim may file a "Counterclaim" for the recovery of any amount of money up to **\$40,000.00** (4/17/14) plus interest and costs.
- B. Cases to settle a disagreement between landlord and tenant about the security deposit in a residential landlord and tenant relationship.
 - C. Cases for the return of leased or rented personal property worth less than \$5,000 where the amount claimed owed for that lease or rental is less than \$5,000 exclusive of interest and costs.
 - D. Cases for recovery of damages sustained or for repossession based upon the unauthorized removal of shopping carts, shopping baskets or similar devices from the premises of any business establishment.

WHERE MUST THE CLAIM BE FILED?

- A. The State of Hawaii is divided into four judicial circuits as follows:
 - 1) First judicial circuit (Oahu, District of Kalawao in Molokai, and all islands not included in other circuits);
 - 2) Second judicial circuit (Maui, Molokai except the District of Kalawao, Lanai, Kahoolawe, and Molokini);
 - 3) Third judicial circuit (Hawaii); and
 - 4) Fifth judicial circuit (Kauai and Niihau).
- B. Each judicial circuit has been divided geographically, into several divisions.
- C. There is a circuit court and a district court in each judicial circuit.
 - 1) The circuit court is located in one place.
 - 2) The district court is divided into as many divisions as there are geographical divisions in the judicial circuit to which it belongs. For example, **The District Court of the Second Circuit** is divided as follows:

DIVISIONS	LOCATION OF COURTHOUSE
Wailuku	Wailuku
Lahaina	Lahaina
Hana	Hana
Molokai	Kaunakakai
Lanai	Lanai City

- D. The court rules provide that the claim shall be filed:
- 1) In the division where the defendant resides;
 - 2) If the defendant does not reside in the judicial circuit, then in the division where the claim for relief arose, or if the claim for relief arose outside of the judicial circuit, then in any division where the defendant can be found; and
 - 3) If there are defendants residing in different divisions, then in the division where the claim for relief arose, or if the claim for relief arose outside of the judicial circuit, then in any division where any defendant can be found.
- E. Consult the clerk of the court if you have any questions about filing procedure.
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MAY A CLASS ACTION CLAIM BE INITIATED IN THE SMALL CLAIMS DIVISION?

NO.

HOW IS THE DEFENDANT NOTIFIED?

- A. The clerk will prepare a notice stating the time and place at which the defendant must appear to answer the claim. The plaintiff must cause a copy of the Statement of Claim together with a copy of the notice to be served on the defendant.
- B. If the defendant is found within the judicial circuit to which the district court belongs, the Statement of Claim and notice may be served on the defendant by either of the following ways:
- I. The plaintiff may send the Statement of Claim and notice to the defendant by registered or certified mail with return receipt requested. Prior to the hearing date, the plaintiff **must file** the receipt for registered or certified mail issued by the post office when the papers were mailed and the return receipt showing the date of delivery and the

signature of the defendant. Without these receipts, you may not be able to prove to the satisfaction of the court that the papers were delivered to the defendant in order to obtain a judgment by default if the defendant does not appear in court.

- a. If the case involves a claim for the return or keeping of the security deposit in a residential landlord and tenant relationship only, the return receipt may show delivery of the registered or certified mail to the defendant at any place in the world.
 - b. Except as stated in (a) above, the return receipt must show delivery of the registered or certified mail to the defendant at a place situated within the judicial circuit in which the suit was commenced.
2. The plaintiff may contact a civil process agent and request their services to serve the papers on the defendant.
- C. If the defendant cannot be found in the Judicial Circuit of State, in certain cases, it may be possible to effect proper service on the defendant by following the procedure prescribed under the appropriate and applicable provisions of Chapter 634, Hawaii Revised Statutes, as amended.

WHAT DOES IT COST TO NOTIFY THE DEFENDANT AND WHO PAYS THE COST?

- A. The plaintiff must pay the fees charged by the post office if service is made by certified or registered mail.
- B. If the papers are given to a civil process agent for service, the plaintiff must pay to the civil process agent a fee for serving the papers plus a mileage fee which will vary according to the distance the agent must travel.
- C. For further information, please check with the clerk.

- D. If the plaintiff wins the case, the court may add the amount of such costs to the judgment rendered against the defendant.
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WHAT STEPS MUST I TAKE TO FILE A CLAIM IN THE SMALL CLAIMS DIVISION?

You must file a Statement of Claim with the clerk of the court. Upon request, he or she may assist with the Statement of Claim from the information you furnish.

WHO MAY ASK THE CLERK FOR ASSISTANCE?

The Assistance of the clerk to prepare necessary papers may be available **to an individual** who seeks help regarding a personal claim.

Anyone filing a claim arising out of a business operation **is not entitled to such assistance.**

MAY I FILE MY SMALL CLAIM IN THE REGULAR CLAIMS DIVISION OF THE DISTRICT COURT INSTEAD OF FILING IT IN THE SMALL CLAIMS DIVISION?

YES; except that a claim for the return or keeping of the security deposit in a residential landlord-tenant relationship and cases involving the repossession of shopping carts, shopping baskets or similar devices can be filed and tried only in the Small Claims Division.

WHAT ARE THE ADVANTAGES OF FILING IN THE SMALL CLAIMS DIVISION?

The procedure is simple and informal.

You may ask the clerk for assistance in preparing any papers that are necessary to sue for recovery of a personal claim. No lawyers are needed.

WHAT ARE THE DISADVANTAGES?

There is no right of appeal from a judgment of the Small Claims Division. The decision of the judge sitting in the Small Claims Division is final.

WHAT DOES IT COST TO FILE A STATEMENT OF CLAIM?

The filing fee is \$35.00 (7/1/98)

WHEN WILL THE CASE BE HEARD?

The clerk will set a hearing date not less than five nor more than 30 days from the date of filing of the Statement of Claim, subject to continuances that may be granted by the court.

Upon the filing of your Statement of Claim and Notice, the clerk will assign a specific date and time for your trial and include that date on the Notice contained in your Statement of Claim and Notice. Your case will appear on the court calendar on the specified day.

HOW MUCH NOTICE WILL THE DEFENDANT HAVE OF THE HEARING?

The defendant must be notified at least 48 hours before the date set for hearing. In other words, the summons must be served on the defendant at least 48 hours before the date of the hearing.

WHAT IF THE DOCUMENTS ARE NOT SERVED UPON THE DEFENDANT BEFORE THE ASSIGNED COURT DATE?

The plaintiff must appear on the assigned court date and ask the Court to continue the matter. The court clerk will prepare the Order for Continuance, which the Plaintiff can pick up after 2 working days from the court date.

WHAT SHOULD THE PLAINTIFF AND THE DEFENDANT DO IN PREPARATION FOR HEARING OF THE CASE?

At the hearing, you will be required to present the facts of your side of the case in your own words.

If you have any witnesses who can back up your claim, bring them to court.

A witness may be compelled to attend under an order to appear, which is known as a subpoena. The party for the order must pay witness fees and mileage.

Bring to court any documents or papers that relate to the case to back up your story. Documents or any papers you might need include:

1. Any written contracts (for example, rental agreements, promissory notes, receipts, agreements to repair property, etc.);
2. Any letters that might have passed between you and the other party.
3. Any bills, paid or unpaid, and cancelled checks having to do with the case;
4. Any repair bills or written estimates of repair prepared by qualified persons;
5. Photographs of any damaged property.

Witnesses are very important in any case where there is damage to property. If your case involves a question of the quality of workmanship or the reasonable value of materials used and services performed for repairing damaged property, an experienced and impartial person in the same trade will make a good witness. The person who made an estimate of the cost of repairs and the person who did the repair work on damaged property should be brought to court as witnesses for the party who wants to recover costs incurred for such repairs.

MAY A PARTY BE REPRESENTED BY AN ATTORNEY?

YES, in all cases; except that if the case involves a claim for the return or retention of the security deposit in a residential rental agreement, neither party may be represented by an attorney.

Generally attorney fees are not awarded unless specifically provided by law.

WHAT HAPPENS IF THE DEFENDANT IS NOT PRESENT AT THE TIME AND PLACE SET FOR THE HEARING?

If the defendant has been properly served with the summons, the plaintiff may win judgment by default, but the judge may require the plaintiff to present evidence to prove his/her claim.

WHAT HAPPENS IF THE PLAINTIFF IS NOT PRESENT AT THE TIME AND PLACE SET FOR THE HEARING?

The case may be dismissed. If the case is dismissed with prejudice, the plaintiff cannot file a new suit on the same claim. If the case is dismissed without prejudice, a new suit on the claim may be filed.

MUST THE DEFENDANT ANSWER THE STATEMENT OF CLAIM IN WRITING?

NO. A defendant may orally deny the plaintiff's claim at the hearing and seek to defeat it on any valid grounds.

However, if the defendant wants to file a counterclaim to the plaintiff's Statement of Claim, then the defendant must file a written answer to plaintiff's claim together with a written statement of his counterclaim before the date of hearing. If the defendant needs additional time to prepare the answer and counterclaim, he/she may ask the court to continue the hearing to another date.

The counterclaim may be for any amount up to \$40,000.00 (4/17/14).

If the plaintiff's case involves a claim for the security deposit in a residential landlord and tenant relationship, the defendant can file a counterclaim up to the amount of the security deposit in dispute only if it is based on a claim over which the Small Claims Division has exclusive jurisdiction. In other words, if the defendant's claim is one which can be filed in the Small Claims Division or the Regular Claims Division, then the defendant must file a separate Statement of Claim instead of a counterclaim.

HOW CAN A PERSON PREPARE A COUNTERCLAIM WITHOUT AN ATTORNEY?

Upon request, the clerk of the court may assist in preparing the counterclaim from the information furnished by the defendant. This service is available to an individual in connection with his or her personal affairs only, and not with any business operation.

The filing fee is \$10.00.

HOW IS THE PLAINTIFF NOTIFIED OF A COUNTERCLAIM?

If there is sufficient time before the hearing date, the counterclaim may be served by mail. If not, a copy should be handed to the plaintiff at the time of the hearing. The date of the hearing may be continued at the request of the plaintiff, if the plaintiff should need additional time to prepare an answer or defense to the counterclaim.

MAY THE CASE BE TRANSFERRED FROM THE SMALL CLAIMS DIVISION TO THE REGULAR CLAIMS DIVISION OF THE DISTRICT COURT?

- A. Cases involving the security deposit in a residential landlord and tenant relationship and cases involving the repossession of shopping carts, shopping baskets or similar devices must be tried and settled in the Small Claims Division. They cannot be transferred to the Regular Claims Division by either party. They cannot be transferred to the Circuit Court for trial by jury.
- B. Pursuant to section §633-27 of the Hawai'i Revised Statutes, effective January 1, 1992, no case filed in the Small Claims Division shall be transferred to the Regular Claims Division unless the transfer is agreed to by the **Plaintiff**. If a case is transferred from the Small Claims Division to the Regular Claims Division:

1. The trial will be scheduled on a date to be set by the judge of the Regular Claims Division.
2. At the trial, rules on evidence will be applied.
3. Each party's right to appeal the judges's decision will be preserved.
4. The party who requested the transfer will be responsible for paying the transfer fee.

MAY THE PLAINTIFF OR THE DEFENDANT HAVE A JURY TRIAL?

YES. If there is a Counterclaim filed for more than \$5,000.00, either party may have the case transferred to the Circuit Court for jury trial.

A demand for jury trial must be filed before the trial in Small Claims Court begins; and \$375.00 or the costs payable to the Circuit Court must be deposited with the clerk of the Court. Upon approval by the presiding judge, the matter will be transferred to the Circuit Court for trial by Jury.

Neither party will have the right to a jury trial if the Statement of Claim is for \$5,000.00 or less and the Counterclaim, if any, is also for \$5,000.00 or less; or if the Statement of Claim is for a matter over which exclusive jurisdiction has been granted to the Small Claims Court.

WHAT HAPPENS AFTER THE COURT DECIDES THE CASE?

The judgment must be prepared in written form and filed. Usually, the clerk prepares the judgment.

However, the court may order the party who wins to prepare it. This may be done, for example, in a case in which the parties are represented by attorneys.

After the judgment is filed, both parties are notified. If both of them have appeared for the hearing, the clerk notifies them. If only the plaintiff has appeared and subsequently obtains judgment, the plaintiff must mail a copy of the judgment, showing the filing date, to the defendant at his last known address.

MAY THE LOSING PARTY APPEAL?

There is no right of appeal from a judgment of the Small Claims Division.

MAY THE LOSING PARTY ASK THE COURT TO RECONSIDER THE JUDGMENT?

The losing party may ask the court to alter or set aside the judgment within 10 days after filing of the judgment.

For example, the losing party may wish to correct a mistake made in computing the amount of the judgment or present new evidence discovered after the time of the hearing.

ONCE THE JUDGMENT IS FINAL, WHAT STEPS MAY BE TAKEN TO COLLECT IT?

There are several remedies governed by State and Federal laws and regulations. The clerk may provide information on alternatives available for collection, however, the court cannot act as the collection agency for the judgment creditor. If you have any questions as to the best means to enforce your judgment against the defendant, you should consult a licensed attorney for appropriate advice.

HOW CAN A JUDGMENT CREDITOR (the party who has won a claim or counterclaim) MAKE OUT THE PAPERS NECESSARY TO COLLECT A JUDGMENT IF THE CREDITOR DOES NOT HAVE AN ATTORNEY?

The creditor, if an individual, may call upon the clerk for assistance if the case involves personal affairs and not business operations.

IS THE JUDGMENT DEBTOR (the losing party) REQUIRED TO PAY THE COST OF COLLECTING THE JUDGMENT?

YES, the debtor must reimburse the judgment creditor for these expenditures. Check with the serving officer or the court clerk.

WHAT MUST I DO IF I RECEIVE PAYMENT-IN-FULL FROM THE DEFENDANT?

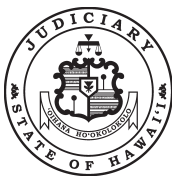
If payment is received prior to a judgment being filed, you must file a NOTICE OF DISMISSAL WITH PREJUDICE. If payment is received after the judgment has been filed and entered, you must file a SATISFACTION OF JUDGMENT. The clerk of the court will furnish you with the necessary forms and provide instructions for its preparation.

IF YOU HAVE ANY OTHER QUESTIONS, WHO CAN HELP ME?

For further information, you may call the Service Center at 244-2706. **ONLY IF THERE IS NO ANSWER**, please call Legal Documents Branch at 244-2752, or you may consult a licensed attorney for advice.

NOTE: THE CLERK OF THE COURT/ BAILIFF WILL ASSIST YOU ON ANY PROCEDURAL MATTERS.

THE CLERK OF THE COURT IS NOT EMPOWERED TO ASSIST YOU ON MATTERS OF A "LEGAL" NATURE. PLEASE CONSULT WITH LEGAL COUNSEL ON MATTERS PERTAINING TO LAW.



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