



## Court is Your Last Resort

Often times, we find ourselves with a problem we don't feel can be satisfied without having to go to court. However, it is best to evaluate all options before having to resort to the judicial system to resolve our conflicts. Make sure the lines of communication with the disputing party are available and open.

If your dispute involves merchandise or services, try to resolve the situation with the clerk or the manager. File a complaint with the Florida Department of Agriculture and Consumer Services' Division of Consumer Services at 1-800-HELP-FLA (435-7352). If you are still unable to rectify the situation, try going to county court.

Small claims courts resolve disputes involving claims for small debts and accounts. While maximum amounts claimed or awarded differ from state to state, court procedures are simple, inexpensive, quick and informal. Court fees are small, and you often get your filing fee back if you win your case. In most cases, you will not need a lawyer to represent you in court, but you may retain court counsel if desired.

Judges often make allowances for consumers. Rulings, however, follow strict court procedures.

### **Small Claims -- \$5,000 or Less**

Small claims are disputes involving claims that are \$5,000 or less, exclusive of interest, costs and attorneys' fees. These cases include minor accidents, car repair disputes, landlord/tenant disputes, store merchandise or mail-order disputes, credit card problems, etc. These cases fall within the claims division of the county court and procedures are simplified.

### **Civil Case -- \$5,000 to \$15,000**

Civil cases involving disputes ranging in amount from \$5,000 to \$15,000 may also be filed in county court; however, procedures are not as simplified as in the small claims division. Defendants are served with a copy of the complaint and summons. They have 20 days to respond. If the defendant responds within 20 days, the plaintiff will request a trial date before the judge. However, if the defendant does not respond, the defendant is in default and the plaintiff will receive a judgment.

### **Small Claims Court Offices**

Check your local telephone book under municipal, county or state government headings for small claims court offices. When you contact the court, ask the court clerk how to use the small claims court. To better understand the process, sit in on a small claims court session before taking your case to court.

### **Prepare for Small Claims Action**

If there is a dispute, have an accurate account of the facts for preparation of your case.

1. Determine witnesses and evidence for resolving the dispute.
2. Recollecting specific facts is important. Write down the facts, including dates, times, places and descriptions. Also, include names, addresses and phone numbers of persons or businesses involved in the dispute.

### **Suing a Business or Corporation**

Get the correct legal name of the business. Check the records of the county occupational license office to help determine the correct name if the defendant is a business. If the business is incorporated, call the Department of State's Corporate Information Line in Tallahassee at (850) 488-9000. This will help in determining the corporation's correct legal name, address, officers, directors, registered agent, date of incorporation and current status of incorporation. If the defendant is operating under a fictitious name, check the registration with the Department of State and with the clerk of court of the county where the defendant does business.

### **You May Represent Yourself or Retain Council**

In most cases you can represent yourself or have a lawyer represent you in court. However, check with your county's clerk of the court, as some judges have special local rules regarding representation by a lawyer.

If you feel you cannot resolve the dispute without special help, you should contact a lawyer. First-time consultations are usually inexpensive or without cost. If you do not know a lawyer to consult, call the Florida Bar Referral Service at (850) 561-5844 or 1-800-342-8011.

### **Statute of Limitations**

The length of time you have to file a claim in court varies depending on the subject matter and circumstances of respective litigation. Therefore, you should file your case as soon as possible.

### **Where to File**

File your claim in the county where -

1. The contract (oral or written) was made; or
2. The defendant lives; or
3. The event occurred; or
4. Terms in the contract specify a particular county. Provide the original contract plus a file copy, plus copies for each defendant.

### **What to File**

The Clerk of the County Court, Small Claims Division, will provide you with a form to fill out to state your claim. This form will tell the other party why you are suing. The form requests: your name and address; the name and address of the party you are suing; the amount you are claiming in the suit; and reasons the defendant owes you money. If you base your suit on a written document, provide copies to the clerk and attach them to the complaint.

Often, the case is resolved by the county judge prior to trial. If you wish to request a jury trial, you may do so at the time you file your complaint.

### **Filing Fees**

Pay your filing fees at the time you file suit. Fees vary from county to county and are dependent on the amount claimed in your suit. The clerk of the court in your county can tell you the amount.

### **Serving the Defendant "Services of Process"**

The defendant must be formally served with a copy of the complaint before the court has jurisdiction. Serving the defendant requires the collection of a fee, payable when you pay the filing fee. If the defendant is a Florida resident, the clerk will send a copy of the suit to the defendant by certified, restricted or registered mail. If you serve the defendant by mail, check with the clerk's office after a reasonable time to find out if the defendant received the complaint.

Ask the clerk to issue a summons if you feel the defendant might leave town or refuse to accept a certified letter. The sheriff or a special process server can complete the service of process, and usually charges for the service. Checks should be payable to the sheriff of the county where the defendant lives. Furnish the sheriff's office with a physical street address.

#### *Non-incorporated Businesses*

If the business you are suing is not a corporation:

- \* Serve the business owner, if there is just one.
- \* For more than one business owners, service on any of the owners will suffice.

#### *Corporations*

When suing a corporation, serve complaints to the corporation's registered agent, or one of the officers of the corporation.

#### *Out-of-state Defendants*

When suing an out-of-state defendant, serve the complaint through the sheriff's office in the county of the defendant's residence.

### **Reimbursement**

Winning your suit entitles you to repayment by the party you sued, including fees for filing and service of process. If you are seeking reimbursement of lawyer's fees, consult your lawyer.

### **Pretrial Conference**

Before you get to trial in the small claims division, you will have to appear at a pretrial hearing. When filing your case, you will be informed of your first court appearance, or a pretrial conference. This is not a trial and does not require witnesses. However, if you do not appear, the court may dismiss your case.

The pretrial conference serves several purposes:

1. It allows the court to talk with both parties of the suit and urge them to settle their case.
2. If settlement cannot be reached, the court may suggest a mediator to consult with both parties. Otherwise, the judge will assign a date for trial.
3. If one party fails to appear, it allows the judge to dispose of the case.

### **Settlement Before the Trial**

If you and the other party have agreed to settle your case before trial, you must let the court know of the settlement. The plaintiff has the responsibility of calling the judge's office to advise of the settlement. If the defendant agrees to pay you, get the agreement in writing. Sign it yourself and have the defendant sign. Identify the court case number

on the agreement and have the clerk file it and update the computer record.

If you feel your suit is no longer necessary or make an agreement with the defendant, file a "voluntary dismissal" form with the clerk.

### **Trial**

If mediation is unsuccessful, the case will be set for trial. Plan for the availability of you and your witnesses. Both parties must appear, or the court will enter judgment in your favor or dismiss the case.

### **Documents, Evidence and Witnesses**

Collect documents as evidence about the case. Include written contracts, correspondence, estimates for repair or replacement warranties, canceled checks, photographs and any other relevant materials.

- \* Arrange your material and plan your presentation.
- \* Bring the item in dispute with you to court, if possible.

Discuss the case with potential witnesses who have personal knowledge of the case, and decide who can provide evidence in your favor at the trial. Personal testimony by witnesses is necessary. Written statements by witnesses are not permitted to be used at trial. Written documents, such as contracts, statements, etc., serve as supporting evidence but may also be crucial to your case.

Note: If someone whom you believe can provide essential information is unwilling to appear in court, ask the clerk to issue a summons, or witness subpoena, compelling the person to appear. Serve this to the witness by the sheriff or the process server. Provide the clerk with the person's full name and address. The clerk will inform you about the required fees. If you do not subpoena a witness and that witness does not voluntarily appear, the judge will continue with the trial and will decide the case on the testimony and evidence presented. If someone whom you believe can provide essential information is unwilling to appear in court, ask the clerk to issue a summons, or witness subpoena, compelling the person to appear. Serve this to the witness by the sheriff or the process server. Provide the clerk with the person's full name and address. The clerk will inform you about the required fees. If you do not subpoena a witness and that witness does not voluntarily appear, the judge will continue with the trial and will decide the case on the testimony and evidence presented.

Decide the order in which you will call your witness. If both parties are present but neither has an attorney, the judge will usually read the complaint and ask for each side's version of the dispute. Then, the party bringing the suit will have the first opportunity to present testimony and evidence. During the proceedings, the

judge may ask questions of any witnesses.

If the other party has an attorney, the attorney will begin by questioning you and your witnesses. Then, the lawyer will present the defendant's side of the story.

Although you may feel some information provided by witnesses is inaccurate, do not interrupt the other party, witnesses or the judge to clarify the information. Make notes of the information you believe to be inaccurate. You will be given an opportunity to address those issues before the end of the proceeding. Interrupting is proper only when you believe you have an allowable objection, such as claiming that a witness does not have direct knowledge of the case or is relying on hearsay.

### **Judgment**

Sometimes the judge will not decide the case immediately, instead opting to send the ruling, or judgment, to the parties at a later date. If the judgment is in your favor, you are entitled to seek payment from the losing party.

### **Collecting a Court Ordered Judgement**

Even if you win your suit, do not expect to receive payment from the defendant in court at the trial. If you are fortunate, the defendant will voluntarily pay what the judgment states. If the defendant does not pay you, options are available for collecting the money owed.

#### *Garnishment of Wages*

Garnishment of wages is where the money owed can be taken from the person's paycheck. You should seek the services of an attorney if you are seeking garnishment of the defendant's wages.

#### *Execution of Judgment*

Record a certified copy of your judgment after winning your case. This will create a lien against any real estate the defendant owns or might acquire for the next 20 years in the county where the judgment is recorded. Recording can be done in any county in Florida where the defendant lives or owns property. The defendant has to pay the amount owed in the judgment before selling any property. A recorded judgment is good for 20 years upon renewal every seven years. After filing, keep the clerk informed of your address in case money to which you are entitled becomes available.

For a fee, the sheriff may seize the property and sell it to pay you the money owed. There are many laws concerning what the sheriff may or may not take to sell. Execution of judgment is a complicated procedure and it will be to your advantage to have a lawyer at this point.

For more information, contact the small claims court office in your county or seek legal counsel.