

NEW YORK STATE UNIFIED COURT SYSTEM

**A GUIDE TO
SMALL CLAIMS &
COMMERCIAL SMALL CLAIMS**
in the
**NEW YORK STATE
CITY, TOWN &
VILLAGE COURTS**



This Guide shows you how to:

Start your case
File a commercial claim in City Court
Collect a judgment
Find the right court for your small claim

—  —
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Chief Administrative Judge

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What is Small Claims Court?

Small Claims Court is a special part in City, Town or Village courts where you can sue for **money**:

- Up to \$5,000 in City Courts
- Up to \$3,000 in Town and Village Courts



You cannot sue to *make* someone do something or for pain and suffering. For example, you can't use Small Claims Court to get back your laptop that you lent your friend.

Small Claims Court:

- Is inexpensive and easy to use,
- You do not *have to* have a lawyer,
- The Court will notify the defendant for you,*

** If the Court is not able to notify the defendant by mail, the clerk will tell you what to do.*

Before you start your case, read these important facts:

The defendant must live, work, have a place for doing business, or own property you are/were renting in New York. (See page 4, *Which Small Claims Court do I use?*)

For **small claims**, you must:

- Be a person who is 18 or older
- Fill out a court form that explains your claim
- Pay a court fee (\$10 – \$20)

For **commercial small claims**, you must:

- Be a corporation, association, partnership, LLC or assignee
- Pay a court fee (\$25 per claim, plus postage costs)
- Send a demand letter first for consumer transactions
- Start the case in a City Court (you can't sue in a Town or Village Court)

You **cannot** file more than 5 commercial claims statewide per calendar month.

Deadline! There are strict deadlines for claims against a municipality, city, or county agency. See page 12.

Who can use Small Claims Court?

Who can use Small Claims Court?

Any person who is 18 or older can sue in Small Claims Court. If you are under 18, your parent or guardian can sue for you.

What if I want to sue for more money than the Small Claims Court allows?

If your claim is for more than the small claims limit (\$5,000 City Court, \$3,000 Town and Village Courts), you can start a civil case in the City Court (up to \$15,000). You cannot split your claim into smaller claims to get around the limit.

Can partnerships start a small claims case?

No. Partnerships can only start a commercial small claims case in a City Court. See page 28.

Can corporations, LLCs and associations start a small claims case?

Municipal and public benefit corporations can use Small Claims Court. Other corporations, LLCs, associations, and assignees cannot start a small claims case. They must start a commercial small claims case in a City Court. See page 28.

Do I need a lawyer to sue in Small Claims Court?

You do not need a lawyer to sue in Small Claims Court. But you may hire one, if you want. The other side may also hire a lawyer. The Court will not give you a lawyer.

Does a corporation or LLC need a lawyer in Small Claims Court?

No. A corporation or LLC does not need a lawyer when it is sued in Small Claims Court. An authorized officer, director, or employee can come to court to defend the case.

If you sue in Small Claims Court:

- You are the *claimant* or *plaintiff*.
- The person or business you sue is the *defendant*

Can I use Small Claims Court if I don't speak English well?

Yes. If the claimant, defendant or a witness needs an interpreter, the Court Clerk will assign an official interpreter for free. Tell the Court Clerk as soon as possible so the interpreter can be at the court date. Learn more:



<http://www.nycourts.gov/COURTINTERPRETER/faqs.shtml>.

What if I need accommodations for a disability (ADA)?

Each Court will help you with accommodations. For Town and Village Courts, call the Court. For City Courts, visit: <http://ww2.nycourts.gov/accessibility/byCounty.shtml> for contact information or ask the Court Clerk.

What if someone sues me, but I am not the responsible person?

Ask the Court Clerk for information about a “third-party action.” You can have the responsible person added to your case. There is a filing fee.

Can I sue on behalf of someone else?

Unless you are the parent or guardian suing on behalf of your child, probably not. For example, if you had an accident in a borrowed car, the registered owner of the car can sue, but you cannot sue for damages to the car.

Do I have to dress-up to go to Court?

No. You do not have to buy anything special or new to wear to Court. Remember it is a formal place, so no t-shirts with swear words or revealing clothing. You want to be polite and respectful.

Some Town and Village Courts do not have Court Clerks. If your Court does not have a Clerk, see the Judge.

Which Small Claims Court do I use?

When do I sue in a Town or Village Court?

If the *defendant* lives, works, has a place for doing business, or owns property you are/were renting (and your claim is related to your tenancy or lease) in a Town or Village, you can use the Small Claims Court:

- In that Town or Village (for up to \$3,000), or
- In any City Court in that county (for up to \$5,000).

When do I sue in a City Court?

If the *defendant* lives, works, has a place for doing business, or owns property you are/were renting (and your claim is related to your tenancy or lease) in a county, you can use the Small Claims Court in any City Court in that county for a claim up to \$5,000.

What if I want to start the case in New York City or Nassau or Suffolk County?

If you want to start the case in New York City, Nassau or Western Suffolk County, the defendant must live, work, have a place for doing business, or own property you are/were renting (and your claim is related to your tenancy or lease) there. To see the different rules, visit:

<http://www.nycourts.gov/COURTS/nyc/SSI/pdfs/smallclaims.pdf>.

What if the defendant does not live, work, or have a place for doing business or does not own property you are/were renting in New York State?

If the *defendant* does **not** live or work or have a place for doing business or own property you are/were renting in New York State, you **cannot** file a Small Claims Court case.

Where are the Small Claims Courts?

To find court addresses, telephone numbers, and hours go to page 33, *Small Claims Court Locations & Hours*.

How do I start my small claims case?

How do I start my small claims case?

You or someone else may start your case by filling out an application. The application form describes your claim to the Court.

Where do I get the court form?

Different courts use different forms. Most City Courts have websites and some have their forms online. Or, you can get the form from the Court Clerk in the court. See page 33 for *Small Claims Court Locations & Hours*.

What information will I need to fill out the form?

You will need the correct name and street address of each defendant and claimant. You must describe what happened and when it happened.

What if I do not have the defendant's correct, legal name?

You can still start your case. You can use any name that the business or person operating the business uses. But once you get the correct information, give it to the Court Clerk. (If you do not provide the correct information, it will be very hard for you to collect your money judgment, if you win.)

To find the correct legal name of a business, contact the County Clerk's Office in the county where the business is located. See page 32, *County Clerks' Offices*. You can also visit the Department of State, Division of Corporations, State Records & UCC at: https://www.dos.ny.gov/corps/bus_entity_search.html.

What addresses should I list?

You **cannot** list a P.O. Box. If any of the claimants or defendants have a P.O. Box address, speak to the Court Clerk.

For each defendant, you should use the address within the geographical jurisdiction of the court:

1. where the defendant lives; or
2. where the defendant works or has a place of business (if they don't live in the jurisdiction or if you don't know where they live); or
3. where you pay your rent (if they don't live or work/have a place of business in the jurisdiction or if you don't know where they live or work), but **ONLY** if the defendant owns the property you are/were renting and your claim is related to your tenancy or lease.

What do I do with my completed form?

File it (or ask someone to file it for you) at the court. See page 33 for *Small Claims Court Locations & Hours*.



Do I have to pay to file my claim?

Yes. You must pay a court fee. Contact the court to find out how you can pay. Many courts do not take personal checks or credit cards. If paying by check or money order, ask the Clerk who to make the check payable to. See page 33 for Small Claims Court contact information.

The fee to sue in City Court is:

- \$15 for claims up to \$1000, and
- \$20 for claims between \$1000 and \$5000.

The fee to sue in a Town or Village Court is:

- \$10 for claims up to \$1000, and
- \$15 for claims between \$1000 and \$3000.

Is there another way to solve my problem *without* going to Court?

Yes. Every county in the state of New York has a community dispute resolution center that offers mediation for free.

A mediator is a neutral person who helps you and the other side try to settle your dispute. The mediator does not decide the case, but helps you talk with the other side. The mediator helps you and the other side write a settlement agreement.

You can find the location of a community dispute resolution center near you at: <http://www.nycourts.gov/ip/adr/ProgramList.shtml>.

Can the person I am suing sue me?

Can the person I am suing sue me?

Yes! If the person you are suing (the defendant) wants to sue *you*, they may file a small claims *counterclaim* against you.

In Small Claims Court, a counterclaim can only be for the amount that can be sued for in the court. The defendant will have to pay a \$3-5 filing fee plus the cost of mailing to file a counterclaim.

How will I know if the defendant files a counterclaim?

The Court will send you a notice or you will be told on the trial date. If the defendant files a counterclaim, they must do so:

- Within 5 days of getting the notice of your claim, or
- On the day of the trial.

If the defendant sues me, will my case be postponed?

Maybe, it depends on when the defendant filed the counterclaim. If the defendant filed it more than 5 days after getting the notice of claim, but before the trial date, the judge must grant your request to postpone the trial.

If the defendant files the counterclaim *on the day of the trial*, you may ask the judge to postpone the case so you can have time to prepare. But, the judge can say no.

Who tells the person I am suing about my claim?

Who tells the person I am suing about my claim?

After you file your claim, the Court Clerk will serve the defendant a notice by mail. If the defendant cannot be served by mail, the clerk will tell you what to do.

Service of the notice lets the defendant know about your claim.

It tells the defendant:

- What the claim is about,
- How much money you are asking for, and
- The date of your Small Claims Court trial.

How do I know if the defendant was served?

The clerk will mail the defendant two copies of the notice:

- One by regular, first-class mail, and
- The other by certified mail.

If the Post Office does not return the notice that was sent by regular mail to the Clerk's Office within 21 days (30 days for consumer transactions cases), the Court considers the defendant to have been served – even if the notice sent by certified mail was not delivered.

What if the Post Office was not able to deliver either notice?

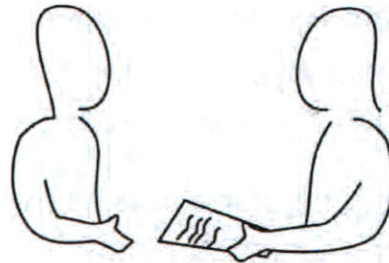
If neither notice could be delivered, the clerk will:

- Tell you how to have the defendant served, and
- Give you a new date and time for your trial.

How do I have the defendant served?

Someone who is 18 or older – not you or anyone else involved in this case – can serve the notice. The Clerk will give you instructions. You can also hire a process server.

If 4 months go by after you first file your claim, and you have not been able to personally serve the defendant, the Court will dismiss your case. Later, if you find out about the defendant's location, you can pay the fee and start a new case.



Important! You cannot have a trial if the defendant was not served.

Can I postpone my trial?

Can I postpone my trial?

You can ask the Court to postpone your trial, but unless you have a good reason, the Court may not agree.

How do I ask to postpone my trial?

Different courts have different rules. Contact the Court. You may be able to postpone (adjourn) your trial by calling the Court. If not, send a letter to the Court and to the other side asking to postpone the case. If the other side agrees in writing, send or bring the letter to the Court. The Clerk will send both sides the new trial date. If you don't get a new trial date from the Court, you (or someone who can speak for you) should go to the Small Claims Court on the date of the trial and explain to the Court why you need an *adjournment*.

If you or someone else on your behalf cannot come to Court on the trial date, the Court will read your letter, but may **not** postpone the case and your case may be dismissed. If you are the defendant, the Court may hear your case even if you are not there. If this happens, the claimant may get a judgment against you. If the Court postpones the case, both sides will be notified of the new trial date.

Special rules for suing a public agency, city, town or village

Can I sue a public agency in Small Claims Court?

You *can* use the small claims courts to sue a school district, town, village, city, county agency or public benefit corporation.

Do I *have to* tell the agency that I plan to sue them?

Yes! By law, you have only **90 days** to notify the agency. Start counting from the day you were injured or your items were damaged. You cannot sue unless you notify the agency.

What if I miss the 90-day deadline?

The Court may dismiss your case, even if you are only 1 day late.

How do I notify the agency?

Get the notice form from the agency you are suing. Find out how the agency wants you to deliver the notice. Some notifications can be done electronically. Fill it out and deliver the notice.

What do I do after I notify the agency?

The agency may:

- Make you an offer to settle your claim,
- Deny (refuse to pay) your claim, or
- May not respond.

After 30 days, if not settled, start your case in Small Claims Court.

Deadline! You have 1 year + 90 days to file. Count from the date you were injured or your items were damaged.

You *cannot* sue the federal government or a state agency in Small Claims Court. Sue a state agency in the Court of Claims: <http://www.nycourts.gov/courts/nyscourtofclaims/>.

How do I get ready for my trial?

Before your trial, organize the evidence that supports your claim:

- Photos, written agreements, letters, or other documents,
- Itemized bills, canceled checks, receipts or invoices, proof of payment, damaged items, etc.
- Printed evidence from your computer or cell phone.
- Audio/visual evidence - ask the Court what format is required.

If you are asking for money to make repairs or get services, bring 2 signed itemized written estimates as proof to support your claim.

Note: if you want your evidence back after the trial, ask the Court when it can be returned.

Can I have witnesses at my trial?

Yes. You can have witnesses at your trial. A witness can be:

- You,
- Someone who knows something about your claim, or
- Someone with a lot of knowledge or experience with the reason for your claim. (This is called an *expert witness*.)

Before speaking to the Court (testifying), all witnesses must first swear or affirm to tell the truth.

Do I need an expert witness to testify at my trial?

If the reason for your claim requires expert knowledge to understand, it's a good idea to have an expert witness. For example, if your claim is about poor workmanship fixing a roof, you will need a roofer with expert knowledge of your type of claim. That roofer must be willing to testify at your trial. In most cases, you must pay an expert witness to testify. In malpractice cases, you must have an expert testify. You cannot use a subpoena to *make* an expert witness testify.

What if a witness does not want to testify or give me records?

You can ask the Court Clerk to issue a *subpoena*. A subpoena is a court order that can order your witness to:

- Send documents or records to the Court, or

- Go to your trial to testify.

Some Courts will give you the form. Call the Court. See sample: https://www.nycourts.gov/legacyPDFs/courts/6jd/forms/SRForms/s_ubpducestecum_instructwithsamp.pdf.

Who gives (serves) the witness the subpoena?

You must arrange for the witness to be served with the subpoena. The server can be a friend or relative who is 18 or older. Neither you nor anyone else involved in this case can be the server. You can also hire a process server or sheriff.

Do I have to pay the witness?

The witness has the right to receive a \$15 witness fee, which must be paid when the subpoena is served. **You** must give the server the fee to pay the witness, and in if the travel is from outside the city, you must pay .23 cents per mile to and from the courthouse too.

Is there a deadline to serve a subpoena?

The subpoena **must** be served before the trial date. You should give the witness a “reasonable” amount of time to prepare for the trial and/or to produce the items listed on the subpoena. Reasonable means at least 2 or more days before the trial.

Can the defendant and I agree to settle our case before the trial?

Yes. It is almost always *better* if you and the defendant can make an agreement either before or during the trial. You may feel certain that you will win your case, but the Court may not agree with you.

If you make an agreement **before** your trial date, notify the Court Clerk in writing and include a copy of the settlement agreement.

If you agree to settle, but you need more time to finish your agreement, contact the Court to see if the case can be postponed or if you must go to Court on your trial date. Ask for a postponement so you can finish your agreement. (This is called an *Adjournment Pending Settlement*.) The Court may give you a new trial date. If the claim is still not settled by the new trial date, go to Court on the new date.

What do I do on the day of my trial?

You should:

- Get to the courthouse early. (You may have to go through security and find your courtroom.)
- Find your Courtroom, then look for the Small Claims Court calendar. There may be a calendar listing the day's cases. It is usually posted outside the courtroom.
- Look for your last name and the defendant's last name on the calendar. If your case is not listed on the calendar, or if there is no calendar posted, ask the Court Clerk for help.
- When you enter the courtroom, you may need to check in with the Court Clerk.

What happens if one side does not come to court on the trial date?

If you, the claimant, are not in Court when the Clerk calls the case, the Court will dismiss your case.

If the defendant is not in Court within 1 hour from the time the case is scheduled, the Court will hear your case without the defendant. (This is called an *inquest*.) If you show enough evidence, you may win your case. If this happens the Court will enter a *default judgment* against the defendant. Defendants in default judgment cases can ask the Court Clerk how to re-open a case.

What if I can't come to Court because of age, mental, physical or other disability?

The Court can let a person testify for someone who is unwell because of age or other disability. The person must be a family member. The person must ask the Judge to let him or her testify on your behalf.

How will I know when my case starts?

In some courts, the clerk will check names as you arrive and let you know when the Court is ready for you.

In other courts, you must wait until the clerk calls your case and your name. When your name is called:

1. Stand up and say your name.
2. Unless you are asking for a postponement, say, "Ready."
3. If you want to postpone your trial or make another request say, "Application."
4. If you and the defendant are both ready, the trial will start.

Who will decide my case?

In some Courts a judge decides your case. In other Courts, it could be a judge or an arbitrator. You can contact the court to find out. You may have a choice. Some courts also offer mediation to help you and the other side settle your case.



What is an arbitrator?

An arbitrator is an experienced lawyer with special training in small claims cases. Arbitrators and judges apply the same law to your case, but a trial with an arbitrator is less formal.

If the court uses arbitrators does this mean that an arbitrator must decide my case?

Maybe. This depends on whether the court offers *voluntary* arbitration or *mandatory* arbitration. Courts that have voluntary arbitration give you a choice between an arbitrator or a judge. If the court has mandatory arbitration then the arbitrator must decide your case.

If the court offers voluntary arbitration, should I choose a judge or an arbitrator?

If you choose an arbitrator, it may be faster because you may have to wait for a judge or come back on another day. But, if you arbitrate, you and the other side agree to accept the arbitrator's decision. Neither side can appeal. The decision is binding.

If you choose a judge, you may have to come back to court on another date. But, you have the right to appeal the decision. The court may also send you to mediation or a conference to see if your case can be settled before you see the judge.