

Small Claims in Massachusetts: What You Need to Know

1. How do I bring a small claims action?

By filing a court form called a "Statement of Claim and Notice of Trial" and paying a filing fee. The form is available in the clerk's office of any of the district, Boston municipal, or housing courts. Instructions on completing a "Statement of Small Claim and Notice of Trial" form can be found on the back of the form itself. For a listing of court locations by county, see <http://www.mass.gov/courts/court-info/courthouses/courthouses-by-county-gen.html>. The person or business filing the claim is called the "plaintiff." The person or business being sued is called the "defendant."

2. Where do I file a small claim?

You may bring a small claim in the District or Boston Municipal Court where the person lives, works, or has a place of business. You may also bring a small claim concerning the rental of an apartment in the District Court or the Boston Municipal Court where the apartment is located. In the Housing Court, every small claim must be brought in the Housing Court conserving the area where the apartment or other residence subject to the small claim is located.

3 Which claims can be brought as small claims?

Unless your case is based upon property damage sustained in an automobile accident, it cannot exceed \$7,000.00. The claim may, however, be subject to statutory damages or attorney's fees in excess of \$7,000.00 (e.g., consumer protection cases or certain landlord/tenant cases). In those cases, the base amount may not exceed \$7,000.00 even though the potential award may exceed that amount.

4. Is there a time limit on when I must bring my small claim?

Yes. The time limit (called the "statute of limitations") varies with the nature of the claim and applies both to small claims and to regular civil law suits. Generally, a claim based on a contract or a consumer protection law must be brought within 6 years, and a claim resulting from negligence or intentional harm must be brought within 3 years,

but there are exceptions. Consult Massachusetts General Laws chapter 260 or a public or law library for additional information.

5. Will I be able to collect from the defendant?

If you win, the defendant will be ordered to pay the judgment if he or she is financially able to do so. If the defendant is able to pay and does not do so, he or she may be held in contempt of court and imprisoned or assessed additional costs. Note that some sources of income and a portion of any wages will be exempt from any payment order.

6. What is the filing fee for a small claim?

The filing fee for small claims of \$500 and under is \$40. The filing fee for claims of \$501 to \$2000 is \$50. The filing fee for claims of \$2001 to \$5000 is \$100. The filing fee for claims of \$5001 to \$7000 is \$150. The filing fee for claims of property damage of more than \$7000 arising from an automobile accident is \$150.

7. What information must I include in my claim?

Fill in the "Statement of Small Claim" form with the amount you are suing for and briefly explain your claim. State your claim simply but clearly so that the defendant can understand why he or she is being sued. You must state specifically any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, or for costs, as well as the total amount being sought, exclusive of any prejudgment interest being sought from the court pursuant to statute.

It is essential that you have the defendant's correct name and mailing address. If you are suing a business that is not a corporation, you should name as the defendant the owner(s) doing business ("d/b/a") under that trade name. You may obtain their names from the City or Town Clerk where the business is located. If you are suing a business that is a corporation, you must have its exact legal name. You can find this information from the Corporate Records Division of the Secretary of State's Office, One Ashburton Place,

Room 1712, Boston, MA 02108 (or at <http://corp.sec.state.ma.us/corp/corpse arch/corpsearchinput.asp>).

In the "MILITARY AFFIDAVIT" portion, you must indicate whether or not the defendant is on active military duty. If you know the defendant's social security number, you may determine whether he or she is on active military duty online at <https://www.dmdc.osd.mil/appj/scra/scr aHome.do>; otherwise, you must write to the appropriate military service headquarters (listed at www.defenselink.mil/faq/pis/PC09SLD R.html). If you are unable to determine whether the defendant is on active military duty and the defendant fails to appear, the court may require you to post a bond or may issue other orders to protect the rights of the defendant if he or she is on active military duty.

8. What are "costs"?

If the plaintiff prevails, or if both sides settle the claim, the plaintiff may recover from the defendant as "costs" the court filing fee. By court order the plaintiff may sometimes recover certain other costs of bringing the claim.

9. How is the defendant notified of the claim?

The defendant is sent a copy of the "Statement of Claim and Notice of Trial" by first class mail. If the defendant lives out of state he or she will be notified by certified mail. Both types of notices will be provided by the court, after the "Statement of Claim and Notice of Trial" form is filed.

10. Will my case go forward if the defendant has not received notice?

If the Post Office is unable to notify ("serve") the defendant and the letter is returned to the court, your case cannot go forward. If the letter is not returned, but later shown to have never been delivered, or to have been sent to the wrong address, any judgment you have received may be vacated. For this reason it is crucial that you make sure that the mailing address entered for the defendant on the "Statement of Claim and Notice of Trial" form is accurate.

11. Are attorneys needed in small claims court?

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No, but you may hire one if you wish. You may be able to find self-help resources at your local public library (libraries.state.ma.us), the Trial Court Law Libraries (<http://www.mass.gov/courts/case-legal-res/law-lib/>) or MassLegal Help (www.MassLegalHelp.org).

12. When and where do the plaintiff and the defendant have to go to court?

Unless the plaintiff and defendant settle the case before the trial date, both sides must appear in court on the date the case is scheduled for trial.

13. What if I cannot come to court on the trial date?

You should call or write the person on the opposing side and ask him or her to agree to postpone ("continue") the case. Continuances should only be for good reason, such as illness, an emergency, or the unavailability of a witness. If both sides agree, or if the opposing side does not agree, or if you are unable to reach the person on the opposing side, you must write the clerk magistrate of the court to ask that the court give you a continuance. Do not wait until the last minute. If the other side makes a reasonable request for a continuance, it may save you some inconvenience if you agree to the request.

14. What if I do not come to court on the trial date?

If the plaintiff does not appear for trial, and the defendant does appear, the court will enter a judgment for the defendant. If both the plaintiff and the defendant do not appear for trial, the claim will be dismissed. If the defendant does not appear for trial, and the plaintiff does appear, the court will likely enter a default judgment and order the defendant to pay the amount claimed. The magistrate may ask the plaintiff to present some evidence of the claim, even if the defendant is not present.

15. How should I prepare for trial?

It may be helpful to write down ahead of time the facts of the case in the order in which they occurred. This will help you organize your thoughts and make a clear presentation of your story. On the trial date, you must bring

with you any witnesses, checks, bills, papers, photographs or letters that will help you prove your case. If you are submitting documents as exhibits at trial, bring copies for the magistrate and for the defendant. If you need a witness to come to court but the witness will not come, ask the clerk-magistrate's office for a witness summons which you must then arrange to have a constable or deputy sheriff deliver to the witness. You may need an expert witness to prove any matter not within common experience. The laws governing small claims are the same as those for major lawsuits, except that simplified procedures are used. The plaintiff must prove that the claim is one which the law recognizes and that the defendant is liable, or the magistrate will enter a decision for the defendant.

16. What will happen on the day of the trial?

Be sure to arrive on time. If your case is not resolved by a mediator, a trial will be held before a magistrate. The plaintiff will be asked to tell his or her side of the story, then the defendant will tell his or her side. Each will have an opportunity to ask questions of the other side and the other side's witnesses. To prevail, the law requires the plaintiff to prove the validity of his or her claim.

17. What if one of the parties wants a continuance?

If both parties are present when the case is called, the case will go forward unless there is good cause for a continuance. If you are ready to go forward and the other party wants a continuance, make sure you inform the magistrate if you object.

18. What will the magistrate do?

The magistrate will make a decision. Notice of the decision (called a "judgment") will be given or sent to each side.

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