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GUIDE TO SMALL CLAIMS COURT

The Rural Law Center of New York, Inc.

1. What is Small Claims Court?

Small Claims Courts are courts that have been simplified and are less formal in order to allow greater access for parties in certain types of cases. All small claims cases are civil (not criminal) and the issue at hand must be money owed. The limit on claims in Small Claims Courts in New York State is \$5000 in City Courts and \$3000 in Town and Village Courts.

2. Who can use the Small Claims Courts?

A party must be an individual, aged 18 or over to bring a suit in Small Claims Courts. If you are the person bringing the suit, you are called the "Claimant". If you are the person being sued, you are called the "Defendant".

3. Where are the Courts?

There are Small Claims Courts throughout New York State. In metropolitan areas, small claims cases are often part of the city court systems. In rural areas, small claims cases may be brought in any of the Town and Village justice courts.

4. Which Court can I use?

You are expected to file a small claims case with a court where the defendant lives, or, in the case of a traffic accident, where the accident occurred. If your case is against a landlord or a business, you can file with the court where the rental property or business is located.

5. What is a typical Small Claims dispute?

Small claims disputes are over money that is alleged to be owed by one party to another. Usually, they are between individuals, and typical cases include debt collection, unpaid rent, breach of contract, damage to premises, bad checks and security deposits.

6. Do I need an attorney?

It is not necessary, nor is it expected, that you will have an attorney represent you in a small claims case. However, if you appear alone, it is important that you well prepared. In cases where claims are brought by landlords or businesses, often attorneys will be present to represent them.

7. What should I know before I file?

Before you file a small claims case, it is a good idea to assess your situation. You will have to invest time and some money in bringing your case. If the amount of money owed is very small, it may not be worth your efforts. However, if you have decided that it is worth your while to proceed, it is important that you are prepared before you file. You will be expected to prove your case and demonstrate exactly how much money is owed to you and for what reason. Be sure that you have all of the necessary documents: copies of contracts, promissory notes, checks, receipts, evidence of workmanship, etc. The more prepared you are, the easier it will be for you to file a claim.

8. How do I file?

You must get an application form from the court and fill it out. The form will ask a number of questions. Be sure that you have complete information before you return the form to the court. You must be able to provide the full name and a street address (not a P.O. box) for the party you are suing. If you are suing a business you can get the "legal" name of the business from your local County Clerk. Be absolutely certain that you are suing the right person. For example, if you sue the property manager of your apartment house instead of the owner and you win, your judgment may be worthless. Your application will also ask you for the amount of money you are suing for and a description of the reason you are suing the Defendant. Try to be concise in your statement, but be sure to provide enough information. It is not enough to say, "He owes me money".

9. Is there a fee?

There is a small filing fee for small claims cases. As of this writing, the fees in City Courts are \$15.00 for claims up to \$1000, and \$20.00 for claims up to \$5000. The filing fees in Town and Village Courts are \$10.00 for claims up to \$1000, and \$15.00 for claims up to \$3000.

10. What happens next?

When you give your paperwork to the court, the Court Clerk will select a date on the court calendar for your case to be heard. Then, the clerk will "serve" the Defendant with a notice of your claim, by mailing to the address you provided. The notice is sent by certified mail and by ordinary first class mail. If

the first class mailing is not returned to the court as undeliverable, then the Defendant is assumed to have received it. If the Defendant cannot receive the notice by mail, the court clerk can tell you how to proceed next. However, your case cannot continue until the Defendant has been served.

11. What is a Counterclaim?

If the person you are suing believes that he or she has a monetary claim against you, then he or she may file a “counterclaim”. Like your claim, the Defendant’s counterclaim must state an amount of money and the explanation for the money presumed owed. A counterclaim may be filed for a small fee and the court will give you notice of the filing. If the Defendant in your case has filed a counterclaim, you should be prepared to deal with that case, as well as your own.

12. Can my case be settled before I see the judge?

Yes, in fact in most Small Claims Courts, the parties are encouraged to participate in dispute resolution services prior to their court appearance, by participating in mediation. These mediation services are made available to the courts by the local Community Dispute Resolution Centers (CDRC’s). There is a CDRC in every county in New York State, and mediation services are provided to courts and communities by trained and certified mediators. Mediation has proven to be extremely successful in small claims cases, since the process allows both parties to work out a satisfactory solution to their dispute.

13. How does Mediation work?

Mediation is an opportunity for the parties to meet with a neutral, third party (the mediator) and attempt to reach a solution to the dispute that is acceptable to both parties. Participation in mediation is voluntary and mediation discussions remain confidential. This gives the parties an opportunity to discuss the case freely in the hopes of working things out. The judge does not participate in mediations, nor does the mediator provide the court with a report of the discussion. If the mediation results in a signed agreement, only the actual agreement is provided to the court.

14. Why would I want to mediate my case?

Even if you think you have a strong case, there is no guarantee of how the judge will rule. There may be evidence presented by the other party that convinces the judge to rule against you. And, when the judge rules, there is always one winner and one loser. In mediations, generally the parties reach a mutually acceptable compromise. This is certainly preferable to taking a chance on the judge’s decision. A mediated settlement will give you at least a partial win, as opposed to a possible complete loss.

15. Is Mediation available in my Small Claims Court?

You can ask the court clerk if mediation is a part of the small claims process in that particular court. If it is not, you can contact your local CDRC and see if arrangements for a mediation session can be made prior to your court date. Mediation Centers are listed by county on the NYS Unified Court System website at the Alternative Dispute Resolution pages. The web address is www.courts.state.ny.us/ip/adr/index.shtml.

16. If we work out a solution by mediation, what happens next?

If mediation services are part of the court process and a solution is reached, the parties will often sign a "Settlement Agreement" that will be presented to the judge. Many Settlement Agreements contain a clause that allows for an immediate judgment to be enforced if the terms are not complied with in the time frames specified.

17. What if mediation is not successful, or the other party refuses to mediate?

One of the basic principles of mediation is the voluntary nature of participation. If the other party refuses to mediate, or if there is no agreement, then the case proceeds to court, as it was originally scheduled.

18. How should I be prepared for court?

Remember that appearance in the courtroom is very important and you will want to do everything possible to make a good first impression. Even though the small claims process is less formal than other court proceedings, it is important to appear in a way that is respectful to the court. It would be a mistake to take a chance of offending the court by the wrong attire. This could unnecessarily prejudice your case. If possible, wear something simple and businesslike. Avoid shorts, torn jeans, and anything that is not clean or too revealing.

19. What should I do on my court date?

Give yourself plenty of time to get to court. You don't want to be late. Plan to arrive at least half an hour before the court time. When you arrive, be sure to check in with the court clerk. You will be directed to a waiting area, and in some cases to a mediation coordinator. When it is time for your case, your name will be called and you will be shown into the courtroom.

20. If my case is not settled prior to my court time, what will happen in the courtroom?

Formal court procedures are typically simplified so that both parties can appear and present their cases without attorney representation. When your case is called, the judge will ask you to explain your case and to provide the evidence you have to support it. Be sure to have all the documents with you that are necessary to prove your points. Have clean copies of everything (checks, receipts, written estimates, contracts, photos, damaged goods, etc.) and be prepared to leave them with the court, if asked. When speaking to the court, be sincere and respectful. Be sure to answer the judge's questions, but keep your answers short. Especially avoid rambling or repetition and, don't interrupt the judge or the other party. If you have the opportunity to present a witness, ask only brief questions that will support your facts. The judge will hear both sides and will likely make an immediate decision.

21. What if I am the Defendant and I don't appear?

If you are the party being sued, and you don't appear for the court date, you will, most likely lose by default. It is always a good idea to appear. Even if you believe that you owe the money, you should take the opportunity to reach a settlement that sets out terms that are satisfactory to you through mediation. And, if you have evidence that you don't owe the money, or the amount is incorrect, this is your opportunity to be heard. Remember, it is the responsibility of the person suing you to prove their case against you. If you are present in court and you have a valid defense or proof that contradicts the claim, then your side will be heard.

22. What if the judge decides in my favor?

If you win your case, the court will issue a judgment that states that a specific amount of money is owed to you by the Defendant. The court, however, does not collect the money for you. It is your responsibility to collect the money, and you should immediately contact the Defendant and attempt to collect. A judgment in your favor is not a guarantee that you will be paid, it is simply a legally enforceable finding that you have a right to this money.

23. What if the Defendant doesn't pay the money owed?

If the Defendant doesn't pay the money owed to you, there are a number of possible actions that you can take. You should ask the court clerk for any information about the possibility of locating the Defendant's assets and about any assistance you might receive from the local sheriff's office. Also, you might decide to file the judgment with your County Clerk. This will place a lien against any real estate owned by the Defendant. Also, there might be ways to investigate the possibility of seizing other property. Some property is exempt from seizure and if the Defendant owns no property, there is probably no chance to collect the money owed.

24. If I lose my case, can I appeal?

It is possible to appeal a small claims decision, but such cases are difficult to win. In addition, you will probably have to hire an attorney and assume even additional financial expense. Since these are claims for relatively small amounts of money, your best strategy is to be well prepared when you go to court.