

SMALL CLAIMS INSTRUCTIONS FOR DEFENDANTS

Small Claims forms and instructions are available online at the court website <http://www.co.marion.or.us/jc> or by contacting a court clerk by telephone at 503-576-7200, email at justicecourt@co.marion.or.us or mail at 4660 Portland Rd., Ste #107, Salem, OR 97305.

If these instructions do not answer your questions, you can call the Oregon State Bar 503.620.0222 or go to www.osbar.org. The website www.oregon.gov has several useful resources including links to the Oregon Revised Statutes and Oregon Administrative Rules. The court clerk may answer questions about filing procedures but cannot give legal advice which includes telling you which form to use.

Small claims are filed to resolve disputes without a lawyer. You may talk to a lawyer at any time for help with your claim but lawyers are not allowed to participate in small claims hearings without the judge's permission. Small claims court can only award money and/or the recovery of personal property up to \$10,000.

SPOUSES AND REGISTERED DOMESTIC PARTNERS

When spouses or registered domestic partners are parties to a case, one may appear on behalf of both in mediation or court hearings with the written consent of the other spouse or registered domestic partner.

TIME DEADLINE

You must file the completed Defendant's Response and pay the correct filing fee with the court clerk **within 14 calendar days** after you receive service of plaintiff's Claim.

DEFAULT JUDGMENT

If you miss the time deadline to file Defendant's Response, plaintiff may request a default judgment against you for the amount of the claim plus filing fees, service costs paid by the plaintiff, and a prevailing party fee. A default judgment may allow plaintiff to seize and sell your property, garnish your wages, or seize funds from your bank account to satisfy the judgment.

Plaintiff may also request a default judgment if you miss the court ordered mediation session or court hearing.

DEFENDANT OVERVIEW OF SMALL CLAIM PROCESS

- File ***Defendant's Response*** and pay the defendant's filing fee with the court clerk
- Attend mandatory mediation
- Review General Information for Defendants: Attend Mandatory Mediation, Courtroom Rules, Prepare for Trial

DEFENDANT'S INSTRUCTIONS FOR *Defendant's Response*

If you are the defendant in a small claim case, you received a paper copy of the Defendant's Response when you were served with plaintiff's claim. You may complete the paper form by marking your Response choice, add the date and your signature, file the form and pay defendant's filing fee with the court clerk.

You can also find small claims forms on the court website www.co.marion.or.us/jc. File the completed Defendant's Response form plus pay the defendant's filing fee with the court clerk.

DEFENDANT'S RESPONSE CHOICES

- Payment of Claim
- Demand a Hearing
- Demand a Hearing and add a Counterclaim
- Demand a Jury Trial

PAYMENT OF CLAIM

Pay the amount of the claim plus the filing fee and service fees plaintiff has paid by sending the payment directly to plaintiff. Check the payment of claim box. Attach proof of your payment or return of property and file the Defendant's Response with the court clerk. There is no court fee to file this form.

DEMAND A HEARING

Check the denial of claim box to demand a court hearing. File the completed Defendant's Response with the court clerk and enclose the defendant's filing fee.

DEMAND A HEARING AND ADD A COUNTERCLAIM

You may check both the denial of claim box and the counterclaim box.

Check the counterclaim box if you believe plaintiff owes you money or property as part of the same transaction or event as the original claim. Describe briefly why plaintiff owes you the money or property you have claimed. If you are requesting property, describe the property including its value and the source of the value such as Blue Book, contract, purchase receipt, or professional estimate. YOU have to prove your counterclaims with factual evidence such as receipts, contracts, photographs.

COUNTERCLAIM OVER \$10,000

If your counterclaim is over \$10,000, you must file a Motion to Transfer the case to Circuit Court and pay the Circuit Court transfer fee or your counterclaim may be dismissed and will not be heard. The transfer fee can be found at <https://www.courts.oregon.gov/Pages/fees.aspx>. Deliver a check or money order payable to the State of Oregon to the Justice Court clerk who will transfer the file to Circuit Court.

If your counterclaim requires a transfer to Circuit Court, the plaintiff will not be limited to the original amount of the claim and if you lose, you will have to pay the plaintiff's lawyer fees, costs and a prevailing party fee.

DEMAND A JURY TRIAL

You may demand a jury trial only if the claim is over \$750. When you file your demand for jury trial, you must include the defendant's filing fee plus the jury trial fees for one day. Additional trial fees must be paid if the trial requires more than one day.

HOW MANY RESPONSE FORMS MUST BE FILED

EACH defendant must file a separate response except spouses or registered domestic partners, who may file one joint response.

HOW TO FILE FORMS WITH THE COURT CLERK

By secure email justicecourt@co.marion.or.us. Email the Defendant's Response form. The defendant's filing fee will need to be paid to complete the filing process.

By mail 4660 Portland Rd. Ste #107, Salem, OR 97305. Mail the Defendant's Response form. Enclose a check or money order for the defendant's filing fee to complete the filing process.

In person 4660 Portland Rd. Ste #107, Salem, OR 97305. Bring the Defendant's Response form with a check or money order for the defendant's filing fee to complete the filing process.

GENERAL INFORMATION FOR DEFENDANTS

COURTROOM RULES

Appropriate dress is required. If not, the judge may ask you to leave the courtroom. Caps and hats must be removed upon entering the courtroom.

Food and drinks are not allowed in the courtroom.

Weapons are not allowed anywhere in the court facility.

Cell phones and all electronic devices that may disrupt court proceedings must be turned off.

Recording is not permitted without advance permission of the judge.

PREPARE FOR THE COURT HEARING

On the day of your court hearing, be sure to allow plenty of time to get through security. Be prepared to present your case in the courtroom at the time listed on your hearing date notice.

Small claims hearings are informal so that the parties can handle their own cases. Lawyers cannot appear without special permission of the court.

Plaintiff must prove the claim against you. You may present a defense to the claim. If you have filed a counterclaim against plaintiff, you must prove the counterclaim.

Whatever you present in court will be all the judge knows about your case. Plaintiff first, and defendant second, will present sworn testimony, evidence, and witnesses to the judge. The judge is only interested in facts. Your testimony should be brief and to the point. You may refer to your written notes but do not expect the judge to read a written statement. Bring factual evidence to trial to defend the claim or support your counterclaim such as receipts, records, documents, bills, original contracts, photos, written repair estimates and witnesses.

Anything you present to the court may be viewed by the other party. It may be possible to protect certain kinds of information from disclosure. Talk to a lawyer if you are concerned.

JUDGMENT AFTER THE COURT HEARING

Once your case has been heard, the judge will make a decision and enter a Judgment. If money is awarded, the judgment creditor is the person who is paid money. The judgment debtor is the person who pays.

The winning party will be awarded a money judgment including their costs and a prevailing party fee. If the money judgment is not paid, the judgment may be enforced by garnishment of wages or a bank account and by placing a lien on real property.

SERVICE MEMBERS MAY BE PROTECTED

If you are in active military service, the plaintiff may not be able to get a default judgment against you if you are unable to respond in time because you are in active military service. Servicemembers Civil Relief Act (50 U.S.C. § 3901). Do not rely on your enlistment status to protect you. Talk to a legal advisor if you have questions or contact the Oregon State Bar at 800-452-7636 or online at www.OregonStateBar.org.