

LINN COUNTY CIRCUIT COURT- SMALL CLAIMS DEPARTMENT PROCEDURES AND INSTRUCTIONS

PLEASE READ THESE INSTRUCTIONS CAREFULLY. THE COURT CLERKS WILL BE GLAD TO HELP YOU WITH PROCEDURAL QUESTIONS, BUT **WILL NOT BE ABLE TO GIVE YOU LEGAL ADVICE OR COMPLETE THE FORMS. TALK TO YOUR ATTORNEY FOR ANY LEGAL ADVICE.**

The purpose of the Small Claims Department is to decide certain civil disputes promptly and economically. Small claims proceedings are governed by Oregon Revised Statutes (ORS) 46.405 through 46.560. The hearings are informal. Unless the Court has given prior approval for an attorney to be present, all parties appear without an attorney. Forms for the proceedings are available in Room 107 of the Linn County Courthouse or online @ web address below. All forms must be printed legibly in ink or typed.

FILING THE CLAIM: The party filing the claim is the PLAINTIFF. The party that the claim is against is the DEFENDANT. To initiate a case, the plaintiff must complete and file a *Claim and Notice of Claim* and pay the necessary fees. All claims for \$750 or less must be filed in the Small Claims Department. A claim for more than \$750 and up to \$10,000 may be filed in the Small Claims Department. Before filing the claim, the plaintiff must have made a bona fide effort to collect the claim from the defendant such as a written letter of demand. The *Claim and Notice of Claim* form must be signed in the presence of the court clerk or a notary public.

WHEN THE CLAIM MAY BE FILED IN LINN COUNTY: At least one of the following requirements must be met: 1) the defendant resides in Linn County; 2) the alleged tort occurred in Linn County; 3) the defendant contracted to perform an obligation in Linn County.

IDENTIFYING THE PARTIES INVOLVED IN THE CLAIM: All parties must be identified correctly and all names must be spelled correctly:

- 1) **ALL INDIVIDUALS** must be listed by their proper name. For example, JAMES L SMITH, SUSAN R. SMITH, No parties are to be listed as Mr. and Mrs. James Smith.
- 2) If a **BUSINESS** is involved and is not a corporation, the plaintiff must list the owner's name plus the name (d.b.a.-doing business as) of the business. For example, JAMES L SMITH dba JIM'S AUTO REPAIR..
- 3) If the business is a **CORPORATION**, the plaintiff must identify the business **and** provide the name and address of the corporation's registered agent. For example, ABC LOAN INC., an Oregon Corp. (registered agent: James Smith, 123 Happy Street, Albany, OR 97321). If you need assistance in the proper listing of a business, call the Corporation Commission in Salem at (503)986-2200 (5, 5) or online @ <http://www.filinginoregon.com>.
- 4) If a party is a **PARTNERSHIP**, the plaintiff must list the name of the partnership plus the name of each partner. For example, JAMES SMITH & WILLIAM JONES, dba SMITH & JONES, a Partnership.
- 5) If any party is under the age of 18 years or in the military service or mentally incapacitated, an attorney should be consulted prior to filing a claim.

FEES REQUIRED AT FILING: At the time of filing, you must pay the appropriate filing fee. Refer to current fee schedule @ http://courts.oregon.gov/OJD/docs/courts/circuit/Fee_Schedule_Public.pdf. Make the check or money order payable to "THE STATE OF OREGON." Upon receipt of your claim and filing fees, the Clerk will file the claim and issue the *Notice of Claim*. In some situations, the fees may be deferred; see the information at the bottom of the next page.

NOTIFYING THE DEFENDANT ("Service of Process"-refer to ORCP 7): The *Notice of Claim* may be served by:

- 1) The **Sheriff** of the county in which the defendant resides. Contact the county sheriff's civil division for specific service fees.*
- 2) A **Private Process Server** (service fees vary)*
- 3) Any **competent person 18 years or older** who is a resident of Oregon and who is neither a party to the action, nor an officer, director, employee, or attorney for any party to the action. A proper Proof of Service must be filed with the court.*
- 4) **Certified mail**. Specify "Deliver to Addressee Only," return receipt requested (check with the Post Office for cost). Proof of service by certified mail is filed in the court by filing the green card, containing the defendant's own legible signature, attached to a copy of the claim.

***Note:** If **personal** service is not performed on defendant, refer to ORCP 7 of the Oregon Revised Statutes for information as to completion of service by mailing notice to the defendant (**form available at stationery/book stores who sell legal forms and through the court.**) If the Proof of Service is not returned to the court within 30 days of filing the claim, the court will take action to dismiss the case.

DEFENDANT'S RESPONSE: The defendant has **14 CALENDAR DAYS** after being served to respond to the plaintiff's claim. (14 days from date of personal service or 14 days from date of mailing notice after substituted service.) If the defendant does not respond within the 14 days, the plaintiff may apply to the Small Claims Department for a **DEFAULT JUDGMENT** (form available with the Clerk of the Court or online).

When the claim is filed, a *Defendant's Answer* form will be supplied by the court. Each defendant answering the complaint must sign the *Answer* form. The defendant may elect to:

- 1) **Admit and pay the claim:** The **defendant** may settle the claim by **paying to the plaintiff** the amount of the claim plus the amount of the filing fees and service expense paid by the plaintiff, and mailing proof of payment to the court. If the claim is for the recovery of specific personal property, the **defendant** may settle the claim by **delivering the property to the plaintiff** and paying the plaintiff the amount of the filing fees and service expense paid by the plaintiff and mailing proof of delivery and payment to the court.

2) **Deny the claim and demand a hearing:** The **defendant** is required to pay the appropriate fee at the time of filing. Refer to current fee schedule @ http://courts.oregon.gov/OJD/docs/courts/circuit/Fee_Schedule_Public.pdf (in some situations the fee may be deferred--see below). Linn County offers mediation on small claims cases. The mediation orientation scheduled by the court requires mandatory attendance by all parties, though actual participation in the mediation process is voluntary. You will receive notice by mail. If the case is not resolved through mediation, the case will be set for a trial date by the court and the parties will receive notice by mail. The hearings are informal. Unless the Court has given prior approval for an attorney to be present, all parties appear without an attorney.

3) **Deny the claim, demand a hearing and file a counterclaim:** The counterclaim must involve the same matter as the plaintiff's claim and defendant must pay the appropriate fee. If the counterclaim exceeds \$10,000, it must be accompanied by a motion requesting that the case be transferred to the circuit court or the court will disregard the counterclaim. Upon filing the motion requesting transfer, the defendant shall pay to the clerk of the court the transfer fee required by ORS 46.570 (1)(c) and an amount equal to the difference between the fee paid by the defendant as required by ORS 46.570 (1)(a) and the fee required of a defendant by ORS 21.110. Upon filing a reply to the counterclaim, the plaintiff shall pay to the clerk of the court an amount equal to the difference between the fee paid by the plaintiff as required by ORS 46.570 (1)(a) and the fee required of a plaintiff by ORS 21.110. **THE CASE WILL NO LONGER BE CONSIDERED A SMALL CLAIMS CASE AND WILL BE PROCESSED AS A CIVIL MATTER.**

4) **Deny the claim and demand a jury trial:** This choice can be made if the amount or value of the claim exceeds \$750. The **defendant** must pay court fee. Refer to current fee schedule @ http://courts.oregon.gov/OJD/docs/courts/circuit/Fee_Schedule_Public.pdf (in some situations the fee may be deferred--see below). The Court will notify the **plaintiff** by mail that within 20 days, the **plaintiff** must file a civil **COMPLAINT** with the Court and the case is processed as a civil matter (ORS 46.455, 46.465). The **plaintiff's** claim is no longer limited to the amount stated in the original claim, though it must involve the same controversy.

If the **defendant** fails to do one of the above within 14 calendar days after receiving the Notice, then upon written request from the **plaintiff**, the Court may enter a DEFAULT JUDGMENT against the defendant for the amount claimed, filing fees, service expenses paid, plus a prevailing party fee (ORS 20.190). The form (REQUEST FOR JUDGMENT/NON MILITARY AFFIDAVIT) is available from the Small Claims Department or online. If no default judgment is requested by the plaintiff within 30 days of the date of service, the court will take action to dismiss the case.

Hearing: If your case proceeds to a hearing, you must have ALL of your evidence ready at the hearing, witnesses, documents, photographs, business records, etc. You must also be prepared to prove your costs (filing fees, service fees paid and any other associated costs).

Collection of Judgment: If a judgment is awarded and the losing party (judgment debtor) does not voluntarily make payment, the winning party (judgment creditor), upon payment of the required fees, may do one or more of the following:

Issue a Writ of Garnishment to the Sheriff's office or a bonded process server in order to obtain money or other property of the judgment debtor which is in the possession of a third party (e.g. debtor's employer, bank, etc.).

Issue a Writ of Execution to the Sheriff's office in order to seize property of the judgment debtor and to use the property toward the payment of the amount involved.

File a Transcript of Judgment in the circuit court to place a lien against the debtor's real property if the money judgment is greater than \$10 and less than \$3000.

An attorney should be consulted if there are questions concerning which remedy is most appropriate.

NOTE: A JUDGMENT IS THE FINAL DECISION OF THE COURT. THERE IS NO APPEAL FROM A SMALL CLAIMS CASE. PAYMENTS ARE TO BE MADE TO THE JUDGMENT CREDITOR. THE COURT **IS NOT A COLLECTION AGENCY** AND WILL NOT SECURE PAYMENT FOR THE JUDGMENT CREDITOR. ONCE THE JUDGMENT HAS BEEN PAID, THE CREDITOR IS LEGALLY RESPONSIBLE FOR FILING A **FULL SATISFACTION** WITH THE COURT. THE FORM IS AVAILABLE FROM THE COURT AND ONLINE.

IF THE CLAIM IS SETTLED PRIOR TO THE ENTRY OF JUDGMENT, THE PLAINTIFF MUST FILE A **MOTION OF JUDGMENT OF DISMISSAL**. THE FORM IS AVAILABLE FROM THE COURT AND ONLINE.



IF YOU HAVE LEGAL QUESTIONS, YOU SHOULD CONTACT AN ATTORNEY. If you need help finding an attorney, you can call the Oregon State Bar Lawyer Referral Service toll-free in Oregon at 1-800-452-7636. Also, you may contact the Oregon State Bar for reference material on small claims at http://www.osbar.org/public/legalinfo/1061_SmallClaims.htm

FEE WAIVER AND DEFERRAL FORM: If you are financially unable to pay the fees, you may request a waiver or deferral of fees. Forms are available at the Circuit Court Clerk's Office or online.

LINN COUNTY CIRCUIT COURT-SMALL CLAIMS DEPARTMENT

Telephone (541)967-3845
300 SW 4th AVE/PO BOX 1749
ALBANY, OR 97321

<http://courts.oregon.gov/Linn>