

# FILING A SMALL CLAIMS SUIT

## **REQUISITES:**

Direct a letter, certified mail, return receipt requested, to the defendant, giving notice of the suit. State the amount of money to be sued for, and if the money is not received within ten (10) days from the date of the receipt of the letter, suit may be filed. You, as plaintiff, your attorney or your authorized agent may appear in person to file your claim, or you may file a sworn statement of the claim by mail.

## **VENUE:**

Suit should be filed in the precinct of the county where the defendant resides. If the suit is based on a contract or tort, the defendant may also be sued in the county where the contract was entered into or to be performed, or where the tort occurred. If you decide to file your suit in this Court and the defendant files a Motion to Transfer Venue (a request that the suit be transferred to some other county or precinct other than the one you filed in Caldwell County), you will be liable for an additional filing fee of \$51.00 if the suit is transferred.

## **JURISDICTION:**

Jurisdiction (what the Court may render judgment for) in Small Claims Court is for the recovery of **MONEY ONLY**, where the amount in controversy does not exceed \$10,000.00. Court costs may be added to that amount. (\$10,000.00 + court costs)

## **AN ACTION IN SMALL CLAIMS COURT MAY NOT BE BROUGHT BY:**

1. an assignee of the claim or other person seeking to bring an action on an assigned claim;
2. a person primarily engaged in the business of lending money at interest;  
or
3. a collection agency or agent.

## **FILING SUIT:**

The responsibility for filling out your petitions rests with you, the plaintiff. It is important that you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their proper capacity. They are as follows:

1. Individual - where an individual is personally responsible to you for damages he may have caused you.
2. Sole proprietor or Partnership - A business that is not incorporated but has filed an assumed name with the county clerk in the county of his business. You must check with the county clerk's office in the county of the business to determine who the owner or owners are. This information for Caldwell County may be obtained at the County Clerk's office at the

Courthouse in Lockhart, direct your letter (notice of the suit) to the owner(s) of the company.

3. Corporation - A business that is incorporated. To sue a corporation, you must find the name of the **REGISTERED AGENT, PRESIDENT** or **VICE PRESIDENT** of the corporation before you begin your suit. The Secretary of State (1-512-463-5555) or the State Comptroller's Office (1-800-252-5555) will give you the information. You will also need the address of the **REGISTERED AGENT, PRESIDENT** or **VICE PRESIDENT**. When you file your suit, you will be filing against the corporation and serving the citation on one of the above mentioned officers of the corporation. It is also possible for an incorporated entity to have an assumed name, e.g. Carr's Auto Shop, Inc. d/b/a Carr's Garage.

#### **COSTS:**

The **filing fee is \$51.00**. In addition, there is a **fee for serving the defendant**, which is **\$80.00 per defendant** named on a petition, to be served in Caldwell County. **\$131.00 total for one defendant** served in Caldwell County. Make payable to the **CALDWELL COUNTY TREASURER**, if to be served in Caldwell County.

If the defendant upon whom you are filing resides **OUTSIDE** of Caldwell County:

1. Call the County courthouse in the county where the defendant is to be served.
2. Ask for the name of the Constable or Sheriff in the precinct where the defendant is to be served; call the office and find out the **SERVICE FEE** for serving a small claims citation, and who to make the money order payable to.
3. Get the address of the constable or sheriff who will be serving the citation.
4. Get a money order, payable as specified above and bring it with you when you file your suit.
5. The cost for filing the suit in this court is **\$51.00** (EXAMPLE: If you are filing the suit on one defendant that is to be served outside of Caldwell County, you would bring **\$51.00** money order payable to **Caldwell County Treasurer**, the Constable's address and the **correct dollar amount per service fee for that particular county**).

#### **CITATION:**

A citation is sent to the Constable's office for service in Caldwell County. Out of county service is sent to the Constable or Sheriff depending on the information you provide the Court.

**ANSWER:**

The defendant(s) in your suit is commanded to answer to the Court, in person or in writing, on the Monday following the expiration of ten (10) days from the date the citation was served upon him.

**REPRESENTATION:**

Small Claims Court was designed for individuals to be able to file suits without the assistance of an attorney; however, you may be represented by an attorney if you choose to do so. The Rules of Evidence are not in effect in Small Claims Court and the Rules of Procedure are relaxed.

**PREPARING YOUR CASE FOR TRIAL:**

The plaintiff has the burden of proof to show by the weight of the evidence that the defendant is at fault. You should bring with you to trial all proof of damages and evidence necessary to substantiate your claim. If you have witnesses to your suit who will not come to court voluntarily, you may order a subpoena to compel them to appear. Your request for a subpoena must be submitted in writing at least two (2) weeks prior to your trial date and pay the required fee for service (Check with the Clerk of the Court for the proper fees). Your request for a hearing must be in writing. If the defendant in your suit fails to answer to the Court, only you, the plaintiff, may be notified to Court for an appearance on the **DEFAULT DOCKET**. You will be asked to briefly state the facts of your case and present any written evidence you may have to support your case.

**TRIAL BY JUDGE OR JURY:**

If the defendant in your suit files an answer, the court date should be approximately 3-4 weeks after service. \*See additional information below for alternate service that could delay serving the defendant. A letter will be mailed to you (the plaintiff) and to the defendant stating the time and date to appear in Court. **IT IS NECESSARY FOR YOU TO BRING ALL WITNESSES, BILLS OF SALE, CONTRACTS, ETC., WITH YOU TO COURT AT THIS TIME. ALL MOTIONS FOR CONTINUANCE (rescheduling your Court appearance date) MUST BE IN WRITING AND RECEIVED NO LATER THAN THREE (3) WORKING DAYS (HOLIDAYS AND WEEKENDS EXCLUDED) PRIOR TO YOUR COURT DATE.**

**AFTER JUDGMENT:**

If judgment is in your favor, the defendant has ten (10) days to appeal the case to the County Court at Law in Caldwell County. Should the Court rule that you recover nothing or should you receive a judgment for less than you requested, you may appeal the case to the County Court at Law within ten (10) days. If an appeal is not filed within the ten (10) days from the date of the judgment is signed, and if a Motion to Set Aside a Default Judgment is not filed within ten (10) days from the date the judgment is signed, the judgment becomes final. Remedies to collect your money are as follows;

**ABSTRACT OF JUDGMENT:**

You may obtain an Abstract of Judgment on the 11th day after judgment. The fee for obtaining an Abstract of Judgment is **\$5.00** payable by certified check or money order to the **Caldwell County Treasurer**. The abstract of Judgment will be mailed to you. To file the Abstract of Judgment in Caldwell County take it to the County Clerk's office, Room 101 Caldwell County Courthouse in Lockhart. Additional information may be obtained by calling (512) 398-1804. You may also file the Abstract of Judgment with any County Clerk's office in the State of Texas if you have reason to believe your defendant owns property in other counties. The purpose of filing the Abstract of Judgment is to put a lien against any *REAL PROPERTY* in the defendant's name. If the defendant sells any real property within ten (10) years from the date of the judgment, the amount of the judgment must be paid, plus interest.

**WRIT OF EXECUTION:**

A Writ of Execution may be obtained anytime after the 30th day from the date the judgment is signed. A Writ of Execution allows a Constable or Sheriff to try and seize non-exempt property from the defendant. If the property is seized, an auction is held and the proceeds from the sale are credited toward your judgment. The cost for filing a Writ of Execution in Caldwell County only is **\$200.00**. Follow instructions under **Costs** to find what the service fee is for a Writ of Execution to be served OUT of Caldwell County.

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment. *SHOULD THE DEFENDANT PAY ANY PORTION OF THE AMOUNT OWED AFTER YOU HAVE RECEIVED A JUDGMENT, IT IS NECESSARY FOR YOU TO NOTIFY THE COURT OF THE CREDIT, OR NOTIFY THE COURT THAT THE JUDGMENT HAS BEEN SATISFIED IN FULL IF THE DEFENDANT PAYS THE ENTIRE JUDGMENT AMOUNT. IF YOUR ADDRESS CHANGES WITHIN THE TEN (10) YEAR PERIOD FOLLOWING THE JUDGMENT, YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS.*

**THE COURT DOES NOT COLLECT THE JUDGMENT FOR YOU, NOR CAN WE FORCE THE DEFENDANT TO PAY THE JUDGMENT.**

**ADDITIONAL INFORMATION:**

**ALTERNATE SERVICE:**

The defendant in a Small Claims suit must be served personally by the Constable or Sheriff of the County, or by a disinterested person authorized by the Court. Sometimes service is avoided by the defendant and an alternate method of service is necessary. This method is referred to as an alternate service. The Constable, Sheriff or authorized person may file an affidavit with the Court stating that he has been unable to serve the defendant for various reasons. You may make a Motion to

the Court that the defendant is served by alternate service after the officer's affidavit is received by the Court. The alternate service may be by serving anyone over 16 years of age at the defendant's usual place of abode or business, or by other means that are reasonably effective to give the defendant notice of the suit. A Court Clerk will call you if the officer serving the citation files an affidavit. We will request that you come in and sign the motion for alternate service. If your request is approved, the Judge will sign an order, and the citation is sent back to the Constable, Sheriff or authorized person as mentioned above.

Should you *NEED* legal advice, please consult with an attorney before filing your suit. The Judge and staff cannot give legal advice to either party.

# WRITTEN NOTICE AND STATEMENT OF CLAIM

DATE: \_\_\_\_\_

RETURN ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ADDRESS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr./Mrs./Miss \_\_\_\_\_

YOU ARE HEREBY GIVEN NOTICE THAT THE AMOUNT OF \$\_\_\_\_\_ IS DUE TO BE REMITTED FOR SETTLEMENT OF YOUR OBLIGATION WITHIN 10 DAYS OF RECEIPT OF THIS NOTICE. YOU ARE ADVISED THAT IF PAYMENT IS NOT RECEIVED WITHIN THE TIME LIMIT PRESCRIBED, THAT SUIT WILL BE FILED IN A CIVIL COURT OF THE LAW TO RECOVER SET AMOUNT **PLUS ALL NECESSARY AND REASONABLE EXPENSES INCURRED** BY THE UNDERSIGNED IN THE PRECEDING REQUIRED TO OBTAIN PAYMENT HEREOF.

SINCERELY,

\_\_\_\_\_

PLAINTIFF'S ORIGINAL PETITION/AFFIDAVIT

No.: \_\_\_\_\_

\_\_\_\_\_, Plaintiff § The Small Claims Court  
V. § Precinct 4  
\_\_\_\_\_, Defendant § Caldwell County, Texas

STATE OF TEXAS  
COUNTY OF CALDWELL

\_\_\_\_\_, whose post office address is \_\_\_\_\_,  
\_\_\_\_\_ County, Texas, being duly sworn, on his oath deposes and says  
that \_\_\_\_\_, whose post office address is \_\_\_\_\_,  
\_\_\_\_\_ County, Texas, is justly indebted to him in the sum of \_\_\_\_\_  
Dollars and \_\_\_\_\_ Cents  
(\_\_\_\_\_), for (\*Give a brief description of the suit).

and that there are no counter claims existing in favor of the defendant and against the  
plaintiff, except

\_\_\_\_\_  
PLAINTIFF'S SIGNATURE

\_\_\_\_\_  
PLAINTIFF'S NAME

\_\_\_\_\_  
PLAINTIFF'S STREET ADDRESS

\_\_\_\_\_  
PLAINTIFF'S CITY, STATE, ZIP

\_\_\_\_\_  
PLAINTIFF'S PHONE

Subscribed and sworn to before this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Raymond Deleon, JUDGE

\_\_\_\_\_  
By: Court Clerk, Justice of the Peace, Pct. 4  
Small Claims Court

**\*\*\* The nature to the claim should be stated in concise form and without technicality, including all pertinent dates and information.**