HOW TO GET A MONEY JUDGMENT IN SMALL CLAIMS COURT

Form DC 84

AFFIDAVIT AND CLAIM, SMALL CLAIMS

Use this form if you want to bring a lawsuit against someone who owes you money or who has caused damage to your property or possessions and you cannot resolve the dispute through mediation or other means. If your damage is the result of an intentional wrongdoing, such as fraud, libel, slander, malicious destruction of property, or assault and battery, you cannot bring your action in the small claims division of the district court unless the wrongdoing is for a dishonored check, consumer protection violation, or recreational trespass.

You cannot use the small claims division of the district court if:

1) your case is against the State of Michigan or a state agency,
2) your case is against a local governmental unit that involves issues of governmental immunity,
3) you are an assignee or third-party beneficiary of the obligation, or
4) you have filed more than five small claims cases in the same week.

The maximum you can collect through a judgment in the small claims division of the district court is $7,000. If your claim is for more than $7,000, you can still use the small claims division but your judgment award cannot exceed $7,000 and you permanently waive the right to collect the rest of your claim.

CLAIM CHECKLIST

Use the following checklist to make sure you have done all the steps that are needed.

DID YOU . . .

1. Fill out all requested information on the form? Yes ☐
2. Make all necessary copies of the form? Yes ☐
3. File the form and filing fee with the clerk of the court? Yes ☐
4. Have the form served on the defendant? Yes ☐
5. Keep one copy of the form for yourself? Yes ☐

If you cannot answer “yes” to all the above steps, a trial on your claim may be delayed or your claims may be dismissed.

By using this form packet you are representing yourself or an employer, a business, or other organization in a small claims court action. In order to receive the action you seek, you must follow the instructions in this packet. If you fail to do even one of the required steps, the court may not be able to give you the result you want.

If you have questions about any step in the process, refer to pages 3 through 5 of this booklet for details.

INSTRUCTIONS FOR USING FORM DC 84
FILING AND SERVING A CLAIM

»» WHO CAN FILE A CLAIM

An affidavit and claim can be signed and filed by someone other than the plaintiff. The plaintiff can be yourself if you are suing as an individual or a sole proprietor (sole owner of a business). **If you are not the plaintiff, but you are filing the claim** for a sole proprietorship (a business owned by one person), corporation, or other organization, you must meet the following conditions:

- If you are filing for an individual and you are not that individual, you must be the individual's guardian, conservator, or next friend.
- If you are filing for a sole proprietor (sole owner of a business) and you are not the owner, you must be a full-time salaried employee of the sole proprietor and you must have knowledge of the facts in the claim.
- If you are filing for a partnership, you must be one of the partners or you must be a full-time salaried employee of the partnership and you must have knowledge of the facts in the claim.
- If you are filing for a corporation, you must be a full-time salaried employee of the corporation and you must have knowledge of the facts in the claim.
- If you are filing for a county, city, village, township, or local or intermediate school district, you must be an elected or appointed officer or employee of the county, city, village, township, or local or intermediate school district who has knowledge of the facts surrounding the claim and who is authorized by the governing body of the county, city, village, township, or local or intermediate school district to file the claim.

»» FILING A CLAIM

1. Can I have an attorney?

If you decide to file a claim in the small claims division of the district court, an attorney cannot represent you. However, if the defendant wants an attorney, the defendant can demand that the claim be removed to the general civil division of the district court.

2. What does it cost?

The fee for filing a claim in the small claims division of the district court is:

$30 for damage claims up to $600 ($25 filing fee + $5 electronic filing system fee)
$50 for damage claims from $600 to $1,750 ($45 filing fee + $5 electronic filing system fee)
$70 for damage claims over $1,750 ($65 filing fee + $5 electronic filing system fee)

The plaintiff is responsible for paying the filing fee and other fees. If the judge rules in favor of the plaintiff, these fees may be added to the judgment amount against the defendant.

3. Signing the affidavit and claim under oath.

The affidavit and claim form must be signed under oath in front of a notary public (you can find one at a bank) or the clerk of the court. The person signing the form must show photo identification to the notary public or clerk of the court before signing the affidavit and claim. The form can only be signed by the person who can file a claim, as stated above, under Who Can File a Claim.

Before you complete the form, you should decide whether you want to sign the affidavit and claim in front of a notary public or in front of the clerk of the court. If you decide to sign the affidavit and

claim in front of a notary public, you only need to print out one copy of the form after completing it. You can make three additional copies afterward. If you go to the court in person, print all four copies of the form after completing it.

4. Fill out the affidavit and claim form.

Fill out form DC 84 (Affidavit and Claim, Small Claims) on the website or get a paper copy of the form from the court to fill out. Follow the instructions on page 6. After completing form DC 84, print out the number of copies you need (see Step 3 on pages 3 and 4).

5. File the affidavit and claim with the court and make arrangements for service.

You can file the affidavit and claim with the court in person or by mail. You must pay the filing fees at the same time you file the affidavit and claim. If you can't afford to pay the filing fee, ask the clerk of the court for a Fee Waiver Request (form MC 20, which is not included in this packet) to fill out. Service fees can cost as little as $15 for certified mail or as much as $26 plus mileage for personal service for each defendant.

When the filing is received, the clerk will record the filing of the claim, assign a case number, and write the name of the district court judge or district court attorney magistrate assigned to the case on all copies of the affidavit and claim form. The clerk will complete the notice of hearing.

The clerk will keep the original of the affidavit and claim for the court file, and will make arrangements to serve one copy on each defendant as you have instructed and paid, either by personal delivery or by certified mail, return receipt requested and deliverable to the addressee only. After serving the claim, the clerk will return the remaining copy of the form to you.

To file with the court in person, take all four copies of the form that you made in Step 4 to the clerk of the court in the proper district court (see MCL 600.8415 for details). Bring your photo identification and your payment for the filing fee with you. Sign the affidavit and claim in front of the clerk of the court.

To file with the court by mail, you need to decide how you want to have the affidavit and claim served on each defendant because you will need to include payment for service when you mail your claim to the court. Contact the court to find out what it will cost. Place all four copies of the signed and notarized affidavit and claim form, payment for the filing fee, payment for service, and one self addressed postage-paid envelope in an envelope addressed to the proper district court (see MCL 600.8415 for details). Have the post office mail the package to the court.

6. Filing proof of service with the court.

After the affidavit and claim is served on the defendant by the process server, the process server will complete the proof of service and file it with the court. If the court serves the affidavit and claim by certified mail, the clerk of the court will complete the proof of service.

If the process server is unable to serve the affidavit and claim on a defendant by personal service, the process server may serve the form by one of the other methods stated in Michigan Court Rule 2.105. It may be necessary for the court to reschedule the appearance date if it appears a defendant will not receive notice at least 7 days before the appearance date. See MCR 4.303(C) and MCL 600.8406.

7. Prepare for the trial.

To prepare for the trial, gather the evidence you need to prove your case. A letter or affidavit from a witness will be accepted as evidence by the court without the witness being physically present at the trial, but it is better if you have the witness come to court. If a witness is unwilling to appear, you can ask the clerk of the court to issue an order to appear (subpoena), requiring the witness to appear at the trial. The order to appear must be served on the witness (along with any witness fee) no later than two days before the trial. You can pay the clerk of the court to make arrangements for service of this order.

»» INFORMATION ABOUT ATTENDING THE HEARING

Bring your copy of the affidavit and claim with you to the hearing. Also, bring with you all the evidence you gathered and witnesses who are willing to testify. If you received a written answer or counterclaim from the defendant, bring that also. The trial will usually take place at the location stated in the notice to appear. It is important for you to arrive at the court on time. If you file a claim and are not in court when your case is called, the case will probably be dismissed.

1. You are expected to conduct yourself in a courteous manner and to follow the court's directions.

2. Make a list of information you think is important for the district court judge or district court attorney magistrate to know. You can use this list as a reminder to bring up the points you think are important.

3. If you need someone to attend this hearing who is unwilling to attend, follow the procedure in Michigan Court Rule 2.506 to get an order to appear (subpoena) or consult an attorney.

4. Go to the courtroom on the scheduled day and time. Dress neatly. Arrive 10 or 15 minutes early. Bring your witnesses with you.

5. Go into the courtroom, take a seat, and wait for your case to be called. Do not interrupt any hearing in progress.

6. The court clerk will call the case and you will appear before the district court judge or district court attorney magistrate to prove your case. Witnesses will be allowed to tell the court about facts that support your evidence.

7. When you are called, go to the front of the courtroom and follow the directions of the district court judge or district court attorney magistrate.

8. After making a decision, the court will prepare an appropriate judgment and the district court judge or district court attorney magistrate will instruct you about what to do next.

»» COLLECTING A MONEY JUDGMENT

If the court enters a money judgment in your favor and it is not paid when ordered, additional papers must be filed with the court to collect on the judgment by having wages or a bank account garnished or property seized. This cannot occur until 21 days after the judgment is entered. The court may ask that information be provided for these collection efforts. See https://michiganlegalhelp.org/resources/money-debt-and-consumer-issues/small-claims for details.

INSTRUCTIONS FOR COMPLETING "AFFIDAVIT AND CLAIM, SMALL CLAIMS"

Please print neatly. MichiganLegalHelp.org has tools that can help you complete this form.

Items 1 through 12 must be completed before your claim can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

(1) (2) Write in the names, addresses, and telephone numbers of the plaintiff and the defendant. The plaintiff is the name of the person suing and may be someone other than you. If the plaintiff is a business, specify both the legal name and any assumed name in which the business is being conducted. The defendant is the person being sued. If you are suing a business, state its legal name if you know it. If you do not know its legal name, state the name the business was using to conduct business. If there is more than one defendant, write the words "et al." after the name of the defendant and write the additional names and addresses on a separate sheet of paper.

(3) Check the box that is true. If another civil case was filed that involved the plaintiff and defendant regarding the same problem stated in this claim, write the name of the court where the case was filed, the case number, and the name of the judge assigned to hear that case. Check the box whether that case is or is not still pending.

(4) A person other than the plaintiff can complete and sign this form. Read page 3 and then check the box that best describes your relationship to the plaintiff. If you are the plaintiff, check the box "plaintiff." If you are a partner and you are suing for the partnership, check the box "a partner." If you are a full-time employee of the plaintiff and are suing for the plaintiff, check the box "a full-time employee of the plaintiff."

(5) The plaintiff can be either: 1) an individual, 2) a partnership, 3) a corporation, 4) a sole proprietor (a private business owner without a partner), or 5) an other organization. Check the box that best describes the plaintiff, and if applicable, complete the blank for "other."

(6) The defendant can be either: 1) an individual, 2) a partner in a business partnership, 3) a corporation, 4) a sole proprietor (a private business owner without a partner), or 5) an other organization. Check the box that best describes the defendant, and if applicable, complete the blank for "other." If there is more than one defendant, you will need to provide this information for each defendant.

(7) Write in the date that the dispute occurred. For example, if the defendant owed money on a certain date and did not pay on that date, print that date here. Or, if the defendant damaged something that belonged to you, print the date that the damage occurred.

(8) Write in the amount of the money owed or that you believe is owed to cover any damage even if it is more than $7,000. If the amount is more than $7,000 and the case is decided in the small claims division of the district court, the plaintiff gives up the right to any amount over $7,000. The plaintiff cannot file another form to get a judgment for the balance. If the plaintiff wants a judgment for an amount over $7,000 and the claim is for $25,000 or less, a lawsuit must be filed in the civil division of the district court.

(9) Briefly explain the reasons for the claim. Include what happened to cause the dispute.

(10) Make sure that you understand and agree with this statement.

(11) Check the boxes that are most accurate.

(12) Check the box that is most accurate.

DO NOT SIGN YOUR NAME until you are standing in front of a notary or the clerk of the court.

DO NOT WRITE IN THE SECTION AFTER ITEM 12. The notary public or clerk of the court will complete this section.

File your affidavit and claim with the court. The clerk of the court will complete the notice of hearing. See page 4 of this packet for details.

- Read pages 3 through 5 of this booklet for details on filing and serving this form.