

INFORMATION FOR FILING
SMALL CLAIM OR JUSTICE COURT SUIT

PLEASE READ CAREFULLY BEFORE
COMPLETING THE PETITION

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1. The amount of money which may be sued for may not exceed the limit of the Court, which is \$10,000. In some cases you may also be able to add up to \$2,500 for attorney fees.
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Type of Case Authorized

Justice Civil Court

- a. Civil matters within jurisdictional amount
- b. Evictions
- c. Foreclosure of mortgage and enforce lien on personal property
- d. Enforcement of deed restrictions

Small Claims Court

- a. Actions for recovery of money only
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Type of Case Prohibited

Justice Court

Small Claim Court

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| <ol style="list-style-type: none">a. Suit by state to recover penalty, forfeiture or escheatb. Divorcec. Slander and defamation suitsd. Foreclosure lien on lande. Suit for trial of title on land | <ol style="list-style-type: none">a. By assignee of claimb. Person primarily engaged in business of loaning moneyc. Collection agency or agent |
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Filing Fees

Justice & Small Claims Court

\$31.00 plus cost of service

In both Justice Civil cases and Small Claims cases, if the Plaintiff wins in Court, the Defendant can not be forced to pay the Plaintiff. The Judge cannot order the Defendant to pay nor will the Defendant be arrested for not paying. The Plaintiff will have a Judgment signed by the Court and may follow certain procedures to collect the Judgment.

The Plaintiff may file in either court for amounts from \$1.00 to \$10,000.00, however if the amount exceeds \$10,000.00, the Plaintiff may not reduce the amount to fit into this court. The suit must be filed in a higher court.

The Defendant must be sued in their proper legal capacity. The following are examples of said capacity:

1. Personally – where an individual is responsible to the Plaintiff for damages.
2. Proprietor or partnership – a business that is not incorporated but is individually owned or has on file with the County Clerk an assumed name certificate.
3. Corporation – a business that is incorporated. It is necessary to know the individual who is able to accept service on behalf of the corporation. This information can be supplied by the Secretary of State at 512-463-5555 or by e-mail at corpinfo@sos.state.tx.us.

The Plaintiff must have this information prior to the filing of the suit. The clerks cannot obtain this information. The clerks cannot assist with the decision of whom shall be the Defendant. Failure to comply with these provisions may result in the case being dismissed and forfeiting all costs.

Issuance of Citation: Once the case is filed, a citation will be issued to the Sheriff or Constable in the county where the Defendant is located. Citations can be served in as few as 10 days, however, sometimes it does take longer. The department will try indefinitely to serve the papers to the Defendant, however, if the Defendant has moved or cannot be found at the address provided, the citation will be returned to our office unserved. The service fee is non-refundable if an effort was made to served the citation. If you obtain a new address for the Defendant, an amended citation may be issued, however, you will be required to pay another service fee. If a citation is not served on the Defendant, a judgment cannot be entered against them.

Defendant's Answer: Once the Defendant has been served the citation, he will have until the Monday following ten days from the date of service to file a written answer with the Court. If the Defendant filed a denial, a hearing will be set by the clerk giving both parties at least 15 days notice. If the Defendant files a consent to owing the claim, the Defendant will be instructed to contact the Plaintiff to pay the claim. If the Defendant does not file an answer, the clerk will set the case for a default hearing and will notify

only the Plaintiff. The Plaintiff will be required to appear before the Judge to prove the case.

Either party has the right to a Jury Trial, and can request such by payment of the \$5.00 jury fee prior to the hearing date.

Hearing: Both sides will present any and all evidence to the Judge or jury at the hearing. The burden of proof lies with the Plaintiff. It will be necessary to provide substantial evidence to support the claim. Bring any paperwork or evidence which you feel may be important to proving the case. You may have as many witnesses as you wish appear with you to give testimony. Avoid “heresay” evidence, such as affidavits, witness statements, garage estimates and police reports. Please have these witnesses appear with you, as the other party has a right to question them also. If they will not appear voluntarily, you may have the Court issue a subpoena for any party that you feel may have pertinent testimony. Subpoena fees are \$65.00 each and must be requested and paid at least 5 days prior to the hearing. There is also a \$10.00 fee which must be attached to the subpoena as a witness fee.

Judgment: Once the Judge or jury has heard all evidence presented, a Judgment will be issued for all, part or none of the claim. A Judgment is the official written decision of the Court.

Either party has the right to appeal the decision of the Court. The proper paperwork (along with a \$10.00 transcript fee and a filing fee to be paid to the County Clerk’s Office) must be filed with the clerk within 10 days from the date the judgment was signed. After this, the judgment becomes final. The clerk will not fill out any appeal paperwork nor instruct you how to file. You will be required to contact an attorney for legal questions and procedures.

Collecting your Judgment:

Abstract of Judgment: An abstract may be obtained from the clerk after 10 days from the date of judgment at the cost of \$5.00. The Plaintiff must request the issuance of an abstract from the Court. The document must be filed by the Plaintiff with the County Clerk’s office. It may be filed in any county within the state of Texas, at a charge to be paid to the County Clerk’s office. An abstract recorded with the County Clerk’s office constitutes a lien on the real property of a Defendant located in the county in which the abstract is recorded. It is also reported to Credit Bureaus. If you believe that the Defendant has property in more than one county, you may file the abstract with more than one county. The abstract continues for a period of ten years except if the judgment becomes dormant. To keep the judgment from becoming dormant, you must have a Writ of Execution issued within ten years after the judgment is rendered.

Writ of Execution: A writ of execution may be issued after 30 days from the date of the judgment at the cost of \$155.00. This document is issued to the Sheriff to collect the judgment. The Writ directs the Sheriff or Constable to contact the judgment debtor

(Defendant) and seize and sell any non-exempt property, real and personal, and deliver the proceeds to you to satisfy the judgment. (See attached page for exempt property.) If the Defendant does not have any non-exempt property, the Writ will be returned Nulla Bona, which means they did not collect the judgment.

**An alternative to going through the time and expense of filing in Small Claims Court would be to go through mediation. You may contact the Panhandle Regional Planning Commission for Dispute Resolution.
