

Chapter 1

Understanding the Ins and Outs of Small Claims Court

In This Chapter

- ▶ Making a decision to go to court
 - ▶ Going to court without a lawyer
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Most people don't really want to court. It's stressful, it can be expensive, and it takes a big chunk of time out of what I assume for most of you is a busy enough schedule. Of course, there are exceptions: Lawyers go there because that's their job, and people who love drama — and create lots of it in their daily lives — may find going to court to get people to listen to them somewhat addicting.

If you're an average Joe or Jane, staying out of court probably seems like a better idea to you, until something happens that seems so unfair that you start considering going to court to get it resolved. If that happens, then this book can help you figure out the best way to go forward with the greatest shot of getting what you want out of small claims court.

In this chapter, I give you a quick overview of small claims court, why it exists, and a quick analysis of whether it's where you should be to resolve your problem. The information here gives you an overview of the kinds of topics covered in greater detail throughout the book.

Starting Down the Road to Small Claims Court

Why are you going, or considering going, to small claims court? Everyone has different reasons, but usually frustration, aggravation, and a sense of outrage at the way a business or personal transaction has turned out is the impetus.

If you could solve things in another way, you probably would. Many litigants say they end up in small claims court because the person they're having a problem with doesn't seem to be listening to them or responding to what's an important issue to them. Some of these situations may be better resolved outside of the court system through mediation or conciliation.

Let's say you threw a garden party in an effort to spiff up your social standing in your neighborhood — you know, tea, crumpets, watercress sandwiches, and the like. You decked yourself out in your white linen suit. You were strolling your garden, greeting neighbors, when the dog next door, Tiny, greeted you by putting his muddy paws on your suit and licking your face.

Although everyone had a good laugh at your expense and the incident won first prize in a funniest video contest, your neighbor refused your request that he pay for the dry cleaning bill for your suit. Not only did he refuse, but he insists you pay the veterinarian's bill because his dog is allergic to linen.

Rather than challenge your neighbor to a duel, you decide to take a more civilized approach and call your lawyer, who tells you that the legal fees involved would be more than any money you may recover. You call several other lawyers and get the same response.

Well, don't despair. Throw your shoulders back, lift your head up high, and put a smile on your face. There is hope. You have a remedy tailor-made (pardon the expression) that suits situations like yours. It's called small claims court.

Small claims court is part of the court system available in every state. It's a court where you don't need a lawyer, where the rules of evidence are not strictly applied, and where the goal is to obtain "substantial justice" for the parties in an expeditious manner. Substantial justice is explained in Chapter 2.



But don't run out and file just yet. Because there are 51 different small claims courts in the United States — the 50 states and the District of Columbia — it's important that you check with your local court system before you start your lawsuit, because not every state permits the same kind of case to be brought in small claims court.

Doing It Without a Net — Or a Lawyer

A book such as this one is very handy to the average citizen who has not passed the bar, because small claims court is a court where lawyers are not only not required but in some places actually prohibited. Yes, you read that correctly: Some courts actually prohibit lawyers in small claims court, which makes it a unique place ripe for human error.

Did you ever hear the saying, “A person who represents himself has a fool for an attorney?” Or is it, “A person who represents himself has a fool for a client?” The point is that someone going to court without legal representation is the sort of thing you’ve always heard is a really bad idea. The people who get most upset about self-representation are called lawyers or attorneys or counselors.

Small claims courts operate on the assumption that you don’t need a lawyer in order to have your case presented easily and decided fairly. Because lawyers have chosen the law as a profession, they generally don’t like programs where legal services are available to just anyone — and at no cost or very little. You have a job, right? And you wouldn’t be happy if someone found a method of doing your job without having to pay you for it, so too lawyers are often skeptical of ideas that reduce potential income sources.

Well, if lawyers control state legislatures — which may actually be a myth — how did we end up with small claims courts all over the country? It’s really very simple. It’s called *small* claims court for a reason. The amount of money you can sue for is limited; In fact, in most places, it’s downright puny. Each state has set a limit as to what is the most money you can sue for in small claims court.



The cost of using a lawyer to represent you on your small claims court case in all likelihood would exceed the amount of money you potentially can recover, making it really hard to hire counsel. This makes the lawyers feel much better about letting you represent yourself.

Don’t think that my intent here is to bash lawyers. Small claims court can’t function without the thousands of attorneys who volunteer their time to serve as arbitrators in small claims courts throughout the United States. The court system couldn’t handle all of the cases brought in small claims court each year in a timely manner if every lawsuit had to be heard by a judge. It would be remiss of me not to recognize the contribution of members of the bar in every jurisdiction who help make the American court system function.

That being the case, if at times throughout this book, it seems as if I’m throwing lawyers under the bus, I ask forgiveness and I promise not to shift into reverse after they’re on the ground. To find out more about how lawyers fit into the small claims court system, check out Chapter 3.

To broadcast or not to broadcast? That is the question

For those of you who are not currently starring on your own reality show, small claims court may be your opportunity to obtain your 15 minutes of fame. The producers of courtroom television shows and their offspring — both legitimate and illegitimate — often send staff members to small claims court to sift through the filings and identify potential cases to be heard before all of America on one of these television programs.

If the staff members think the case you filed with the small claims court clerk sounds interesting, the producers send you and your opponent a letter asking if you want to have your dispute heard on television. If you both agree to do this, you sign a contract with the television show producers and the case is decided under the rules established by the production company and not in your local small claims court. The production company's rules determine how the case will proceed and whether you have any recourse after the television judge decides the case in the event you're dissatisfied.

The advantage of having your case heard on television is that everyone is a winner in that they're compensated by the producers. If you're bringing the case and you win, the producers pay you the amount of the judgment awarded by the television judge. The person you're suing doesn't

lay out a cent. That person is also paid a fee for agreeing to have the case heard on television and appearing on the program. If you don't prove your case, and the television judge rules against you, both you and the person you are suing are compensated by the production company.

You may be thinking, fame and/or fortune, what's the downside? Well, as I mention, the entire proceeding is subject to the terms of the contract you sign with the producers. This means you may be sacrificing any rights you would have under the laws of the state in which you live and agreeing to be bound by the rules of the television show. Should there be a dispute between you and the producers, you may be subjecting yourself to the law of a different state, such as the state where the television show is filmed. You may be limiting your monetary compensation should the show not be broadcast on television for any reason. You'll also be subject to the editing discretion of the production company. This means you can end up looking like the complete incompetent your mother-in-law always thought you were.

If you and your opponent both decide that television is me, you can close this book and save yourself the trouble of reading it, because nothing that happens on television is even remotely like going to real court.

Understanding Why Small Claims Court Rules Seem So Confusing

Although you may not need a lawyer to use small claims court, you may need one to ferret out your state's various rules and regulations.

The information you need about the procedures of small claims court are contained in your state's statutes. You may not be able to find it conveniently located in just one section of your state's law — you may have to skip around to various statutes to figure out what court to file in, what procedures to

follow, and what rules of evidence are used in small claims court. Sometimes the rules may also be contained in some local regulation as well as in the state law.

Even after you find the information, understanding the statutes may require a lawyer or at least a reference to a legal dictionary, as many states still use terms that have been applied since colonial times from *common law* rather than plain language to describe the process and your rights.



Check whether your court system or the state bar association has some user-friendly pamphlets or websites that explain how small claims court operates in your area.

Getting the go signal for small claims court

Because every state is different, I can only generalize about your state's rules about small claims court. But generally, small claims court maybe an option for you if you meet three criteria:

- ✓ You're looking for a limited amount of money.
- ✓ The transaction arose locally rather than across county or state lines.
- ✓ The potential defendant is a readily identifiable individual or business.

See Chapter 2 for all the details about determining whether you belong in small claims court, or whether just knocking on your neighbor's door and apologizing for all the scenes you caused in the last month may be more appropriate.

Being rejected by the small claims system

Sometimes it's evident from the start that you and small claims court aren't a match made in heaven. For example, you don't belong in small claims court if:

- ✓ You want a remedy or result other than money, such as forcing someone to meet the terms of a contract or stopping your neighbor from doing something that really annoys you.
- ✓ You're looking to win enough money from the defendant to retire to a tropical paradise and never have to handle money again in your life.
- ✓ You want to sue so many people that you need a sports arena to seat them all and interpreters from every member nation of the UN.

Preparing for Your Big Day

One thing that becomes apparent as you read this book, which I'm assuming that you find it so informative and entertaining that you read it from cover to cover and give as a holiday gift to all your friends and some of your enemies, is that preparation is the key to success.

Preparation for small claims court means:

- ✓ Knowing what kind of claim you have. Do you have a contract claim, property damage claim, or something else? (Chapter 4 can help you figure it out.)
- ✓ Figuring out how much money to seek and properly classifying your damage claim. (Chapter 5 explains money matters.)
- ✓ Determining who you're planning to sue: Is it a person or a business? If the defendant is a business, you need to know whether it's a sole proprietorship, a partnership, or a corporation. Chapter 6 tells you how to ferret out this information.
- ✓ Discovering the procedures used in your local court. (The clerk has all the answers; find out how to work with the clerk in Chapter 7.)
- ✓ Planning what you intend to do when you get to court. (Chapter 11 can help you avoid making a fool of yourself in court.)
- ✓ Deciding how to present your case. (Turn to Chapter 12 for tips on this.)

Finding specifics on your type of case

Because small claims cases tend to fit into certain general categories, I've picked out some of the more typical situations I've seen in court to give a more detailed treatment as to what to expect and how to better prepare your case.

Chapter 16 talks about contract cases that involve where you live; landlord and condominium disputes both fit into this category.

If you're doing battle with a business, turn to Chapter 17 for details on what this entails. Chapters 18 and 19 discuss all the things that go wrong in daily living, such as arguments associated with weddings in Chapter 18 and irritating situations with the neighbors in Chapter 19. If you're struggling with issues rising from Internet transactions, Chapter 20 can help you succeed in court.

Showing Up in Court

Woody Allen once said something to the effect that 80 percent of success is just showing up. That may be good in some situations, but in small claims court, just showing up will be a disaster for you — although not showing up is worse.

Even if you're prepared for your case, you still have to be prepared for court. This means being dressed for the occasion and treating it as an important event. You also have to be prepared to deal with the clerks of the court, the courtroom staff, your opponent, and the judge.



A confrontational attitude with everyone you meet along the way in your quest for justice is a good way to undo all of the preparation you did for your day in court. Let Chapters 11 and 14 help you win your case by not losing your case through your own incorrect actions.

Living Through the Aftermath

One thing that people who aren't familiar with the legal process discover quickly is that there is a difference between winning a case and collecting your money. I hope this book sets you on the path to victory. But even if you win your case, you still have to figure out how to collect a money judgment in your favor.

Historical aspects of small claims court

Because I have a master's degree in American history, I'm forced to place some historical information in this book. Lots of significant events occurred 100 years ago in 1912. The *Titanic* sank. Fenway Park opened in Boston. Teddy Roosevelt and William Howard Taft split the Republican vote, leading to the election of Woodrow Wilson. And more germane to this book, some sources say that the first small claims court was started in Kansas.

Before long it became apparent that you didn't have to be in Kansas anymore to find a small claims court, as every state created one for its citizens. Some other sources have concluded that the first small claims court started in Cleveland, Ohio, in 1913. It really doesn't matter for the purposes of this book, but by going with 1912 and Kansas, I get to refer to some events that just about everyone knows about and to make a reference to *The Wizard of Oz* that just doesn't work with 1913 and Cleveland.

Deciding to settle your case for less than you want in order to insure prompt payment is an option to explore. Chapter 21 helps you figure out how to get what you have coming to you. It also explains options for what you can do if you're not paid and who can help you enforce your judgment using the legal process.

In every small claims trial, someone wins and someone loses. What to do if you're not satisfied with the court's determination is something to think about almost before you start your case. Chapter 22 helps you make decisions about what to do if the verdict doesn't go your way. It helps you prepare for the possibility of losing and tells you how to proceed to either appeal a decision or to respond to an appeal.