

**HOW TO PROCEED IN SMALL CLAIMS COURT
AFTER A TRAFFIC ACCIDENT**



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Small Claims Court is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. Any person age 18 and above can take advantage of this service.

Do I have to pay to file?

Yes. The filing fee is \$22 for the first 12 claims you file in a year. After that, it is \$66. These fees are the same for every county in the state.

Can I bring a lawyer?

No, a lawyer can't represent you in court. But you can talk to a lawyer before or after court.

How much can I ask for?

An individual cannot ask for more than \$7,500 in a claim. Corporations and other entities, e.g., government agencies, cannot ask for more than \$5,000. You can file as many claims as you want for up to \$2,500 each. However, you can only file two claims in a calendar year for more than \$2,500.

What kinds of cases go to small claims court?

There are different kinds of cases. The most common are: car accidents, property damage, landlord/tenant rent deposit disputes, and collection of money owed.

What will happen at my hearing?

The judge will listen to both sides of the story. To help tell your side, bring evidence like:

- Witnesses
- Photos
- Bills
- Receipts
- Diagram of Accident
- Other relevant documents that support your side

The judge may make a decision at your hearing, or mail it to you later. Instead of a judge, you may have a commissioner or temporary judge at your hearing. They are both just like judges. A temporary judge (called a "judge pro tem" or "judge pro tempore") is a lawyer who hears and decides cases. If you don't want a temporary judge, you can ask the court to have a judge hear your case. You may have to come back another day.

Can I appeal the judge's decision?

You can't appeal if you were the one who filed the claim.

When is it too late to file a claim?

It's not easy to figure out if it's too late to file. If you're not sure, file your case and let the judge decide. Here are some tips:

- If you are suing because you **got hurt**, you can file a claim for up to two years after you were hurt.
- If you are suing because your **property was damaged**, you have 3 years to file after your property was damaged.

Do I have to go to court?

If you're suing someone, you **must** go to court. You can't send anyone else (even a lawyer) to represent you in court.

What should I expect in court?

When the judge calls your name, go to the front of the room. The judge may ask you to try to settle your case before the hearing takes place. The plaintiff will present their case first. Your case will usually last 10-15 minutes.

How can I get ready for court?

Plan what you are going to say. Decide what your main points are and bring proof. Try to think of what the other person might say and how you will answer. You can also talk to a small claims legal advisor or a lawyer before court.

How do I tell my story?

Be quick and to the point and stay calm. It is your job to **PROVE** your case. Here are some tips:

- The first thing you need to say is why you are there.
 - Tell the judge how you were affected by what the other person did, and
 - Why it is their fault.
- Also explain why it is not your fault.
- Say what happened, in the order it happened.
- Group facts together. For example: "From April to August, I took the car in 10 times and he didn't fix the brakes."

I won what do I do now?

Once they've paid, file a form called *Acknowledgment of Satisfaction of Judgment* within 14 days.

How long must I wait before I can start to force the debtor to pay?

Enforcement of the judgment is put off until the time for appeal expires (30 days after entry of judgment). If an appeal hearing is held, the judgment can be enforced after the superior court's judgment is sent back to the small claims court. This should occur within 10 days. For more information, check out California Code of Civil Procedure sections 116.780, 116.810, and 116.820.

If the defendant doesn't appeal the original judgment, must they tell me what property they own?

A debtor that fails to appeal or file a motion to vacate the judgment (and that doesn't

voluntarily pay the judgment) must fill out a *Judgment Debtor's Statement of Assets* (form SC-133) and send it to you. In many counties the court clerk will mail a SC-133 form to the debtor with the original judgment. Unfortunately, many debtors do not fill out and deliver the SC-133. Often this may force you to do a debtor's examination.

Will this judgment show up on the debtor's credit report?

The credit reporting bureaus will know the debtor hasn't paid your judgment because the debtor's name will appear on the court's "Judgment Roll," and this is a public record. The credit reporting bureaus go to each courthouse and get that information for their records.

What out-of-pocket costs can I get back from the debtor and how do I collect them?

The law (Code of Civil Procedure section 685.070) lets you recover:

- Court clerk fees for issuing a writ of execution or abstract of judgment,
- County recorder fees for recording and indexing an abstract of judgment,
- Statutory fees for the sheriff/marshal,
- Costs associated with a debtor's examination (hearing fee and service of process fee).

To recover your costs of collection, you must file with the court a *Memorandum of Costs after Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012) within 2 years of incurring the costs.

For more information, check out Code of Civil Procedure section 685.070.

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