

How to make a claim to the small claims court

(With thanks to the National Accommodation Association)

Small Claims Court - www.paralegaladvice.org.za/docs/chap03/03.html

The Small Claims Court is also a civil court. But the procedure is much simpler.

The Small Claims Court allows people to bring claims for less than R3 000 cheaply and quickly. Small Claims Courts cannot hear certain cases.

See Small Claims Courts

Lawyers

You may not use a lawyer in the Small Claims Court. Your opponent may also not use a lawyer in the court.

If you want to you can ask a lawyer to give you advice before the case. You may also get advice from a paralegal before the case. But in the Small Claims Court you must speak for yourself.

Summary of the steps in a Small Claims Court

Contacting your opponent by telephone and letter

It is important to contact the other person either by telephone or in writing BEFORE you take any steps through the Small Claims Court. This person is called your opponent in the case. You must explain what you are claiming and why you are claiming this. If you have only spoken to your opponent on the telephone, you must then write him or her a letter setting out your claim.

See Model Letter of demand written by a person who plans to take a case to Small Claims Court

If the person refuses to answer your request, then you take further steps.

Letter of demand

If you want to use the Small Claims Court, you must send an official Small Claims Court letter of demand to your opponent.

See Model Letter of demand written by a paralegal on behalf of a client who is claiming, telling the other person that you intend to take a case to the Small Claims Court

You can get a form for the letter of demand at the Small Claims Court.

You add to the letter of demand a full description of your claim. Keep a copy of the letter for yourself. Send the original letter to your opponent by registered post or deliver it by hand.

If you send the letter by registered post, you must ask the post office to send a pink A.R. card with the letter. When the opponent gets the letter, he or she must sign the pink card. This is then returned to you and is your proof of receipt of the letter of demand. Keep the Certified Registered Slip and the pink card in a safe place.

If you deliver the letter by hand, the person who receives the letter must sign another copy of the letter saying that he or she received it. Keep this signed copy in a safe place.

You must give your opponent 14 days to reply.

If your opponent does not reply within 14 days then you can issue a summons.

The summons

Take a copy of the letter of demand and proof that it was sent (for example, a registered slip from the post office and the pink card), to the Clerk of the Small Claims Court.

Ask the Clerk to issue a summons. The Clerk of the Court will help you fill out a summons form. You then

take the summons to your opponent at his or her home or place of work. If you do not want to take the summons yourself, you can give it to the Sheriff of the Court to take to your opponent. You may have to pay between R30 and R40 for this.

The summons gives your opponent 10 days to pay your claim. It also mentions a date after the 10 days when she or he must appear in the Small Claims Court if the claim is not settled.

A Statement of Defence

If your opponent wants to, she or he can hand in a Statement of Defence to the Clerk of the Small Claims Court. But this is not necessary. Your opponent can decide only to mention his or her defence at the court appearance.

The trial

At the trial, the Small Claims Commissioner (who is usually a lawyer) is the person who makes the decision.

He or she is like a judge or magistrate. The Commissioner helps both sides to present their cases and explains the court procedure to both sides.

The Commissioner then asks all the questions. You can only ask your opponent questions when the Commissioner says that you can. If you do not understand English or Afrikaans, you can ask for an interpreter, but you must ask for this before the day of the case.

Both you and your opponent can call any witnesses to support your cases. The Commissioner will question the witnesses. The parties should also bring any documents involved in the case, for example, an invoice, receipt, photographs, statements by other people, and so on which could be used as proof

Changing the claim

At any time before the case, you can ask the Small Claims Commissioner to change some of the details in any of the documents. Or you can ask the court to stop the claim altogether. The Commissioner will allow any changes which he or she decides are reasonable.

What happens if your opponent does not come to court?

The court can still make its decision even if your opponent is not there. The Commissioner can give a default judgment. The same methods for enforcing a judgment can be used as in an ordinary civil case.

See Default judgment

The Commissioner gives judgment

The Commissioner will decide on a 'balance of probabilities' who is right. This is the same as in other civil cases. When the Commissioner has heard all the evidence, he or she needs to decide the case, the trial stops and judgment can be given. The Commissioner does not have to listen to all the witnesses if he or she thinks it is not necessary.

Appeal and review

The Commissioner's decision or judgment cannot be taken on appeal.

The Commissioner's judgment can be taken on review in the High Court on three grounds:

If the court did not have jurisdiction. In other words the case should not have been heard in that court.

If the Commissioner was biased or corrupt

If the proper procedure was not followed in the Court. This is also called a gross irregularity. For example, if the Commissioner did not allow one of the sides to tell their story, this is not proper procedure, because each side must get a fair hearing.

Steps following judgment

The judgment of the court is final, unless there are grounds for review.

If judgment is given against you, you must do whatever the court says you must do. You must pay any costs that the court makes against you. If you are the plaintiff, these costs can only be for fees for the messenger of the court.

If judgment is given against your opponent, he or she must immediately pay you whatever the court says.

Enforcing a Small Claims Court judgment

The same method of enforcing a judgment can be used in a Small Claims Court case as in an ordinary civil case.

See Enforcing a civil judgment

Information supplied by Michele de Souza, Greenlands, Pietermaritzburg