

GENERAL INFORMATION ON SMALL CLAIMS COURT

This information is prepared and provided by Legal Services of Greater Miami, Inc. Small Claims Court is a court where you do not need an attorney to represent you. It is designed so that lay people can represent themselves. The maximum you can sue for in small claims court is \$5000.

The filing fees in small claims court are based on how much money you are suing for. If your claim is for:

\$1.00 - \$99.99	you pay \$55.00 filing fee
\$100.00 - \$500	you pay \$80.00 filing fee
\$500.01 - \$2,500	you pay \$175.00 filing fee
\$2,500.01 - \$5,000	you pay \$300.00 filing fee

(Additional fees may apply – see schedule of fees at end of document)

Effective July 1, 2004 court and other fees are no longer waived for those deemed indigent. Even if a plaintiff is indigent, the Clerk will no longer exempt him or her from paying the filing, and other, fees. However, an indigent plaintiff may enter into a payment plan so as to pay the filing, and other fees, over time. The procedure to enter into a payment plan is outlined at the end of this document.

You can file your small claim at any of the following court locations: (the numbers in parentheses are the branch court numbers)

Dade County Courthouse (05)
73 West Flagler Street
Miami, Florida 33130
Telephone: (305) 375-5775

COUNTY COURT BRANCH LOCATIONS

**Caleb Center
(North Central District) (20)**
5400 N.W. 22 Avenue, Room 205
Miami, Florida 33142
Telephone: (305) 636-2255

**Coral Gables Branch
(South Central District) (25)**
3100 Ponce de Leon Blvd.
Coral Gables, Florida 33134
Telephone: (305) 569-2500

**Cutler Ridge Branch
(South District) (26)**
10710 S.W. 211th Street
Miami, Florida 33189
Telephone: (305) 232-3807

**Hialeah Branch
(Northwest District) (21)**
11 E. 6th Street
Hialeah, FL 33010
Telephone: (305) 275-1155

**Miami Beach Branch
(East District) (24)**
1130 Washington Avenue
Miami Beach, Florida 33139
Telephone: (305) 535-4200

**North Dade Justice Center
(North District) (23)**
15555 Biscayne Boulevard
North Miami Beach, Florida 33160
Telephone: (305) 354-8707

KNOW WHO YOU ARE SUING

You must know precisely who you are suing. You must know the correct legal name of the person or business you are suing.

Suing a Corporation

If you are suing a corporation, you must know the full name under which the business is incorporated. You must also know the name and address of either a corporate officer or the registered agent of the business. You may get a list of officers of the business from the Florida Secretary of State by calling 1-850-488-9000. You may also write to the Secretary of State, Corporation Division, The Capitol, Tallahassee, Florida 32304. If you have access to the internet, you may also access this information at www.sunbiz.org.

If you are suing a corporation, you must serve either the Registered Agent, the President, or the Vice-president of the corporation. If the Registered Agent, President and Vice-president are absent, then you can serve Treasurer, Corporate Secretary or General Manager.

Suing a Business that is Not a Corporation

If the business you are suing is not incorporated, you must know the correct company name and the full name and address of the owner of the business. You can get this information by calling the Occupational License Bureau of Miami-Dade County at 305-270-4949. If the business you are suing is not incorporated, you must serve the owner of the business.

WHAT IS "SERVICE OF PROCESS"?

To "serve" means having the sheriff or process server personally hand a copy of your statement of claim and summons to that person.

FILING THE LAWSUIT

At the clerk's office you will complete a Statement of Claim, and pay the filing fee. There will be deputy clerks available to help.

PRE-TRIAL CONFERENCE

After you have filed your suit, you will be notified of a place and date for a pre-trial conference. The pre-trial conference is held to decide whether or not your lawsuit should go to a full hearing before a judge, or to see if it can be settled out of court. You must attend the pre-trial conference. If you do not, the judge will dismiss your case. If the defendant does not appear for the pre-trial conference, a default judgment may be entered against the defendant. If that happens you automatically win your case.

Sometimes at the pre-trial conference the Judge will ask you if you want to try mediation. This is a process where you and the other party sit down with a mediator and try to settle the case instead of having a trial. The advantage is that your case is over right away and you are sure of the result, instead of taking a chance with a trial.

The judge at the pre-trial conference may also tell the parties what kind of evidence and witnesses should be presented at the trial. When you go to the pre-trial conference, you should take any documents which may help you prove your case. Although you should not take your witnesses to the pre-trial conference, you must be able to tell the judge how many witnesses you plan to have at the trial.

After you are given a trial date, it is your responsibility to subpoena any witnesses you want to call at the trial to prove your case. To do this, you must go to one of the filing locations. A deputy clerk will give you the correct forms and will help you.

WHAT WILL HAPPEN AT YOUR TRIAL

The trial is the final hearing in your case. When you go to the trial, you should take any documents and/or witnesses which may help you prove your case. At the trial all the witnesses testify and both sides present whatever documents or other evidence they have. The trial may be held in the Courtroom or the Judge's Chambers.

OPENING STATEMENT

If you have filed the lawsuit, you are the plaintiff and you present your case first. You can start with an "opening statement" in which you explain to the court what the case is about, what you are going to prove and how you will prove it. The defendant can also make an opening statement but may decide to do that when he presents the defense.

PLAINTIFF'S CASE

After the opening statement the plaintiff presents his/her witnesses and all his/her documents and other evidence (such as pictures that there was no damage in the apartment, etc.). The plaintiff's witnesses present their testimony by answering questions put to them by the plaintiff. This is called direct examination. When the plaintiff finishes questioning the witness, the defendant can ask the plaintiff's witnesses questions. This is called cross-examination. After the cross examination by the defendant, the plaintiff can question the witness again. This is called redirect.

DEFENDANT'S CASE

After the plaintiff has presented everything necessary to prove the case, then the defendant has the opportunity to present his side of the case. He can call witnesses and introduce documents and other evidence. The plaintiff can cross examine the defendant's witnesses.

REBUTTAL

When the defendant is done with his defense, the plaintiff can present witnesses or evidence which rebut the defendant's case.

CLOSING ARGUMENT

After both sides have presented their cases, then both the plaintiff and defendant can make a closing argument. In the closing argument, each party tries to persuade the court to rule in his/her favor. Each party can restate to the court what he/she has proved and why he/she should win. The court then decides the case and issues a decision. This is called the judgment and will be written. Usually the court rules immediately after the trial; but sometimes the court will take additional time to rule.

The court may award the prevailing party (this means the person who wins) court costs, and possibly attorney's fees, if the prevailing party was represented by an attorney, and there is a contract or statute that provides for attorney's fees.

COUNTERCLAIM

Sometimes when the plaintiff sues the defendant, the defendant files a counterclaim against the plaintiff in the same case. A counterclaim is a claim that the defendant has against the plaintiff, which may or may not have

arisen out of the same transaction that gave rise to the plaintiff's claim. For instance, a tenant may sue for a security deposit but the landlord may file a counterclaim for all the damage that the tenant did to the unit. If a counterclaim is filed, then at the trial, the defendant has to prove the counterclaim, just like the plaintiff has to prove the original claim.

AFTER THE FINAL JUDGMENT

MOTION FOR A NEW TRIAL

If you are unhappy with the outcome of the trial, you may file a motion for a new trial. Motions for a new trial must be filed within 10 days after the Judgment is entered.

COLLECTING ON A JUDGMENT

If no new trial has been requested, and if you have not received payment even though there was a final judgment in your favor, you have the right to begin post-judgment procedures as listed below.

\$ If you want to have your final judgement entered as a lien against real property owned by the defendant(s), you must obtain a certified copy at the location where your case was heard, and then have it recorded by the Clerk of the County in which the property is located. The recorded Final Judgement will serve as a lien for up to 20 years from the date the Judgment was signed, but must be re-recorded every ten years to stay in effect. The Miami-Dade County Recording office is located at 22 NW 1st Street, Miami, Florida 33130. (See fee schedule)

\$ If you know the name and address of the employer or the bank of the defendant(s), you may want to use the process of Garnishment. This is an order issued by a deputy clerk in which a third party (usually employer or bank) is told to hold funds until a hearing is held and a judge decides if they should be awarded to you. (See fee schedule)

\$ A Writ of Execution , which commands the Sheriff's Department to make demand for the amount of your Final Judgment from the defendant(s), may be issued by a deputy clerk upon request. This is only effective if you obtain an "Instruction for Levy" form from the Sheriff's Office and complete it giving a description and location of property that the sheriff can take from the defendant and put up for auction. (See fee schedule)

\$ If you do not know the employer(s) or bank(s) of the defendant(s), and if you do not know the location of any property, which might be subject to a Writ of Execution, you may file a motion wit the Clerk's Office for a Hearing in Aid of Execution. The judge will then enter an order for the hearing and the defendant(s) will be served with the order and a "Fact Information Sheet". At the hearing, the defendant(s) will be required to reveal assets, employment and sources of income to the judge.

ADDITIONAL INFORMATION

If you have any questions regarding the information in this handout, or if you need further assistance regarding a lawsuit you filed, or a lawsuit which plan to file, you should contact the Clerk of Courts. If after contacting the Clerk of Courts you still require additional information, you should make an appointment to attend our Small Claims Clinic. To make an appointment to attend the Small Claims Clinic, call 305-576-0080.

The Small Claims Clinic is held on the second and fourth Tuesday of each month from 5:00 - 8:00 p.m. at the offices of Legal Services of Greater Miami, Inc., located at 3000 Biscayne Boulevard, Suite 500, Miami, FL 33137. Clients meet with private attorneys who provide free legal advice about how to represent yourself in a small claims case. **The attorneys do not go to court or provide ongoing legal assistance to resolve the dispute.**

Fee Schedule (As of July 1, 2008)

These fees are subject to change.

Filing Fees*:

From \$.01 to \$99.99	\$55.00
From \$100.00 to \$500	\$80.00
From \$500.01 to \$2,500	\$175.00
From \$2,500.01 to \$5,000	\$300.00

*Deferred Payment Agreement Fee: \$25.00

Note: Claims that exceed \$5,000 are not Small Claims. Claims from \$5,000.01 to \$ 15,000.00 are filed as County Civil Cases and have a filing fee of \$205.00.

Issuance of Summons

Issuance of Summons by the Clerk	\$20.00
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Sheriff's Fee:

For service - each defendant	\$20.00
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Certification:

For each page copied	\$1.00
For certifying the copy	\$2.00

Recording:

For a one page document	\$10.00
For each additional page	\$8.50

Execution (Sheriff's Fees):

For executing (Minimum)Small-Claims-General-Info- Eng-07-2008	\$110.00
Levy Deposit (Maybe refundable)	\$500.00

Contact sheriff at 305-375-5100 (The Clerk of Courts will assist you in contacting the Sherrif).

Judgement Lien Recording:

Florida Secretary of State \$20.00

Garnishment: For filing fee

(one time - 1st garnishment only) \$35.00

*For deposit in Court Registry \$100.00

For Clerk's fee \$2.00

For Sheriff's service fee \$20.00

*To be used for garnishee's attorney's fees

FILING FEE PROCEDURE

The Courts require that a person who files a small claims or other type of lawsuit must pay a **Filing Fee**. If you do not have the money to buy the Filing Fee at once, you can pay it in **Installments**. Ask the Court's Clerk to allow you to pay the Filing Fee in Installments.

- * Florida Law allows a person whose income is within **200% of the poverty guidelines** to enter into an Installment Plan to pay the Filing Fee over time. The poverty guidelines change every year. The 2008 poverty guidelines are below.
- * You must agree to a Payment Plan with a **\$25 administrative fee**. This is a fee you must pay in addition to the Filing Fee.
- * The Payment Plan can't be more than 2% of your income each month.
- * You don't have to pay any cash up front to get the Payment Plan.

WHAT DO I DO IF THE CLERK WON'T LET ME HAVE A PAYMENT PLAN?

If the Clerk decides that your income is greater than the poverty guidelines, and refuses to allow you to pay the filing fee in installments, tell the Clerk you want the Judge to review this decision. The Judge may decide that you may pay the filing fee in installments.

WHAT IF I DON'T MAKE PAYMENTS ACCORDING TO THE PAYMENT PLAN?

If you don't pay the filing fee according to the Payment Plan, the Clerk of Courts may ask a collection agency to collect this money from you. This could result in a court judgment against you for the amount of the filing fee that you did not pay, in addition to a 40% charge, and a possible lien on the public record.