

# SMALL CLAIMS COURT FOR COMMUNITY ASSOCIATIONS

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AUTHOR

MARY M. HOWELL, ESQ.

**Epsten Grinnell & Howell**<sup>APC</sup>  
Attorneys Serving Community Associations

800.300.1704    [www.epsten.com](http://www.epsten.com)

# SMALL CLAIMS COURT

## WHAT IS THE SMALL CLAIMS COURT?

The Small Claims Court is a special division of the Court system designated solely to handle disputes too small to be handled economically with the aid of an attorney. The present limit for association recovery is \$5,000.00. If an individual claim is more than \$5,000.00, you may voluntarily forgive that part of your claim in excess of the limit and use the Small Claims Court. But remember, you can *never* collect the money you have forgiven. That is one of the "costs" of using the Small Claims Court. (Code of Civil Procedure Sections 116.220, 116.231).

## WHAT TYPES OF CLAIMS ARE SUITABLE FOR SMALL CLAIMS COURT?

A. *Homeowner associations* typically use Small Claims Court to:

1. Sue an owner for a delinquent assessment (as an alternative to foreclosure of an assessment lien);
2. Sue a *past* owner for delinquent assessments;
3. Sue for fines;
4. Collect for damages caused by the negligence of another.

B. *Homeowners* typically use Small Claims Court to:

1. Settle disputes between neighbors, whether arising from the CC&R's or not;
2. Sue the homeowners association for damages.

Please note: you may *not* use the Small Claims Court solely to force someone to comply with the CC&Rs.

## WHO MAY USE THE SMALL CLAIMS COURT?

Individual homeowners, unincorporated associations and corporations may use the Small Claims Court.

"Associations, both incorporated and unincorporated may appear and participate in a Small Claims Court action only through a regular employee, or a duly appointed or elected officer or director who is employed, appointed or elected for purposes other than solely representing the corporation in Small Claims Court." (CCP §§116.540 [b]).

"...[Homeowner Associations] may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association." (CCP §§116.540 [i]).

Courts require a "Declaration in Support of Appearance by a Representative/Employer" signed by a board member or the association president, authorizing the association manager to appear on the association's behalf. Most judges will permit an association manager to appear if the Declaration is signed and submitted, but the association manager should be personally knowledgeable of the facts of the case. Some judges require the officer or director to also be present.

## MAY ATTORNEYS REPRESENT CLIENTS IN SMALL CLAIMS COURT TRIALS?

No.

## MAY ATTORNEYS EVER REPRESENT CLIENTS IN SMALL CLAIMS COURT?

Yes, on appeal, and on most "motions" brought before the Court.

## ARE THERE DISADVANTAGES TO SUING IN SMALL CLAIMS COURT?

Yes, primarily there are two disadvantages:

1. A losing plaintiff has no right to appeal, while the losing defendant *may* appeal to a higher Court;
2. The absence of attorneys sometimes allows the Court to make decisions based upon a misunderstanding of the law.

## **WHERE DO I FILE A SMALL CLAIMS CASE?**

### WHERE IS THE SMALL CLAIMS COURT?

Usually, it's the same location as your Superior Court. Remember, it's a division of the county Court in each county. In smaller judicial districts, Small Claims cases are heard in a special place designated for that purpose. For instance, in Riverside County, Small Claims cases are heard in five different locations.

### HOW DO I KNOW WHICH COURT TO USE ?

Disputes initiated by homeowner associations or neighboring homeowners revolve around the real property in question. "Venue" - the location of the proper Court - is determined by the address/zip code of the real property. Branches of the Riverside County Small Claims Court are located in Banning, Blythe, Hemet, Indio and Temecula. Branches of the San Diego County Court are located in Chula Vista, El Cajon, Kearny Mesa, Ramona and San Diego. Please refer to the last page herein for addresses and other pertinent contact information.

## **HOW DO I USE THE SMALL CLAIMS COURT?**

### HOW DO I FILE A SMALL CLAIMS SUIT?

It is really quite simple. Go to the Small Claims Court. Ask the clerk for the form called "Plaintiff's Claim and Order to Defendant." The clerk will either give you the form so you may take it back to your office and fill it out, or the clerk may type it for you right then and there. For that reason, it is important to have the following information with you (pursuant to the Code of Civil Procedure Section 116.320 and consistent with your Association's Articles of Incorporation or deed):

1. The complete and proper legal names of the plaintiff and defendant;
2. The defendant's current address, and the address where the defendant may be served with process, along with the defendant's telephone number, if known;
3. A brief summary of the facts regarding your claim (usually only a few words -- for example, "The defendant failed to pay \$180.00 in maintenance assessments for the months June and July, 2006; he also owes \$10.00 in late fees for those months.");

4. Bring a calendar so you can make sure the date the clerk gives you is convenient for you to be in Court;
5. A check for the filing fee (\$30.00) for up to twelve cases in the previous year; if the amount demanded is \$1,500.00 or less; the filing fee is \$50.00 if the amount demanded is more than \$1,500.00 but less than \$5,000.00. If you filed more than 12 small claims within the previous twelve months, the filing fee is \$100.00.
6. A check for the process server (\$10.00 per defendant for certified mail).

#### WHAT DOES THE PROCESS SERVER DO?

The process server hands the Small Claims complaint to the defendant. That gives the Court jurisdiction over the defendant and requires him or her to appear in Court on the date set by the clerk.

#### WHO CAN SERVE THE DEFENDANT?

Pursuant to Code of Civil Procedure Section 116.340, anyone 18 years of age or older who is *not* a party to the lawsuit. You may hire a private process server to effect service.

#### WHAT IF THE DEFENDANT DOES NOT APPEAR IN COURT?

The judge will still ask you for evidence to prove your claim. If you have sufficient evidence, you will prevail. A "default" judgment will be entered in your favor and against the defendant. Typically, the Court will mail the judgment to you within a couple of weeks.

#### WHAT IF THE DEFENDANT APPEARS IN COURT?

The judge will hear each of you, examine any documentation you have brought with you, and make a decision. The decision is known as a "judgment." Sometimes the judge wishes to consider the matter further, and takes the case "under submission." That simply means you will receive the judge's written decision by mail, usually within a week or two.

Pointer: During the trial, be mindful not to interrupt the other party or the judge. Hand all your documents for the judge to the bailiff, unless otherwise instructed by the judge. Do not approach the judge ("the bench") unless the judge says you may.

## HOW TO TRY A CASE

### HOW DO YOU ACTUALLY PREPARE FOR TRIAL IN SMALL CLAIMS COURT?

You should prepare a brief outline of relevant facts in chronological order. Bring with you all necessary exhibits. These should include CC&R's and Bylaws, deeds and/or trust deeds (if a former owner), notices of assessments, correspondence, accounting records, photographs, etc.

Pointer: Carefully review and understand documents submitted to the Court prior to the trial. Be prepared to answer questions from the judge, and to explain any assessment account records.

The facts and exhibits should be presented by someone with first-hand knowledge of the situation. Occasionally the Court will agree to accept a "declaration under penalty of perjury" in lieu of testimony, but you should not count on this. It is always better to have your witness present in person. You should have two or more copies of each exhibit available in Court.

### WHY DO I NEED TWO COPIES?

The original must be submitted to the Court; copies may be subject to objection. As soon as you refer to a document, you must hand it to the clerk or bailiff who will, in turn, hand it to the judge. (Never hand anything directly to the judge unless he or she specifically asks you to do so.) When you hand a paper to the judge, you no longer have it before you and, therefore, you cannot talk about it conveniently. If the defendant does not have a copy of the document, he or she will not know what is going on. If you have an original and two copies, you can keep a copy marked up with your notes, hand a copy to the defendant so he or she may follow along, and give the original to the judge. Also provide the judge with any necessary computations, clearly worked out and neatly typewritten.

Pointer: Number each page of your exhibits for easy reference.

### WHAT IF A WITNESS REFUSES TO COME TO COURT?

The "subpoena power" of the Court is available to *compel* witnesses to come and testify. If you subpoena a witness to appear, you must, upon service of the subpoena, provide him or her with a witness fee of \$35.00 per day, and 20 cents per mile both ways for travel expense (check Government Code Section 68093). Therefore, you must arrange to have the process server carry a check in that amount when the subpoena is actually served.

### WHAT WILL ACTUALLY HAPPEN ON THE DAY OF TRIAL ?

In some counties, on the day and time your case is set for trial, you will appear in a large "Presiding Department." Your case will not actually be tried in that Department but will be sent from there to a "Trial Department" for trial. Presiding departments are usually chaotic and noisy; therefore, it is very important to *pay attention to what is being said*, and to be quiet yourself. The judge or a Court clerk usually calls the calendar by reading all the cases to be heard that day. They ask the plaintiff and defendant to answer "ready" or "here" if they are ready and available to go to trial, or to explain why they are not ready to go to trial.

### DOES EVERY COUNTY USE THIS SYSTEM?

No. In many counties you will report directly to the Courtroom where your case will be tried. Often there is a bulletin board outside, listing all the cases to be heard that day. Check it at once, and make sure you are in the correct Courtroom.

### WHAT HAPPENS IF ONE SIDE DOESN'T ANSWER AT ALL ?

The case will be heard as a "default matter." (See page 4 above.)

### WHAT IS A "PRO TEM" JUDGE ?

There is a severe shortage of judges to hear Small Claims matters. The Courts' calendars are very crowded. In order to get cases heard "quickly," the Court appoints attorneys to act as judges for the day, called "judges pro tem" (Latin for "temporary judge"). Attorneys who act as judges pro tem are not paid for this service, but regard it as an honor. You need not accept a judge pro tem if you do not wish to, and may request that case be heard by a judge or commissioner.

### HOW DO YOU INDICATE YOU DON'T WANT A PRO TEM JUDGE ?

Simply tell the Court when the case is called that you do not wish to have a pro tem judge. This may mean you will have to wait a little longer to go to trial or come back on another day, but you cannot be forced to accept a pro tem judge if you do not wish to do so.

### IS IT WISE TO ACCEPT A PRO TEM JUDGE?

The greatest risk with a pro tem judge is that he or she may not be familiar with the laws applicable to homeowner associations. You can alleviate the problem by directing the judge to the pertinent statutes (codes) or case law relating to your matter. (Consult with your association attorney, should you need assistance).

### MUST I TAKE THE "REGULAR" JUDGE I AM ASSIGNED?

No. You may "challenge" *one* judge by filing a "peremptory challenge" form (available in the Courtroom). You must file the challenge as soon as you know who the judge will be; you may not challenge after the trial begins.

### WHAT DO I DO WHEN MY CASE IS CALLED?

Come forward in front of the bar (the little railing between the audience and the area where the Court officials are seated). Be seated at the "counsel table." Normally there is a sign on the table indicating where the plaintiff and defendant are to sit. After you are seated, the judge will ask the plaintiff to present his or her case first. The defendant should sit *patiently* and *not interrupt* the plaintiff. The plaintiff should give the same courtesy to the defendant.

### IS COURTESY IMPORTANT IN COURT, AND WILL IT MAKE A STRONG IMPRESSION ON THE JUDGE?

Shouts of "liar" or "that's not true" often heard on popular television shows will *not* favorably impress the judge, and will only hurt your case. Remember, you are trying to show the judge you are the "good guy" -- so act like one. After you have completed presenting your case, ask the judge if he or she has any questions, and then *sit down and be quiet!* More cases have been lost by a party talking on and on unnecessarily than by a party leaving something out of his or her presentation.

### HOW DO I KNOW WHETHER I HAVE WON OR LOST?

You may not. Sometimes the judge announces his decision from the bench and gives an explanation. Other times you will receive a letter within a few days or weeks, indicating the Court's decision. Matters taken "under submission" usually are not accompanied by an explanation. You either win or you lose, but regardless of the results, don't argue with the judge after the decision is announced- it will do you no good!

## HOW DO I COLLECT AFTER I WIN?

### ASSUMING I WON, HOW DO I COLLECT THE MONEY?

Often, defendants pay the debt voluntarily once a judge has decided they are in the wrong. Unfortunately, many refuse to pay even after a judge has found against them.

### WHAT DO I DO IF THE DEFENDANT REFUSES TO PAY ME DESPITE THE JUDGE'S DECISION?

Ask the clerk's office to prepare two documents: a "Writ of Execution" and "Abstract of Judgment." There is a fee of \$25.00 for issuance of the Writ and \$25.00 for the Abstract. The Abstract should be recorded with the County Recorder's office; recording costs will vary depending upon the county, but are approximately \$15.00 for the first page, and \$3.50 for each additional debtor. Additional addresses other than the original will cost \$1.50. Typically, conformed copies cost \$1.00, and certified copies cost \$2.00 per page, plus a \$1.00 certification fee.

The Abstract will act as a *lien on any real property the defendant owns* in the county in which the Abstract is recorded. A "Writ of Execution" is an order authorizing the Marshal's office to seize the property of the judgment debtor to satisfy the judgment.

### MAY I HAVE THE SHERIFF SEIZE ANY PROPERTY I WISH?

No. In order to protect debtors, legislation has been enacted in California that "exempts" much of a debtor's property from execution. Among the items exempt are:

1. \$6,075.00 exemption for "tools of the trade" reasonably necessary to, and actually used by, the debtor in his or her trade, business, or profession by which the judgment debtor earns a livelihood (Code of Civil Procedure Section 704.060);
2. A large portion of the equity in a family home (this is known as a "homestead") (Code of Civil Procedure Section 704.730);
3. \$2,300.00 in equity in motor vehicles (Code of Civil Procedure Section 704.010); and \$4,850.00 in equity in commercial motor vehicles (Code of Civil Procedure Section 704.060[d][1]);
4. 75% of paid earnings (Code of Civil Procedure Section 704.070);
5. \$6,075.00 in jewelry, heirlooms, and art. (Code of Civil Procedure Section 704.040).

## WHAT INCOME OR PROPERTY MAY BE SEIZED?

1. **Wages**, up to 25%. You will need the name and address of the debtor's employer.
2. **Bank accounts**. Have you photocopied payment checks in the past? If not, start. If you use a management company, instruct them to do so. Instruct the Sheriff or Marshal to "levy on the content of all savings or checking accounts in the debtor's name at \_\_\_\_\_ Bank located at \_\_\_\_\_." (The same is true for savings & loans, credit unions, etc.) The Sheriff or Marshal will go to the bank, serve the writ, *and take the money out of the bank!*

**Note:** A bank account or other deposit account into which Social Security benefits are directly deposited by the U.S. Government is exempt without making a claim in the following amount:

1. \$2,425 if the benefits are payable to only one depositor, or to two or more depositors who are joint payees for payments which represent a benefit to only one of the depositors; or
2. \$3,650 if payable to two or more depositors who are the designated payees, unless the payments represent a benefit to only one of the depositors. (Code of Civil Procedure Section 704.080[b] (amended Stats. 1995, Ch. 196)).

## WHAT ABOUT LEVYING ON CARS, TRUCKS OR MOTORCYCLES?

This is not usually a wise idea. One automobile is excluded from execution. You must pay off all loans in cash before the Sheriff or Marshal will levy the writ.

## WHAT IF I JUST DON'T KNOW MUCH ABOUT THE JUDGMENT DEBTOR? WHAT IF I DON'T KNOW WHERE HE OR SHE WORKS, BANKS, DOES BUSINESS, OR MUCH ELSE EXCEPT WHERE HE OR SHE LIVES? HOW DO I FIND OUT? JUST ASK HIM OR HER?

The debtor usually won't voluntarily tell you much about his or her affairs after you sue him or her, but a debtor can be *compelled* to tell you through two procedures. The first is called an "Appearance of Judgment Debtor;" the second, a "Judgment Debtor's Statement of Assets."

## JUDGMENT DEBTOR'S STATEMENT OF ASSETS.

After judgment, the court clerk will mail the debtor a questionnaire, asking for details of the debtor's assets. The debtor must return this to the Court within 30 days unless the debt is paid beforehand.

## WHO MAY REPRESENT A HOMEOWNERS ASSOCIATION IN SMALL CLAIMS COURT?

If your association is a common interest development, the association may appear and participate in court "through an agent, a management company representative, or bookkeeper." CCP 116.540(i) The person you send must have and give to the court a declaration, stating that the individual is authorized to appear for the association, and the capacity of the individual (that is, is the person the president, or another officer, or director, or from the management company, or a bookkeeper.) Also, the declaration must state that the individual appearing is NOT employed solely to represent the association in small claims court.

If your association is NOT a common interest development (whether incorporated or not), the association can appear in court only through "... a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing [the association]..." The same declaration mentioned in the preceding paragraph is required.

**Branches of the San Diego County  
Small Claims Courts**  
<http://www.sdcourt.ca.gov>

East County Regional Center  
250 East Main Street  
El Cajon, CA 92020  
619-441-4461

Hall of Justice  
330 West Broadway  
San Diego, CA 92101  
619-531-3141: Civil Business Office  
619-615-6358: Civil

Kearny Mesa  
8950 Clairemont Mesa Blvd  
San Diego, CA 92123-1187  
619-236-2471 Small Claims Advisory  
858-694-2066 Small Claims  
858-236-2471 Recorded Information

North County Regional Center  
325 South Melrose  
Vista, CA 92081  
760-726-9595

Ramona Branch  
1428 Montecito Road  
Ramona, CA 92065  
760-738-2435

South County Regional Center  
500 3rd Avenue  
Chula Vista, CA 91910  
619-691-4439

**Branches of the Riverside County  
Small Claims Courts**  
<http://www.courts.co.riverside.ca.us>

Banning Court  
155 E. Hayes Street  
Banning, CA 92220  
(909) 922-7155

Blythe Court  
265 N. Broadway  
Blythe, Ca. 92225  
(760) 921-7980

Hemet Court  
880 No. State Street,  
Hemet, CA 92543  
(909) 766-2322

Indio Court  
46200 Oasis St  
Indio, Ca. 92201  
(760) 863-8208

Temecula Court  
41002 County Center Drive, Suite 100  
Temecula, CA 92591  
(909) 600-6423

Riverside Historical Court House  
4050 Main Street  
Riverside Ca. 92501  
(951) 955-4600