

How To File a Small Claims Affidavit

Small Claims cases are governed by Utah Code title 78A, chapter 8. These forms and instructions constitute the "*simplified rules of procedure and evidence*" referred to in Utah Code 78A-8-102. If you have any questions not addressed in these instructions, refer to the Utah Code. You should be able to locate a copy in your local library or at utcourts.gov.

Instructions to the Plaintiff

1: FILING SUIT. You are the "plaintiff" in this case and the person you are suing is the "defendant." The maximum amount that you may sue for is \$11,000. Claims must be for money only. The Small Claims Department cannot be used to sue for possession of property or to evict a tenant. The debt must be owed to you. An employee may represent an employer, but you may not bring an action on behalf of anyone else. The Small Claims Department has jurisdiction over cases in which the defendant resides or the debt arises within the geographic boundaries of the court. You need to know the amount of the debt, what it is for, and the defendant's name, street address and telephone number. The defendant's Social Security Number will be helpful. If you are suing a business, call the Department of Commerce at 801-530-4849 or [search online](#) to obtain the business' proper name and the name of its registered agent.

You must prepare the Affidavit, sign it in the presence of a notary public or court clerk, have your signature notarized, and file it with the court clerk. The Affidavit must be legibly handwritten. You must pay a filing fee (\$60.00 for claims \$2,000 or less, \$100.00 for claims \$2,000 - \$7,500, \$185.00 for claims \$7,500 - \$11,000) at the time you file the Affidavit. It is your responsibility to give the Affidavit to the Sheriff's department, Constable or other process server, for service on the defendant at least thirty days before the trial date. A "Military Service Declaration" must be filled out if you are suing an individual, to support a default judgment (if the defendant does not appear at trial). You must prove that individual is not in the military in order to get a default judgment. If you have the defendant's social security number or date of birth you can do your research at the following website: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>.

2: TRIAL. The clerk will set a trial date and give you a copy of the Affidavit with the trial date on it. If you fail to appear at trial, your case will be dismissed. Contact your process server a few days before trial to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk.

3: COUNTER AFFIDAVIT. If defendant files a Counter Affidavit against you, trial may be rescheduled. If you fail to appear at trial after a Counter Affidavit has been filed, judgment may be entered against you for the amount requested in the Counter Affidavit.

INSTRUCTIONS TO THE DEFENDANT

1: TRIAL. You have had a lawsuit filed against you. If you wish to contest the plaintiff's claim, you must appear at trial on the appointed day. If you fail to appear at trial, judgment may be entered against you for the amount requested.

2: PAYMENT. If you do not dispute the claim, make arrangements with plaintiff to pay the claim and the court costs. If the plaintiff obtains judgment and pursues collection through the court, additional court costs may be charged to you.

3: COUNTER AFFIDAVIT. If the plaintiff owes you money, you may file a Counter Affidavit on a form provided by the clerk.

You must file the Counter Affidavit, pay the proper fee (\$50 for claims \$2,000 or less, \$70 for claims \$2,000 - \$7500, \$120 for claims \$7500 - \$11,000) and mail it to plaintiff, no later than 15 working days prior to the trial date. When you file the Counter Affidavit with the court be sure to bring 4 copies for filing. If you intend to file a Counter Affidavit, many of the "Instructions to the Plaintiff" will apply to you. Read them.

ADDITIONAL INSTRUCTIONS TO BOTH PARTIES

1: ATTORNEYS. Small Claims cases are informal. Parties are encouraged to represent themselves. You may, however, hire an attorney if you wish.

2: SETTLEMENT. If the claim is settled prior to the trial date, call the court for instructions.

3: EVIDENCE AND WITNESSES. It is extremely important that you bring with you to trial all witnesses and papers necessary to prove your claim or defense. If you fail to do this, the case may be decided against you. The Utah Rules of Evidence will generally be followed because they are designed to foster accurate fact finding. While the Rules serve as appropriate guidelines in Small Claims trials, judges are free to depart from their strict application when justice dictates. Evidence must be offered through the statements of live witnesses at trial, except that written statements such as repair bids, appraisals, repair bills and medical bills may be used instead of live testimony to establish the amount of a claim. If you intend to rely on such written statements, you should bring them with you. Be sure that the statements are itemized, signed and submitted on the preparer's original letterhead. If your case involves a damaged item, you must give the other party a chance to inspect the damage prior to trial. You must have damaged items available for inspection by the other party prior to trial.

If you need the testimony of a witness who will not attend trial voluntarily, you should ask the court, no later than 10 days before the trial date, to issue a Subpoena requiring that person to attend. It is your responsibility to have the Subpoena served and to pay the witness fee and service fee.

4: JUDGMENT. If judgment is granted, the winning party has the right to enforce the judgment. The losing party may be required to testify regarding assets and income. A lien can be placed on the losing party's property, and non-exempt wages, bank accounts, stocks and other assets can be seized and sold by the sheriff or constable. A judgment can accrue interest and the prevailing party may be entitled to recover court costs accruing after judgment. A judgment must be collected or renewed within 8 years of the date it is granted or it expires.

5: APPEAL. Either party may appeal a Small Claims judgment within 30 [calendar](#) days after entry of judgment. A Notice of Appeal must be filed with the court and the appropriate fee paid.