

# **How to Sue in Small Claims Court**



**Legal Services of Greater Miami, Inc.**

**Tenants' Rights Project**

**Renters' Education and Advocacy Legal Lines (REAL)**

**<https://sites.google.com/site/reallsgmi>**

**[www.lsgmi.org](http://www.lsgmi.org)**

# Small Claims Process

**Step 1:** File claim

**Step 2:** Serve claim

**Step 3:** Attend pre-trial conference

- One of 3 things will occur:
  - I. Judge will dismiss the case
  - II. Judge will order mediation
  - III. Judge will order trial

**Step 4(a):** Attend mediation, if ordered

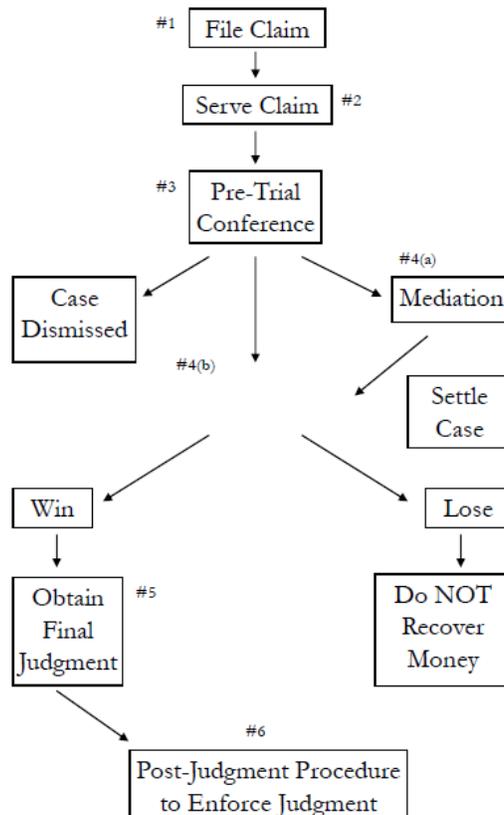
- One of 2 things will occur:
  - I. Come to an agreement with the other party and settle the case
  - II. Fail to come to an agreement with the other party and go to trial

**Step 4(b):** Attend trial, if ordered

- One of 2 things will occur:
  - I. Lose trial and do not recover claim
  - II. Win and obtain Final Judgment

**Step 5:** Submit Final Judgment Form, if prevailing party

**Step 6:** Collect judgment by following post-judgment procedure



## WHAT IS SMALL CLAIMS COURT?

Small claims court is a court where you do not need an attorney to represent you. It is designed so that people can represent themselves. The maximum you can sue for in small claims court is \$5,000 (not including court costs, interest, and attorney's fees).

## FILING A CLAIM IN SMALL CLAIMS COURT

You can find all of the forms to file a suit in Small Claims Court at:

[http://www.miami-dadeclerk.com/property\\_small\\_claims.asp](http://www.miami-dadeclerk.com/property_small_claims.asp)

### **Fees**

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      **\$100.00 - \$500**, you pay \$80.00

**\$500.01 - \$2,500**, you pay \$175.00      **\$2,500.01 - \$5,000**, you pay \$300.00

If you are low income, you can have the filing fee waived by filling out the "Application for Determination of Civil Indigent Status." That form is included with this brochure. You need to turn this in to the clerk when you file your Statement of Claim.

### **Service**

You should know exactly who you are suing - the correct legal name of the person or business you are suing and where they can be served because your lawsuit cannot proceed until the defendant has been served.

If you are suing a corporation, you can serve the registered agent. You may find out the name of the registered agent by calling "Corporate Information" at the Florida Secretary of State, 1-850-488-9000 or from the Sunbiz website [www.sunbiz.org](http://www.sunbiz.org).

"Serve" means having the Sheriff or process server personally hand a copy of your lawsuit to that person. If you cannot serve the registered agent of a corporation, then you can serve any corporate officer.

You have 2 service options:

1. You may use the Sheriff to serve the Statement of Claim. It will cost \$40.00.
2. You may use a court approved process server to serve the defendant (sometimes quicker than the Sheriff). Cost may vary depending on provider. To obtain a list of process servers, contact (305)349-5543.

### **Where to File**

You can file your small claim at any of the court locations listed below:

<b>Dade County Courthouse (05)</b> 73 W. Flagler Street, Room 137 Miami, Florida 33130	<b>Coral Gables District Court (25)</b> 3100 Ponce de Leon Blvd. Coral Gables, Florida 33134
<b>South Dade Justice Center (26)</b> 10710 S.W. 211 <sup>th</sup> Street, Room 1200 Miami, Florida 33189	<b>Miami Beach District Court (24)</b> 1130 Washington Avenue, Room 200 Miami Beach, Florida 33139
<b>Hialeah District Court (21)</b> 11 E. 6th Street, Room 100 Hialeah, Florida 33010	<b>North Dade Justice Center (23)</b> 15555 Biscayne Boulevard, Room 100 Miami, Florida 33160

## **AFTER YOU FILE YOUR STATEMENT OF CLAIM**

After you have filed your suit, you will be notified of a place and date for a **PRE-TRIAL CONFERENCE**. You must attend the conference; if you do not, the judge will dismiss your case. The pre-trial conference is held to determine 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. Do not bring witnesses at this time.

Sometimes at the pre-trial conference the judge will ask you if you want to settle your case, and go to **MEDIATION**. The advantage of mediation is that your case is over right away and you know the result, instead of taking a chance with a trial. The disadvantage is that you may not get everything you want.

The judge at the pre-trial conference may also tell the parties what kind of evidence and witnesses should be presented at the trial.

## **WHAT WILL HAPPEN AT YOUR TRIAL**

The trial is the final hearing in your case. At the trial all the witnesses testify and both sides present whatever documents or other evidence they have.

If you filed the claim, you are the plaintiff and you present your case first. You can start with an “opening statement”, where 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.

After the plaintiff has presented everything necessary to prove the case, then the defendant has the opportunity to present his side of the case. They both can call witnesses and introduce documents and other evidence. They can each also ask questions of the other party’s witnesses.

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

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 favor. You can restate to the Judge what you have proved and why you should win.

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. For instance, a tenant may sue for a security deposit but the landlord may file a counterclaim for damage 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.

The judge then decides the case and issues a decision. This is called the **JUDGMENT** and will be written. Usually the judge rules immediately after the trial; sometimes the judge will take additional time to rule.

If the judge makes a decision in your favor, you will receive a **FINAL JUDGMENT** in the mail or be instructed to go to the Clerk’s Office to obtain a Final Judgment form. You are required to submit the Final Judgment form to the judge for signature. You must complete it and provide copies to the judge and the defendant(s), along with addressed stamped envelopes for all parties. You should also keep a copy for yourself and give a certified copy to the Clerk so that the judgment can be recorded.

A Final Judgment is a legal document stating that one party is entitled to recover damages in a specified amount from another party. Interest will be added to the amount awarded until the Final Judgment is satisfied and the judge may also award the prevailing party (the party who wins) court costs and possibly attorney's fees.

Note: At any time during this process, the defendant may pay you and settle the claim. However, obtaining a judgment against a party is NOT the same as collecting that judgment, and can be difficult. Post-judgment legal procedures are often required prior to any collection. You may find it necessary to hire an attorney to assist you with collections. You can call the Dade County Bar's Lawyer Assistance Program at (305)371-2646 for a referral to an attorney who does collection work.



## **Legal Services of Greater Miami, Inc.**

### **Main Office**

3000 Biscayne Boulevard, Suite 500  
Miami, FL 33137  
Telephone: (305) 576-0080  
TTD: (305) 573-1578

### **South Dade**

11285 SW 211 Street, Suite 302  
Miami, Florida 33189  
Telephone: (305) 576-0080  
TTD: (305) 573-1578

### **Monroe County**

Telephone: (877) 715-7464  
TTD: (877) 715-7461

***Passionately Committed to Equal Justice***

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IN THE CIRCUIT/COUNTY COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff/Petitioner or In the Interest Of  
vs.

\_\_\_\_\_  
Defendant/Respondent

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have \_\_\_\_\_ dependents. (Include only those persons you list on your U.S. Income tax return.)

Are you Married? Yes No Does your Spouse Work? Yes No Annual Spouse Income? \$ \_\_\_\_\_

2. I have a net income of \$ \_\_\_\_\_ paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_

(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_.

(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job.....	Yes \$ _____	No	Veterans' benefits.....	Yes \$ _____	No
Social Security benefits			Workers compensation.....	Yes \$ _____	No
For you.....	Yes \$ _____	No	Income from absent family members.....	Yes \$ _____	No
For child(ren).....	Yes \$ _____	No	Stocks/bonds.....	Yes \$ _____	No
Unemployment compensation.....	Yes \$ _____	No	Rental income.....	Yes \$ _____	No
Union payments.....	Yes \$ _____	No	Dividends or interest.....	Yes \$ _____	No
Retirement/pensions.....	Yes \$ _____	No	Other kinds of income not on the list.....	Yes \$ _____	No
Trusts.....	Yes \$ _____	No	Gifts.....	Yes \$ _____	No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash.....	Yes \$ _____	No	Savings account.....	Yes \$ _____	No
Bank account(s).....	Yes \$ _____	No	Stocks/bonds.....	Yes \$ _____	No
Certificates of deposit or money market accounts.....	Yes \$ _____	No	Homestead Real Property*.....	Yes \$ _____	No
Boats*.....	Yes \$ _____	No	Motor Vehicle*.....	Yes \$ _____	No
			Non-homestead real property/real estate*.....	Yes \$ _____	No

\*show loans on these assets in paragraph 5

Check one: I DO DO NOT expect to receive more assets in the near future. The asset is \_\_\_\_\_.

5. I have total liabilities and debts of \$ \_\_\_\_\_ as follows: Motor Vehicle \$ \_\_\_\_\_, Home \$ \_\_\_\_\_, Other Real Property \$ \_\_\_\_\_, Child Support paid direct \$ \_\_\_\_\_, Credit Cards \$ \_\_\_\_\_, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ \_\_\_\_\_.

6. I have a private lawyer in this case..... Yes No

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Date of Birth                      Driver's License or ID Number

\_\_\_\_\_  
Signature of Applicant for Indigent Status  
Print Full Legal Name \_\_\_\_\_  
Phone Number: \_\_\_\_\_

\_\_\_\_\_  
Address, P O Address, Street, City, State, Zip Code

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_  
Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.**  
**THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

<b>DIVISION</b> <input type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER	<b>STATEMENT OF CLAIM</b> (File in Duplicate Plus One For Each Defendant)	<b>CASE NUMBER</b>  <b>SECTION NO.</b>
<b>PLAINTIFF</b>	<b>VS. DEFENDANT(S)</b>	<b>CLOCK IN</b>
The Plaintiff sues the Defendant for money owed Plaintiff by Defendant; and which is past due and unpaid; for (As marked (x) below):	Address:	Phone Number:
<input type="checkbox"/> Good, wares and merchandise sold by plaintiff, to defendant; <input type="checkbox"/> Work done and materials furnished by plaintiff, to defendant; <input type="checkbox"/> Money lent by plaintiff to the defendant which is due and payable; <input type="checkbox"/> Money due to plaintiff upon accounts stated and agreed to between them; <input type="checkbox"/> On a written instrument, copy of which is attached hereto; <input type="checkbox"/> Rent for certain premises in Miami-Dade County, Florida, Viz; <input type="checkbox"/> Other (Explain) <input type="checkbox"/> Any additional facts in connection with any of the above: <p align="center"><b>(USE ADDITIONAL SHEET IF NECESSARY)</b></p>		
Where Plaintiff demands judgment in the sum of \$ _____ together with court costs and any further costs which the Court may assess.		
The Plaintiff, _____ says the foregoing is a just and true statement of the amount owed by defendant to plaintiff, exclusive of all lawful setoffs, and that defendant has no lawful defenses which would preclude the collection of said amount.		
Affiant states that the defendant(s) is/are not in the military service of the United States.		
Attorney/Plaintiff	Signature	Attorney's Bar No.
Address of Attorney/Plaintiff		Telephone No.
The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ who is personally known to me or who has produced _____ as identification and did <input type="checkbox"/> / did not <input type="checkbox"/> take an oath.		
SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____ 20____.		
<b>HARVEY RUVIN</b> <b>CLERK OF COURTS</b>	_____ Deputy Clerk	NOTARY PUBLIC, State of Florida _____ My Commission Expires: _____

**IMPORTANT: SEE REVERSE**

SERVICE OF PROCESS <input type="checkbox"/> PROCESS SERVER <input type="checkbox"/> SHERIFF <input type="checkbox"/> MAIL	FILING FEE AMOUNT	RECEIPT NUMBER
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NOTE: If the claim is based upon a written document, a copy, or the material part thereof, shall be attached to the statement of claim.

**INSTRUCTION SHEET  
IMPORTANT**

YOU MUST advise the Clerk, in writing, of any change in your mailing address.

If you are a DEFENDANT and fail to appear on the designated date, in person or by an attorney, a judgment may be entered against you.

Plaintiff(s) will not be entitled to a default or judgment in the absence of an affidavit regarding the defendant's military status in compliance with applicable law. This form, if sworn to, will meet the above requirements.

If you are a PLAINTIFF and fail to appear on the designated date, in person or by an attorney, this case may be dismissed for Want of Prosecution.

Any claim of the Defendant against the Plaintiff, arising out of the same transaction or occurrence which is the subject matter of plaintiff's claim, shall be filed not less than 5 days prior to the appearance date, or within such times as the Court designates. When a counterclaim or set-off exceeds the jurisdiction of the Court, it shall be filed in writing before or at the pretrial hearing, and the action shall then be transferred to the Court having jurisdiction thereof. As evidence of good faith, the counter-claimant shall deposit a sum sufficient to pay the filing fee in the Court to which the case is to be transferred with his counterclaim.

FAILURE TO MAKE THE DEPOSIT WAIVES THE RIGHT TO TRANSFER.

TRIAL BY JURY may be had upon written demand by Plaintiff made at the commencement of the action or by any defendant within 5 days after service of the notice to appear or at the Pretrial Conference. If the demand is not made, the right to trial by jury is waived.

If at any time in the proceedings a settlement is reached between the parties, this office should be notified in writing by the Plaintiff.

If you have any questions regarding procedures, this office will assist you. This office cannot furnish legal advice to you. Please consult your attorney for legal advice.

**CAUTION**

A copy of any paper that you file at any time with the Clerk or Judge **MUST** be sent by you to each attorney appearing in the case, if any, or to all parties not represented by an attorney. You must set forth the date and to whom you sent the copy (or copies) of the paper filed, which would be followed by your signature.

**AMERICANS WITH DISABILITIES ACT OF 1990  
ADA NOTICE**

**“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court’s ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1<sup>st</sup> Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”**