

## Legal Matters – February, 2009

Legal Matters is a column that answers your legal questions. It is written by Barry Evans, Attorney at Law, located at 550 Egret Bay Blvd., League City, TX 77573. Barry has been practicing as an attorney for over twenty-five years. If you have any questions regarding this article, you may contact Barry Evans at 281-557-1900 or you can email him at [barryevans@msn.com](mailto:barryevans@msn.com).



### **What You Need To Know About Small Claims Court**

Small claims court is the real "People's Court." The purpose of small claims court is to provide an informal, uncomplicated proceeding to resolve small disputes that do not involve enough money to warrant the expense of formal litigation. Most people appear in small claims court do not have a lawyer but represent themselves.

### **What Type Of Case Can Be Brought In Small Claims Court?**

Not all disputes can be heard in small claims court. Small claims court cannot hear disputes involving more than \$10,000. If you wish to recover more than \$10,000, you must consider another court and, in most cases, the assistance of an attorney.

Small claims court can only award money. You cannot ask the court to order the other party to do anything, or to refrain from doing something. If you need an order to make someone do something or to stop doing something, other courts are available. If you win in small claims court, you can only win a judgment for a dollar amount (up to \$10,000 plus court costs.)

### **Are There Alternatives To Small Claims Court?**

You should always try to settle a dispute without going to court. My suggestion is to send a polite, non-emotional, concise (one page or less) letter to the defendant summarizing the problem and how much it will take to resolve the claim. This letter should be sent certified mail / return receipt requested, along with a copy sent via regular mail. Alternatively, it may be sent via fax if you are able to obtain a confirmation receipt. Give them a reasonable amount of time to respond (at the minimum, ten (10) days.) Do not threaten them with a lawsuit, but simply state you will take further action if you do not receive a response within your designated time frame. My experience is this approach will resolve most simple disputes.

### **Naming The Correct Party.**

Correctly naming the defendant is crucial to your case because the court cannot grant a judgment against a defendant who is improperly named in the complaint. If the defendant is an individual, simply name the individual. If the defendant is a business entity such as a corporation or LLC, you must serve the defendant by serving its Registered Agent. The easiest way to get this information is to call the Texas Secretary of State (512) 463-5555 and ask for the name and address of the Registered Agent.

### **Where Do You File Suit?**

You must normally file suit in the county where the party that is being sued (the defendant) resides, or where the services you are complaining about were performed. The justice of the peace in each county is also the judge for small claims court. The small claims court will be listed in the telephone directory as justices of the peace.

If there is more than one justice of the peace in a county, then a small claim normally must be made in the court whose precinct covers the area where the defendant resides.

Selecting the proper county and precinct (venue) is important, but even if you make a mistake (and the Defendant complains), your case will simply be transferred to the proper county and/or precinct.

### **How Do You File Suit?**

You should collect all the information that will be needed to start your lawsuit before you go to the courthouse. Collect your records, including copies of contracts and agreements. You should also collect the following information:

- a. the complete name and address of each person or business your claim is against;
- b. the amount you intend to claim in damages (\$10,000 or less); and
- c. a concise statement of the basis for your claim, stated plainly and without technicalities, including the date the claim arose and any other relevant date. You should write this statement in advance.

Once you are prepared, call the justice of the peace court that you have determined to be the correct one. Find out how much money you will need to pay the fees necessary to start your lawsuit and the exact procedure you need to follow to file your claim.

You should personally go to the court to start the suit. Ask to see the clerk in charge of filing small claims. You must complete a small claims statement.

You must swear under oath that your small claims statement is true. You will have to pay the clerk the necessary fees. If you want a jury trial you must request one and pay an additional fee. These fees generally must be paid in cash, money order, or company check. Most courts do not accept personal checks.

**Editor's note:** *The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*