Filing a Small Claims Suit

REQUISITES:
Direct a letter, certified mail, return receipt requested, to the defendant, giving notice of the suit. State the amount of money to be sued for, and if the money is not received within 10 days from the date of the receipt of the letter, suit may be filed.

You, as plaintiff, your attorney or your authorized agent may appear in person to file your claim, or you may file a sworn statement of the claim by mail. (See "Statement of Claim in Small Claims Court" in documents section of this site.)

VENUE:
Suit should be filed in the precinct of the county where the defendant resides. If the suit is based on a contract or tort, the defendant may also be sued in the county where the contract was entered into or to be performed, or where the tort occurred. If you decide to file your suit in this Court and the defendant files a Motion to Transfer Venue (a request that the suit be transferred to some other county or precinct other than the one you filed in of Brazos County), you will be liable for an additional filing fee of $31.00 if the suit is transferred.

JURISDICTION:
Jurisdiction (what the Court may render judgment for) in Small Claims Court is for the recovery of MONEY ONLY, where the amount in controversy does not exceed $10,000.00 including interest. Court costs may be added to that amount. ($10,000.00 + court costs)

AN ACTION IN SMALL CLAIMS COURT MAY NOT BE BROUGHT BY:

1) an assignee of the claim or other person seeking to bring an action on an assigned claim;
2) a person primarily engaged in the business of lending money at interest; or
3) a collection agency or agent.

FILING SUIT:
The responsibility for filling out your petition rests with you, the plaintiff. Court clerks will assist you if you have any questions. It is important that you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant in their proper legal capacity. They are as follows:

1) Individual - Where an individual is personally responsible to you for damages he may have caused you.
2) Sole Proprietor or Partnership - A business that is not incorporated, but has filed an assumed name with the county clerk in the county of his business. You must check with the county clerk's office in the county of the business to determine who the owner or owners are. This information for Brazos County may be obtained at the County Clerk's office at the Courthouse in Bryan. Direct your letter (notice of the suit) to the owner(s) of the company.

3) Corporation - A business that is incorporated. To sue a corporation, you must find the name of the REGISTERED AGENT, PRESIDENT OR VICE-PRESIDENT of the corporation before you begin your suit. The Secretary of State (1-512-463-5555) or the State Comptroller's Office (1-800-252-5555) will give you the information. You will also need the address of the REGISTERED AGENT, PRESIDENT OR VICE-PRESIDENT. When you file your suit, you will be filing against the corporation and serving the citation on one of the above mentioned officers of the corporation. It is also possible for an incorporated entity to have an assumed name, e.g. Carr's Auto Shop, Inc. d/b/a Carr's Garage.

COSTS:
The filing fee is $31.00. In addition, there is a fee for serving the defendant, which is $70.00 per defendant to be served in Brazos County. **($101.00** total for one defendant to be served in Brazos County.)

If the defendant upon whom you are filing resides **OUTSIDE** of Brazos County:

1) Call the County Courthouse in the County where the defendant is to be served.

2) Ask for the name of the Constable or Sheriff in the precinct where the defendant is to be served; call that office and find out the **SERVICE FEE** for serving a **SMALL CLAIM CITATION.**

3) Get the address of the Constable or Sheriff who will be serving the citation.

4) Get a money order, payable to the Constable or Sheriff who will be serving the citation and bring it with you when you file your suit.

5) The cost for filing the suit in this Court is **$31.00 (EXAMPLE**: If you are filing the suit on one defendant that is to be served in Hill County, you would bring a money order payable to Hill County Sheriff, the Sheriff's / Constable's address in the amount required by that county for service to the defendant and the **$31.00** filing fee.)

CITATION: A citation is sent to the Constable's office for service in Brazos County. Out of county service is sent to the Constable or Sheriff, depending on the information you provide the Court.

ANSWER:
The defendant(s) in your suit is commanded to answer to the Court, in writing, on the Monday following the expiration of ten days from the date the citation was served upon him.

REPRESENTATION:
Small Claims Court was designed for individuals to be able to file suits without the assistance of an attorney, however, you may be represented by an attorney if you

choose to do so. The Rules of Evidence are not in effect in Small Claims Court and the Rules of Procedure are relaxed.

PREPARING YOUR CASE FOR TRIAL:
The Plaintiff has the burden of proof to show by the weight of the evidence that the defendant is at fault. You should bring with you to trial all proof of damages and evidence necessary to substantiate your claim. If you have witnesses to your suit who will not come to court voluntarily, you may order subpoena to compel them to appear. You must submit your request for a subpoena in writing at least one week prior to your trial date and pay the required fee for service. **($70.00 in Brazos County)** (Check with the Clerk of the Court for the proper fees for out of county witnesses.)

DEFAULT JUDGMENTS:
If the defendant in your suit fails to answer to the Court, only you, the plaintiff, will be notified for Court for an appearance on the DEFAULT DOCKET. You will be asked to briefly state the facts of your case and present any written evidence you may have to support your case.

TRIAL BY JUDGE OR JURY:
If the defendant in your suit files an answer, the court date should be approximately 3 - 4 weeks after service. (See additional information below for alternate service that could delay serving the defendant.) A trial setting notice will be mailed to you (the plaintiff) and to the defendant stating the time and date to appear in Court. IT IS NECESSARY FOR YOU TO BRING ALL WITNESSES, BILLS OF SALE, CONTRACTS, ETC., WITH YOU TO COURT AT THIS TIME. ALL MOTIONS FOR CONTINUANCE (rescheduling your Court appearance date) MUST BE IN WRITING AND RECEIVED NO LATER THAN 3 WORKING DAYS (HOLIDAYS AND WEEKENDS EXCLUDED) PRIOR TO YOUR COURT DATE.

AFTER JUDGMENT:
If you receive a judgment, the defendant has ten days to appeal the case to the County Court at Law in Brazos County. Should the Court rule that you recover nothing or should you receive a judgment for less than you requested, you may appeal the case to the County Court within ten days. If an appeal is not filed within ten days from the date the judgment is signed, and if a Motion to Set Aside a Default Judgment is not filed within 10 days from the date the judgment is signed, the judgment becomes final. Your remedies to collect your money are as follows:

ABSTRACT OF JUDGMENT:
You may obtain an Abstract of Judgment on the 11th day after judgment. The fee for obtaining an Abstract of Judgment is $5.00 payable in cash, check, or money order or certified check. The Abstract of Judgment will be mailed to you. Take the Abstract of Judgment to the Brazos County Clerk's office, at the Courthouse in Bryan, Texas in order to file it in Brazos County. Additional information may be obtained by calling (979) 361-4528 and asking for the County Clerk's office. You may also file the Abstract of Judgment with any County Clerk's office in the State of Texas if you have reason to believe your defendant owns property in other counties. The purpose of

filing the Abstract of Judgment is to put a lien against any REAL PROPERTY in the defendant's name. If the defendant sells any real property within 10 years from the date of the judgment, the amount of the judgment must be paid, plus interest.

WRIT OF EXECUTION:
A Writ of Execution may be obtained anytime after the 30th day from the date the judgment is signed. A Writ of Execution allows a Constable or Sheriff to try and seize non-exempt property from the defendant. If the property is seized, an auction is held and the proceeds from the sale are credited toward your judgment. The cost for filing a Writ of Execution is $130.00 ($5.00 - Court's filing fee and $125.00 - Constable's service fee for Brazos County) Follow instructions under "Costs" for finding what the service fee is on a Writ of Execution to be served OUT of Brazos County.

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment. SHOULD THE DEFENDANT PAY ANY PORTION OF THE AMOUNT OWED AFTER YOU HAVE RECEIVED A JUDGMENT, IT IS NECESSARY FOR YOU TO NOTIFY THE COURT OF THE CREDIT, OR NOTIFY THE COURT THAT THE JUDGMENT HAS BEEN SATISFIED IN FULL IF THE DEFENDANT PAYS THE ENTIRE JUDGMENT AMOUNT. IF YOUR ADDRESS CHANGES WITHIN THE 10 YEAR PERIOD FOLLOWING THE JUDGMENT, YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS.

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU, NOR CAN WE FORCE THE DEFENDANT TO PAY THE JUDGMENT.

ADDITIONAL INFORMATION:

ALTERNATE SERVICE:
The defendant in a Small Claims suit must be served personally by the Constable or Sheriff of the county, or by a disinterested person authorized by the Court. Sometimes, service is avoided by the defendant and an alternate method of service is necessary. This method is referred to as "alternate service." The Constable, Sheriff or authorized person may file an affidavit with the Court stating that he has been unable to serve the defendant for various reasons. You may make a Motion to the Court that the defendant be served by alternate service after the officer's affidavit is received by the Court. The alternate service may be by serving anyone over 16 years of age at the defendant's usual place of abode or business, or by other means that are reasonably effective to give the defendant notice of the suit. A Court Clerk will call you if the officer serving the citation files an affidavit. We will request that you come in and sign the motion for alternate service. If your request is approved, the Judge will sign an order, and the citation is sent back to the Constable, Sheriff or authorized person as mentioned above.

If you have any additional questions, please contact the Civil Department of the appropriate Justice Court listed on this brochure.