

# A GUIDE TO SMALL CLAIMS COURT

Legal Aid of North Carolina, Inc.  
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Anyone 18 or over has the right to start a lawsuit in the North Carolina court system. If the lawsuit is for a claim of \$10,000 or less, it can be brought into Small Claims Court, which is available in every county. This amount may be different in different counties. You should ask the clerk at the courthouse about the maximum amount you can ask for in a Small Claims lawsuit. A person usually does not need a lawyer in Small Claims Court, whether that person is bringing the suit or defending against the suit. In some cases, though, you might need a lawyer, especially involving possible eviction by a landlord.

This booklet is a guide to help you handle your own case in Small Claims Court. It tells you how to fill out the right forms, prepare for trial, handle the trial, and follow through on the judge's decision. This booklet discusses the main situations that arise. An appendix at the end includes more details on certain issues, including where to go for more help.

Legal Aid of North Carolina, Inc. has prepared this booklet as a public service: Legal Aid of North Carolina is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in North Carolina, in order to ensure equal access to justice and to remove legal barriers to economic opportunity. However, there still is not enough funding to provide legal services for all the needs of poor people in North Carolina. Our limited staff and resources make it very difficult to represent every client who contacts us. Hopefully, this booklet can help some of those seeking services from Legal Aid of NC to help themselves. Blank forms for you to copy and then use are included at the end of this booklet.

On page 33, please refer to the list of Legal Aid Offices and which counties they serve. For additional information about Legal Aid of North Carolina, please visit our website, [www.legalaidnc.org](http://www.legalaidnc.org). To apply for services, please contact our Helpline at 866-219-5262 or you may apply online at <https://www.legalaidnc.org/apply/>.

## A Guide to Small Claims Court

### YOU HAVE THE RIGHT TO AN INTERPRETER IN SMALL CLAIMS COURT

The court provides an interpreter free-of-charge to all people who have a case in Small Claims Court (both Plaintiffs and Defendants). To ask for an interpreter for your small claims case, visit the website

<https://www.nccourts.org/LanguageAccess/Documents/InterpreterRequestForm.pdf>.

Fill out the whole application and submit it using the "Submit" button at the bottom of the application to send it in an email format. When the email is created, hit "Send" to send your application. You will receive an electronic confirmation stating that your application has been received. If you don't receive an electronic confirmation within 24 hours, please get in contact with the Language Access Coordinator (LAC) in the county where you have court. You can contact the LAC using the following email address (example): County.Interpreter@nccourts.org. For example, you can contact the Wake County LAC by sending an email to Wake.Interpreter@nccourts.org. If you have court in another county, put the name of the county where you have court in the email address. You need to submit a new application for each court date where you need an interpreter. Complete the application using Adobe Reader or Internet Explorer. The application to "Request for Spoken Foreign Language Court Interpreter is found at:

<https://www.nccourts.org/LanguageAccess/Documents/InterpreterRequestForm.pdf>

If you have asked for an interpreter and no one has responded, or you have not had success in getting an interpreter, you can submit a complaint to the court system using this complaint form here: <https://www.nccourts.org/Surveys/LA/languageaccess.html>. Fill out the information about your court date, the case number, the county of court, etc., and explain that you have not received information about how to obtain an interpreter. You should submit it using the "Submit" button at the bottom of the page to send your complaint to the court. You may also make a complaint if you already had court and you did not receive an interpreter.

Finally, if you do not have success in obtaining an interpreter through the electronic application, you can still ask the judge for an interpreter when you are in court. You should say clearly at the beginning of the hearing that you do not speak or understand English fluently and that you are asking for an interpreter.

Remember that a court interpreter is not an attorney and cannot give you legal advice about your case.

THIS FORM CAN ONLY BE FILLED OUT AND SUBMITTED ONLINE  
**REQUEST FOR SPOKEN FOREIGN LANGUAGE COURT INTERPRETER**

The Judicial Department provides spoken foreign language court interpreters at state expense for all Limited English Proficient (LEP) parties in interest in most court proceedings, child custody mediation, child planning conferences, and out-of-court communications on behalf of public defenders, assigned/appointed counsel, district attorneys and the GAL Program. Note: Public Defenders, Assigned Counsel, District Attorney or GAL: For out-of-court communication with the LEP individual on a date other than the court date, submit this form only for LOTS services. For out-of-court Spanish language needs, contact a Spanish court interpreter directly from the Registry.

A request for an interpreter must be submitted to the language access coordinator (LAC) in the county in which the case will be heard. When you select the county in the box below, this form automatically will be sent to the LAC for that county.

Please fill out this form completely and click the "Submit" button at the bottom of the page to send your request via email. Once the email is created, you must click "Send" to submit your request. You will receive a confirmation email to acknowledge your successful submission of the form. If you do not receive a confirmation email within 24 hours, please contact the LAC for the county. You may contact the LAC at [.<CountyName>.Interpreter@nccourts.org](mailto:<CountyName>.Interpreter@nccourts.org). For example, to contact the Wake County LAC, send an email to [Wake.Interpreter@nccourts.org](mailto:Wake.Interpreter@nccourts.org). For New Hanover County, send an email to [NewHanover.Interpreter@nccourts.org](mailto:NewHanover.Interpreter@nccourts.org). *You should submit a new request form for each court date for which an Interpreter is needed. Please fill out this form using Adobe Reader or Internet Explorer.*

[Fill out form here](#)

THIS FORM CAN ONLY BE FILLED OUT AND SUBMITTED ONLINE  
**LANGUAGE ACCESS COMPLAINT**

Complaints or concerns about language access services?  
Submit your complaint or concern [here](#).

The North Carolina Judicial Department is committed to removing barriers that prohibit equal access to justice by individuals with limited English proficiency. To that end, a language access officer has been appointed to receive and address concerns about language access services in the North Carolina state courts.

If you have complaints or concerns about language access services that have been provided to you, or if you have concerns about language access policies and practices within our courts, report your concerns here. Provide appropriate contact information so that we can contact you for additional information if necessary, properly investigate your complaint and respond to you.

The language access officer will address your concerns and attempt to resolve any outstanding language access issues within 30 days of submission of this form.

**NOTE:** Complete this form only if you have a formal complaint or concern about language access services. If you have general questions, contact the Office of Language Access Services at (919) 890-1407 or send an email to [OLAS@nccourts.org](mailto:OLAS@nccourts.org).

## TABLE OF CONTENTS

<b>A Guide to Small Claims Court</b> .....	3
<b>What is Small Claims Court?</b> .....	7
<b>If You Are the Plaintiff - How to File Your Claim</b> .....	9
<b>If You Are the Defendant - What to Expect</b> .....	13
<b>How to Prepare for the Trial</b> .....	14
<b>The Small Claims Court Trial</b> .....	16
<b>After the Trial</b> .....	18
<b>Appeals to District Court</b> .....	22
<b>Appendix</b> .....	23

## Chapter 1

### What is Small Claims Court?

Small Claims Court is part of the North Carolina court system where people settle disputes regarding property or money worth \$10,000 or less. Every county in North Carolina has a Small Claims Court, which is sometimes called Magistrate's Court, the maximum amount you can sue for may be different in different counties. You should check with the clerk at the courthouse to find out the maximum amount you can ask for in a Small Claims Lawsuit.

The judge, called a magistrate, may or may not be a lawyer. There is no jury. The trial is quick and informal, usually lasting no more than 15 or 30 minutes. You don't have to have a lawyer to represent you in Small Claims Court, but you *may* have a lawyer. The person who starts the lawsuit is the *plaintiff*. The person being sued is called the *defendant*.

*In the three cases below, you would be the plaintiff:*

- A repairman came to fix your refrigerator and in the process knocked a hole in your kitchen wall. The repair shop won't pay for the damages, so you sue the shop for your loss.
- Someone dents your car but refuses to pay for the damage, so you sue that person.
- Your landlord refuses to make your home or apartment meet housing codes, and you sue for damages, repairs, or lower rent.

*You would be the defendant in these three cases:*

- Your landlord tries to evict you from your apartment and collect back rent.
- A finance company sues you for money it claims you owe on a loan.
- A finance company sues you for possession of property, which you used as collateral for a loan.

### What You Cannot Do in Small Claims Court

This court is not used for criminal offenses, traffic tickets, or disagreements over child support, among other things. You have to be 18 years old to use Small Claims Court. For more information about age and guardian issues, see "Age" in the Appendix.

### Your Right to an Interpreter

You have the right to an interpreter in Small Claims Court.

### Do You Need a Lawyer?

Before you decide to handle your own case in Small Claims Court, you need to think about whether you need a lawyer. If you are facing eviction by your landlord or being sued by a finance company, you may need a lawyer. If you are a low-income person, you may be eligible to get free Legal assistance from the Legal Aid office nearest you. You may want to call our Legal Aid Helpline at 866-219-5262 or you may apply for services online at <https://www.legalaidnc.org/apply/>.

## The Costs of Small Claims Court

Suing someone in Small Claims Court costs money. For each lawsuit, the plaintiff must pay a \$96 filing fee to the clerk of court. You pay an additional \$30 fee for each defendant to cover the cost of the sheriff getting the proper legal forms to the defendant. The plaintiff can choose to mail the papers directly to the defendant, as explained in Chapter 2, but this is more difficult and not much cheaper. If you win your case, the court may add these fees to the amount that the defendant is supposed to pay you.

If you cannot afford to pay the fees, you may not have to pay them. You have to fill out a form called "Petition to Sue/Appeal File Motions as an Indigent" [here](#). You get the form from the clerk. You fill out the top part of this form and sign it before a notary public.

If you receive food stamps/SNAP, Temporary Assistance to Needy Families (TANF) or Supplemental income (SSI), the clerk may automatically allow you to bring the lawsuit without paying any fees. If you do not receive any of those benefits, then you may be required to fill out the Civil Affidavit of Indigency form and the Petition to Sue/Appeal/File Motions as an Indigent. The clerk will review these papers to decide whether you can afford to pay the costs.

There can be additional fees if you ask the sheriff's department to enforce the judge's order or want to appeal a judge's ruling.



## Chapter 2

# If You Are the Plaintiff - How to File Your Claim

To start a lawsuit, you mail or deliver a complaint and a summons to the Office of the Clerk of Superior Court at a county courthouse. This part of the booklet explains where to sue, which complaint form to use, how to fill in the proper legal forms, how to file the claim, and how to get the forms to the defendant.

### Where to Sue

If you are suing someone who lives in your own county, start the lawsuit there. If you are suing someone in a different county, you must start the lawsuit in that county. This means mailing or taking the forms and fees to the clerk of court in the other county.

Your trial will be held in the county where the defendant lives. If you are suing more than one defendant and they live in different counties, pick a county where one of them lives and sue them all in that county. For instance, if one of the defendants lives in your county but another defendant does not, you can sue both defendants in your county.

### Choosing A Complaint Form

Before you file your lawsuit, you must fill out a complaint form. The clerk of court has different complaint forms for different kinds of problems. The three most commonly used forms are: *Complaint for Money Owed*, *complaint to Recover Possession of Personal Property*, and *Complaint in Summary Ejectment* (used by landlords). The Complaint for Money Owed is described in detail in the next section.

The forms described in this booklet can be found at the North Carolina Court System website, [www.nccourts.org](http://www.nccourts.org). If you want to get back some property which is in dispute, you should use the Complaint to Recover Possession of Personal Property <https://www.nccourts.org/Forms/Documents/350.pdf>. On that form, you as the plaintiff must say if you are a "secured party" or not. A secured party is usually a finance company or other institution of some sort rather than an individual. If you have a written statement that you may repossess property if payments are not made according to an agreed upon schedule, then you are a secured party.

Landlords use the Complaint in Summary Ejectment form to collect back rent or evict tenants. This form is fairly complicated to understand both for landlords (the plaintiffs) and tenants (the defendants). If none of the standard forms suits your exact situation, you may write your own complaint. Be sure to state what your claim is and include the type of information shown on the sample that follows.

### How to Fill Out Complaint for Money Owed

A copy of this form is shown [here](#), and the steps to fill out that form are described below.

**Step 1.** If you are filing the suit, put your correct full name as plaintiff, with your address and telephone number, if any. You must include the name of your county.

**Step 2.** Put the person's full name being sued as defendant, with the address and telephone number, if any, and the county where the person lives. If you are suing a business, you must find out

if it is a corporation or not. If the business is a corporation, you list the correct name of the corporation as the defendant. Your complaint and summons must go to the "registered agent" of the corporation, or to an officer, director, or managing agent of the corporation. If the business is not a corporation, you list the owners of the business as the defendants.

For more explanation of businesses as defendants, see the Appendix.

*Step 3.* List the name and address of your attorney if you have one. If you don't have an attorney, leave this blank.

*Step 4.* List the county where you are bringing this lawsuit.

*Step 5.* After "Principal Amount Owed," put the exact amount of money which you claim the defendant owes you. If you are claiming interest on this money, put that amount on the next line. Add the two figures to get the "Total Amount Owed."

*Step 6.* In the sample complaint form, note the choices of boxes the plaintiff may use. You can check a box and fill in the information on the line next to the box. Or you can check "other" and describe the purpose of your suit.

*Step 7.* Sign and date the complaint. If you have a lawyer, he or she may sign it.

[The Servicemembers Civil Relief Act \(SCRA\) Affidavit \(AOC-G-250 Rev. 10/19\)](#) must be filled out and filled with your other court papers at the time you sue the defendant. This Affidavit is your sworn statement that the defendant is or is not on active military duty. You will need to sign this Affidavit in front of a notary public.

The Servicemembers Civil Relief Act (SCRA) is a federal law which protects the legal rights of military service members during active duty. The SCRA applies to members of the Army, Navy, Air Force, Marine Corps, and National Guard on active duty, along with officers of the Public Health Service and National Oceanic and Atmospheric Administration (NOAA) on active service. Like the federal law, the North Carolina Servicemembers Civil Relief Act (NCSCRA) provides the same protections to the listed servicemembers and includes members who are on active duty in the NC National Guard and their dependents.

The NCSCRA also applies to National Guard members who serve in other states but live in North Carolina with their dependents. The NCSCRA gives other legal protections to active duty service members who have signed written leases.

To find out if the defendant is a service member on active duty, you may search a website at <https://scra.dmdc.osd.mil/>. This website will not tell you if someone is a dependent of a National Guard member. If the defendant is an active-duty service member, then the Court may not hold a trial and postpone or delay your case. In some cases, the Court may appoint or assign an attorney to represent the servicemember.

### **How to Fill Out the Summons and Assignment Card**

You must also fill out a summons, which is available from the clerk's office. This notice of the lawsuit goes to each defendant. See the blank summons [here](#). You fill out the top part of the form. Write the county where you are suing, your name as the plaintiff, the name of the defendant, and under "TO:" the name and address of each defendant. If you are suing a corporation, list it as the defendant, and under "TO:" put the name and address of the registered agent, an officer, director, or managing

agent of the corporation (for more information, see "Businesses As Defendants" in the Appendix.

The clerk will fill in the rest of the form, sign it, and set the date and time for the trial. This tells the defendant when to come to court. The date will be no later than 30 days from the day you file your complaint.

The clerk may also ask you to fill out a Notice of Assignment/ Service card. Put your name on the back, so that it is like a postcard addressed to yourself. The clerk of court mails this card to you when your case is scheduled. It lets you know when your case will be heard and whether the defendant received the summons and complaint.

### **How to File the Lawsuit**

Make a copy of the complaint and summons for yourself and a copy for each defendant you are suing. Give all the copies to the clerk of court, who stamps the date and time on them. When you file the complaint, you will need to pay the \$96 court cost or file as an indigent, as explained in Chapter 1.

For the filing of the lawsuit to be completed, a copy of the complaint and summons must then be delivered to each defendant. You can have this done through the sheriff's office, or you can do it yourself through a complicated procedure explained in the next section.

If you choose to use the sheriff's office, you must pay a \$30 service fee for each defendant. Sometimes, you pay this \$30 fee directly to the sheriff; sometimes the clerk gives the forms to the sheriff and takes the fee for you. If you filed as an indigent, you do not need to pay the \$30 fee.

When filing by mail, use either a money order or cashier's check. Make separate checks for the \$96 filing fee, to the Clerk of Superior Court, and for the \$30 service fee for each defendant, to the sheriff of that county. *Do not send cash or a personal check.*

### **Getting the Legal Papers to the Defendant**

You can get the complaint and summons to the defendant using the sheriff, the mail, or other means. The sheriff's office is much simpler than other methods. Here's why.

*By Sheriff.* Often, a clerk will take your papers and your \$30 fee over to the sheriff's office. Sometimes, however, you must take the forms stamped by the clerk from the clerk to the sheriff's office. In either case, keep a copy of the stamped complaint and summons for your records.

The sheriff's deputy keeps a copy of the summons and fills out the back telling how the complaint and summons were delivered to the defendant. The deputy will then file this information with the clerk of court.

If you use the sheriff, you should receive the assignment card from the clerk telling you whether the defendant received these papers and the date of your trial. If you do not receive the assignment card in several weeks, check with the clerk directly. The case cannot be heard in court if the defendant has not been notified.

*By Mail.* You may prefer to send the complaint and the summons to the defendant by registered or certified mail, but this is more difficult. You must do this yourself at the post office and ask for it to be sent return receipt requested. Sending these papers by registered or certified mail requires that they are actually delivered or handed to the defendant. You then have to write a statement and get it certified by a notary public that you followed the right steps in this process. Next, you have to file that

statement with the clerk of court, along with the post card which the post office mails back to you showing that the defendant got what you mailed. The clerk must get this certified statement from you before completing the Notice of Assignment/Service card.

*By Other Means.* If you cannot get the complaint and summons to the defendant using these instructions, there are other ways to try to serve the defendant. For instance, you can start over with a new summons form, which you can get from the clerk. Or you can use what's called "service by publication," which is giving notice to a defendant through a newspaper. Service by publication usually costs a lot of money. You may need a lawyer to help you do this.

## Chapter 3

### If You Are the Defendant - What to Expect

If you are being sued, you will get a copy of the summons and a copy of the complaint from the sheriff or by registered or certified mail. Read both sides of the complaint and summons carefully. These court papers will tell you what the case is about and when you have to be in court. Except in cases involving evictions, you should have received your court papers at least **five days** before the hearing date on the summons. If you do not, then the magistrate should set the hearing date for another date in the future.

You may call the magistrate ahead of time about this and ask for a later court date. If you are unable to speak with the magistrate or the magistrate will not give you another court date, then you should still go to the hearing at the date and time set out in the summons. At the hearing, you can ask the magistrate for a new hearing date for this reason.

If you think you will need a lawyer's help to defend your case, talk to one right away. Don't wait until the last minute to contact a lawyer. This is especially important if a landlord is trying to evict you.

If you are a tenant, there are several **ways**, you can be notified of a proposed eviction. The landlord may mail the complaint and summons to you by certified or registered mail. The sheriff may personally hand-deliver these forms to you; the sheriff may mail these forms to you by regular mail; and/or the sheriff may post these forms on your home. The sheriff is required to do these things at least **two days** before the hearing. The legal papers posted on your door are important! Pay attention to them and see a lawyer or decide immediately what you are going to do.

You may, if you wish, mail a formal answer to the clerk of court about the complaint or take this written answer to court. But you can also just wait and tell your side of the story at the trial.

You may have a complaint against the person who is suing you. If you want to file what's called a counterclaim, you will probably need to contact a lawyer. For more on counterclaims, see the Appendix.

## Chapter 4

# How to Prepare for the Trial

### **Remember:**

The "Plaintiff" is the one who is suing someone.

The "Defendant" is the one who is being sued.

### ***If you are the plaintiff, you must prove in court:***

- Why the defendant owes you money and the amount owed;
- Why the defendant should return certain property to you, which property should be returned, and in some cases, the value of the property (an issue when the defendant claims that the disputed property is worth more than \$10,000, the highest amount allowed to be settled in this court); and
- If you are the landlord seeking a summary ejectment action, why you are entitled to an order requiring the defendant to move out.

### ***If you are the defendant:***

- You try to show that you do not owe the money or should not have to return the property, or that you owe less than the plaintiff says you owe; or
- In a summary ejectment case, you need to show why you should not be required to move out, or that the landlord owes you money because of the landlord's failure to maintain your home in a livable condition.

## Steps To Prepare for the Trial

1. *Gather your evidence.* Get together any materials you have that will help you prove your side of the story, including receipts, letters, photos, leases, cancelled checks, contracts, or ledgers. Bring them with you when you come to court.
2. *Witnesses.* Anyone who has first-hand knowledge about the case can be a witness - friends, family members, strangers, even a child. If they can help you prove your side of the story, they can help you in your trial. But they have to come to court to tell the judge themselves about what they saw or know. Be sure and tell your witnesses when and where the case will be heard. If a witness won't come to court, or can't get off work for the trial, you might want to force the witness to come to court by having the sheriff deliver a subpoena to that witness (see Appendix).
3. *Practice what you are going to say.* Before you go to court, practice. Think about what questions the other **side** and the judge may ask you in court. Think about how you should answer them. The magistrate may not give you much time to tell your story, so you have to be able to list the most important points briefly and clearly. But be sure you say everything important to your case.
4. *Visit the Court.* If you have time, go to Small Claims Court to see what it's like. This can be especially helpful if you've never been in court. Small Claims Court is much more informal than other courtrooms.

## Settling Out of Court

You may decide to settle out of court, whether you are the plaintiff or the defendant. If you do reach such an agreement, get it in writing. You may need a written agreement later if the other party does not follow through. If you are the defendant, don't settle just to keep from going to court. If you think you don't owe what the plaintiff says you owe, then you should present your case to the magistrate.

If you can reach an agreement with the other side before the court hearing, you do not need to go to the trial. When a case is settled out of court, the plaintiff should notify the clerk of court so that the case is dismissed. If you are the defendant, check with the clerk of court before your trial date to be sure that the plaintiff has really dismissed the case. If the case is settled out of court, the plaintiff will not get back the court costs that were paid, unless the defendant agrees to pay them as part of the settlement.

### Check List for Trial

Use this space to make your own list of evidence and witnesses, and to be sure you're ready for trial.

<b>Evidence</b>	<b>Witnesses</b>

## Chapter 5

# The Small Claims Court Trial

### Be On Time!

Go to court ten minutes early! It is very important not to be late. If you are the plaintiff and not there when the magistrate calls your case, he or she can dismiss the case. If you are the defendant and not there when the magistrate gets to your case, the plaintiff still must prove the case. But the plaintiff will have a much easier job if you aren't there to tell your side of the story.

If you cannot make it to court on the day of your trial, call the magistrate ahead of time and ask for a later court date. The magistrate may or may not give you another court date. *But if you are the plaintiff and don't call and don't show up at court, the magistrate will dismiss your case.\* If you are the defendant and don't call or show up, you are likely to lose.\**

If your case is dismissed "without prejudice" and you still want a hearing, you may either appeal the case to District Court or you will have to start all over, filing new forms and paying the fee again. If your case is just dismissed, it is considered "with prejudice" and cannot be filed again. However, you could still appeal the case to District Court. An explanation of how to appeal the case to District Court is in *Chapter 7*.

### The Events at the Trial

When it is your turn to speak, tell your story simply and truthfully. Focus on the facts, not your opinion. You should not try to act or sound like a lawyer. Just be yourself. Show the magistrate any evidence you have. After you have testified, your witnesses can testify and you can ask them questions.

The magistrate or the other side may ask questions of you and of your witnesses. Remember that you and your witnesses only have to answer questions about the facts. You do not have to answer questions about the kind of person you are or anything else that is not an issue in the case. Tell the magistrate if you do not want to answer, and why. It does not help your case to argue with the other side or to talk when others are already speaking. The magistrate will tell you if you must answer a question.

Here's the usual order of events at the trial.

- *The Oath*. All those giving evidence or testimony during the trial must swear or affirm that they will tell the truth. This includes plaintiff, defendant, and witnesses. You do not have to swear on a Bible; you can affirm to tell the truth.
- *The Plaintiff's Case*. The magistrate asks the plaintiff to present his or her case first, including any evidence and witnesses. The defendant gets to ask questions of the plaintiff and each of the plaintiff's witnesses after each one testifies.
- *The Defendant's Side*. The defendant then presents that side of the case, with any evidence and witnesses. The plaintiff gets to ask questions of the defendant and each of the defendant's witnesses after each testifies.
- *The Magistrate Reaches a judgment*. The magistrate reviews the evidence and reaches a decision, which is called a judgment and explained in detail in the next section. No more evidence can be given to the magistrate after the trial.



## The Magistrate's Judgment

The magistrate can make a decision at the trial or may wait up to 10 days to issue the judgment. In the judgment, the magistrate may:

- *dismiss the case*, if the plaintiff has not proved the case;
- *order the defendant to pay* either the full amount claimed by the plaintiff or part of that amount, including the plaintiff's filing fees;
- *order the defendant to return property* to the plaintiff; or
- *in summary ejectment cases*, order the defendant to move out and/or pay rent or damages that are due. If the magistrate makes a decision which you do not understand, ask the magistrate to explain it to you before you leave the court. Also, you may ask for a copy of the magistrate's decision at that time. If the magistrate makes the judgment during the 10 days after the trial, you can call or go to the clerk of Superior Court later to find out the judgment. Be sure to have the case file number with you.

## Landlords and Tenants

### Small Claims Trial Required Before Eviction

For a landlord to evict a tenant legally, *North Carolina law requires that the landlord file an action in Small Claims Court called a "summary ejectment."* The landlord cannot just lock you out of your home or try to force you to move through such actions as cutting off your electricity. If you are a tenant and your landlord is trying to evict you - have you put out of your house or apartment - you have other legal protections and rights which are not covered in this booklet. For more information on evictions, contact the Legal Aid Helpline at 866-219-5262 or apply for services online at <https://www.legalaidnc.org/apply/>.

## Chapter 6

# After the Trial

At the end of the trial, or up to 10 days after the trial, the magistrate will sign a written decision called a judgment. The magistrate gives this to the plaintiff, the defendant, and the clerk's office. The clerk files the judgment in the official court records, which are available to the public. These records include the losing person's name, the amount and nature of the judgment, and whether the judgment has been paid. Creditors use these records for credit checks.

### The Plaintiff - Getting What is Owed You

If you are the plaintiff and have won your **case**, the defendant may pay you directly or give the money owed you to the clerk of court, who will then give it to you. The defendant must do this within 10 calendar days after the judgment or appeal to District Court, which is explained in the next chapter (Chapter 7).

If the defendant pays you directly, you must tell the clerk's office and fill out a Certificate of Payment. (See form AOC-CV 413 at <https://www.nccourts.org/Forms/Documents/680.pdf>) The clerk will then note this payment in the official records. Do this within 60 calendar days or the defendant can sue you to make you do this. In such a suit, you pay the defendant's attorney and court costs.

If the defendant has not paid or appealed within the 10-day period, you can have the clerk issue an order to the sheriff called an execution. This gives the sheriff the power to demand payment of your judgment from the defendant. If the defendant does not pay, the sheriff can then seize any cash, vehicles, goods or other property of the defendant, sell them, and use the money to pay the judgment. The sheriff turns over any money collected in this way to the clerk, who notes payment in the official records and gives the money to you.

### Property Which the Sheriff Cannot Take - "Exempt" Property

The law lets the defendant keep some property, which is called "exempt" property. Before the clerk can issue the execution order, you must get two new forms from the clerk, called Notice of Right to Have Exemptions Designated and Motion to Claim Exempt Property. You must fill out portions of these forms, have the clerk sign the Notice and then have both forms served on the losing party. You can do this using the sheriff or the mail, as you did with the summons and complaint. See Chapter 2 more information. Below, we will use "defendant" to mean the losing party to explain the court process to exempt or protect property from being used to pay a judgment.

After receiving these forms, the defendant has 20 calendar days to fill out the Motion to Claim Exempt Property, mail or deliver it to the clerk's office, and send you a copy. If the defendant does not return the form in the 20-day period or returns the form showing there is property to take, you can then ask the clerk to issue the execution to the sheriff. If the defendant returns the form but lists property as exempt that you believe should not have been listed, then you can ask for a hearing before a District Court judge. At that hearing, you and/or the judge can ask the defendant questions about the property listed on the Motion to Claim Exempt Property or any other property which you believe that the defendant may own but did not list on the Motion.

If the defendant denies owning certain property, then you will need to prove that the defendant is wrong. The judge will then make a decision about what property the defendant can keep. After that

decision is made, then you can ask the clerk of court to issue the execution to the sheriff.

The clerk's fee for issuing this execution order is \$25. The fee to the sheriff's office for trying to collect the judgment is \$30. Sometimes, the defendant may give the sheriff the money that is owed on the judgment. If the defendant does not pay, then the sheriff will need to find property that can be taken to pay the judgment, then there will be more costs involved in taking the property and selling it. You will be required to post a bond before the sheriff will take the property and sell it to pay the judgment. You will be paid back these costs from the money collected from the sale of the property.

Do not attempt to take the execution to the other party yourself. Only the sheriff can deliver an execution and collect the money. After an execution is in force, do not accept any money or property from the other party. The execution papers are good for 90 calendar days. If the sheriff cannot find the defendant to deliver the execution or cannot find property that can be taken to pay the judgment within that 90-day period, then the sheriff will lose the authority to try and collect the judgment for you. After the 90 calendar days, the sheriff will return the papers back to the clerk of court with a written statement about why the papers are being returned. If you still want to try and collect the judgment, then you will need to pay more fees and ask the clerk to issue another execution. There is no limit on the number of executions that the clerk can issue. However, you are required to give the defendant a new Notice of Right to Have Exemptions Designated and Motion to Claim Exempt Property before any new executions are issued.

### **If The Magistrate Rules Against You**

If the magistrate orders you to pay money to the other side, and you decide not to appeal, you can either pay through the clerk of court or directly to the other side. Be sure to get a receipt when you pay and be sure the clerk marks the judgment as "paid." If you pay the other side, get that party to go to the clerk's office to have the official records marked "paid." The plaintiff must do this within 60 calendar days, or you can sue to have it done, with the other side paying your attorney and court fees. To avoid such a problem, it is much safer to pay through the clerk of court.

If the magistrate orders you to return property to the other side, and you decide not to appeal, return the property directly to the plaintiff. Be sure to get a receipt from the plaintiff or plaintiff's lawyer when you turn over the property. Until the judgment is paid in full, the records in the clerk's office will show that the judgment is "outstanding." This could hurt your credit rating.

### **If You Lose and Can't Afford to Pay**

If you get a judgment against you and do not pay it, the other side may ask the sheriff to enforce the judgment. Your car or other property could be sold by the sheriff to satisfy the judgment. However, before any property is taken by the sheriff, you can claim some of your property as "exempt property" -that is, property that is protected from being collected. You may be able to keep your car, house, household property, or other property.

Before your property may be taken to pay a judgement, you must receive a Notice of Right to Have Exemptions Designated and a Motion to Claim Exempt Property. You must fill out the Motion to Claim Exempt Property, return it to the clerk of court, and send a copy to the plaintiff or plaintiff's attorney within 20 calendar days OR YOU COULD LOSE EVERYTHING YOU OWN! If you do not fill out the form or do not claim property as exempt, the plaintiff can then ask the sheriff to start the execution. The sheriff can then come to your home or place of work to collect the money or seize property to sell in order to pay the judgment.

The sheriff can check at your house from time to time to see if you have gotten any property that is not exempt or given away any that you claimed. For more information on exempt property, contact the Legal Aid Helpline at 866-219-5262 or apply for services online at <https://www.legalaidnc.org/apply>.

The sheriff will not put you in jail because you cannot pay the judgment. The judgment stays on your record for at least 10 years or until you pay it.

### **What Property Can Be Protected:**

The exemption law lists different types of property and sets limits for the value of property that can be exempt. Exemption limits are based on the "equity value" of your interest in each item of property. To determine your equity value in an item, follow these steps:

1. Find out the fair market value of your interest in the item. "Fair market value" means what you could sell the item for (at the flea market, for example). If you co-own the item with someone else, only the fair market value of your share of the property is counted.
2. Find out the amount owed (pay-off) to each creditor who has a security interest in the item.
3. Subtract #2 from #1.

Following is a list of the types of property that can be exempted, with the "equity value" exemption limits for each type of property. The amount listed below are effective January 1, 2006 and apply to judgments filed on or after that date. Exemption amounts may be different for judgments filed before January 1, 2006.

Each debtor can exempt:

- up to \$35,000 in land, house, mobile home or other property used as a residence, or burial plots. (Additional protections may apply to real property or a mobile home owned by married persons and unmarried persons who are 65 years of age or older.)
- up to \$5,000 in any property (this amount is reduced by the amount of exemption claimed for residence or burial plot.)
- up to \$3,500 in one automobile.
- up to \$5,000 in clothes, household furnishings and goods, appliances, books, animals, crops, and musical instruments which are used primarily for personal, family, or household use. (This amount increases \$1,000 for each dependent of the debtor up to a maximum of four (4) dependents.)
- up to \$2,000 in books, tools, or other things you or your dependents use for your work or trade.
- life insurance policies listing a spouse and/or children as beneficiaries.
- items of health care aid you or your dependents need to work or stay healthy.
- money payments for personal injury or for the death of a person upon whom you depend for support (unless the judgment is for services related to personal injury).
- individual retirement accounts, including individual retirement annuities and Roth retirement accounts.
- funds up to \$25,000 in college savings plans under certain conditions.
- other state or governmental retirement accounts.
- alimony, support, separate maintenance, and child support payments necessary for your support.

### **What Property Is Not Protected?**

Exemptions don't apply to the following:

- all of your property, if you fail to claim your exemptions on time!
- the value of property is greater than the exemptions allow.
- personal property bought less than 90 days before the judgment collection starts.
- claims owed to the federal government or its agencies, as allowed by federal law.
- claims of the State or its subdivisions for taxes, appearance bonds, or fiduciary bonds.
- claims for liens placed by law against specific property.
- if a seller takes a security interest in an item you are buying from that seller, the item is not exempt from a judgment for the property.
- orders for child support, alimony, or property distribution related to divorce or alimony.
- property owned by debtors who do not reside in North Carolina.
- judgments against corporations.

### **Tips For Protecting Your Exemption Rights**

1. Notify the Clerk of Court and judgment creditor(s) if you change addresses after a judgment is entered. If you cannot be located for personal service by the Sheriff or by certified mail, service of the exemption notice can be made by regular mail to your "last known" address, whether or not you actually receive it.
2. Carefully read all mail and Court notices you receive. Your 20-day time limit for claiming exemptions begins on the day after you are served with the exemption notice.
3. Read and follow the instructions stated on the Motion form. Complete each section of the Motion. Make sure you list all of your property, including your share of property owned with others. You can attach additional pages if necessary. Values should be based on what you reasonably believe you could sell the item for, at a flea market, for example. If an item has no equity value, you should list the item with a "\$0" value.
4. Make sure to follow instructions at the end of the Motion for signing, dating, and serving your Motion. One copy of the Motion must be filed with the Court, and a copy must also be sent to the creditor- all within the 20-day time limit.
5. If you need help completing the exemption motion, if you own property in excess of exemption limits, or if the creditor objects to your exemptions, promptly contact an attorney or the Legal Aid Helpline at 866-219-5262.

## Chapter 7

# Appeals to District Court

After the judgment in Small Claims Court, either side can appeal to get a new trial in District Court. To appeal, you must either tell the magistrate at the trial after the decision is made or file a written Notice of Appeal to District Court form with the clerk within 10 calendar days from the date of the judgment. If you file a written notice, you must mail a copy of it to the other side within 10 calendar days of the judgment. A sample appeals form is [here](#). If you cannot get such a form from the clerk in your county, you may write your own appeal, using this form as a guide.

### Cost

To appeal your case you must pay a fee of \$150 to the clerk of court within 20 calendar days after the judgment. If you cannot afford to pay this fee, ask the clerk for the "Petition to Sue/Appeal /File Motions as an Indigent" form and file it within 10 calendar days after the magistrate issues the judgment. (See Chapter 1 for more about this form.)

The clerk, magistrate, or judge will probably decide at the time you file the form whether you have to pay the fee. However, he or she may take up to 20 days after the judgment to decide this. If you don't get a decision right away, you will have to keep checking with the clerk of court throughout this 20-day period to find out if you can appeal as an indigent. If you are not allowed to appeal as an indigent, you must pay your \$150 fee before the 20-day period is up in order for your appeal to go forward in the courts.

### Waiting for the Appeal to Be Heard

If you appeal a judgment made against you in Small Claims Court, you do not have to pay that judgment until the District Court decides the case. If the judgment requires you to deliver property to the other side, however, you may have to turn the property over, or post bond in order to keep the property during the appeal. Instead of a bond, the clerk might ask you to put up cash or other security to keep the property. If you are a tenant and want to continue living in your residence while appealing the case, you must sign a statement agreeing to pay your rent to the court during the appeal process. Some of this rent may be due at the time you appeal.

### District Court

When a case is appealed by either party, a new trial date is set for District Court. The case is treated as a brand-new case that has never been tried before. This means you will have to present your evidence and witnesses again. Either side may ask to have a jury to decide the facts, but this request must be made at the time the Notice of Appeal is filed. If neither side chooses to have a jury, the judge will decide the case. District Court is more formal and cases there take more time. Legal papers that you may want to file are not available as forms from the clerk. Most people find they need a lawyer to take a case to district court. This is especially true if you are a tenant appealing an eviction.

## Appendix

**Age.** A person under age 18 can have a claim filed by a guardian ad litem ("GAL") who has been appointed by a clerk of court. A guardian ad litem must be over 18 and can be a parent, relative or friend. If the person you wish to sue is under age 18 or under any legal disability, such as mental incompetence, you should ask a lawyer for help.

**Businesses as Defendants.** If you are suing a business, you must first find out whether it is a corporation or not. To find this out, along with the name and address of the corporation's registered agent, call the N.C. Secretary of State, Corporations Division (919) 814-5400 (or visit its website, <https://www.sosnc.gov/corporations/thepage.aspx>).

If the business **is a** corporation, the Corporation Division will tell you the county, city, and street address of the corporation's registered office and principal place of business, which could be in different counties. You may sue this corporation in any county where it does business.

If there is no record of that business as a corporation, then go to the Register of Deeds office in the county where the business has its main office. The Register of Deeds, which is in the courthouse, has the names of owners of businesses in its county. Write the business owner's name on the court papers as the defendant.

If the Register of Deeds office does not have information about the owners or their addresses or about any registered office, you may sue the business in any county where it does business.

**Counterclaims.** If you are the defendant and have a claim against the person who sues you, you can sue that person as part of the same case. You do this by filing a "counterclaim," also in Small Claims Court. For example, an appliance store may be suing for a repair bill you didn't pay. But you don't want to pay because the repairman knocked a hole in your wall, which you paid to have repaired. You want the appliance company to pay for that damage before you pay its repair bill. Your counterclaim cannot be more than \$10,000, and you should check with the clerk to find out the maximum amount you can ask for in the counterclaim.

To file a counterclaim, you need to write an answer to the complaint you get. Write what your claim is and your answer to what the plaintiff says under the heading "Answer and Counterclaim." Take the written answer and counterclaim to the clerk of court on or before the day of your trial and pay a \$96 filing fee or complete the Petition to Sue as Indigent Form. See Chapter 1. Include with the answer and counterclaim a signed statement of how you will give these papers to the defendant, which you can do in person or by regular mail. All of this must be done before the time set for the trial.

If you are the defendant and have filed a counterclaim against the plaintiff, the magistrate may order the plaintiff to pay part or all of your claim, or may order the property returned to you. If you win your counterclaim you can collect on it the same way that the plaintiff collects on a judgment, as discussed in Chapter 6.

**Subpoena.** If a person cannot get time off from work to come to court or is unwilling to come, you can get a subpoena from the clerk of court. This is a legal notice, which requires the witness to come to court. You will have to pay a \$30 fee for the sheriff to deliver the subpoena to the witness. Each witness who is subpoenaed can collect a small daily fee and, if the witness is from outside the county, travel expenses from the court, after the judgment is collected. These fees are then added to the court costs, which are paid by the person who loses, if the judgment is collected.

**Suits Over \$10,000.** The limit of \$10,000 on suits in Small Claims Court does not include interest or court fees. If you have a claim over \$10,000 or the maximum amount allowable in a Small

Claims lawsuit, you can:

1. File your claim in District Court, where you will probably need a lawyer to represent you; or
2. You can lower your claim to the maximum amount for Small Claims lawsuits and file it in Small Claims Court.

*Wrong Person is Sued.* If you are being sued and think someone else is at fault in the case, you can use a legal procedure to have this person appear in court as another party to the lawsuit. This person is called a "third party defendant." In a situation like this, you will need a lawyer to be sure that your rights are protected.



# Legal Aid of North Carolina, Inc.

If you need legal assistance, call 866-219-5262,  
or apply online at

<https://www.legalaidnc.org/apply>

## LANC has offices in the following locations:

**Legal Aid of NC - Ahoskie** Counties Served: Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Northampton, Pasquotank, Perquimans

**Legal Aid of NC – Asheville** Counties Served: Buncombe, Henderson, Madison, Polk, Rutherford, Transylvania

**Legal Aid of NC – Charlotte** Counties Served: Mecklenburg

**Legal Aid of NC – Concord** Counties Served: Cabarrus, Stanly, Union

**Legal Aid of NC - Durham** Counties Served: Caswell, Durham, Franklin, Granville, Person, Vance, Warren

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*This booklet applies to statutes and forms current as of February 2020. Since laws apply differently in different situations and may change from time to time, you should consult a lawyer for special advice on your case. Some counties may still be using old forms which differ from some of the ones in this booklet or may be using an earlier version of this booklet.*

*This booklet should be available in every county, at the office of the Clerk of Superior Court. Be aware, however, that the people who work in these offices cannot help you fill out any forms or give any legal advice. It is against the law for them to do this.*

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