

HOW TO FILE A SMALL CLAIMS AFFIDAVIT OR COUNTER AFFIDAVIT

Small Claims cases are governed by Utah Code Title 78, Chapter 6. The Supreme Court has adopted “simplified rules of procedure and evidence” called the Rules of Small Claims Procedures. If you have any questions not addressed in these instructions, refer to the Rules of Small Claims Procedures or the Utah Code. You should be able to locate a copy in your local library, on the State Courts’ Website at <http://courtlink.utcourts.gov> (for Rules of Small Claims Procedures), or the Legislature’s Website at <http://www.state.je.us> (for the Utah Code).

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 \$10,000.00. Claims must be for money only. The Small Claims Department cannot be used to sue for possession of property or to evict a tenant. You may not sue a governmental entity using small claims procedures. To sue a governmental entity you must comply with special statutory procedures and the Utah Rules of Civil Procedure. 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. If you are suing a business, call the Department of Commerce at 801-530-4849 or <http://www.eutah.org/serv/bes> 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** should be typewritten, but will be accepted if legibly handwritten. You must pay a filing fee (\$60.00 for claims \$2,000.00 or less, \$100.00 for claims \$2,000.01 - \$7,500.00, \$185.00 for claims \$7,500.01 - \$10,000.00) at the time you file the **Affidavit**. If you can not afford the filing fee, you can file an “Affidavit or Impecuniosity” (form available from the court). You will need to provide relevant financial information and the court may decide to waive the filing fee.

It is your responsibility to serve the defendant. You can serve the defendant by:

mailing a copy of the **Affidavit** to the defendant by any method that requires the defendant to sign acknowledging receipt (examples would be registered or certified mail with return receipt requested to be signed by addressee only or a commercial courier service that will return a receipt signed by the addressee only); or

giving the **Affidavit** to the Sheriff’s department, Constable or any person regularly engaged in the business of serving process for service on the defendant, and paying for the service.

The **Affidavit** must be served on defendant at least 30 calendar days before the trial date. If you serve the defendant by mail, the date of service is the date that the defendant signs the receipt. If you serve the defendant by mail, you must fill out and file with the court the **Proof of Service** (Form D). The Proof of Service Form must be filed with the court within 10 calendar days of service and must have the original receipt signed by the defendant attached. If the **Affidavit** is served by the sheriff’s office, constable, or person regularly engaged in the business of serving process, the Proof of Service will be filed by that person. You will need to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk.

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 “with prejudice” and you may not be able to re-file your claim.**

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, judgement 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, judgement 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 judgement and pursues collection through the court, additional court costs and interest 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** and pay the proper fee (\$45.00 for claims \$2,000.00 or less, \$75.00 for claims \$2,000.01 - \$7,500.00, \$105.00 for claims \$7,500.01 - \$10,000.00) at least 15 calendar days prior to the trial date. The Court Clerk will mail a copy of the **Counter Affidavit** to the plaintiff. 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. However, you may hire an attorney if you wish. Parties with attorneys will not get preferential treatment.

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

3. POSTPONING THE TRIAL. If you want to change the trial date, you must request a "Continuance." Fill out the **Request For Continuance** form available at the court. The court must receive your **Request for Continuance** at least five calendar days before trial. The Court Clerk can grant a continuance of up to 45 calendar days. A longer continuance may be granted only by the judge. Each side can only get on continuance from the Court Clerk.

4. 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. Strict rules of evidence do not apply in trials of small claims actions. Irrelevant or unduly repetitious evidence will be excluded. A court may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their serious business affairs. The judge may allow hearsay that is probative, trustworthy and credible. "Hearsay" is testimony about what someone else said. If at all possible, witnesses should testify about their first-hand knowledge. However, if possible, a party should have witnesses to testify rather than rely on hearsay. Claims based entirely on hearsay will generally be disallowed. Evidence should 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 should give the other party a chance to inspect the damage prior to trial.

If you need the testimony of a witness who will not attend trial voluntarily, you should ask the court or your attorney 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. A subpoena must be served at least 5 calendar days before trial. You may have a witness appear voluntarily without a subpoena, but the judge will not continue the trial if the witness fails to appear.

5. JUDGEMENT. If judgement is granted, the winning party has the right to enforce the judgement. 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 accrues interest and the prevailing party may be entitled to recover court costs accruing after judgement. **A judgement must be collected or renewed within 8 years of the date it is granted or it expires.** When a judgement is paid, the winning party must file a **Satisfaction of Judgement** with the court.

6. APPEAL. Either party may appeal a Small Claims judgement within 10 businesses days (not counting weekends or holidays) of the loser's receipt of notice of entry of judgment. A Notice of Appeal must be filed with the court that issued the judgement and the appropriate fee paid. The notice of appeal automatically suspends the judgement, and the winning party may not attempt to collect the judgement.

**Syracuse Justice Court, State of Utah
Davis County, Small Claims Department
1979 West 1900 South, Syracuse, UT 84075**

Name _____ Plaintiff)

Agent & Title _____)

Street Address _____)

City, State, Zip _____ Phone _____)

Name _____ . Defendant)

Social Security No. _____)

Agent & Title _____)

Street Address _____)

City, State, Zip _____ Phone _____)

**SMALL CLAIMS
AFFIDAVIT & ORDER**

Case No. _____

AFFIDAVIT

Plaintiff swears that the following is true:

- | | |
|---|----------|
| (1) Defendant owes plaintiff | \$ _____ |
| () Plus a \$60.00 filing fee for a claim of \$2,000 or less | \$ _____ |
| () plus a \$100.00 filing fee for a claim of more than \$2,000.01 - \$7,500.00 | \$ _____ |
| () plus a \$185.00 filing fee for a claim of \$7,500.01 - \$10,000.00 | \$ _____ |
| plus an estimated filing fee | \$ _____ |
| for a total of | \$ _____ |

(2) This debt arose on _____ for: _____

(3) Plaintiff has asked defendant to pay the debt, but it has not been paid.

(4) Defendant resides or the claim arose within the jurisdiction of this court.

Plaintiff: _____

SUBSCRIBED and SWORN to before me on _____

Clerk, Deputy or Notary

ORDER OF THE COURT

THE STATE OF UTAH TO THE DEFENDANT: You are directed to appear at a trial and answer the above claim:

On Date: _____ At Time: _____ At Address: 1979 W. 1900 S. Syracuse, Utah

If you fail to appear at the trial, judgment may be entered against you for the amount listed above.

Date: _____

Clerk or Deputy

**Syracuse Justice Court, State of Utah
 Davis County, Small Claims Department
 1979 West 1900 South, Syracuse, Utah 84075**

Name		Plaintiff)
Street Address)
City, State, Zip	Phone)
Name		Defendant)
Street Address)
City, State, Zip	Phone)

PROOF OF SERVICE

Case No. _____

Plaintiff Defendant certifies that the Affidavit Counter Affidavit was mailed to the opposing party. The original document acknowledging receipt signed by Plaintiff Defendant is attached to the bottom of this form. If the opposing party is not a person (e.g., a corporation), the name of the person signing the form is _____ that person's position/title is _____.

Date _____

Plaintiff Defendant

By _____ Agent's name and title, if appropriate)

INSTRUCTIONS FOR PROOF OF SERVICE

If you served the other party by mail, you must prove that the other party got adequate notice. To do so, you must provide the document (not a copy) signed by the other party indicating receipt. The document must show the date the defendant received the **Affidavit** or **Counter Affidavit**. This document must be attached to the bottom left corner of the **Proof of Service** form in a way that still allows anything under the document to be seen (forexample., staple only along left margin). If the document covers more than half the page, attach document to 8 1/2" X 11" paper and staple behind **Proof of Service**.

If the other party is a person, that person must sign the document indicating receipt. It is not sufficient to have the document signed by someone living at the same place as the party.

If the other party is not a person, (for example, a corporation), the document must be signed by someone who is authorized to accept service of process. Please refer to Utah Rule of Civil Procedure 4 to determine who is authorized to accept service for various types of business organizations. You must identify on the **Proof of Service** the name of the person accepting service and the person's title.

The **Proof of Service** must be filed with the court no later than ten days after service. The **Affidavit** or **Counter Affidavit** is considered served on the date the party being served signed the receipt.

If you choose to serve the **Affidavit** or **Counter Affidavit** by mail, and do not show the court that the other party got the required notice, you will not be able to get a default judgement if the other party does not appear for trial.

**Syracuse Justice Court, State of Utah
Davis County, Small Claims Department
1979 West 1900 South, Syracuse, Utah 84075**

State of Utah)

AFFIDAVIT OF SERVICE

County of Davis)

Case No. _____

I hereby make return of service and certify:

1. I am a Duly Qualified and Acting Peace officer, or am a person over the age of 18 years and am not a party to this action.

2. I received the annexed small claims affidavit and order on _____.

3. I served _____ a true and correct copy by:

Delivering said copy to said individual personally at _____

Leaving said copy with _____, a person of suitable age and discretion at the usual place of abode of the defendant and whose relationship to defendant is _____, to whom I showed the original.

4. Upon serving the same, I endorsed the date and place of service and my name on the copy served.

Date Served: _____

Signature of Server

Attempts Made: _____

Service Fee: _____

Official Title

Mileage Fee: _____

No. Miles Traveled _____

(If service is not made by a sheriff or deputy, the signature Or the server must be notarized.)

Total: _____

Subscribed and sworn to before me on _____.

Notary Public
Residing At:
My commision expires: