

**FILING A SMALL CLAIMS SUIT IN THE JUSTICE COURT
PRECINCT ONE LAMPASAS COUNTY
501 EAST 4TH STREET
LAMPASAS, TEXAS 76550
512-556-8271 EXT. 311**

***Disclaimer:** The law is constantly changing and there may be times when the information on this web site will not be current. This information is provided for general informational purposes only and is not intended as legal advice. This information is not a comprehensive treatment of the subject and is not a substitute for advice from an attorney. It is not possible to include information sufficient to meet all facts and circumstances and you are urged to consult with an attorney. We have made every effort to set out information accurately, but we do not warrant the reliability or appropriateness of the information for a particular purpose, and we do not assume liability for any consequences resulting from your reliance on the information presented.*

REQUISITES:

DIRECT A LETTER, CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the defendant, giving notice of the suit. State the amount 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.

VENUE:

Suit should be filed in the precinct of the county where the action occurred or where the defendant resides. If the suit is based on a contract or tort, the defendant may be sued in the county where the contract was entered into or to be performed. If you file your suit in the wrong Court and the defendant files a ‘Motion to Transfer Venue’, you will be liable for an additional filing fee if the suit is transferred.

JURISDICTION:

The jurisdiction of the Small Claims Court is limited to \$10,000.00. Court Costs may be added to that amount.

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 in 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. The court clerk will assist you if you have any questions. It is important you understand that for any potential judgment you may receive to be valid, it is necessary for you to sue the defendant(s) in their proper legal capacity. They are as follows:

1. Individual –Where an individual is personally responsible to you for damages they 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. Direct your letter (notice of suit) to the owner/owners of the company.
3. Corporation – A business that is incorporated. To sue a corporation, you must find the name of the REGISTERED AGENT, PRESIDENT, and OR VICE-PRESIDENT of the corporation before you begin your suit. The Secretary of the State (512-463-5555) or the State Comptroller’s Office (800-252-5555) can furnish the information. You will also need the address of the REGISTERD AGENT, PRESIDENT, and OR VICE-PRESIDENT. When you file your suit, you will be filing against the above mentioned officers of the corporation. It is also possible for an incorporated entity to have an assumed name. (EX. Carr’s Auto Shop d/b/a Carr’s Garage)

COSTS:

The filing fee is \$ 31.00. In addition, there is a fee for serving the defendant with the citation. The fee is \$75.00 per defendant, to be served in Lampasas County Precinct One, payable by money order to Justice of the Peace Pct. One. If the defendant upon whom you are filing resides OUTSIDE of Lampasas County Pct. One, the charge may be more than that charged in Lampasas County. It may also be less. You will need to contact the serving agency in the county upon which service is needed and get the correct information to provide to the court. Such information includes the address of the serving agency (i.e. Sheriff's Dept or Constable) and the cost of such service.

CITATION:

A citation is placed in the hands of the Constable for service in Lampasas County. Out of County service is sent to the Constable or Sheriff of that County. Service can take up to 90 days.

ANSWER:

The defendant(s) in your suit is commanded to answer to the court in person or in writing, on Monday following the expiration of 10 days from the date the citation was served. It is your responsibility to keep in contact with the court and inquire as to the progress of your suit. We will not automatically notify you're when service has been obtained. You must call and ask.

REPRESENTATION:

Small Claims 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 Claim's Court and the Rules of Procedure are relaxed.

PREPARING YOUR CASE FOR TRIAL:

The plaintiff has the burden to prove by a preponderance of the evidence each element at his cause of action (claim). You should bring with you, to trial, all proof of damage and evidence necessary to substantiate your claim. If you have witnesses to your suit who will not come to court voluntarily, you may request a 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 filing and service (\$27.00 for filing and \$75.00 for service).

DEFAULT JUDGEMENT:

If the defendant in your suit fails to answer to the Court, you **may** be the only one notified of an appearance for a default hearing on the Court Docket. You will be asked to briefly state the facts of your case and present any evidence you may have to support your case and the amount of damages you are seeking.

TRIAL BY JUDGE OR JURY:

If the defendant in your suit files an answer, or even if no answer is filed, the Court date will be set with the County Attorney. You and the defendant will be notified by mail at least 10 days prior to the setting of the case for trial. IT IS NECESSARY FOR YOU TO BRING ALL WITNESSES, BILLS OF SALE, CONTRACTS, AND OTHER EVIDENCE TO COURT AT THIS TIME. ALL MOTIONS FOR CONTINUANCE (rescheduling your Court appearance date) MUST BE IN WRITING, SWORN TO, AND RECEIVED NO LATER THAN 3 DAYS PRIOR TO YOUR COURT DATE.

AFTER JUDGEMENT:

If you receive a Judgment, the defendant has 10 days to appeal the case to the County Court. 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 10 days. If an appeal is not filed within 10 days from the date the Judgment was 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 JUDGEMENT:

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 by money order. The Abstract of Judgment must be picked up from this office. You will take the Abstract of Judgment to the County Clerk's Office and pay a fee there to file the abstract. You may also file the Abstract of Judgment in any County Clerk's office in Texas if you have reason to believe your defendant owns property in other Counties. The purpose for filing the Abstract of Judgment is to put a lien against any non exempt Real Property in the defendant's name. If the defendant sells any real property within 10 years from the date of Judgment, the amount of Judgment must be paid, plus interest. In order for the lien to remain in effect, you must request and have issued a Writ of Execution within 12 months from the date your Judgment was signed. Failure to do so may result in your Judgment becoming dormant and revived only by a scire facias proceeding.

WRIT OF EXECUTION:

A Writ of Execution may be obtained anytime after the 30th day from the date of the Judgment was signed. You must request and have issued a Writ of Execution within 12 months from the date of Judgment in order for your Judgment to remain valid. Failure to do so may result in your Judgment becoming dormant and revived only by a scire facias proceeding.

A Writ of Execution allows a Constable or Sheriff to try and seize non-exempt property from the defendant. If any 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 filing fee and \$125.00 service fee). Serving a Writ of Execution out of the county may cost more or less.

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 JUDGEMENT, IT IS NECESSARY FOR YOU TO NOTIFY THE COURT IF THE CREDIT OR NOTIFY THE COURT THAT THE JUDGEMENT HAS BEEN SATISFIED IN FULL IF THE DEFENDANT PAYS THE ENTIRE JUDGEMENT AMOUNT. IF YOUR ADDRESS CHANGES WITHIN THE 10 YEAR PERIOD FOLLOWING THE JUDGEMENT, YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS.

THIS COURT DOES NOT WORK TO COLLECT THE JUDGEMENT FOR YOU, NOR CAN WE FORCE THE DEFENDANT TO PAY THE JUDGEMENT. HOWEVER, THE JUDGEMENT MAY BE PAID THROUGH THE COURT SO AS TO RECORD ITS PAYMENT.