

## **HOW TO FILE A SMALL CLAIMS AFFIDAVIT OR COUNTER AFFIDAVIT**

Small Claims cases are governed by Utah Code Title 78, Chapter 6. These forms and instructions constitute the “simplified rules of procedure and evidence” referred to in Utah Code § 78-6-1. If you have any questions not addressed in these instructions, refer to the Utah Code. You should be able to locate a copy in your local library.

### **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 \$7,500.00. 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. The defendant’s Social Security Number will be helpful. If you are suing a business, call the Department of Commerce at 530-4849 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 (\$45.00 for claims \$2,000.00 or less, \$70.00 for claims over \$2,000.00) at the time you file the Affidavit. It is your responsibility to give the Affidavit to the Sheriff’s department, Constable or other process server, for service on the defendant, and to pay for that service. The Affidavit must be served on the defendant at least 30 days before the trial date:

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. Contact your process server a few days before trial to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk.

3. Counter Affidavit. If the defendant files a Counter Affidavit against you, the trial may be rescheduled. If you fail to appear at the trial after a Counter Affidavit has been filed, judgment 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 the trial on the appointed day. If you fail to appear at trial, judgment may be entered against you for the amount requested.

2. Payment. If you do not dispute the claim, make arrangements with the plaintiff to pay the claim and the court costs. If the plaintiff obtains a judgment and pursues collection through the court, additional court costs 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 Court Clerk, up to 15 days before the trial. You must file the Counter Affidavit; pay the proper filing fee (\$45.00 for claims \$2,000.00 or less, \$70.00 for claims over \$2,000.00) and the Court Clerk will complete the Summons and mail a copy of the Counter Affidavit to the plaintiff. The Court Clerk may reschedule the trial. 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.

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

3. 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. The Utah Rules of Evidence will generally be followed because they are designed to foster accurate fact finding. While the Rules serve as appropriate guidelines in Small Claims trials, judges are free to depart from their strict application when justice dictates. Evidence must 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 must give the other party a chance to inspect the damage prior to trial. You must have damaged items available for inspection by the other party prior to trial.

If you need the testimony of a witness who will not attend the trial voluntarily, you should ask the court, no later than 10 days before the trial date, 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.

4. Judgment. If the judgment is granted, the winning party has the right to enforce the judgment. 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 can accrue interest and the prevailing party may be entitled to recover court costs accruing after judgment. A judgment must be collected or renewed within 8 years of the date it is granted or it expires.

5. Appeal. Any party may appeal a Small Claims judgment within 30 calendar days after entry of judgment or order or after denial of motion to set aside the judgment or order, whichever is later.

IN THE JUSTICE COURT, IN AND FOR BLUFFDALE CITY,  
COUNTY OF SALT LAKE, STATE OF UTAH  
14175 South Redwood Road, Bluffdale, Utah 84065  
Before the Honorable Reed S. Parkin, Justice Court Judge  
1(801)446-9219 – Phone 1(801-446-8642 - Fax

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\_\_\_\_\_, Plaintiff )  
Name )  
\_\_\_\_\_) )  
Street Address )  
\_\_\_\_\_) )  
City, State, ZIP Phone )  
vs. )  
\_\_\_\_\_, Defendant )  
Name )  
\_\_\_\_\_) )  
Street Address )  
\_\_\_\_\_) )  
City, State, ZIP Phone )

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SMALL CLAIMS AFFIDAVIT  
AND SUMMONS

Case No. \_\_\_\_\_

**AFFIDAVIT**

Plaintiff swears that the following is true:

- (1) Defendant owes me \$\_\_\_\_\_ for the claim described in paragraph (2).  
[ ] plus the court filing fee of \$60.00 \$\_\_\_\_\_ for a claim of \$2,000.00 or less  
[ ] plus the court filing fee of \$100.00 \$\_\_\_\_\_ for a claim of \$2,001.00 up to \$7,500.00  
( ) plus the court filing fee of \$185.00 \$\_\_\_\_\_ for a claim of \$7,501.00 up to \$10,000.00  
plus an estimated service fee of \$\_\_\_\_\_  
For a total of: \$\_\_\_\_\_

plus prejudgment interest to the date of judgment, if qualified for prejudgment interest.

- (2) This claim arose on \_\_\_\_\_ for: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

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

\_\_\_\_\_  
Plaintiff's or Agent's Signature

Subscribed and sworn to before me on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court

**SUMMONS**

THE STATE OF UTAH TO THE DEFENDANT: You are summoned to appear at trial to answer the aforesaid claim.

\_\_\_\_\_  
Date of trial

\_\_\_\_\_  
Time of trial

The trial will be held at: Bluffdale Justice Court  
14175 So. Redwood Rd.  
Bluffdale, Utah 84065

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk's Signature

NOTICE TO THE DEFENDANT: A small claims case has been filed against you. This imposes upon you certain rights and responsibilities. If you need information, you may obtain a small claims information and instruction manual from the clerk of the court for a fee or you may obtain it for free at: [www.utcourts.gov](http://www.utcourts.gov).

ADA NOTICE: If you need special accommodations (including communication aids and services) during this proceeding you should call the Court Clerk at 446-9219, at least three days before the proceeding.

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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. Contact your process server a few days before trial to make sure the Affidavit has been served and proof of the service has been filed with the Court Clerk.

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3. Counter Affidavit. If the plaintiff owes you money, you may file a Counter Affidavit on a form provided by the Court Clerk, up to 15 days before the trial. You must file the Counter Affidavit; pay the proper filing fee (\$50.00 for claims \$2,000.00 or less, \$70.00 for claims over \$2,000.00 and \$120.00 for claims up to \$10,000.00) and the Court Clerk will complete the Summons and mail a copy of the Counter Affidavit to the plaintiff. The Court Clerk may reschedule the trial. If you intend to file a Counter Affidavit, many of the “Instructions to the Plaintiff” will apply to you. Read them.

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5. Appeal. Any party may appeal a Small Claims judgment within 30 calendar days after entry of judgment or order or after denial of motion to set aside the judgment or order, whichever is later. An appeal will be tried in District Court. The fee for filing for an appeal is \$225.00.

IN THE JUSTICE COURT, IN AND FOR BLUFFDALE CITY,  
COUNTY OF SALT LAKE, STATE OF UTAH  
14175 South Redwood Road, Bluffdale, Utah 84065  
Before the Honorable Reed S. Parkin, Justice Court Judge

	)				
	), Plaintiff				
Name	)				
	)				
Street Address	)				
	)				
City, State, ZIP		Phone	)		PROOF OF SERVICE
	)				
	)	vs.	)		
	)				
	), Defendant				Case No. _____
Name	)				
	)				
Street Address	)				
	)				
City, State, ZIP		Phone	)		
	)				

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 and that person's position/title is \_\_\_\_\_.

Dated \_\_\_\_\_, 2005

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 (for example, 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 (10) 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 judgment if the other party does not appear for trial.**

## **CONSTABLE INFORMATION SHEET**

**JAY WEAVER  
P.O. BOX 538  
SANDY, UT 84091  
571-7211**

**BOB REITZ  
7026 S. COMMERCE PARK DR. # 101  
MIDVALE, UT 84047  
255-5468**

**SALT LAKE COUNTY CONSTABLE'S OFFICE  
47 E. 7200 SOUTH, STE. 221  
MIDVALE, UT 84047  
561-4278**

**SILVAN WARNICK  
SALT LAKE CO. CONSTABLE  
3256 W. STARFIRE ROAD  
SOUTH JORDAN, UT 84095**

**PRO-SERVE PROFESSIONAL SERVICES LLC  
5258 S. PINEMONT DR., SUITE 210  
MURRAY, UT 84123**

**LARRY BRINGHURST  
47 E. 7200 S.  
SUITE 221  
MIDVALE, UT 84047 (561-4270)**

**JOHN SINDT  
47 E. 7200 S.  
SUITE 204  
MIDVALE, UT 84047 (561-4278)**