

Heigh-Ho, Heigh-Ho, It's Off to Small Claims We Go

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Small Claims: HOA – cue “Law & Order” theme (“bum bum”). Unfortunately, the inside of a courtroom is never as exciting as it is on TV, and small claims court is no exception. Going to court can be stressful, time consuming, and may not even result in a good outcome. Anyone who has been to small claims will tell you it is often a matter of luck. As Thomas Jefferson once said, “I am a great believer in luck, and I find the harder I work, the more I have of it.” The secret to succeeding in small claims is having that kind of luck.

Small claims is an informal court proceeding in which a judicial officer (a judge or an appointed attorney) hears each side of a case and issues an enforceable and binding judgment. Only a losing defendant can appeal a small claims judgment. Attorneys are not allowed to participate in these proceedings (hold your applause), but agents, including managing agents and collection agents, can appear on behalf of associations. While small claims court is an appropriate venue for many different types of disputes, the type most common for associations is assessment collection claims. Keep in mind, the maximum limit an association may sue for in small claims is \$5,000, but it can be sued for up to \$10,000. Other limitations may apply

depending on the number of other claims brought that year.

Managers should meet with the board to receive authorization to appear on behalf of the association and to be given a range of settlement authority because small claims inevitably includes being asked to step

into the hallway to discuss a resolution. Managers will need to be able to negotiate late fees, interest and costs. Finally, when you pack your bag for court, you will need three copies (for you, the hearing officer and defendant) of: (1) CC&Rs, (2) collection policy, (3) defendant’s ledger, (4) owner’s deed for the property, and (5) anything else you think is important.

If you’ve never been to small claims, it’s like any other government office: it will take a while, you’ll be shuffled around, you’ll wait in line, and you’ll get to hear people argue. You will be assigned to a particular department at a particular time, so arrive early and wait outside until the bailiff or clerk opens the doors. Don’t be late! You will be on a calendar with many other cases. If there are cases ahead of yours, pay attention to the hearing officer to see which strategies work. Part of your job is educating the hearing officer who may not be familiar with HOA law.

You will be sworn in and your testimony will be under oath, so keep your argument truthful and simple by focusing on the elements you need to prove:

1. Statement of the Case: defendant owned a unit, failed to pay assessments, and as a result owes

assessments, late charges, interest and collection costs in the amount of \$__.

2. Defendant owns/owned __, which is subject to the CC&Rs. Provide CC&Rs and cite to the assessment provisions.
3. Defendant failed to pay and owes \$__. Provide and explain the ledger.
4. Interest, late charges and collection costs owed pursuant to __ of the CC&Rs. Explain the charges and refer to the ledger.
5. Association’s collection policy defines the amount of interest and late charges. Provide a copy.
6. Assessment obligation and the consequences of the delinquency are also set forth in Civil Code § 5650(a) (b).
7. Closing Statement: Do not conclude by dropping your binder while saying “I rest my case,” or “This whole courtroom is out of order.” A modest “Thank you, your honor” will get you far.

The defendant will have an opportunity to put on a defense and cross-examine you and your evidence. Never interrupt the hearing officer or the defendant. Each case is different and you may find it useful to consult with the association’s attorney in advance of the hearing.

Small claims court can be a stressful endeavor, but that stress can be reduced by preparation, organized documents, arriving early and keeping arguments simple. By doing that, you will have all the luck you need.

ABOUT THE AUTHOR



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