


### Form 1

<b>STATEMENT OF SMALL CLAIM AND NOTICE OF TRIAL</b>		For Court Use Only. →	DOCKET NO. _____	TRIAL COURT OF MASSACHUSETTS SMALL CLAIMS SESSION	
PART 1	<input type="checkbox"/> BOSTON MUNICIPAL COURT	<input type="checkbox"/> DISTRICT COURT _____ Division	<input type="checkbox"/> HOUSING COURT _____ Division		
PART 2	PLAINTIFF'S NAME, ADDRESS, ZIP CODE AND PHONE _____ _____ PHONE NO: _____		PLAINTIFF'S ATTORNEY (if any) Name: _____ Address: _____ PHONE NO: _____ BBO NO: _____		
PART 3	DEFENDANT'S NAME, ADDRESS, ZIP CODE AND PHONE _____ _____ PHONE NO: _____		ADDITIONAL DEFENDENT (if any) Name: _____ Address: _____ PHONE NO: _____		
PART 4	<p><b>PLAINTIFF'S CLAIM.</b> The defendant owes \$ _____ plus \$ _____ court costs for the following reasons: Give the date of the event that is the basis of your claim.</p> <p>_____ _____ _____ _____ _____</p> <p style="text-align: center;">SIGNATURE OF PLAINTIFF X <span style="float: right;">DATE</span></p>				
PART 5	<p><b>MEDIATION:</b> Mediation of this claim may be available prior to trial if both parties agree to discuss the matter with a mediator, who will assist the parties in trying to resolve the dispute on mutually agreed to terms. The plaintiff must notify the court if he or she desires mediation; the defendant may consent to mediation on the trial date.</p> <p><input type="checkbox"/> The plaintiff is willing to attempt to settle this claim through court mediation.</p>				
PART 6	<p><b>MILITARY AFFIDAVIT:</b> The plaintiff states under the pains and penalties of perjury that the:</p> <p><input type="checkbox"/> above defendant(s) is (are) not serving in the military and at present live(s) or work(s) at the above address.</p> <p><input type="checkbox"/> above defendant(s) is (are) serving in the military</p> <p style="text-align: center;">x _____ DATE</p> <p style="text-align: center;">SIGNATURE OF PLAINTIFF <span style="float: right;">DATE</span></p>				
NOTICE OF TRIAL	<p><b>NOTICE TO PLAINTIFF:</b></p> <p>You have sued the above defendant in Small Claims Court. You are directed to appear for trial of this matter on the date and time noted to the right.</p> <p>You should call the court prior to the hearing date to learn whether the defendant's notice of trial was delivered and whether the defendant has filed an answer.</p> <p><b>SEE ADDITIONAL INSTRUCTIONS ON THE BACK OF THIS FORM</b></p>		<p>NAME AND ADDRESS OF COURT</p> <p>DATE AND TIME OF TRIAL</p> <p style="text-align: center;">_____ AT _____ DATE TIME</p>		<p>BOTH THE PLAINTIFF AND THE DEFENDANT MUST APPEAR AT THIS COURT ON THE DATE AND TIME SPECIFIED</p>
FIRST JUSTICE		CLERK-MAGISTRATE OR DESIGNEE		ROOM NO. _____	

INSTRUCTIONS FOR FILING A SMALL CLAIM — You must complete Parts 1-6 of this form. See instructions on reverse.  
 ATENCION: ESTE ES UN AVISO OFICIAL DE LA CORTE SI USTED NO SABE LEER INGLÈS, OBTENGA UNA TRADUCCIÒN.

## INSTRUCTIONS FOR PERSONS FILING A SMALL CLAIM — Complete Parts 1-6 on front of form.

**Part 1.** You may file your small claim only in the court for the area where either the plaintiff or the defendant lives or has a place of business or employment. A small claim against a landlord arising from the rental of an apartment may also be filed where the apartment is located. You may find it easier to enforce a decision in your favor if you file your small claim where the defendant lives or works, but you are not required to do so. The Clerk-Magistrate's office can tell you which court serves an area and the fee you must pay to file your case.

**Part 2.** The person or business filing the claim is called the plaintiff.

**Part 3.** The person or business being sued is called the defendant. If you are suing a business that is not a corporation, you should name as the defendant the owner(s) doing business under that name; the names of the owner(s) can be obtained from the City or Town Clerk where the business's offices are located. If you are suing a business that is a corporation, you must have the exact legal name. You can find this information from the Corporate Records Division of the Secretary of State's Office, One Ashburton Place, Room 1712, Boston, MA 02108 (or online at <http://corp.sec.state.ma.us/corp/corptest/corpsearchinput.asp>).

**Part 4.** Fill in the amount you are suing for and briefly explain your claim. State your claim clearly so the defendant can understand why he or she is being sued. State specifically any amounts sought for damages, for multiple damages or statutory penalties, for attorney's fees, or for costs (including the amount of the filing fee), as well as the total amount being sought, exclusive of any prejudgment interest being sought from the court pursuant to statute. If your claim arose in the course of your trade or commerce, or you are pursuing a claim for assigned debt, also state: (1) the original creditor's name (if different from yours), (2) only the last four digits of any account number assigned by the original creditor, and the amount and date of the last payment, if any. Sign your name in the space provided.

**Part 5.** Indicate if you are willing to attempt to mediate this claim.

**Part 6.** If you know the defendant's social security number, you may determine whether he or she is on active military duty online at [www.dmdc.osd.mil/scra/owa/home](http://www.dmdc.osd.mil/scra/owa/home); otherwise, you must write to the appropriate military service headquarters (which are listed at [www.defenseink.mil/faq/pis/PC09SLDR.html](http://www.defenseink.mil/faq/pis/PC09SLDR.html)). If you are unable to determine whether the defendant is on active military duty and the defendant fails to appear, the court may require you to post a bond or may issue other orders to protect the rights of the defendant if he or she is on active military duty.

Bring or mail the completed form, with all parts intact, together with a check or money order (made payable to "Clerk-Magistrate") for the filing fee, to the Clerk-Magistrate's office of the court where you are filing your case.

If your claim arose in the course of your trade or commerce, or you are pursuing a claim for assigned debt, you must also file a separate "Verification of Defendant's Address" form with your claim, certifying that you have verified the defendant's mailing address in the manner set forth in that form. If you do not do so and the defendant fails to appear, you may not obtain a default judgment and your claim will be dismissed without prejudice. (This requirement does not apply if your claim arose from leasing or renting your residential property of three or fewer units that is also your primary residence unless you also own, manage or are otherwise involved in leasing or renting other residential property.)

## INSTRUCTIONS TO THE PLAINTIFF AND THE DEFENDANT

### 1. WHAT IS A SMALL CLAIM?

The small claims court is designed to resolve smaller money claims, making it easier and less expensive for the public to use the court. The plaintiff named on the front of this form has brought a small claim against the defendant for the amount and reasons stated. Both sides must appear in court on the trial date and time shown on the front of this form unless the plaintiff and defendant settle this case before then.

### 2. HOW IS THE DEFENDANT NOTIFIED OF THIS CLAIM?

The defendant is sent a copy of this "Statement of Small Claim and Notice of Trial" by first class mail. General Laws c. 223A, § 6 usually requires that out-of-state defendants be sent their notice by certified mail with a return receipt. If the plaintiff inquires, the court will inform the plaintiff if the Postal Service has been unable to notify ("serve") the defendant.

### 3. ARE ATTORNEYS NEEDED IN SMALL CLAIMS COURT?

No, but you may hire one if you wish.

### 4. WHAT ARE "COSTS"?

If the plaintiff prevails, or if both sides settle the claim, the plaintiff may also recover from the defendant as "costs" the court filing fee and postage.

### 5. IS THE DEFENDANT REQUIRED TO FILE AN ANSWER?

The defendant is not required to file a written answer to the plaintiff's claim. However, the defendant may send a signed letter to the court, with a copy to the plaintiff, saying clearly and simply why the plaintiff should not prevail.

### 6. WHAT IF THE DEFENDANT BELIEVES THE PLAINTIFF OWES HIM OR HER MONEY?

In his or her answer or in a separate letter to the court, or on the trial date, the defendant may set forth in writing, with a copy to the plaintiff, any money claim against the plaintiff that is within the jurisdiction of the small claims court (a "counterclaim"). Both claims will be treated as one case and tried together if the defendant mails a copy of the counterclaim to the plaintiff at least ten days before the scheduled trial date, or if the magistrate orders that they be so treated. Such counterclaims are not compulsory.

### 7. WHAT IF THE DEFENDANT ADMITS OWING ALL THE MONEY?

The defendant should contact the plaintiff and arrange to make payment. If payment is not made before the trial date, both the plaintiff and defendant must appear in court or file with the court the official "Agreement for Judgment and for Payment Order" form. That form lists income sources that are exempt from any payment order.

### 8. WHAT IF THE DEFENDANT ADMITS OWING THE MONEY BUT NEEDS TIME TO PAY?

If the plaintiff and defendant agree on a proposed payment schedule, they must file with the court the official "Agreement for Judgment and for Payment Order" form. If this is not done before the trial date, both the plaintiff and defendant must appear in court on that date. The defendant must complete a "Financial Statement" form and give his or her reasons for requesting time to pay.

### 9. WHAT IF THE DEFENDANT BELIEVES HE OR SHE OWES NOTHING, OR ONLY SOME OF THE MONEY CLAIMED?

The defendant must appear in court on the trial date and will be able to question whether he or she owes money and, if so, how much.

### 10. WHAT IF I CANNOT COME TO COURT ON THE TRIAL DATE?

Call or write the person on the opposing side and ask him or her to agree to postpone ("continue") the case. Continuances should be only for a good reason, such as illness, an emergency, or the unavailability of a witness. You must write the Clerk-Magistrate of the court to ask that the court give you a continuance, whether or not you are able to reach the person on the opposing side, and whether both sides agree to a continuance or not. Do not wait until the last minute. If the other side makes a reasonable request for a continuance, it may save you some inconvenience if you agree to the request.

### 11. WHAT IF I DO NOT COME TO COURT ON THE TRIAL DAY?

If the defendant does not appear for trial and the plaintiff does appear, the court may enter a default judgment and order the defendant to pay the amount claimed. The magistrate may ask the plaintiff to present some evidence of the claim, even if the defendant is not present. If the plaintiff does not appear for trial and the defendant does appear, the court will enter a judgment for the defendant. If both the plaintiff and the defendant do not appear for trial, the claim will be dismissed.

### 12. HOW SHOULD I PREPARE FOR TRIAL?

It may be helpful to write down ahead of time the facts of the case in the order in which they occurred. This will help you organize your thoughts and make a clear presentation of your story. On the trial date, you must bring with you any witnesses, checks, bills, papers, photographs or letters that will help you prove your case. If you need a witness to come to court but the witness will not come, ask the Clerk-Magistrate's office for a witness summons which you must then arrange to have an officer deliver to the witness. You may need an expert witness to prove any matter not within common experience. The plaintiff must prove that the claim is one that the law recognizes and that the defendant is liable, or the magistrate will enter a decision for the defendant.

### 13. WHAT WILL HAPPEN ON THE DAY OF THE TRIAL?

Be sure to arrive on time. If your case is not resolved by a mediator, a trial will be held before a magistrate. The plaintiff will be asked to tell his or her side of the story, then the defendant will tell his or her side. Each will have an opportunity to ask questions of the other side and the other side's witnesses. To prevail, the law requires the plaintiff to prove the validity of his or her claim.

### 14. WHAT WILL THE MAGISTRATE DO?

The magistrate will make a decision. Notice of the decision (called a "judgment") will be given or sent to each side.

### 15. CAN I APPEAL THE MAGISTRATE'S DECISION?

By bringing a claim in small claims court, the plaintiff (and the defendant as to any counterclaim) gives up the right to have the claim decided by a jury and to appeal if he or she loses. If the defendant loses (or the plaintiff loses on any counterclaim) before the magistrate, he or she can appeal for a new trial by a judge or a jury of any disputed questions of fact, but must post a bond, unless that requirement is waived.