

Hopkins • Tschetter • Sulzer
Attorneys and Counselors at Law



Landlord News

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DEALING WITH PESKY SMALL CLAIMS COURT LAWSUITS

A resident has sued you in small claims court. What do you do? You have three options. First, you can defend yourself. Second, you can consult with us on how to defend the case, and then handle the case yourself.



Third, you can retain us to defend the case for you. You'll need to decide quickly which option you want for a host of reasons. If you want us to represent you in small claims court, a Notice of Representation has to be

filed at least seven days prior to the trial. This rule is absolute and the Courts will not make any exceptions. So, if you forward a small claims case to us less than seven days prior to trial, we will not be able to represent you.

You should evaluate several factors to determine whether you should involve us in the case. How much money is your resident or former resident suing you for? If the resident is seeking \$3,500.00 or more, you should strongly consider having an attorney represent you because the case can be defended for less than this amount. On the other hand, if the resident is seeking \$500.00, the cost of defense (attorneys' fees) will be higher than the amount sought. Normally we advise our clients to not pay more in attorney fees than the amount that the resident is claiming in their small claims case. No set dollar amount automatically dictates that you should have attorney representation. However, generally, the greater the resident's claim, the more you should lean to involving us.

The county in which you're being sued is another factor that you should consider. Various counties do not allow attorneys to fully represent their clients in a small claims case, and thus you lose many of the benefits of having an attorney represent you. For example, recently in Jefferson County we were not allowed to cross-examine any of the witnesses nor were we allowed to ask basic

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New Pool and Spa Safety Act Goes Into Effect December 19 What You Need To Know

Late last year Congress passed the Virginia Graeme Baker Act in response to the June 2002 drowning death of former Secretary of State James Baker's 7-year-old granddaughter, who was held underwater by the suction of a pool drain. This new law requires that all public pools and spas, including those located in apartment communities, must have drainage systems in place specifically designed to prevent this sort of accident from ever happening again. By December 19, or by the day of reopening if your pool is closed for the winter, all pools and spas must utilize a drainage/pumping system designed to prevent excessive suction resulting from drain blockage. This bill specifically mandates safety vacuum release systems, suction-limiting vent systems, gravity drainage systems, automatic pump shut-off systems, drain disablements or other system designs that will reduce the suction from drains.



Time is running out to get into compliance. Multi-Housing owners and providers are advised to evaluate their pool drain systems to determine if adjustments are required. Failure to comply with this law can result in substantial

civil and/or criminal penalties. If you are not sure how this law applies to you, or have any questions relating to what you will need to do to meet these new standards, call our office to discuss your situation with one of our attorneys. For additional information, detailed guidelines and new drainage design suggestions, check out the US Consumer Product Safety Commission website at www.CPSC.gov.

DEALING WITH PESKY SMALL CLAIMS COURT LAWSUITS CONTINUED FROM PAGE 1

questions. The Court allowed us to participate only in an advisory role. The court insisted that our client present the case. We were not allowed to speak. When a court adopts and enforces a policy to discourage attorney representation on small claims cases, you are better off if you're not represented by an attorney.

In this type of situation, if the client would have retained us to only to consult with us about the case, the client would have saved a considerable amount of attorneys' fees and been in the same situation. Even if a small claims court will let us fully participate, often an hour of consultation with us will meet your needs. The case isn't complicated. You just need a legal analysis, and advice about how to present the case. The consultation is billed hourly, and provides you with face-to-face attorney time for reviewing all of your documents and equipping you with the legal expertise to defend your case. This option is excellent for the smaller amount cases because your attorneys' fees will be nominal. Overall, this option is also appropriate either for clients who want to handle the case themselves, or for courts that severely limit the advantages of having an attorney.

Frequently, small claims cases involve resident files that have already been placed with a collection agency. If you are sued in small claims court, you should always first determine if the file is at a collection agency. If a small claims case involves a collection agency file, you should promptly contact the collection agency and determine if the collection agency is going to handle the small claims case. Most collection agencies will not handle a small claims trial. If the file has been placed with a collection agency, and the collection agency isn't going to handle the small claims case, you should recall the file from the collection agency. You should always recall the file in writing, and issue clear instructions to the collection agency to cease any efforts to collect the debt. You should order the collection agency to cease collecting the debt because the debt will now become a counterclaim in the small claims case. You should bring the resident's balance as a counterclaim in the small claims case to resolve all legal issues with the former resident in one case.

Regardless of attorney involvement, you should also always determine whether you should object to the small claims magistrate. Magistrates preside over all small



claims courts, unless an Objection to Magistrate is filed. Pursuant to Colorado statute, you have the right to have any case heard by a judge. Similar to the Notice of Representation, you must file an Objection to the Magistrate at least seven days prior to trial. Whether to object to the magistrate is a key decision. Pro-tenant bias is a clear reason to object. Unfortunately, some small claims magistrates are notoriously known for being pro-tenant. We've heard story after story of how small claims magistrates disregard the law to somehow find for the tenant. One story clearly comes to mind; the Landlord sent the tenant



a security deposit disposition within the sixty-day requirement of the lease. However, the magistrate found that since the lease had gone month-to-month the Landlord was required to send the disposition within thirty

days, even though the lease stated that the original lease provisions were still in effect. Small Claims magistrates are frequently moved around. If you are unfamiliar with the reputation of a particular magistrate in a jurisdiction, contact us.

Ted Nugent would love small claims because it's usually a free-for-all. The resident tells their story. You tell your story. Almost all documents are admitted into evidence. The only evidence rule enforced in small claims is relevance. However, there is no guarantee that a small claims court will enforce the rule, or keep out irrelevant evidence. Similar to magistrates, judges hearing small claims cases are inconsistent at best. The law is clear. Even if a judge hears a small claims case, the small claims' rules of evidence apply. Again, these rules are extremely informal. However, some judges take the position that when you request a judge, the county court rules of evidence apply. If the county court rules apply, you need to meet technical legal requirements to get evidence admitted.

Because small claims court is a gamble with no reliable or predictable results, always seriously evaluate settlement, especially on lower dollar cases. Your time, and your staff's time are valuable. The golden advantage of settling is certainty. You'll have no idea how the small claims roulette will turn out. If you settle, at least you know what you get. If you can get the resident to drop his case in exchange for you dropping your collection action against him, you might be better off in some cases. You should always consider dollar amount and collectability in deciding to settle a small claims case. Lower dollar amounts owed by a resident or non-collectability (regardless of amount owed) are both strong indicators that you should settle the small claims case.

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**DEALING WITH PESKY SMALL CLAIMS COURT LAWSUITS
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If you are going to trial on your own (Hans Solo), you need to evaluate your evidence and the strongest way to present your evidence. Even in small claims court, third party (e.g. vendor) witnesses always carry more weight than you do. For example, the contractor who replaced the lawn generally will have more credibility than you. If a witness is going to testify, you should always take full advantage of the witness's expertise and their personal knowledge of the facts. The landscape guy should testify about the cost of the lawn replacement and provide his

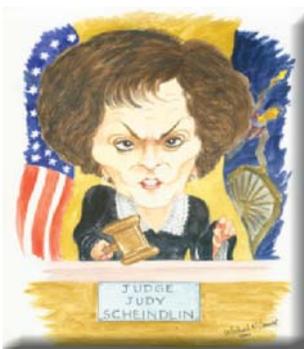


expert opinion that the lawn needed to be replaced. Before and after pictures carry significant weight, i.e. the beautiful green lawn when the tenants moved in versus the brown lawn scattered

with weeds when the tenants moved out. Some courts won't award damages based on estimates because you're not out-of-pocket yet. Receipts and invoices with proof of payment are always the strongest and safest evidence of actual out-of-pocket damages.

Be realistic about your damages. If you overreach, even on some damages, you can substantially damage your credibility on all damages. If your carpet is 10 years old, you won't get full replacement value (likely nothing) even if the resident caused huge stains. If the resident's dog or cat peed all over the carpet and destroyed it, you should always preserve and bring a small carpet sample to bolster your photos. Similarly, if your tenant lived in the property for four years, the Court is not likely to award painting damages even if the tenant's kids used the wall as their personal canvas. Small claims courts rarely award damages for your time and effort (labor). Thus, you're not going to get damages for the time your son spent watering the lawn to try to save it, especially if you didn't pay him. In our experience, you will almost never get the full amount you are asking for from a former resident in small claims court. Keep this in mind when evaluating your settlement position.

Small claims court is similar to Judge Judy or the People's court with Judge Marilyn Milian. It's not the Microsoft Anti-Trust Trial. Each side tells their story. Both sides show the court their documentary or physical evidence. Depending on the Court, the judge or magistrate will allow each party to ask the other party questions. Some Courts will only allow a narrative from each side, with the magistrate or judge



asking all of the questions. After hearing each side and looking at each side's documents, the Court determines the winner. This is the whole shooting match.

To recap, you can increase your chances of winning in small claims court in a number of ways. First, promptly evaluate your options. Don't wait until the last minute to decide if you want an attorney involved, or to object to the magistrate. If you delay, you are likely to blow the deadlines for exercising these options. Second, be realistic in evaluating whether it's worth fighting in the first place, and what you are likely to win if you prevail.



Your time is valuable. If the case doesn't involve a lot of money or if the resident isn't collectable, the winning move may be to settle. Realistically evaluate your damages when deciding to settle. Third, if you are going to fight, make sure that you don't bring a knife to a gunfight. Make sure that you have the necessary documents and witnesses to present to the Court. Always remember that we are here to assist you in evaluating your small claims problems.

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FED Filing Deadlines - December 2008

All notices received by 10:30am on the date specified will be filed for the corresponding court date.

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
1 Court Date: 12/8/08 Adams Denver Douglas El Paso	2 Court Date: 12/9/08 Arapahoe Broomfield Jefferson Weld	3 Court Date: 12/10/08 Adams Denver Douglas	4 Court Date: 12/11/08 Arapahoe Broomfield Denver El Paso Jefferson	5 Court Date: 12/12/08 Adams Arapahoe Boulder Fort Collins Loveland
8 Court Date: 12/15/08 Adams Denver Douglas El Paso	9 Court Date: 12/16/08 Arapahoe Broomfield Jefferson Weld	10 Court Date: 12/17/08 Adams Denver Douglas	11 Court Date: 12/18/08 Arapahoe Broomfield Denver El Paso Jefferson	12 Court Date: 12/19/08 Adams Arapahoe Boulder Fort Collins Loveland
15 Court Date: 12/22/08 Adams Denver Douglas El Paso	16 Court Date: 12/23/08 Arapahoe Broomfield Jefferson Weld	17 Court Date: 12/24/08 Adams Denver Douglas	18	19 Court Date: 12/29/08 Adams Denver El Paso
22 Court Date: 12/30/08 Arapahoe Broomfield Jefferson Weld	23 Court Date: 12/31/08 Adams Denver	24 Court Date: 1/2/09 Adams Arapahoe Boulder Fort Collins Loveland	25 Christmas Day - Courts Closed	26 Office Closed
29 Court Date: 1/6/09 Arapahoe Broomfield Jefferson Weld	30 Court Date: 1/7/09 Adams Denver Douglas	31 Court Date: 1/8/09 Arapahoe Broomfield Denver El Paso Jefferson		

IMPORTANT HTS DECEMBER DATES

December 5th - Client Holiday Party
HTS 2821 S. Parker Rd
4:30 p.m. - 7:30 p.m.

December 11th - Colo. Springs Client Holiday Party
Bella Springs - 1050 Milano Pt.
4:30 p.m. - 7:30 p.m.

December 25th - **ALL COURTS CLOSED**

December 25th-26th - **HTS CLOSED**

January 1st - **ALL COURTS CLOSED**
HTS CLOSED

Last Reminder To RSVP
For The HTS Client Holiday Party
December 5th - 4:30-7:30

Mike@htspc.com or Mike - 303-699-3484



LESSONS LEARNED FROM SANTA HO! HO! HO!

1. Dress in colorful clothing
2. Lose the girdle
3. See the world
4. Let others do the heavy lifting
5. Keep working, if only part time
6. You can look vibrant on a diet of cookies and milk
7. Enjoy the company of children
8. Be flattered when people impersonate you
9. Give more than you receive
10. You don't need GPS when tracked by NORAD
11. Treat all people nicely
12. Spread peace and goodwill
14. Wear a suit that repels soot
15. Don't visit a library wearing bells on your shoes
16. Laugh frequently and loudly

The HTS Team Extends To All Clients

Our Very Best Wishes
For A Happy Holiday Season
and
A Joyous And Prosperous
New Year



We Appreciate And Thank You For Your Support