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DISCLAIMER: The law is constantly changing and there may be times when the information provided in this packet 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.

Small Claims & Justice Court Suits

Filing a Small Claims or Justice Court Suit: Please read this packet completely before filing your suit. Legal advice can only be obtained from an attorney. Our Court Clerks are trained in procedure only, and cannot give any legal advice. This is for the clerk's protection as well as your own. The following procedural instructions are the only information you will receive from this office. You may need to consult an attorney to protect your interests.

There are two civil forums over which the Justice of the Peace presides: Small Claims and Justice Court. Some types of cases may be filed in either forum, while others are restricted to a certain forum. There are other similarities and differences that you should consider prior to filing suit.

THE TEXAS STATUTES

The Texas Statutes are available on-line at <http://www.capitol.state.tx.us/statutes/statutes.html>

VENUE

A suit should be filed in the County and Precinct where one or more Defendants reside. (CPRC 15.082). However, there are exceptions to this rule.

JURISDICTION

A **Justice Court Suit** is a civil suit for money damages, possession of real property, and enforcement of liens on personal property. The amount of controversy must total \$10,000 or *less*, interest excluded.

A **Small Claims Court Suit** is a civil suit for money damages only (you may not recover personal property). The amount in controversy must total \$10,000 or *less*, interest included.

DAMAGES

The amount of money you are suing for is called "damage". The amount of damage sought must be supported by evidence. *A plaintiff may not diminish the amount of the underlying claim in order to maintain a suit in the Justice Court or Small Claims Court!* For example, if a Plaintiff states that the suit is for "\$10,000" and the evidence shows that the damages are actually greater than \$10,000, the Court loses jurisdiction of the case, and the lawsuit **must** be dismissed and refilled in a court of competent jurisdiction. Additionally, a Plaintiff cannot tell the Court that damages are greater than \$10,000, but the Plaintiff is willing to "settle for less".

Introduction

This information is furnished to provide basic information relative to the law governing civil actions brought in the Precinct 4, Waller County Justice Court. The Waller County Justice of the Peace and the Clerks of the Waller County Justice of the Peace Court are not allowed to give legal advice. You are urged to review the applicable laws and to consult an attorney of your choice for further information or answers to specific legal questions.

About the Justice Court

Creation and Jurisdiction

The Justice Courts in Texas are created under Chapter 27 of the Texas Government Code. Justice Courts have jurisdiction of civil matters in which the amount in controversy is not more than \$10,000, exclusive of interest. Justice courts also have jurisdiction of suits relating to enforcement of deed restrictions of a residential subdivision that does not concern a structural change to a dwelling.

The Justice Court also has jurisdiction of Eviction Cases.

Justice Courts **do not** have jurisdiction of suits for divorce, suits to recover damages for slander or defamation, suits for title of land, or suits to enforce a lien on land.

Jurisdiction is the power of the court to entertain an action, consider the merits, and render a valid judgment.

Rules of Procedure and Evidence

Rules 523, et seq of the Texas Rules of Civil Procedure govern procedures in the Justice Courts. All rules governing the district and county courts also govern the Justice Courts insofar as they can be applied, except where otherwise specifically provided by law. *Rule 523, Texas Rules of Civil Procedure.*

The Texas Rules of Evidence govern civil proceedings in the Justice Courts. *Rule 101, Texas Rules of Evidence.*

If you are representing yourself in the Justice Court, you will be required to follow the Texas Rules of Civil Procedure and the Texas Rules of Evidence.

About the Small Claims Court

Creation

The Small Claims Court in Texas is created under Chapter 28 of the Texas Government code. It has concurrent jurisdiction with the Justice Court in actions by any person for the recovery of money in which amount involved, exclusive of costs, does not exceed \$10,000. Jurisdiction is the power of the court to entertain an action, consider the merits, and render a valid judgment.

Presiding Judge

Each Justice of the Peace sits as the judge of the Small Claims Court.

Persons Not Allowed to Bring Claims in Small Claims Court

In general, an assignee, a money lender, and a collection agent may not bring an action in the Small Claims Court.

An assignee of a claim or any other person seeking to bring an action on a claim which has been assigned is prohibited from seeking relief in the Small Claims Court.

A person who is primarily engaged in the business of lending money with interest may not file a claim in the Small Claims Court.

A collection agency or a collection agent is also prohibited from bringing an action in the Small Claims Court.

Texas Government Code.

Sec. 28.003. JURISDICTION. (a) The small claims court has concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed \$10,000.

(b) An action may not be brought in small claims court by:

- (1) an assignee of the claim or other person seeking to bring an action on an assigned claim;
- (2) a person primarily engaged in the business of lending money at interest; or
- (3) a collection agency or collection agent.

(c) A person may be represented by an attorney in small claims court.

(d) This section does not prevent a legal heir from bringing an action on a claim or account otherwise within the jurisdiction of the court.

(e) A corporation need not be represented by an attorney in small claims court.

Representation

In the Small Claims Court, a person may represent himself or herself, and may, if he or she so chooses, be represented by an attorney. See *Section 28.012, Texas Government Code*.

A corporation does not have to be represented by an attorney in the Small Claims Court. See *Section 28.003, Texas Government Code*.

COMPARISON OF SMALL CLAIMS AND JUSTICE COURT CIVIL SUITS

TOPIC	JUSTICE COURT	SMALL CLAIMS COURT
Jurisdiction Amount	\$10,000 exclusive of interest (GC 27.031); inclusive of attorney fees; exclusive of court costs	\$10,000 (interest included) (GC 28.093); inclusive of attorney fees; exclusive of court costs (GC 28.00)
Type of Case	Allowed	Allowed
	(a) Civil matter within jurisdictional limit (b) Forcible Entry & Detainer (evictions) (c) Foreclosure of mortgage and enforcement of lien on personal property	Action for recovery of money only.
	Prohibited	Prohibited
	(a) Suit by state to recover penalty, forfeiture or escheat (b) Person primarily engaged in business of loaning money with interest (c) Slander and defamation suits (d) Suit for trial of title of land (e) Foreclosure of lien on land	(a) by assignee of claim (b) Divorce (c) Collection agency or agents
Filing Fee	\$17.00 plus cost of service	\$12.00 plus cost of service
Venue	CPRC 15.082 to 15.100 Generally in county and precinct where one or more defendants reside	GC 28.011 Generally in county and precinct where one or more defendants reside or where defendant has contracted to perform
Pleadings	May be oral or written for petition and answer; all other pleadings must be formal (TRC 525)	Petition must be sworn (GC 28.012); all other pleadings may be informal (GC 28.033) except motion to change venue (GC 28.014)
Writ of Attachment	Yes	No
Writ of Execution	Yes	Yes
Writ of Garnishment	Yes	Yes
Writ of Sequestration	Yes	No
Attorneys	Must appear for a corporation May appear for individual	May appear for corporation; not required (GC 28.031); May appear for individual
Duty of Judge	Uphold and enforce the constitution and laws of the State of Texas	(1) To develop facts of the case; (2) May question or summons witnesses
Continuance	After motion and hearing (TRC 251-254)	Only for good cause shown (GC 28.032)
Discovery	Yes	Limited, with prior court approval (GC 28.033)
Jury Trial	Yes	Yes
Trial and Hearings	Formal; must follow Rules of Evidence and informal Rules of Civil Procedure	Informal
Rules of Evidence	Apply	Do not apply
Appeal	Yes	Yes, if in excess of \$20
GC = Government Code TRC = Texas Rules of Court CPRC = Civil Practice and Remedies Code		

VENUE IN JUSTICE COURT SUITS

Does not apply to Small Claims Suits
All references in parentheses are to Texas Civil Practice and Remedies Code

General Rule (15.082)	County and Precinct where one or more of the defendants reside
Suit for Rent (15.091)	Precinct in which all or part of the property is located
Suit of a Contract (15.092)	(a) Suit on a written contract that promises performance may be brought in the precinct where the labor was to be performed (b) Suit on an oral or written contract for labor actually performed may be brought in the precinct where the labor was actually performed (c) Suit on a contract for goods, services or loans for personal, family or household use may be brought where the contract was signed or where the defendant resides
Suit on a Tort (15.093)	Tort suit for damages may be brought in the county and precinct in which the injury was inflicted
Suit against a corporation or association (15.094)	Precinct (a) where all or part of the cause of action arose; (b) where the corporation has an agency or representative or (c) where the principal office is located
Insurance Companies (15.096)	Precinct in which all or part of the insured property is located in the case of a property claim. Precinct in which the injured person resides when the injury occurred.

VENUE IN SMALL CLAIMS COURT SUITS

Does not apply to justice Court Suits
All references are to Texas Government Code 28.011

General Rule	County and Precinct where the defendant resides
Suit for Contract	On an obligation which the defendant has contracted to perform in a certain county may be brought in that county