

SMALL CLAIMS COURT



HOW TO RESOLVE DISPUTES

- ▶ RPA requires mediation before arbitration/court (RPA Paragraph 22)
- ▶ Mediation not required if claim is subject to small claims court



COMMON SMALL CLAIMS COURT DISPUTES (BUYER-SELLER)



- ▶ Buyer demands return of deposit after cancelling for failure to get loan during contingency period
- ▶ Seller demands release of deposit if buyer cancels after removing all contingencies
- ▶ Buyer demands seller pay for improperly done repairs
- ▶ Buyer demands seller pay if property not as represented
- ▶ Other examples

COMMON SMALL CLAIMS COURT DISPUTES (BROKER-PRINCIPAL)

- ▶ Broker (not Agent) demands commission after property sells, if Seller revokes compensation instruction
- ▶ Broker (not Agent) demands compensation if Seller withdraws property during terms of listing
- ▶ Broker (not Agent) demands compensation if after expiration of listing Seller sells to Buyer named on Notice of Prospective Buyers (C.A.R. Form NPB), when timely provided to Seller

SMALL CLAIMS DOLLAR LIMIT



- ▶ Individuals, claim does not exceed \$10,000
- ▶ Others (corporations or LLCs), claims not exceeding \$5,000
- ▶ Multiple filers are limited to two claims above \$2,500. All filings thereafter must be \$2,500 or below

FINAL DECISION OF SMALL CLAIMS COURT

- ▶ Plaintiff-The person filing the claim
 - ▶ Cannot appeal the decision
- ▶ Defendant-The person being sued
 - ▶ Can appeal the decision, which results in a new trial in the Superior Court
 - ▶ The decision of the Superior Court of an appeal of a small claims decision is not appealable

INVOLVEMENT OF ATTORNEYS IN SMALL CLAIMS COURT

- ▶ Neither party may be represented by an attorney
- ▶ Attorneys may give advice before a small claims hearing
- ▶ Attorneys may represent a party in an appeal



COSTS, TIMING AND SERVICE

- ▶ Small claims filing fees range from \$30 to \$75 dollars for those only filing no more than one claim per year
- ▶ Small claims hearing can be scheduled anywhere between 20 and 70 days after filing with the court
- ▶ Plaintiff must serve the defendant within California with the lawsuit at least 15 days prior to the hearing date and 20 days prior if the defendant is out of the county



FICTITIOUS BUSINESS NAMES (FBN)



- ▶ Plaintiff can file under a fictitious business name if the name complies with FBN laws
- ▶ If Defendant is served as a FBN, the court shall ask for Defendant's actual legal name. Plaintiff can ask the court to, or the court on its own may, amend a claim or judgment to include Defendant's correct legal or business name

UNIQUE PLAINTIFFS AND DEFENDANTS

- ▶ Out-of-State Defendants
 - ▶ Defendant living out of California can be served if the claim relates to property owned in California by the out-of-State owner
- ▶ Property Managers
 - ▶ A property manager may appear for a property owner for claims related to the managed property

PRESENTING THE CASE

- ▶ Plaintiffs and defendants will be given time to argue their case
- ▶ Time is likely to be limited--small claims courts are busy!
- ▶ Be prepared with supporting documents such as the contract, contingency removal forms, inspection reports, seller disclosures, estimates and invoices, and even witnesses



MORE INFORMATION

C.A.R. Legal Q&A, “Small Claims Court”

<https://www.car.org/riskmanagement/qa/miscellaneous-folder/small-claims-court>

C.A.R. Small Claims Court Assistance Manual for REALTORS® and Their Clients

<https://www.car.org/legal/recasesandresources/SmallClaimsCourt>