

your LAW

SUMMER 2010

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Understanding Small Claims Court

Small-claims court is an informal and relatively inexpensive forum for resolving certain types of small disputes, but it certainly isn't right for *every* small dispute. So how do you decide when it is right for you? And even before that, what exactly is it?

What Are Small-Claims Courts?

Small-claims courts are usually part of the state court system; since state court systems set their own rules, the exact procedures and policies differ from state to state. In most, individuals can sue only to collect money—you can't ask a small-claims court to force your opponent to take any other action, such as perform a certain act like taking down a fence that crosses a property line. And as the term "small claims" implies, people can only bring cases worth a limited amount of money to small-claims court.

You do not necessarily need to hire a lawyer to bring a case in small-claims court. In fact, some states do not allow a lawyer to accompany you. But that does not mean your trip to small-claims court will be a breeze or that you should not consult an attorney first. By acting as your

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Health-Care Reform— Staying in the Know

Throughout the first part of this year, it would have been difficult to pick up a newspaper or turn on the television without seeing or hearing something about health-care reform. Regardless of whether you were a health-care reform supporter, opponent, or agnostic, you should be aware of some important legal rights and responsibilities as the law goes into effect.

Perhaps the biggest, most obvious change will be that after the legislation takes full effect more individuals will *have* health-care coverage. This will include the tens of millions who currently are uninsured. This expanded coverage will come in many forms and apply to many different groups of people. For example, Medicaid coverage will be expanded to include certain low-income workers who currently don't qualify. Additionally, insurance

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Avoiding the Deep End: Your Swimming Pool and the Law

Your backyard swimming pool may be the highlight of your neighborhood's summer, but it is also a very real danger. According to the U.S. Consumer Product Safety Commission, 260 children under the age of five drown in swimming pools each year. Of course, there are some commonsense steps you can take to protect your family and friends, including erecting a fence at least 4-feet high around the pool, keeping a careful watch on children in your yard, and keeping rescue equipment and a phone nearby. However, the law also plays an important role in defining what you must do to protect yourself from legal and financial liability.

Legally, pool owners are responsible for what happens in their pools. In order to fulfill your legal duty, you must do your best to provide a safe environment and know what to do should an accident occur. If something were to happen, you could be held liable for money damages on a legal theory of negligence. Negligence is the idea that although accidents and injuries sometimes just happen, with no one intending to cause them, doctors' bills, lost wages, and emotional losses still need to be covered. Under the law of negligence, the person who caused the injuries can be held responsible even if he or she never intended any harm. If a pool accident were to occur under theory of negligence, a court will look to a variety of factors to determine the owner's liability. These include the likelihood that such an injury was to occur, the steps the homeowner took to avoid the injury, and how much of a burden it would have been on the home owner to totally avoid the circumstances resulting in the injury. Because pools are what the law calls "attractive nuisances," you likely will be held to a higher standard of care than under the traditional theory of negligence. The doctrine of attractive nuisances says that if there is access to a dangerous part of your property, including a swimming pool, it is your responsibility to erect barriers and take other safety precautions to protect children who may access your property, even without your knowledge.

Local Standards

Additionally, many states have specific statutes requiring protective measures around a swimming pool; for example, a certain height of fence or a certain type of gate. Failure to adhere to these safety standards would probably make you liable in case of an accident. Check with your local building officials or your attorney to determine the laws in your area—and make sure you obey them.

To fulfill your legal duty, you must do your best to provide a safe environment and know what to do should an accident occur.

In deciding which safety procedures to take, don't simply rely on "swim at your own risk" signs. Such signs likely won't be enough to make you immune from legal liability. Even trespassers, particularly children, may have a case against you should they be injured in your pool, regardless of the signs you have hung.

Homeowners' Insurance

Even if you take every precaution and follow your legal responsibilities to a tee, there is still a chance an accident could happen and you could be held legally liable simply because you are the pool owner. Should this happen, your homeowners' insurance policy should be your financial safety net. Broadly speaking, your homeowners' insurance policy should cover the repair or replacement of your house and belongings in the event of some damage, for example, a pipe bursting, but also monetary damages associated with a legal claim or judgment against you for injuries people suffer in your home or on your property. How much the insurer pays will depend, of course, on the limits of your policy, which in turn depends on how much you've paid in premiums.

Umbrella Policies

Umbrella liability policies, sometimes called a "personal excess liability" policies, protect you in case of a big judgment that would quickly eat up your regular policy coverage. People usually determine their need for umbrella liability coverage not so much by how many hazards there are on their property but by the assets they have to protect. After all, the wealthier you are, the more you have to lose if someone is injured on your property. You should consult with your insurance agent or attorney for help in deciding what type and amount of coverage is best for you.

It's summer; you should be spending your time relaxing and enjoying the sun and warm weather with your family and friends. This isn't the time of year you want to spend worrying about your legal liability, your insurance policies, and the appropriate safety precautions you should be taking. However, if you have a pool in your backyard, don't let these issues go to the back of your mind simply because the temperature rises; when it comes to pool safety and liability, the old Benjamin Franklin quote applies: an ounce of prevention is worth a pound of cure. ✕

Making Sure Your Advertising Doesn't Buy You a Lawsuit

If you are a small-business owner, you know how important advertising is when it comes to getting customers through your door. However, advertising can also have some pitfalls, particularly if you aren't aware of the legal implications at play. In recent years, many states and localities have stepped up efforts to protect consumers of commercial advertising. Consequently, now more than ever it pays to understand the legal environment before embarking on an advertising campaign.

Unintended Contracts

One worry you might have is inadvertently making a contract through an ad. If you have made a contract and your product doesn't deliver on its promise, you might have a breach-of-contract suit on your hands. Suppose your store advertises that it will give a free gift or a special discount to "the first one hundred customers" or to a person who has made some other special effort. If so, you have made an offer to your potential customers. A customer can accept your offer by making the special effort successfully. This could constitute "consideration" and result in a binding contract. Although advertisements are rarely the basis of contracts, a contract can be formed when there is an offer, acceptance, and the exchange of something of value, or "consideration." Store advertisements usually do not meet the requirements of an offer. The law, perhaps somewhat artificially, classifies them as "invitations to bargain." But there are exceptions to this.

A major department store got into hot water many years ago by carelessly advertising, "Be among the first thousand shoppers at our store tomorrow to win a \$1,000 shopping spree." The wording suggested to some people that all one thousand would win—a million-dollar proposition for the store. On the other hand, simply highlighting an upcoming sale or announcing the offering of a new service would not cause such problems and would allow you to keep the risk of an inadvertent contract on the back shelf of your worry closet.



False Advertising

False or deceptive advertising has legal implications beyond contract law and is forbidden under federal law and in most states, notably under the consumer fraud laws. According to the law dealing with false or deceptive advertising, your intent isn't important. The overall impression conveyed by your ad is what counts. False or deceptive advertising may mislead a consumer about a product's place of origin, nature or quality, or maker. The product being advertised can be property, services, or even credit.

An example of creating a misleading impression about a product's place of origin would be putting French labels on sweaters made in Arkansas. Similarly, promising first-quality socks and delivering irregulars or seconds is creating a misleading

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impression about an item's nature or quality. Claiming a cheap counterfeit watch as a Rolex is creating a misleading impression as to its maker. As for services, false advertising might lead consumers into thinking that someone has qualifications (such as being a master carpenter) that he or she actually does not have.

On the other hand, it's okay for an advertiser to claim that it makes the "best tasting" fried chicken on the market. In the law, this kind of claim is called *puffing*—

that is, an exaggerated sales talk or statement of opinion that is unlikely to be mistaken for an enforceable promise. However, it might be deceptive advertising to portray an item in a way that suggests performance far beyond reality. And if a spark plug ad says the plugs will last 50,000 miles and they routinely fail early on, the advertisement was probably misleading.

Complaints about deceptive ads could land you in hot water with state or local consumer-protection offices, the state attorney general's office, or the National Advertising Division of the Council of Better Business Bureaus. Another advertising watchdog out there is the Federal Trade Commission, though it typically gets involved only in national or multistate ad campaigns. If a customer has complained about your advertising, or if you have any questions, talk to your attorney; you may even want to schedule regular check-ins with your attorney to review your advertising plans. **X**

Here's a checklist to keep in mind when creating your advertisements

- Be careful of factual claims: It's one thing to puff your product—no one can really prove it isn't the "best." It's another thing to make a claim that can be disproved.
- Be doubly careful of claims you're making about the competition's product: You can try to disparage it, but be sure you have your facts in line before you do—your competitor has every incentive to dispute you, perhaps in court.
- Be clear about whatever offers you're making—don't accidentally mislead about price, special offers, "free" gifts, or other special promotions.
- Don't be caught in the bait-and-switch trap—make sure you have enough of the sale item you're offering and that your salespeople know to offer rain checks if you run out.



own advocate in small-claims court, you may need to research, gather documents, and investigate factual matters to prepare and present your case clearly and concisely. Your attorney can help you determine which documents and forms you will need.

Small-claims court procedures are similar to those of regular courts, only less formal. The person initiating the lawsuit (the plaintiff) is generally required to file a complaint against the party from whom he or she seeks money. A judge or clerk will then set a date for a hearing, and the person being sued (the defendant) must be notified. At the hearing, both sides have

a chance to present their version of the story and produce evidence to help support their arguments. After both sides have presented evidence, the judge will make a decision and either deliver it to the parties on the spot or mail it to them soon afterward.

Is Small Claims Right for You?

Every state has an upper limit on the amount of money that can be sought in small-claims courts. Typically the limit is between \$2,000 and \$7,000, but in some states it is as high as \$15,000. In order to find out the applicable limits in your state, contact the small-claims clerk of your local court. Most states also provide this information online.

Common matters handled in small-claims court include disputes involving debt and repayments of loans, breach or cancellation of contracts, minor personal injuries, breach of warranty (for example, when a purchased product is defective or not as advertised), property damage, evictions, and failure to return borrowed property.

On the other hand, there are some types of cases that can never be brought in small-claims court. These include: criminal matters; divorce proceedings; bankruptcy filings; name change requests; and any kind of law suit against a state, the federal government, or a federal agency.

Explore Your Other Options

You have other options for resolving your disputes besides small-claims court. It is important to understand that it might not always be in your best interest to resolve a matter in small-claims court. In particular, you may want to consider whether

Small-claims court procedures are similar to those of regular courts, only less formal.

you want your financial dispute discussed in public, how the case might affect your reputation, and how the small-claims process may affect future opportunities for you and the other side to work together. Other options for dealing with smaller disputes include simply calling, writing, and meeting with the other side to work out a solution, mediation, arbitration, and traditional lawsuits.

You may want to specifically ask your local small-claims court clerk to help with mediation. Mediation of a small-claims case is mandatory in some areas of the country. In others, it is easily accessible on a voluntary basis, either right in the courthouse or at a nearby community center. You can contact a mediation center to enlist its help in bringing the other party to the table.

Of course, if you have any questions about how things will play out in small-claims court or about whether small-claims court is even the right option for you, you shouldn't hesitate to talk to your attorney to assess your possible paths. **✎**

You should be aware of some important legal rights and responsibilities as the law goes into effect.

companies will not be able to deny coverage for preexisting conditions or drop customers when they become sick. More young adults will be covered, and under the new federal law, children can now remain on their parents' health insurance coverage until the age of 26.

Of course, with increased benefits come increased responsibilities and obligations. Your employer, or you (if you are a mid-sized-business owner), will have increased obligations to offer health-insurance coverage to employees. Under the law, employers with 50 employees or more will be penalized if they don't offer coverage or if a number of employees obtain subsidies to buy insurance.

The new health-care-reform legislation includes a number of other major changes, including increased coverage for certain categories of individuals and increased financial and personal responsibilities for other categories of individuals. For example, by 2014 most Americans will be required to carry a minimum level of health insurance or they will have to pay a penalty. Of course, there are also some exceptions to this requirement for those who can show a religious belief that would contradict obtaining health-care coverage or who can show financial hardship.

Finally, the government too will now have additional responsibilities—for example, the federal government will now need to define the minimum level of benefits insurance companies must offer.

Below are some trustworthy online resources that belong in your browser's bookmarks. By checking these sites periodically as the law goes into effect and the final implementation strategies are hammered out, you can be assured you won't be caught unaware of your new rights and responsibilities.

- the American Medical Association www.ama-assn.org/ama/pub/health-system-reform/faq.shtml
- the White House www.whitehouse.gov; click on link for "Health Reform"
- the Kaiser Family Foundation www.kff.org

If you are currently worried about your health-care coverage or have any concerns about the steps your insurance provider is taking, do not hesitate to talk to your attorney or your state's attorney general's office. **✎**