

Now That You're Being Sued

by Perry Safran and Douglas McClanahan



Most builders direct a great deal of time and energy toward avoiding disputes. They prepare accurate cost estimates to eliminate budget problems and plan realistic project schedules to meet client expectations. And they craft their contracts carefully, trying to foresee every eventuality. In fact, most builders focus so completely on avoiding litigation that when a lawsuit finally comes along, they find themselves on completely unfamiliar ground.

A lawsuit can be frightening and confusing when you don't know what to expect. But all civil lawsuits follow the same steps in the same order. The details can be complicated, but the general procedure is straightforward. To help sort out the initial stages of a civil lawsuit, consider the following hypothetical situation.

The complaint. A builder named Dan buys some construction materials from Paul, but never pays for them. Paul explains what happened to his lawyer, who drafts a complaint, and files it in court. A complaint is a formal way for Paul to tell the court that he has been wronged and deserves damages. In this case, Paul's complaint says that Dan breached their contract for building materials by not paying. The damages Paul wants are the cost of the materials — say, \$5,000 — plus interest.

Service. After filing the complaint, Paul's lawyer sends a copy to Dan, usually via the sheriff, certified mail, or a process server, depending on the state. This is called "service" or "summons." Like a subpoena to a nonparty in a lawsuit, a summons establishes jurisdiction over the defendant in a lawsuit. Once served, Dan must "answer," or respond, within a specific period of time. Most states allow defendants 30 days to answer, but in federal court and some states, defendants have only 20 days.

The answer. After being served with the complaint, Dan answers,

claiming that he didn't pay Paul because Paul owed him a personal debt. The answer is a formal document that must include the signature and address of Dan or his attorney. In federal court, Dan would also have to file a "notice of receipt of summons," which says that he received the complaint.

It's important that Dan file an answer within the deadline. If Dan forgets to answer, or doesn't answer in time, Paul may get a *default judgment*. A default judgment means Paul automatically wins because Dan didn't respond. In fact, in a default judgment, all allegations in the complaint are deemed to be true, even if they're false. For instance, if Paul's complaint claimed that Dan owed him \$8,000 (instead of the \$5,000 actually owed),

**In a default judgment,
all allegations in the
complaint are deemed
to be true, even if
they're false**

and Dan failed to answer, the default judgment would award Paul \$8,000. A default judgment can be overturned, but it is much easier (and cheaper) either to answer on time, or to ask the clerk of court to extend the time to answer.

Courts are very strict about time limits. To compute the deadline for an answer, Dan should begin counting days from the time he was served, including weekends and legal holidays (day one is the day after the summons arrived). If the last day is on a weekend or legal holiday, the answer is due the next working day.

Countersuits. In his answer, Dan may begin a countersuit against Paul, or bring a suit against a third party. A countersuit might claim that Paul did

not deliver the materials at the agreed-upon time. Or Dan may bring a third-party suit against the delivery company, claiming that he paid the driver, who then failed to pay Paul.

Dan may also answer with *affirmative defenses*. Affirmative defenses are claims that, if true, mean that the person who brought the complaint cannot win. For example, Dan might answer that the time for bringing a lawsuit (the statute of limitations) has expired. The courts are also very strict about affirmative defenses. Failure to include a particular affirmative defense in an answer may cause a person to lose that defense at later stages of the lawsuit. In other words, you only get one shot: If you don't include an affirmative defense in the answer, you can't bring it up later.

Dan may also include other "motions" in his answer. A *motion to dismiss*, for example, can be based on the opinion that there is nothing in the law that entitles Paul to recover damages. A motion for a *summary judgment*, on the other hand, would agree to the facts of the case, but would ask the judge to decide the case immediately instead of at trial.

Answering a complaint can be complicated. The content and timing of an answer have legal significance and affect legal rights. The proper procedure for filing and answering a lawsuit is also different in each state, and for suits filed in federal court.

Small claims courts have yet another set of procedures. Again, requirements vary from state to state, but are generally designed to simplify the process by reducing the need for an attorney, and by providing standard forms and instructions both for filing a complaint and for a summons. Small claims court hearings are also brief and informal, and allow the plaintiff and defendant to tell their story without the constraints of full trial procedures.

But regardless of where a lawsuit is filed, one factor remains the same: Once an action has begun, the clock begins to tick. ■

Perry Safran is an attorney with Safran Law Offices in Raleigh, N.C. Douglas McClanahan is a third-year law student at Campbell University in Buies Creek, N.C.