

CLERK OF COURTS MINNEHAHA COUNTY
425 NORTH DAKOTA AVENUE
SIOUX FALLS, South Dakota 57104-2470
(605) 367-4924 (605) 782-3026 (605) 782-3027

This information is intended to provide public information, not legal advice. It is provided for informational purposes only and should not be considered legal advice. The Clerk of Court's Office is prohibited from providing legal advice or services. You should consult an attorney if you have legal questions.

The small claims court is an informal court, which allows people to sue for small losses of money or property. The procedures are simple enough so that an individual can file and handle his own claim in court.

The limit set by law for small claims actions is \$12,000.00 or less plus court costs incurred.

QUESTIONS YOU WILL BE ASKED:

1. Is the defendant a resident of Minnehaha County?
2. Did the transaction take place in Minnehaha County?

**IF YOU CANNOT ANSWER YES TO ONE OF THESE QUESTIONS,
THE SMALL CLAIM CANNOT BE FILED IN MINNEHAHA COUNTY.**

The parties to the action are: **PLAINTIFF** - Party filing the claim and **DEFENDANT** - Party who claims are filed against.

STARTING THE SMALL CLAIMS ACTION

FILING A CLAIM IS NO GUARANTEE OF PAYMENT

The small claims action must be filed in the county where the defendant lives, or in the county where the loss occurred. To start the action, the plaintiff or his attorney must provide a written signed statement, describing how the loss or damage occurred. This statement, along with supporting documents (see attachment A), and the address of the plaintiff and defendant, must be filed with the clerk of court. The fee and court costs for filing a small claims action vary, depending on the amount of loss claimed. The plaintiff pays these fees at the time of filing and are added to the amount of the claim.

FILING FEES:

\$.01 to \$ 100.00 = \$23.98
\$ 100.01 to \$ 1,000.00 = \$29.98
\$ 1,000.01 to \$ 3,999.99 = \$39.98
\$ 4,000.00 to \$12,000.00 = \$43.98

THESE FEES APPLY IF YOUR CLAIM IS FILED AGAINST ONE DEFENDANT. ADDITIONAL POSTAGE IN THE AMOUNT OF \$5.98 IS REQUIRED FOR EACH ADDITIONAL DEFENDANT. FEES AND POSTAGE AMOUNTS MAY BE CHANGED BY LAW, SO THE PLAINTIFF SHOULD INQUIRE ABOUT FEES AT THE TIME OF FILING. FILING FEES ARE NON-REFUNDABLE.

INFORMATION NEEDED AT THE TIME OF FILING:

1. Written statement, which is signed by plaintiff, describing how the loss or damage occurred and must include the exact dollar amount of the claim
2. Supporting documents for any amount you are seeking
3. Correct spelling of the defendant's name and their current residential mailing address
4. Filing fee
5. Case Filing Statement

EXAMPLES OF SUPPORTING DOCUMENTS:

Car accident: Two (2) estimates to the damage and the accident/police report. Or proof of value if vehicle is totaled
Past Due Rent: Copy of the lease if available, the dates for which the rent covers, the exact dollar amount, address of rental property, receipts for any damages you are requesting.
Security Deposit: A copy of the receipt or proof of payment.
Past Due Account: A copy of the bill or statement
NSF, Account Closed or Stop Payment checks: The original check

When the clerk accepts the statement of damages claimed and the necessary fees, the case will be entered on the small claims docket. **The clerk will assign a default hearing date. It is the Plaintiffs responsibility to appear at the clerk of courts office on the default date at the specified time to receive a default judgment or inform the clerk of any settlements. If an answer or denial is filed, a court trial date will be set and all parties will be notified. All settlements need to be in writing. This is important information and it should be carefully noted for future reference.** An answer date will also be set and given to the defendant. The answer date will be approximately six weeks away to allow service upon the defendant.

Once the papers are filed and the action is docketed and placed on the court calendar, the clerk will send the proper notice to the defendant by certified mail, informing him of the lawsuit being brought against him. If the defendant does not receive the notice by certified mail, it may be necessary to have a private process server or the sheriff serve the notice on him personally. In the event personal service is necessary, the Plaintiff must pay the service fees, which are then added to the amount of the claim.

PERSONAL SERVICE: You may use one of the following agencies for personal service of Small Claims Notice:

SHERIFF'S DEPARTMENT 367-4331
Law Enforcement Center
320 W 4th Street – 2nd Floor,
Sioux Falls, South Dakota 57104

PRIVATE PROCESS SERVERS
(See Process Server in the Yellow Pages)

YOU CANNOT GET A JUDGMENT AGAINST THE DEFENDANT UNLESS SAID DEFENDANT IS PROPERLY SERVED OR THE CERTIFIED LETTER IS REFUSED.

It is YOUR responsibility to make sure the defendant is served, and that we have proof of service by the court date.

WHAT SHOULD THE DEFENDANT DO?

If the defendant, after receiving notice of lawsuit, wishes to settle the dispute without going to trial, he should contact the plaintiff and try to arrange a settlement. In the event of an out-of-court settlement, it is the plaintiff's responsibility to contact the clerk of court and cancel the lawsuit. The defendant is advised to contact the clerk of court to verify the cancellation.

CONTEST OR DENY: If the defendant wishes to contest the plaintiff's claim, he must file a written denial with the clerk of court stating fully and specifically what parts of the claim are contested and why they are contested. The denial must be filed on or before the denial date. **If the defendant files a denial all parties to the action will be notified of the date and time of the court hearing. The denial date is important information and it should be carefully noted.**

COUNTERCLAIM: A Defendant may deny the claim and also COUNTERCLAIM if the Plaintiff has damaged them. They must also have documentation of their counterclaim. The claim and counterclaim will be heard at the same time.

REMOVAL TO CIRCUIT COURT: The Defendant may wish to have the action transferred to circuit court. The procedure for this can be found in the South Dakota Codified Laws.

DEFAULT JUDGMENTS, CONTESTED CASES AND SUBPOENAS

DEFAULT JUDGMENT

If the defendant fails to comply properly with the notice or fails to appear for the court hearing, they may lose the case by default and have a judgment entered against them in favor of the plaintiff. A notice of entry of judgment will be mailed to both the plaintiff and the defendant. The plaintiff may attempt to collect (see HOW DO I GET MY MONEY IF I WIN? section below) if the defendant does not pay within 10 days.

CONTESTED CASES

Both the plaintiff and defendant should be certain of the date, hour, and place of trial, and be there on time. The clerk swears in plaintiffs, defendants and witnesses. The Judge will ask questions of both parties about their claim and defense. After the judge receives all available testimony, the judge usually announces their decision. However the judge may delay the decision, and put the judgment in writing at a later date. If you receive a money judgment in a contested case, you must wait 30 days or such additional time given the other party to pay before additional steps can be taken to try and collect.

A SMALL CLAIMS JUDGMENT IS FINAL – IT CANNOT BE APPEALED

SUBPOENAS

The plaintiff or defendant may request to have a witness subpoenaed to testify on their behalf. The fees for subpoenas are \$2.00 per person and can be obtained through our office. There are certain guidelines you must follow per statute regarding service and witness fees. You will find this information on the second page of your subpoena.

HOW DO I GET MY MONEY IF I WIN?

Note: The award of a judgment does not guarantee payment of the claim. The court makes the decision and records the judgment, it does not enforce collection. While the entry of judgment does create a recorded lien against the debtor, it does not guarantee payment of the debt.

Three (3) steps you may take to try and collect are:

EXECUTIONS

If you are not paid within the respective time periods, you may return to the Small Claims Clerk and obtain an execution, which is an order requiring the Sheriff to attempt to find money or other property to satisfy your judgment. The cost of an execution is \$5.00, which must be paid in advance to the clerk of the Small Claims Court. The sheriff has fees that they must charge for attempting to collect your judgment. These charges may be recovered from the judgment debtor in addition to the amount of the judgment.

GARNISHMENT OF WAGES

You must know where the debtor is employed. You may obtain garnishment forms at office equipment stores. The clerk of courts office cannot give these forms to you. The clerks are also forbidden to answer questions as to how to complete any forms.

DRIVER'S LICENSE

The driver's license of a debtor may be pulled if the claim arises from a motor vehicle accident. The plaintiff can return to the Clerk of Courts office and obtain a certified copy of the judgment for a \$2.00 fee and then contact the Driver Improvement Program in Pierre (1-800-952-3696) for further instruction.

IT IS NECESSARY THAT THE PLAINTIFF SATISFY THIS JUDGMENT WITH THE CLERK OF COURTS ONCE IT HAS BEEN PAID IN FULL.