Both the plaintiff and the defendant should be certain of the date, hour, and place of trial, and be there on time. Although some judges may allow special arrangements for a party's absence in unusual circumstances, failure of either party to appear may result in a judgment for the other side. If either party is unable to appear as scheduled, he should contact the clerk of court immediately and make arrangements to reschedule the proceedings.

At the trial either party may bring in witnesses to testify, and introduce other evidence (receipts, documents etc.), in support of his claim. Hearsay is not an acceptable form of proof. Each party is responsible for the appearance of his own witnesses. In some cases, it may become necessary to subpoena unwilling witnesses to appear, or to subpoena materials into court. Upon request the clerk of court will prepare these. Contact a clerk of court office if a subpoena is needed. The requesting party is responsible for subpoena fee of $2.00 payable to the clerk of court and any fees related to serving the subpoena payable to the sheriff or process server.

When testimony is given at trial, witnesses are placed under oath. As this testimony, and other evidence (papers, etc.), are introduced to support the claims made, the judge may ask questions of the parties and their witnesses in order to clarify the facts. After he receives all necessary, available testimony, the judge usually announces his decision. However, the judge may delay his decision, and put the judgment in writing at a later date.

A small claims judgment cannot be appealed to a higher court. The judgment may be renewed within ten years from the original date of entry of judgment. You will need to file a copy of the judgment and an affidavit that the money has not been completely collected with the clerk of court. SDCL-15-16-33 & 34.

HOW DO I GET MY MONEY IF I WIN?

If you are awarded a money judgment, you may ask the other party to pay you immediately, unless the judge has provided a time period for payment.

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.

If the other party does not pay, you may begin a collection process called an execution. An execution is a court order authorizing the sheriff to seize property belonging to the losing party and sell it to satisfy the judgment. The clerk of court can provide you with the necessary form for this procedure. There is a fee for the issuance of the execution.

Unless there is a default judgment or a special court order (ask the clerk of court if either of these apply), an execution may not be issued until thirty days after the entry of judgment. After that period, it may be issued anytime within twenty years after the date of judgment. SDCL 15-18-1. (See SDCL 15-16-33 for instruction on renewal of money judgments prior to the expiration of ten years from the first docketing of the judgment.) After the proper time period has elapsed, the execution form is completed, signed by the clerk, and given to the creditor. You must take it to the sheriff's office and pay a fee to the sheriff to have him execute on the judgment. The sheriff then has sixty days to find property of the debtor to execute on.

There are some types of property that are exempt from execution, and it is sometimes difficult for the sheriff to find property that can be used to execute the judgment. When you take the execution form to the sheriff, you should provide him with the current address and place of employment of the debtor. Also, if you know of any unmortgaged property which the debtor owns, you should provide this information to the sheriff or officer to whom you give the execution form.

The sheriff may not find property to satisfy the judgment (but he still keeps his fee). You will need to follow the statutory requirements regarding judgments.

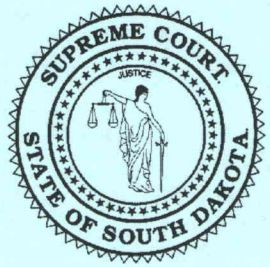
There are other procedures available to collect on the judgment, but they are often legally complex and the assistance of an attorney may be required. There is a fee and it may even require another trial. SDCL 21-18-1,-2.1,-3.

AFTER YOU RECEIVE PAYMENT:

After payment for the full amount of the claim has been received, the creditor receiving payment should inform the clerk in writing that full payment has been received. The clerk will then satisfy the judgment. Upon receipt of a claim by the debtor that the judgment has been paid in full but has not been satisfied by the lienholder, the court shall issue an order to show cause requiring the lienholder appear and show cause why the judgment should not be satisfied. Provided that no good cause is shown, the clerk will then satisfy the judgment. There is no charge for this satisfaction. This filing of the satisfaction of judgment will release the lien that was created by the entry of judgment.

How To Use South Dakota's

SMALL CLAIMS COURT



Additional copies may be obtained by contacting the State Court Administrator's Office, 500 E. Capitol Ave., Pierre, South Dakota 57501-5070 or the website at http://ujs.sd.gov/. (Rev. 04/2011)

10,000 copies of this brochure were prepared by the Unified Judicial System of South Dakota at a cost of $.03 per copy.

INTRODUCTION

If you think that someone has negligently or intentionally caused you financial loss or property damage, your first thought may be to "see him in court." Don't be too hasty to do this. Asking the court to resolve your problem can be time consuming and troublesome, and there is still no guarantee you will get satisfaction for your loss.

To save the time and trouble of a small claims lawsuit, you would be well advised first to contact the other party in the dispute, and try to discuss the problem calmly and objectively. Make a serious effort to arrive at an agreement that will settle the matter fairly. A reasonable solution worked out to the mutual benefit of willing parties will eliminate the stress of the courtroom confrontation. It will also reduce or eliminate the long term personal hostility that often results from this type of grievance.

If your complaint is against a business organization, there are agencies such as the Better Business Bureau that may help you get satisfaction. If your efforts to produce a reasonable settlement are not successful, the small claims court remains a practical alternative. Generally, however, the best court action, even in small claims, is the one that is avoided.

THE SMALL CLAIMS COURT

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 the law for small claims actions is $12,000.00 or less. SDCL 16-12C-13. However, since this limit may change from time to time, it is suggested that the plaintiff (that is the person bringing the action to court) verify with the clerk of court the maximum amount that can be claimed.

The parties (plaintiff and defendant) of the action must be at least 18 years old. If one of the parties is under the age of 18, his parent or guardian must represent him in the action. If there are a number of plaintiffs bringing action against one defendant, one of the plaintiffs may be authorized to act for all of them. A corporation may be represented by one of its officers, and a collection agency may act for a client who has made proper assignment of a debt.

STARTING THE SMALL CLAIMS ACTION

The small claims action must be filed either in the county where the defendant lives, or in the county where the loss occurred. In some cases, this may mean that the plaintiff is required to start the small claims action by mail, and travel to another county for the trial. A civil case filing statement must also be filed with the small claims action. The clerk of court in your own county can explain the process to you, and will file the necessary papers in the proper court.

To start the action, the plaintiff or his attorney, on a form issued by the clerk, must provide a signed written statement, describing how the loss or damage occurred. This statement, along with supporting documents (receipts, cost estimates, etc.), and the address of the plaintiff and the defendant, must be filed with the clerk of court. The fee for starting the action, and the postage and service cost required, may be added to the damages claimed against the defendant.

The fee and court costs for filing a small claims action vary, depending on the amount of loss claimed and the number of defendants. These are paid by the plaintiff at the time of filing. These amounts may be changed by law, so the plaintiff should ask the clerk about the fees or visit the website at http://ujs.sd.gov/. SDCL 14-6-1, 15-39-52, 16-2-39.

Claim	Fee and Court Costs
$100 or less	$24.03
$100.01 to $1,000	$30.03
$1,000.01 to $3,999.99	$40.03
$4,000 to $12,000	$44.03
Each Additional Defendant-Add	$ 6.03

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 the date by which the defendant must answer, or the date and time of the hearing. This is important information and it should be carefully noted for future reference.

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 the sheriff serve the notice on him personally. The sheriff's service will cost the plaintiff an additional fee, and authorization by the plaintiff is required.

After receiving the notice of lawsuit, the defendant may contact the plaintiff in an attempt to settle the action out of court. It is entirely up to the plaintiff to decide whether to accept the offer of the defendant. Reasonable out-of-court settlement is advisable, but the plaintiff will not receive a refund of the filing fee or other costs should he settle out of court. If the plaintiff agrees to an out-of-court settlement, he must inform the clerk of court immediately of the settlement, and cancel the lawsuit.

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 before the trial date. If a settlement is reached and full satisfaction is given to the plaintiff at the time of agreement, the defendant should need only a receipt from the plaintiff. If the settlement is arranged for a future date, the agreement should be in writing and signed by both parties.

Although, 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 office of the clerk of court to verify the cancellation.

If the defendant wishes to contest the plaintiff's claim, he must file an answer with the court according to the notice served on him. If the defendant fails to comply properly with the notice, he may lose the case by default and have a judgment entered against him in favor of the plaintiff.

The answer by the defendant should be filed in the court clerk's office within the time limit specified in the court's notice. The defendant's answer to the notice should be written clearly and in plain language. It may deny all or any part of the claim of the plaintiff, but it must specify the basis for the denial. In addition, the defendant's answer may even "counterclaim" that the plaintiff owes the defendant money, however, a counterclaim must be filed within the time frame for answer. SDCL 15-39-66. The clerk of court can explain the counterclaim, and answer any other questions about the required response by the defendant.

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.

WHAT HAPPENS AT THE TRIAL

Small claims court provides a low-cost process for a citizen to obtain reasonable compensation for certain damages through the binding decision of an impartial judge. Each party involved has a right to tell his story in his own words, present testimony of witnesses, ask questions, and receive the courts judgment on the issues presented. Either party may be represented by an attorney at the trial. However, because the procedures of the court are informal and the judge will explain legal procedures, hiring a lawyer is not necessary.