

INSTRUCTIONS FOR EVICTION ACTIONS

IN ORDER TO BE PROPERLY PREPARED FOR THIS TYPE OF ACTION, PARTIES ARE STRONGLY ENCOURAGED TO REVIEW CHAPTER 21-16 AND CHAPTER 15-6 OF THE SOUTH DAKOTA CODIFIED LAWS AND TO CONTACT AN ATTORNEY.

FOR THE LANDLORD/PLAINTIFF:

FORMS THAT MAY BE NEEDED:

- Notice to Quit and Vacate, UJS Form-110
- Case Filing Statement, UJS Form-232
- Summons, UJS Form-111
- Verified Complaint, UJS Form-112
- Motion for Default Judgment, UJS Form-113
- Affidavit in Support of Motion for Default Judgment, UJS Form-114
- Affidavit of Mailing, (need multiple) UJS Form-115
- Notice of Hearing, UJS Form-116
- Default Judgment, UJS Form-117
- Notice of Entry of Default Judgment, UJS Form-118
- Judgment of Eviction and Damages, UJS Form-138
- Notice of Entry of Judgment of Eviction and Damages, UJS Form-139

STEP 1 – NOTICE TO QUIT AND VACATE (This step MUST be completed before moving on to STEP 2):

FORM NEEDED FOR THIS STEP:

- Notice to Quit and Vacate, UJS Form-110

The Notice to Quit and Vacate is the informal process for evicting a current tenant. The landlord must notify all parties who signed the lease, in writing, that they have three (3) days to vacate the premises. This step must be completed before a formal court action may be initiated.

To complete this step, the landlord must complete the Notice to Quit and Vacate and make at least two copies. The Notice must be delivered to the Sheriff's office in the county where the property is located for service on the tenant/s (SDCL § 21-16-2.) The Sheriff's Office will charge a service fee that the landlord is responsible for paying. Once service has been completed, the Sheriff's office will provide the landlord with an Affidavit of Service with the details of the service on the tenant. The landlord should keep this Affidavit of Service for possible use in a formal court action. After being served, the tenant has three (3) days, excluding the date of service, to remove their personal property and vacate the premises. If the tenant complies, no further eviction action is necessary. If the tenant does not comply, a formal court action must be initiated to remove the tenant (See STEP 2).

STEP 2 – INITIATING THE FORMAL COURT ACTION:

FORMS NEEDED FOR THIS STEP:

- Case Filing Statement, UJS Form-232

- Summons, UJS Form-111
- Verified Complaint, UJS Form-112 (copies of the lease, the Notice to Quit and Vacate, and the Sheriff's Affidavit of Service must be attached to the Verified Complaint).

If a tenant fails to vacate the premises within three (3) days, the landlord must initiate a formal court action to have the tenant legally removed. To accomplish this, the landlord must complete a Case Filing Statement for each party (the landlord and the tenant/s), the Summons, and the Verified Complaint. Please note that the Verified Complaint MUST be signed in front of a Notary Public or the Clerk of Court. Copies of the Notice to Quit and Vacate and Sheriff's Affidavit of Service for the notice to quit must be attached to the Verified Complaint. The landlord should make at least two (2) copies of the Summons and Verified Complaint (with attachments), one set for their own records and one set for service on the tenant. File the originals, along with the original Case Filing Statements, with the Clerk of Court's Office in the county where the property is located. There will be a filing fee. If the landlord believes they are eligible for a waiver of the fee, they may file the waiver request found at <https://ujslawhelp.sd.gov/WaiveroffFees.aspx>. Once the court has determined whether the landlord qualifies, the landlord will be notified. The case will not go forward until a determination is made that the landlord qualifies for the waiver, or the fee is paid.

A copy of the Summons and Verified Complaint (with attachments) must be delivered to the Sheriff's office for service on the tenant. This is a very important step as service of the Summons and Verified Complaint is what starts the court eviction action. The Sheriff's Office will charge a service fee that the landlord is responsible for paying. When service has been completed, the Sheriff's Office will provide an Affidavit of Service verifying when and how the tenant was served. The landlord must file this affidavit with the Clerk of Court's Office immediately upon receipt.

Once served, the tenant has four (4) days, not counting the day served, to serve and file an Answer. Those four days will not begin to run until proper service is made. The landlord should also keep in mind that the tenant may serve the answer on the landlord by mail. In that case, service is completed upon mailing and an additional three (3) days for delivery are allowed (SDCL 15-6-6e). If the tenant answers skip STEP 3 and go to STEP 4.

STEP 3 – DEFAULT JUDGMENT: (ONLY IF THE TENANT HAS NOT ANSWERED OR APPEARED WITHIN FOUR (4) DAYS OF SERVICE).

FORMS NEEDED FOR THIS STEP:

- Motion for Default Judgment, UJS Form-113
- Affidavit in Support of Default Judgment, UJS Form-114
- Affidavit of Mailing, (will need at least 2) UJS Form-115
- Notice of Hearing, (if hearing is required) UJS Form-116
- Default Judgment, UJS Form-117
- Notice of Entry, UJS Form-118

If the tenant fails to answer the complaint within four (4) days, the landlord may be entitled to default judgment. This means that the Court may find in favor of the landlord and order the tenant to vacate the premises immediately. To request default judgment, the landlord must complete the Motion for Default Judgment and Affidavit in Support of Default Judgment. Please note the Affidavit MUST be signed in front of a Notary Public or Clerk. Once signed, the landlord should make two copies and

mail one to the tenant. They next complete the Affidavit of Mailing, signing only in front of a Clerk or Notary, and file it and the original Motion for Default Judgment, and Affidavit in Support of Default Judgment with the Clerk's office. Once these are filed the landlord will need to inquire as to whether that Court requires a hearing on the motion. If a hearing is required the landlord will request a hearing date from the Clerk's office, or Court Administration, depending on the county. **Once a date is scheduled, the landlord must then fill out the Notice of Hearing (check the Eviction Complaint and Answer box), mail a copy to the tenant at least seven (7) days before the hearing, and complete an Affidavit of Mailing, filing the originals with the Clerk's office. At or before the time of hearing/default, the landlord should have the Default Judgment form available for the Court. If the Court finds the tenant is in default, the judge will sign the Default Judgment. After receiving a copy of the signed Judgment, the landlord must complete the Notice of Entry, mail a copy of the Judgment and Notice of Entry to the tenant, and file the originals with the Clerk along with a completed Affidavit of Mailing.**

STEP 4 - TRIAL (IF TENANT FILES AN ANSWER OR OTHER PLEADING)

FORMS NEEDED FOR THIS STEP:

- Notice of Hearing, UJS Form-116
- Affidavit of Mailing, (may need two) UJS Form-115
- Judgment of Eviction and Damages, UJS Form-138
- Notice of Entry, UJS Form-139

If the tenant does serve and file a response to the landlord's complaint, a trial must be scheduled. As soon as they receive an answer, the landlord must contact the Clerk of Court's office or Court Administration, depending on the county, to schedule a trial date. **The landlord must then complete the Notice of Hearing (check the Motion for Default Judgment box) and mail it to the tenant at least seven (7) days before the trial date.** Once mailed, they then complete the Affidavit of Mailing and file the original along with the original Notice of Hearing with the Clerk's office. At the trial, the landlord should have the Judgment of Eviction and Damages form available for the Court. If the Court finds in favor of the landlord, the judge will sign the Judgment. After receiving a copy of the signed Judgment, the landlord must complete the Notice of Entry, mail a copy of the Judgment and Notice of Entry to the tenant, and file the originals with the Clerk along with a completed Affidavit of Mailing.

If judgment is entered and the tenant/s fails to vacate the premises in the time ordered, the landlord can take the signed Judgment of Eviction and Damages form to the Sheriff's Office to have the tenant forcibly removed.

FOR THE TENANT/DEFENDANT:

FORMS NEEDED TO ANSWER THE COMPLAINT:

- Case Filing Statement, UJS Form-232
- Answer (For Eviction), UJS Form-119
- Affidavit of Mailing (For Answer), UJS Form-120

If the tenant vacates the premises within three days after being served the Notice to Quit and Vacate, excluding the day of service, they do not need to do anything further. However, if the tenant does not vacate the premises and is then served with a Verified Complaint and Summons, the tenant

must file and serve an Answer within four (4) days, not counting the day of service. Failure to answer the complaint may result in default judgment against them, meaning they will not be given the opportunity to present evidence or make any argument against eviction to the court, and the court will likely rule in favor of the landlord.

To prevent default judgment, the tenant must complete the Answer and mail a copy to the landlord within four (4) days of receiving the complaint and summons. After they have mailed the Answer to the landlord the tenant must then complete the Affidavit of Mailing Answer, sign it in front of a Clerk or Notary, and file it and the original Answer with the Clerk of Court's office in the county where the court action was initiated. They must also complete and file a Civil Case Filing Statement. An answer filing fee is required to file. If the tenant believes they are eligible for a waiver of the answer fee, they may file a waiver request with the Clerk of Court's office for the court to rule on. The form to request a waiver is found at the following link: <https://ujs.sd.gov/uploads/forms/UJS-137ApplicationWaiverFeeAnswerResponsivePleading.pdf>. It is very important that the tenant serve the Answer on the landlord within that four-day period. To properly serve the landlord, the tenant must mail the documents on or before that fourth day. Service is considered complete upon mailing.

Once the landlord has received a copy of the Answer, they are responsible for scheduling a trial date. Once they have a trial date the landlord then completes the Notice of Hearing, mails a copy to the tenant, and files the original with the Clerk's office. The tenant must appear for the trial and bring any witnesses or evidence they wish to present. After hearing evidence and argument presented during the trial from both sides, the Court will make its decision. **If the tenant does not appear for trial the court will likely rule in favor of the landlord and award the damages requested.**

If the tenant fails to vacate the premises after a Judgment of Eviction and Damages has been entered the landlord can have the Sheriff's office forcibly remove them from the property.