

# SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM

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## **Guide to Small Claims Court**



# Take Note

If someone has caused you financial loss or property damage, your initial reaction might be to take them to court. However, it's important to reconsider this option before doing so. Court proceedings can be time-consuming and troublesome, with no guarantee of a favorable outcome.

It is recommended to first contact the other party in the dispute and calmly and objectively discuss the issue. Make a genuine effort to reach a fair agreement. Finding a reasonable solution that benefits all parties can eliminate the stress of a courtroom confrontation. It can also reduce or prevent long-term personal hostility that often arises from such grievances.

If the complaint is against a business, agencies such as the [Better Business Bureau](#) may be able to assist with the situation.

If efforts for a reasonable settlement are not successful, small claims court remains a practical option. Generally, however, the best court action, even in small claims, is the one that is avoided.

## Small Claims Court

Small claims court is an informal court which allows people to sue for small losses of money or property. This procedure allows people to handle their own claims in court without hiring a lawyer. Small claims court is the quickest, least expensive and least complicated way of settling disputes over limited sums of money.

The limit set by South Dakota law for a small claims action is \$12,000 or less ([SDCL 16-12C-13](#)). Because this limit could change, verify with the clerk of courts office the maximum amount that can be claimed.

Parties of the action must be at least 18 years old. If one of the parties is under the age of 18, their parent or guardian must represent them in the action.

If there are several parties bringing an action, one of the parties may be authorized to act for all of them. A corporation may be represented by one of its officers. A collection agency may act for a client who has made proper assignment of a debt.

# Starting a Small Claims Action

The person who files the action (complaint) is the **plaintiff**. The person who is sued is the **defendant**. A small claims action must be filed either in the county where the defendant lives or in the county where the loss occurred. This could mean that the plaintiff must start the small claims action by mail and travel to another county for a trial. The clerk of courts in the county where the plaintiff lives can explain the process.

The plaintiff (or their attorney) must submit a case filing statement (form UJS-232) and a signed, written statement of claim (form UJS-008) describing how the loss or damage occurred. These two statements, any supporting documents (receipts, cost estimates, etc.), and the address of the plaintiff and the defendant must be filed with the clerk of courts.

The fee and court costs for filing a small claims action vary depending on the amount of loss claimed and the number of defendants. The fees and costs must be paid by the plaintiff at the time of filing. The fee for starting the action, postage and required service costs may be added to the damages claimed against the defendant. Fees and court costs are set by law. Current fees and court costs are:

- Claims for \$100 or Less: \$22.41
- Claims from \$100.01 to \$1,000: \$28.41
- Claims from \$1,000.01 to \$3,999.99: \$38.41
- Claims from \$4,000 to \$12,000: \$40.41
- Each Additional Defendant: Add \$10.41

After the clerk of courts accepts the statement of damages claimed and required fees, the case will be entered on the small claims docket. The clerk of courts will assign the date the defendant must answer by or the date and time of a hearing. This important information should be carefully noted for future reference.

The clerk of courts will send by certified mail a notice informing the defendant of the lawsuit being brought against them. If the defendant does not receive the notice by certified mail, it may be necessary to have the sheriff personally serve the notice. 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 to attempt to settle the action out of court. It is up to the plaintiff to decide whether to accept the defendant's offer. Reasonable out-of-court settlement is advisable. If the plaintiff agrees to an out-of-court settlement, they must contact the clerk of courts immediately to cancel the lawsuit. If the case is settled out of court, the plaintiff will not receive a refund of the filing fee or other costs.

# What the Defendant Should Do

The defendant may want to **settle** (resolve) the lawsuit without going to trial. To attempt to reach a settlement, the defendant should contact the plaintiff before the trial date. If a settlement is reached and the plaintiff is fully satisfied, the defendant needs 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. In an out-of-court settlement, the plaintiff is responsible for contacting the clerk of courts office to cancel the lawsuit. The defendant is advised to also contact the clerk of courts office to verify the cancellation.

If the defendant **contests** the plaintiff's claim, they must file an answer to the notice (form UJS-278). The defendant must file their answer with the clerk of courts office within the time limit specified in the 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 plaintiff's claim, but it must specify the basis for the denial. If the defendant contests the claim, a trial is held before a circuit court or magistrate judge.

The defendant's answer may **counterclaim** that the plaintiff owes the defendant money. A counterclaim must be filed within the time frame for answer ([SDCL 15-39-66](#)). The clerk of courts can explain the counterclaim process and answer any other questions about the required response by the defendant (form UJS-278).

The defendant may want to have the action **transferred** from small claims court to circuit court ([SDCL 15-39-57](#)).

If the defendant fails to properly comply with the notice, they may lose the case by default. A judgment will then be entered against the defendant in favor of the plaintiff. Before a default judgment may be entered, the plaintiff is required to file an affidavit stating whether the defendant is in the military service and show necessary facts to support the affidavit (form UJS-306).

## Preparing for Trial

Each party involved in small claims court has a right to tell their story in their own words, present testimony of witnesses, ask questions, and receive the court's decision on the issues presented. Either party may be represented by an attorney at the trial. However, because small claims court is informal and the judge will explain legal procedures, hiring a lawyer is not necessary.

Both the plaintiff and the defendant should be certain of the date, hour and place of trial and should arrive 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, they should contact the clerk of courts immediately to reschedule the proceeding.

Both parties may bring witnesses to testify and introduce evidence, such as receipts or documents, in support of their claim. Hearsay (statement made by someone who is not present in court) is not an acceptable form of proof. Each party is responsible for the appearance of their own witnesses. In some cases, it may become necessary to subpoena unwilling witnesses to appear in court or subpoena materials. A subpoena is an order issued by the court, and the clerk of courts office will prepare a subpoena upon request. The requesting party is responsible for the subpoena fee of \$2 payable to the clerk of courts and any fees related to serving the subpoena payable to the sheriff or process server.

Witnesses who testify at the trial are placed under oath. As testimony and other evidence are introduced to support the claims made, the judge may ask questions of the parties and their witnesses to clarify the facts. Following testimony, the judge usually announces their decision. However, the judge may delay their 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 10 years from the original date of entry of judgment. The plaintiff must file a copy of the judgment and an affidavit that the money has not been completely collected with the clerk of courts ([SDCL 15-16-33](#) and [SDCL 15-16-34](#)).

## Collection

If a person is awarded a money judgment, they may ask the other party to pay 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, but 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 debtor does not pay, the person awarded the money judgment 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 courts can provide the necessary form for this procedure. There is a fee for the issuance of an execution.

Unless there is a default judgment or a special court order (ask the clerk of courts if either of these apply), an execution may not be issued until 30 days after the entry of judgment. After that period, it may be issued anytime within 20 years after the date of judgment. (See [SDCL 15-18-1](#) and [SDCL 15-16-33](#) for instructions on renewal of

money judgments prior to the expiration of 10 years from the first docketing of the judgment.)

After the proper amount of time has elapsed, the execution form is completed, signed by the clerk and courts, and given to the creditor. The person seeking payment must take the form to the sheriff's office and pay a fee to execute on the judgment. Provide the debtor's current address and place of employment. If the debtor owns non-mortgaged property, also provide this information to the sheriff.

The sheriff has 60 days to find property of the debtor to execute on. It is sometimes difficult for the sheriff to find property that can be used to execute the judgment. Also, there are some types of property that are exempt from execution. If the sheriff does not find property to satisfy the judgment, the execution fee is not refunded.

There are other procedures to collect on the judgment, but they are often legally complex, and the assistance of an attorney may be required. There is a fee for these procedures, and another trial may be required ([SDCL 21-18-1](#), [SDCL 21-18-2.1](#) and [SDCL 21-18-3](#))

## Following Payment

After receiving payment for the full amount of the claim, the creditor should notify the clerk of courts in writing. The clerk of courts will then mark the judgement as satisfied (form UJS-019).

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 will issue an order requiring the lienholder appear and show cause why the judgment should not be satisfied. If no good cause is shown, the clerk will then satisfy the judgment. There is no charge for this satisfaction.

The filing of the satisfaction of judgment will release the lien that was created by the entry of judgment.

## Questions

For additional information regarding small claims court, contact the clerk of courts office or visit <https://ujs.sd.gov>.

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