



DO's and DON'T's For South Dakota Evictions in 2021

DO:

- **ALERT THE TENANT OF WHAT THE EVICTION MORATORIUM ACTUALLY MEANS.** Where a tenant claims relief under the Federal moratorium, the tenant should be made aware that the moratorium **does not** stop the accrual of rent charges or fees; rather, it only keeps them from being evicted. Consequently, it is in their best interest to make their best efforts to keep up with their rent to the extent they can. In fact, the moratorium *requires* that they make their best efforts.
- **RE-READ THE LEASE.** South Dakota Chapter 21-16 sets forth some very short notice periods, but parties to a lease contract can agree to something entirely different. You will want to ensure that you give the notice required under your agreement if you agreed to something different than what is set forth in statute.
- **BE AWARE OF SERVICE REQUIREMENTS.** The law changed in 2020 on what is required to serve an eviction action. SDCL 21-16-6 now reads:

The complaint shall be in writing and verified by the plaintiff or the plaintiff's agent or signed by the plaintiff's attorney, and served with a summons. A sheriff, any person legally authorized to effect service under § 15-6-4(c), or constable of the county shall attempt to serve a lessee, subtenant, or party in possession with a minimum of two service attempts. Each attempt shall be at least one week apart and both attempts shall be within thirty days.

On the second service attempt, the summons may be posted in a conspicuous place on the property and delivered to a person there residing, if such person can be found, and also sent by first class mail addressed to the tenant at the place where the property is situated.

(Emphasis added.)

Presumably, this change is meant to address the tenant who won't come to the door when the sheriff is outside. Anyone who has ever been frustrated by this scenario should be aware of this new provision.



DON'T:

- **STOP THE CHARGES WHEN A TENANT CLAIMS RELIEF UNDER THE MORATORIUM.** Again, the relief provided under the Federal moratorium is solely to keep evictions from moving forward. The idea behind this law was that, if people are evicted for nonpayment of rent due to COVID-related income losses, homeless shelters will fill up and the virus will make its way through such facilities. It was not meant to give non-paying tenants a “free ride,” and property owners and managers retain the right to collect unpaid amounts.
- **TAKE SHORTCUTS ON SERVICE.** The new version of SDCL 21-16-6, allowing service of the Complaint by posting after 2 service attempts one week apart, has not been tested in the Courts to this point. Suffice it to say, anyone proceeding with an eviction under this section will want to make sure that the local sheriff or deputy very carefully documents the service attempts and posting procedure in the Sheriff's Return.
- **IGNORE REQUESTS FOR REASONABLE ACCOMMODATIONS.** The Fair Housing Amendments Act (FHAA) makes it illegal "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of . . . that person" 42 U.S.C. § 3604(f)(2)(A). Under 42 U.S.C. § 3604(f)(3)(B), discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling" If a reasonable request is made to make accommodations for a person's handicap, the landlord must take that request seriously. Otherwise, the failure or refusal may be raised as a defense to eviction.

Zachary W. Peterson
Partner
[Richardson Law Firm](#)

NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise.