

This web site is a brief guide to Civil Process for the citizens of Kandiyohi County. We have provided information which answers the most common questions received by our staff.

The information presented is not comprehensive. It does not provide legal advice, nor does it attempt to suggest a course of action if there are legal issues to be resolved. If you need legal advice, please contact an attorney. Our office is not permitted to provide legal advice nor can we recommend any specific attorney.

In most cases, reference is made to applicable Minnesota Statutes. Minnesota Statutes are available on-line through the State of Minnesota web site.

We hope this web site will be beneficial. Should you have any questions, please contact the Kandiyohi County Sheriff's Office Civil Unit at 320-214-6700, ext. 3329

MORE INFORMATION

- Civil Process Fees
- Conciliation Court
- Summons and Petition in Dissolution Of Marriage
- Divorce Actions and Recovery Of Property
- Domestic Abuse Orders For Protection
- Restraining Orders For Harassment
- Subpoena Service
- Summons and Complaint Service
- Unlawful Detainer Actions & Evictions
- Writs Of Execution
- Mortgage Foreclosure
- List of Sales
- Bankruptcy Actions

DOWNLOADABLE FORMS

- Garnishment Exemption Notice and Notice of Intent to Levy on Earnings
- Financial Institution Execution Disclosure and Exemption Notice
- Execution Instructions
- Service Information Sheet
- A Guide to Conciliation Court
- Wage Assignment Letter

Civil Process Fees

The Sheriff's Office requires a deposit for the service fees. \$30.00 per person or business served and plus mileage to the location.

Service Fee	\$30.00
Certificate of Vacancy.....	\$30.00
Notice of Sale	\$30.00
Certificate of Sale	\$30.00
All Sales	\$45.00
Not Founds.....	\$15.00

Service fee is charged per paper for each defendant.
The mileage fee is .50 cents per mile.

Conciliation Court

Conciliation Court, also known as "Small Claims Court", was created to allow citizens to bring legal claims to the court without expensive costs or complicated legal procedures. Conciliation Court can accept claims for filing that are at, or below, the limit set by law. Currently the limit is \$7500.

You cannot file a claim in Conciliation Court involving the title to real estate. You may represent yourself or you may hire an attorney. If you file a claim in Conciliation Court, you must do so in the county where the defendant resides. The Kandiyohi County Conciliation Court has prepared a "Conciliation Court Quick Guide" (**see forms**) to answer most questions. For additional guidance you can phone and/or visit the District Court website <http://www.courts.state.mn.us/districts/eighth> or contact the Conciliation Court office.

Summons and Petition in Dissolution of Marriage

In a divorce action, the person seeking the divorce (petitioner) will have a Summons and Petition for Dissolution of Marriage prepared, usually by an attorney. This must be served on the respondent *personally*. Substitute service is not permitted. If the petitioner requests the Sheriff's Office to serve this process, the original Summons and a copy of the Summons and Petition for service should be presented to the Sheriff's Office. Following service, the Sheriff's Office will return the original and a Certificate of Service to the petitioner, who must file the documents with the Court Administrator. The Sheriff's Office does charge for this service.

Divorce Actions and Recovery of Property

Often in divorce actions a judge will award property to one of the parties, but the other party will not release the property. The Sheriff's Office cannot force one person to turn property over to another. It would be prudent to consult an attorney in this situation.

Domestic Abuse Orders for Protection

Victims of domestic violence may seek an Order for Protection (OFP) from Family Court. It is not necessary for a victim to report the violence to the police in order to request an OFP, but the Kandiyohi County Sheriff's Office strongly recommends they do. This allows the criminal justice system to intervene in the situation.

Pursuant to Minnesota Statute 518B.01 Subd. 2(b), domestic abuse occurs to a family or household member if committed by a family or household member. Family or household member is defined as:

- Spouse and former spouse
- Parents and children
- Persons related by blood
- Persons who are currently residing together or who have resided together in the past
- Persons who have a child in common regardless of whether they have been married or have lived together at any time
- A man or a woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time
- Persons involved in a significant romantic or sexual relationship

An adult may file a Petition for an Order for Protection on behalf of any victim who is a minor, is considered vulnerable because of mental deficiency, or is of an advanced age.

Anyone seeking an OFP may contact the Kandiyohi County Women's Shelter House. The staff will assist you in preparing the Affidavit and Petition necessary to obtain an OFP. They also have advocates, Willmar Police, and Family Services and staff to assist victims of abuse.

When a judge reviews the Petition and Affidavit for an OFP, the judge will determine if an *Ex Parte* Temporary OFP should be issued. Hearings to review the OFP are usually scheduled seven (7) days following the filing of the OFP. After the hearing, a judge will listen to both the petitioner (the filing party) and the respondent (the person the OFP is filed against) and will determine if a long-term Order for Protection should be issued. This is generally for one or two years.

If an OFP is granted, either temporary or long-term, it will be brought to the Kandiyohi County Sheriff's Office - Civil Unit to be served. In most cases, these Orders can be served at any time and anywhere. The Court Administrator does not charge a filing fee for this OFP, nor does the Sheriff's Office charge a fee for this service.

Restraining Orders for Harassment

Victims of harassment may seek a restraining order from the court. The definition of harassment includes a single incident of physical or sexual assault. Further, gestures must either have a substantial adverse effect or be intended to have a substantial adverse effect of the safety, security, or privacy of another to be considered harassment.

If a single physical or sexual assault incident, repeated intrusive/unwanted incidents or gestures having adverse effect on safety are the basis for a harassment order, the petitioner must also allege an immediate and present danger of harassment before the court issues a temporary restraining order.

In any harassment case, reports of the incidents of harassment should be made to a local law enforcement agency. If you live in Kandiyohi County dial 9-1-1 and a local officer will take a report.

To obtain a Harassment Restraining Order, it is necessary to file a Petition and Affidavit with the Court Administrator. Advocates at the Kandiyohi County Women's Shelter can assist you in preparing these documents.

Subpoena Service

Subpoenas can be obtained from the Court Administrator's Office in the county where the court action is filed. Someone who is not part of the court action can make Service of the Subpoena. The Kandiyohi County Sheriff's Office – Civil Unit does serve Subpoenas.

An original and a copy for service must be given to the Sheriff's Office. Following service, the original Subpoena will be returned to the party along with a Certificate of Service. It is the responsibility of the party to return these to the Court Administrator.

A Subpoena can be served upon the named person or left with someone of "suitable age and discretion" who resides at the same address.

In most civil cases, a witness who has received a Subpoena is entitled to witness fees and mileage in advance. If so, a check to cover the witness fees and mileage usually is provided to the witness at the time the Subpoena is served. It is the responsibility of the person requesting service to pay those fees. To determine if a witness is entitled to fees, please check the statutes and rules applicable to the particular type of court action. The type of action in court determines the type of fees.

The Sheriff's Office does charge for this service.

Summons and Complaint Service

If a plaintiff desires the Sheriff's Office to serve a Summons and Complaint in a Civil Court action, the plaintiff should provide the Sheriff's Office with the original Summons and a copy of the Summons and Complaint for each defendant in the action.

A Sheriff's Deputy will serve the copy and return the original Summons, along with a Certificate of Service, to the plaintiff. It is the plaintiff's responsibility to file the original and Certificate with the Court Administrator.

The Sheriff's Office does charge for this service.

Unlawful Detainer Action (Eviction)

An Unlawful Detainer Action is required in order to evict a tenant from rental property. Minnesota Statutes Chapter 504B regulates these actions.

There are four common reasons for evicting a tenant:

- Delinquent rent payments.
- Violation of lease provisions.
- Failure to move after thirty (30) day written notice.
- Landlord is notified by law enforcement authorities of narcotics sales or activities on the tenant's premises.

To commence an Unlawful Detainer Action the property owner (plaintiff) must file a "Complaint In Unlawful Detainer" with the Court Administrator.

When a complaint has been filed, the Court Administrator will establish a court date, issue a Summons, and provide the plaintiff with enough copies of the Summons and Complaint to serve each defendant. If the tenant has unknown parties living on the premises, the plaintiff can list John Doe, Mary Roe, etc. as additional defendants.

The Summons and Complaint must be served on each tenant/defendant no less than seven (7) days before the court date, exclusive of the court date. The service must be made by a third person who is not part of the court action. A notarized Affidavit of Service must be filed with the Court Administrator before the date of the court hearing.

The Kandiyohi County Sheriff's Office can serve the papers on the tenant/defendant. The original Summons, plus copies of the Summons and Complaint for the defendants should be delivered to the Kandiyohi County Sheriff's Office – Civil Unit as soon as the plaintiff receives them.

If a Sheriff's Deputy does not find the defendants at home after making attempts on at least two different days, one day before 6:00 p.m. and one day after 6:00 p.m., the Deputy will post the Summons and Complaint on the door of the premises involved in the Unlawful Detainer Action.

The Deputy will complete the appropriate Certificate and the original Summons and Certificate will be filed with the Court Administrator's Office by the Sheriff's Office.

The plaintiff should mail a copy of the Summons and Complaint to each defendant by first class mail immediately after giving the original to the Sheriff. The plaintiff must complete and file a notarized Affidavit of Mailing with the Court Administrator. If posting is required, the court file will be checked to ensure the Affidavit of Mailing is on file with the court at least three days before the hearing.

The "Complaint in Unlawful Detainer" form is available on the Minnesota Court website at: <http://www.courts.state.mn.us>

The Sheriff's Office charges fees for this type of service.

Evictions

If a judge finds in favor of the plaintiff at the hearing, a Writ of Recovery will be authorized. This is an Order for the Sheriff to restore the premises to the plaintiff.

The Writ must be taken to the Kandiyohi County Sheriff's Office – Civil Unit for service. *The Writ is valid for only thirty days so the plaintiff should not delay bringing it to the Sheriff.* A deputy will serve the Writ on the defendants if they are home, or it will be posted on the door of the premises. In either case, the defendants will be provided with a 24-hour notice advising that they have 24 hours to remove themselves and family and all of their personal property from the premises after the Writ is served or posted. The Sheriff's Office charges fees for this type of service.

If the defendant fails to vacate the premises, the plaintiff must contact the Kandiyohi County Sheriff's Office - Civil Unit at (320) 214-6700 X3329 to schedule an eviction. When the eviction is scheduled, two options are available for storage of the defendants' personal property:

- On-site storage for 60 days.
- Contract with a licensed and bonded mover to inventory and remove the property.

If the plaintiff chooses to use the first option, Deputies will remove the defendants and stand by until the plaintiff has completed an inventory of the premises. If the defendants want to recover their property, they must contact the plaintiff within 60 days and make arrangements to pick it up. The plaintiff must release the property to the defendant. It is recommended, but not required, that recovery of property be handled on a single time/date basis. After 60 days, if the defendant has not picked up the property, it is considered abandoned.

If the plaintiff selects the second option, the plaintiff must contract with a licensed and bonded mover and make arrangements to have the mover there at the time of the eviction. Deputies will remove the defendants and standby until the moving company has loaded the property and completed an inventory. The plaintiff has a lien for the moving and storage expenses *only*. The defendant again has 60 days to contact the plaintiff to make arrangements to pick up the property, and may be required to pay the moving costs before it's released. Frequently the value of the personal property is less than the moving expenses, and since the plaintiff is responsible for paying the movers, this option is selected less often.

For additional information please visit the Minnesota Housing Court website.

The Sheriff's Office charges fees for this service.

Writs of Execution

Writs of Execution are Orders issued by District Court directing the Sheriff to satisfy a judgment. They must be directed to the Sheriff of the county in which the assets to satisfy the judgment are located and they may be for personal or real property. Minnesota Statutes Chapter 550 applies to executions. The Writ of Execution document is valid for one hundred eighty (180) days after the date of issue. The judgment on which it is based is usually good for 10 years, and can be renewed by additional court action. It is the responsibility of the judgment creditor to locate assets belonging to the judgment debtor which can be levied upon to satisfy the judgment. The most common procedures are wage levies and financial institution levies.

Wage Levies

If a creditor wants the Sheriff's Office to conduct a wage levy, it is the creditor's responsibility to provide a Writ of Execution directed to the Sheriff of the county in which the debtor works. The judgment creditor or the creditor's attorney must endorse this Writ. The creditor must provide the Sheriff's Office with a deposit of \$30, which will be applied to the cost of executing the Writ. By law, the creditor must also provide the Sheriff's Office with a check for \$15 made payable to the debtor's employer. This check will be given to the employer when the wage levy is served.

In computing the amount to be collected, the Sheriff's Office will include the amount of the judgment, the interest accruing at the rate indicated on the Writ and any additional costs that have been added by the Court Administrator. The Sheriff's Office will also add the approved commission on the above total, plus Sheriff's Office service fees.

If the judgment is totally satisfied, the creditor will receive the judgment amount, interest, additional costs, \$15 employer's fee and the \$30 deposit. If the judgment is only partially satisfied, the Sheriff's commission on the amount collected, and the service fees, will be deducted from the amount collected.

If for some reason no money is collected, the Sheriff's service fees are the creditor's responsibility.

The creditor is required to send an exemption notice (see forms) to the debtor at least thirteen (13) days prior to commencing the levy, if service is by mail. The Sheriff's Office Employee receiving the Writ of Execution from the creditor will ask the creditor to indicate on the Execution Instruction Sheet (see forms) the date notice was given to the debtor. They will also ask if any moneys have been paid to the creditor for the debt owed.

Wage levies are conducted for a seventy (70) day period, after which the employer will send a check to the Sheriff's Office. If the check is insufficient to satisfy the judgment, the Sheriff's Office will conduct a second seventy (70) day levy. Following the second levy, all money collected will be processed and a check issued to the creditor. If it is not enough to satisfy the judgment, the creditor must obtain a new Writ of Execution and request the Sheriff to continue the levy.

Financial Institution Levies

A levy at a financial institution requires a \$60 deposit. The creditor must also provide the Sheriff with a \$15 check made payable to the financial institution. The name on the account must be the same as the name of the judgment debtor on the Writ of Execution or the financial institution will not honor it. It is possible to levy on a joint account. If the debtor is not a corporation or business, the creditor must provide the Sheriff with two copies of a completed levy exemption notice (see forms) to be given to the financial institution when the levy is served.

Other Types of Levies

It is possible to levy on other items, including vehicles, boats, snowmobiles, recreational vehicles, etc. Deposit amounts required to cover seizure and storage costs vary depending upon the action requested by the judgment creditor, so please contact our Office for a deposit amount prior to planning this type of levy. It is also recommended that you read Minnesota Statutes Chapter 550 for more information, particularly related to **exemptions** to levy. Sheriff's Office staff can discuss a particular fact situation with you, but you are advised to consult an attorney if you have legal questions. Non-homestead real property may also be levied upon and sold. This is a complex procedure and should be discussed with an attorney.

Mortgage Foreclosure

Mortgage Foreclosures are legal actions taken to foreclose upon real estate, as opposed to personal property. These are covered by Minnesota Statutes Chapters 580-582.

Mortgage Foreclosure: Redemption

Pursuant to Minnesota Statutes, *most* properties sold in a Mortgage Foreclosure action can be redeemed by the mortgagor. The published Notice of Mortgage Foreclosure Sale usually contains a paragraph indicating the length of the redemption period. In most cases, this is six months. Minnesota Statutes Chapters 580 – 582 regulate these redemptions. However, some Mortgage Foreclosures are subject to federal regulations, in which case there is no redemption period.

List of Sales

The Kandiyohi County Sheriff's Office does not provide a list of sales. Mortgage Foreclosure sales are advertised in legal newspapers. Sales are published in the West Central Tribune. To qualify as a legal newspaper, the publication must have a paid subscription of over 500 subscribers. Sales are listed in the real estate section.

If the Sheriff's Office is conducting a sale pursuant to Judgment & Decree or as part of an Execution action, the sale notice will be posted in three public display areas located within the county.

Bankruptcy Actions

Bankruptcy actions are filed in U.S. Bankruptcy Court. Residents of Kandiyohi County file with the Minneapolis Office.

A bankruptcy filing will automatically stay any action to collect judgments or conduct Mortgage Foreclosure Sales. In most cases, it will automatically stop an Unlawful Detainer Action.

Following a hearing by the Bankruptcy Court, creditors may be permitted to continue their collection actions or the bankruptcy judge may permit other actions to resume.
