

As You Turn 18

INTRODUCTION

Welcome to the adult world.

AS YOU TURN 18 covers a few of the areas of the law that a person about to set out on his or her own often wants to or should know about. This booklet has been prepared specifically to help inform you of these new rights and obligations. Some of the most common questions are addressed: What are my rights if I'm arrested? What are my legal obligations if I marry? What should I look for in renting an apartment, or in buying a car?

The subjects explained in this booklet are your legal rights. This is only an informational guideline to help you on your way. It is impossible to explain all of your rights and obligations in a short booklet. Please remember that there are exceptions and special circumstances which may affect your legal rights and responsibilities. AS YOU TURN 18 is your basic guide. We hope you find it useful.

CRIMINAL LAW

Arrested? What are my rights?

A police officer may arrest you if the officer has a warrant for your arrest or if the officer sees you violate or attempt to violate the law, or if a crime was committed and the police have probable cause to think you committed the crime.

It is a crime to resist an officer who arrests you lawfully. Even if you are innocent of the crime you are being charged with, it is an additional crime to resist arrest.

It is your constitutional right to refuse to answer any questions, sign any statements, or take any tests concerning any crime. After identifying yourself, you have the right to refuse to make any further statements. This constitutional right to remain silent applies at all times, whether the questioning takes place before or after an arrest is made. If you are in doubt, talk to a lawyer before you talk with the police. If you are in custody at the police station or in a police car, tell the officers you would like to speak to a lawyer before answering any questions. If you ask to speak with a lawyer, the officer must stop all questioning concerning the crime. You may voluntarily give up your right to remain silent, and you may make oral statements, sign written statements, and submit to any requested tests, but any information obtained from you voluntarily can be used against you in court. If an officer promises leniency if you confess, any statements you make in reliance on those promises can also be used against you in court, and the Judge is not bound to be lenient with you. Only confessions obtained under duress, by way of threats, beatings or other force, may not be used against you.

After the arrest is made, you may be taken to the police station. The police have the right to take your photograph and your fingerprints and to search your person and property, including your automobile if you are arrested in it.

If the police wish to question you after they have taken you into custody, they must read you the Miranda Warning, which informs you of your right to remain silent, that any thing you say can be used

as evidence against you, that you have a right to consult with and have the presence of a lawyer, and if you cannot afford a lawyer, one will be appointed for you.

Court proceedings.

In most cases, after the arrest, the accused is entitled to a preliminary hearing before a Judge. At that hearing, the court will decide whether there is probable cause to believe that a crime has been committed and that you committed the crime. If such probable cause does not exist, the Judge will dismiss the charges. If the Judge finds probable cause does exist, then you will be bound over to circuit court for arraignment.

At the arraignment, the charges against you are read by the prosecuting attorney, and you must enter a plea. If you plead "guilty," you give up certain rights, including your right to a jury trial, and the Judge will proceed to sentencing. If you plead "not guilty," you have a right to a jury trial before twelve impartial jurors. At the trial you are presumed innocent, and the State has the burden of proving your guilt beyond a reasonable doubt. You have the privilege against self-incrimination, or the right to remain silent. This means that you cannot be forced to testify, but you can testify if you want to. You have the right to question the witnesses against you, and you continue to have the right to be represented by a lawyer. All twelve jurors have to find you guilty of the crime charged. If you are convicted by the jury, you have the right to appeal your conviction.

JUVENILE COURTS

Juvenile Courts in South Dakota.

A juvenile is a person who is before the court for an alleged delinquent act committed prior to his or her eighteenth birthday.

The following cases are handled in juvenile court:

All criminal cases against juveniles which involve a criminal penalty, except underage consumption, possession of an alcoholic beverage, hunting, fishing, boating, park, traffic offenses that are misdemeanors, (including, but not limited to DWUI, Reckless Driving, Eluding, Possession of a Suspended Driver's License, Hunting Big Game without a License, etc.) or petty offenses which are handled in circuit (adult) court;

All cases where a child is a habitual truant from school, who has run away from home or is otherwise beyond the control of his or her parent, guardian, or other custodian, or whose behavior or condition is such as to endanger his or her own or others welfare; and

All cases involving children who have been physically, sexually or emotionally abused or neglected. If a child is charged with a felony offense, the child may be transferred to circuit (adult) court following a transfer hearing. The court shall consider whether it is contrary to the best interest of the child and of the public to retain jurisdiction over the child. The court will consider: the seriousness of the alleged offense; whether it was committed in an aggressive, violent, premeditated, or willful manner; whether it was an offense against property or person; whether the child committed the act with other adults; the record and previous history of the juvenile; the protection of the public and the likelihood of rehabilitation of the juvenile; and, the prosecutorial merit of the complaint.

There is a rebuttable presumption that it is not in the best interest of the public to retain jurisdiction over a child, sixteen years of age or older, who is charged with serious offenses (including, but not limited to, homicide, kidnapping, rape in the first degree, commission of felony while armed with firearms, carrying or placing explosive or device on vehicle or in baggage, robbery in the first degree, burglary in the first degree and arson).

A child who has been transferred to adult court may be held in jail if the child is 15, 16, or 17 years of age and the child has committed a crime of violence or sexual contact as defined.

Juvenile records cannot be inspected without a court order, except in cases where the juvenile is transferred to circuit (adult) court for criminal proceedings. Juvenile records may not be used in later life for other purposes, such as to disqualify the person from being on a jury or from holding public office. However, juvenile records may be reviewed as part of a presentence investigation following any criminal conviction by that person as an adult. Also, virtually all branches of the military, including the National Guard, require applicants to disclose juvenile records. Felonies or serious misdemeanors committed as a juvenile may result in rejection or a delay in enlistment.

All hearings in juvenile court are closed unless the court finds compelling reasons to require otherwise. However, if the juvenile is 16 years of age or older and has committed a crime of violence as defined or certain drug offenses the hearings and pleadings are open to the public. Generally, victims of any act of juvenile delinquency may attend all hearings involving the juvenile. The court may commit a child to the Department of Corrections. Upon doing so, the Department of Corrections will make the determination as to where custodial care shall be provided.

ALCOHOL

It's your choice - choosing whether to drink or not is a personal choice each of us must make. If you choose to drink, you should be aware of the very serious consequences you face if you violate the law.

You must be 21 years old to buy, consume or possess any form of an alcoholic beverage. If you are over 18 but less than 21 and you purchase, attempt to purchase, possess, or consume alcoholic beverages (except when consumed in a religious ceremony), the maximum sentence is 30 days in jail, a \$200.00 fine, or both.

Anyone who sells or furnishes alcohol to any person under 18 years, unless it is done in the immediate presence of a parent, guardian or spouse over 21 years old, is subject to a maximum jail term of one year, a maximum fine in the amount of \$1,000.00, or both. Anyone who sells or furnishes alcohol to any person who is 18 years old or older but less than 21, is subject to a maximum sentence of 30 days in jail, a \$100.00 fine, or both.

If you are under the age of twenty-one and are the driver of a motor vehicle in which the court finds you guilty of possessing or consuming alcoholic beverages in a motor vehicle, the court shall suspend your driver's license for six months. If it is a second or subsequent conviction, your driving privileges are suspended for a period of one year.

If you are arrested for driving while under the influence, it is important that you understand your rights. You have the right to remain silent at all times you are with the arresting officer. You do not have to answer any questions. You do not have to perform any "field sobriety tests," either inside the patrol car (like reciting the abc's, counting backwards, blowing into the PBT, etc.) or outside the patrol car (like walking heel to toe, balancing on one foot, etc.).

You have the right to refuse to take a chemical or breath test to determine your blood alcohol content. If you refuse, however, you will probably lose your driving privilege for one year. You do not have the right to consult with an attorney before deciding whether to take the requested test. After the test has been performed, you may then contact your lawyer.

If you submit to the chemical or breath test, you have a right to know the results of the test. You also have the right to have an independent test done, at your own expense. A first offense DWUI and a second offense DWUI carry with it a maximum sentence of one year in the county jail, a \$1,000.00 fine, or both. A third offense DWUI conviction is a felony offense for which you could spend time in the South Dakota Penitentiary.

EVERY YEAR MANY PEOPLE DIE IN SOUTH DAKOTA
IN ALCOHOL-RELATED ACCIDENTS
PLEASE DON'T DRINK AND DRIVE!

MARRIAGE

Marriage is a legally binding contract between a man, a woman and the State of South Dakota. No formal residency is required to be married.

Legal Requirements of Marriage.

Age.

Persons eighteen years of age or older may get married without the consent of their parents or legal guardians.

The consent of one parent or the legal guardian is required for persons sixteen or seventeen years old to get married.

A woman under the age of sixteen must be pregnant or have given birth to a child and have the consent of a parent or other legal guardian, in order to be married.

Marriage Ceremony.

The marriage ceremony may be performed by a Circuit Court Judge, a Supreme Court Justice, a magistrate, mayor, or any church official authorized to perform a marriage ceremony. The ceremony must be conducted within 20 days of the issuance of the marriage license. You can get a license at the county courthouse.

Legal Consequences of Marriage.

Name Change: There is no requirement that the woman assume her husband's last name. However, if the husband's last name is assumed, it becomes the legal name of the wife without a formal legal proceeding to change the name.

Duty to Support: Under South Dakota law a spouse has the duty to provide for the support of the other. The support required is to provide adequate food, clothing, shelter and medical attendance if the spouse has the abilities to provide such support.

DIVORCE

Grounds for Divorce.

South Dakota laws provide seven reasons for which a divorce can be granted. The seven grounds are adultery, extreme cruelty, willful desertion, willful neglect, habitual intemperance, conviction of a felony, and the most common, irreconcilable differences.

Irreconcilable differences is a hybrid of a no-fault divorce, however, both parties must consent and agree to a divorce on this ground.

Initiating Divorce Proceedings.

A divorce is a lawsuit initiated like any other civil lawsuit with the service of a summons and complaint upon the defendant spouse. The person initiating the divorce must be a resident of South Dakota or stationed in South Dakota as a member of the military. Further, the plaintiff must maintain his/her residency or military status throughout the pendency of the action. The divorce action may be brought in the county of residence of either one of the parties.

Once a divorce action is initiated, both parties are restricted from doing certain things by virtue of a temporary restraining order which automatically takes effect upon the service of the summons and complaint. Neither party can dispose of or conceal marital assets without written consent of the other party or court order. The parties are also restrained from removing children from the state without written consent of the other party or court order. Finally, both parties are restrained from molesting or disturbing the peace of the other.

Issues in a Divorce.

A divorce cannot be granted by the court until 60 days after the completion of the service of the summons and complaint. Many divorce issues are discussed between the parties and their attorneys during this time period in an effort to settle the divorce without a trial.

If the parties are able to negotiate and settle all issues arising during the course of the marriage, such agreements can be incorporated into a written stipulation offered to the court for approval and neither party may be required to appear at a court hearing.

Property Division.

The court is given the burden of making a division of the marital property between the parties if they do not agree upon a fair distribution between themselves. The court is to consider equity and the circumstances of the parties in making its decision, including the length of the marriage, the value of the property of each party, the parties' age, health, ability to earn and contribution to the accumulation of marital property. The fault of a party with regard to the pending divorce is not to be considered in the division of property. The court must also make a fair and equitable allocation of the marital debts.

Child Custody.

If custody of the minor children cannot be agreed upon, the court must determine which party will be awarded custody. The sole criterion in such a determination is what is in the best interests of the child's welfare. If the child is old enough to make an intelligent decision, the court may consider the wishes of the children, but is not bound by those wishes.

Often, both parents retain joint legal custody of the children with one parent being granted primary physical custody. Normally, the parent who does not receive physical custody will be entitled to visitation rights. The lengths and frequency of visitation varies and is dependent upon the circumstances in each case. Child custody may be later modified by the court under certain circumstances.

Child Support.

The non-custodial parent must provide financial support to help offset the financial burden of raising children. South Dakota statutes contain guidelines which set forth the appropriate amount of child

support based upon the combined net income of both parents. If one or both parents are capable of working, but are unemployed or full-time students, a minimum wage may be imputed. Deviations from these guidelines may be made only if the court specifically finds certain factors to exist. These guidelines also apply to children born out-of-wedlock once paternity has been established.

Child support can be determined for a nominal fee through an administrative process conducted outside of court by the Department of Social Services, Office of Child Support Enforcement. It is not necessary for a parent to retain legal counsel to represent them in these administrative proceedings.

Spousal Support.

In determining whether or not alimony or spousal support is to be granted, the court considers factors similar to those used in determining a division of property. In addition to those factors, the relative fault of a party may be considered. Such an award of spousal support can be ordered payable for the life of the other party or for a shorter period, depending upon the circumstances, and may be modified thereafter.

DOMESTIC VIOLENCE

A general principle of law is that people should not physically hurt or assault each other. That same general principle applies to members of a family if domestic violence occurs between its members. South Dakota has enacted laws specifically dealing with those who are the perpetrators and victims of domestic violence.

The primary tool available to victims or potential victims of domestic abuse is the protection order. A protection order restrains one party from committing any act of violence, or excludes that party from the home. Any person may seek a protection order. If a person cannot afford to pay filing fees to obtain a protection order, the court may waive those fees. The clerk of courts in each county is required to make available to all persons standard forms to be used.

A party does not need to retain a lawyer in order to apply for and receive a protection order. Upon application, an ex parte temporary protection order may be granted for a period of up to 30 days, after which a court hearing must be held for a permanent protection order.

If a permanent protection order is granted, its maximum duration will be three years. A protection order may provide the following:

- Restrain any party from committing acts of domestic abuse;
- Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- Award temporary custody or establish temporary visitation with regards to minor children of the parties;
- Establish temporary support for minor children of the parties or a spouse;
- Order that either or both of the parties obtain counseling;
- Order other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a sheriff or constable.

Violation of a temporary or permanent protection order is a Class 1 misdemeanor in South Dakota. The maximum penalty is a one year county jail sentence and a \$1,000.00 fine.

Stalking.

Stalking laws were recently passed by the South Dakota Legislature. Stalking is defined as a person who willfully, maliciously, and repeatedly follows or harasses another person or who makes a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury.

A first time conviction can result in a maximum penalty of one year in the county jail and/or a \$1,000.00 fine. Subsequent convictions occurring within a seven year time frame against the same victim and involving acts of violence or a credible threat of violence can result in a penalty of five years in the state penitentiary and/or a \$5,000.00 fine.

If a protection order is in effect against the perpetrator and the perpetrator commits the crime of stalking the maximum penalty is two years in the state penitentiary and/or a \$2,000.00 fine.

Assault.

Domestic abuse, even in the absence of a protection order, may result in criminal prosecution. Most often, the person will be charged with simple assault, a Class 1 misdemeanor with the potential penalties outlined above. If the victim is seriously injured, more serious criminal charges may be considered.

If you or someone you know is the victim of domestic violence, you should report any assaults against you to your local police. The South Dakota Department of Social Services has regional offices throughout the State to provide assistance to victims of domestic violence. Many communities have organizations whose programs are specifically designed to help those that are victims of domestic abuse. Feel free to call an attorney in your area or the police to ask for assistance in contacting an organization that can assist you.

SMALL CLAIMS COURT

Those who have seen the television program "The People's Court" are familiar with the Small claims court process available in many states, including South Dakota. Small claims court provides the public with a simple system of deciding small cases without the delays and expenses usually associated with lawsuits.

Small claims court will handle disputes involving \$4,000 or less. The person starting the claim is called the plaintiff. To start a small claims action, the plaintiff must go to the county clerk of court and fill out a form briefly describing the nature of the claim. The clerk will help in filling out the form. The plaintiff must pay a small fee to start the action. If the court rules in favor of the plaintiff, the defendant must repay the filing fees. A hearing date is scheduled and a copy of the forms are then sent to the defendant.

The defendant is notified that if he or she wishes to contest the plaintiff's claim, an answer must be filed with the clerk. The answer should be written in plain language denying any or all of the plaintiff's claim. The answer should also state the reasons why the defendant denies the claim. The defendant may also make a counterclaim against the plaintiff if he or she feels the plaintiff owes money. If the defendant does not file an answer, the court may grant a judgment by default in favor of the plaintiff. At the trial, each party may bring in witnesses to testify and introduce evidence such as receipts, photographs or drawings to support their case. Either party may have an attorney represent them at the trial, but it is not necessary. The judge will listen to the evidence and testimony presented by both parties and then make a decision.

If the plaintiff wins the case, the defendant should be asked to pay the money immediately. In the event the defendant refuses to pay the judgment, the plaintiff may, after waiting 30 days, obtain an "execution" from the clerk of court. An execution allows the sheriff to seize property owned by the defendant and sell it to satisfy the judgment. There is another small fee for an execution and for having the sheriff attempt to collect on it. Judgments and executions are valid for 20 years.

RENTING A PLACE TO LIVE

After graduation, one of the first things many students do is leave home to attend college or begin a new career. Often this requires them to rent a new place to live. Renting property may give rise to disputes between landlords and tenants which could be avoided if the tenant would take certain steps to protect himself prior to renting.

What is a lease?

A lease is the agreement between a landlord and a tenant which establishes the length of time the tenant may occupy the property and the amount of rent the tenant will be required to pay. The lease may also contain several other provisions regarding the rights and obligations of both the landlord and the tenant.

Who is who in a lease and what do the lease terms mean?

The terms used in a lease can be confusing. Some common examples of lease terminology include the following:

- Lessor - the landlord;
- Lessee - the person renting the premises, also known as the tenant;
- Assignment of the Lease - this refers to the original tenant renting the premises to another tenant and then permanently leaving the premises. The new tenant is substituted in the place of the original tenant;
- Subleasing - this is similar to assignment; however, the original tenant remains responsible to the landlord for the rent, and the original tenant usually intends to return to the premises after the sublease expires;
- Security Deposit - a deposit of money to secure performance of the lease and compensate the landlord for a tenant's damage to the premises. A security deposit is more fully described below.

If these terms are not in the lease, you should discuss each of them with the landlord before you rent.

How long does a lease last?

The lease agreement usually will define how long the lease will be in effect. Typically, the lease will be for a fixed period of time (for example, six months) and is then renewable on a month-to-month basis. If a lease is to last more than a year, it must be in writing and must be signed by the landlord.

It is important to fully understand the length of the lease term. If the lease is for a fixed period of time (for example, six months) and the tenant moves out before the expiration of the leased term, the tenant may still be responsible for the full amount of rent that would have been paid through the expiration of the lease term. This may be true even if the tenant no longer lives in the apartment and even if the landlord refuses to find anyone else to rent the vacant premises.

Questions to ask before moving in.

- How long is the term of the lease?

- What is the amount of rent?
- When must the rent be paid and is there any charge for late payment?
- What charges are included in the rent? In other words, does the rent cover charges for electricity, gas, water, garbage service, etc., or is the tenant responsible for those charges?
- Are pets allowed?
- Can the tenant bring in roommates to share the rent?
- What notice must the tenant give the landlord prior to terminating the lease?
- What does the landlord require in terms of cleaning the premises prior to the tenant vacating them?

The tenant and the landlord together should closely inspect the premises prior to the tenant moving in. Both the tenant and the landlord should make a list of all holes in the walls, stains in the carpet, scratches on walls and doors, broken windows, etc., which exist prior to the time the tenant moves in.

Tenant rights and landlord obligations.

The tenant has a right to possess and enjoy the leased premises. This means that the landlord may not lock the tenant out of the premises nor can the landlord interrupt or diminish the tenant's utility services. In other words, the landlord may not cause the electricity to be shut off in order to cause the tenant to leave the premises.

If the landlord interferes with the tenant's right, the tenant has two remedies: first, the tenant may bring a lawsuit against the landlord to recover possession of the premises; or second, the tenant may terminate the lease and vacate the rental premises.

The landlord is obligated to keep the premises in a good and safe condition. This obligation extends to all common areas such as hallways, entrances, storage areas, and laundry facilities. Unless the lease agreement states otherwise, the landlord must maintain all electrical, plumbing and heating systems.

If the landlord fails to keep the premises in a good and safe condition, the tenant must give the landlord notice of that fact. The landlord then has a reasonable amount of time to make the necessary repairs. If the landlord fails to make the repairs, the tenant has the following options:

- The tenant may have the repairs made and deduct the cost of the repairs from the rent;
- The tenant may have the repairs made and attempt to collect the costs from the landlord in some other manner;
- If the cost of repairs exceeds one month's rent, the tenant can withhold payment of the rent and deposit the rental payment in a separate account. The tenant must notify the landlord in writing that the rent will remain in the account until the repairs are made or until there are sufficient funds in the account to pay for the repairs;
- If the landlord refuses to make the necessary repairs, and if the repairs are of such a nature that the premises are not fit for human habitation or are unsafe, the tenant may simply leave the premises and is no longer obligated to pay rent or perform any other duties required under the lease.

Landlord rights and tenant obligations.

Remember that the landlord is the owner of the premises and is, therefore, entitled to protect his property. One of the principal means of protecting property is through the use of a security deposit.

A security deposit is an amount of money paid by the tenant to the landlord. The money is held by the landlord until the lease expires. The amount of the security deposit cannot exceed one month's rent

unless both the landlord and the tenant agree to a higher amount. Typically, the landlord will require a higher amount if pets are permitted on the premises.

Within two weeks after the termination of the lease and receipt of the tenant's mailing address or delivery instructions, the landlord must return the security deposit to the tenant or furnish a written statement showing the specific reason for withholding any part or all of the security deposit. The landlord cannot charge the cost of repairing any damages which existed at the time you moved in against the security deposit. If you did not take the time to perform an inspection to check the damages before you moved in, however, you may find yourself arguing with the landlord over whether a particular item of damage existed prior to taking possession of the premises. Take a few moments to perform an inspection prior to moving into the premises, and you may avoid a significant amount of frustration and expense.

If the amount of damage exceeds the amount of the security deposit, the landlord may collect the excess damages from the tenant. In other words, the tenant is responsible for any damages to the leased premises beyond ordinary wear and tear.

The tenant may be evicted from the premises if the tenant does not pay rent on a timely basis or if the tenant continues to occupy the premises after the term of the lease expires.

If the tenant moves out but leaves property behind, the landlord can: (1) if the property is less than \$100 and has not been removed within ten days, the landlord can simply dispose of the property; (2) if the value of the property is more than \$100, the landlord must store the property and hold the tenant responsible for paying any storage or handling costs. If the property has been stored for more than thirty days, the landlord can dispose of the property and apply the money toward the cost of handling and storage.

Before you move out.

Before leaving the leased premises, you should be sure to do the following:

Give proper notice to the landlord. Look at the lease to determine what notice is required.

Typically, the tenant must give at least one month's notice. The lease may require that notice be given on the first day of the month. Thus, if the tenant gives notice sometime during the middle of the month, the notice is not effective and does not begin to run until the first day of the following month. Give the landlord written notice. The tenant should keep a copy of the notice as proof that notice was given in a timely manner. You should keep copies of all written documents, including your lease.

Clean the premises in accordance with the landlord's requirements. The tenant should return the premises to the condition that they were in when he moved in, other than normal wear and tear.

The tenant should make a demand upon the landlord in writing requesting return of the entire amount of the security deposit. Send the demand for the return of the security deposit to the landlord by certified mail so that the time by which the landlord must return the security deposit (two weeks after termination of the lease and receipt of the tenant's mailing address or delivery instructions) is established. If the landlord does not return the entire security deposit, he must provide the tenant with an accounting explaining why any or all of the security deposit was not returned.

If the landlord does not return all or part of the security deposit, and if the tenant believes the landlord does not have a valid reason for withholding any of the security deposit, the tenant should immediately notify the landlord and inquire why such money was withheld. If the landlord cannot adequately explain the withholding, and if the amount of money involved is significant, it may be worthwhile pursuing return of your deposit in small claims court.

YOU AND YOUR CAR

Buying a New Car.

If you don't already own a car, you probably want one. New cars today are awfully expensive, but if you've just won the lottery, or are lucky enough to be able to afford one, consider this advice before going to the car lot.

Compare prices between two different dealers on the same type of car. Remember, the price on the window sticker is not the price you need to pay to buy the car. It's only the manufacturer's suggested retail price. Dealers will expect you to bargain with them! Investigate certain publications for the dealer's cost -- that's how much the dealer paid for the car.

Compare warranties on the cars you're looking at. Some new cars have warranties ranging from 12 months or 12,000 miles (whichever comes first), all the way up to 100,000 mile bumper-to-bumper warranties. The longer the term of the warranty and greater the coverage provided, the greater the cost normally associated with such a warranty. Check exactly what is covered in writing in the warranty provisions. Do not rely on oral statement or promises of sales people and/or car dealers -- these are extremely difficult to enforce regarding warranty issues months or years down the road.

Investigate options packages. Dealers make more money when they sell you more options. Many cars are available without the options. Others are sold with packages of the most commonly asked for options -- stereo, air conditioning, and cruise control. Make sure you're getting only the options you want.

Buying a Used Car.

Used cars can offer great deals, but may also create huge headaches. You can lessen your chances for a headache by carefully checking on the following:

- Make sure you get the model year, make and serial number of the car you're looking at;
- Get the name and address of the previous owner and ask them about the car;
- Make sure you ask the seller if he or she knows of any mechanical defect in the car;
- Check if there is any remaining warranty on the car;
- Check whether the car has had any prior damage, such as fire, flood or accident. In South Dakota, every seller of a used vehicle is required to fill out a damage disclosure statement, listing any damage to the car in excess of \$2,000, unless the car is 9 or more model years old;
- It might be a good idea to have the car checked out by a mechanic you know and trust; and
- Have the owner or dealer sign a Bill of Sale properly identifying the vehicle by year, make, model, and vehicle identification number (VIN #).

In addition, the law gives you the right to know the true mileage on the car. You have this right regardless who's selling you the car. The mileage a car has been driven is generally a good indicator of the relative value and safety of the car.

If you purchase a second-hand car, the seller has 30 days to provide you with the car's title. You must then get the car titled in your name, usually at the county treasurer's office. Be prepared to pay a title fee on the purchase of your vehicle which is 3% of the purchase price on all vehicles 10 years old and newer. For vehicles older than 10 years, if less than \$1,500.00 was paid as the purchase price there is no title fee. If the car was purchased new from a dealer, the dealer will get you the title. You will still

have to register the title with the county, and will still have to pay fees. Don't forget that sales tax will be charged too!

Leasing a Car.

Leasing a car is a recent marketing tool created to further reduce required monthly payments for (generally) new automobiles. While some individuals are able to negotiate a very favorable lease agreement and are quite happy with driving a vehicle making monthly lease payments for the lease term (normally 1 to 3 years), leasing a vehicle is NOT for every buyer. You should talk with your parents, and an accountant or investment advisor to determine whether leasing makes financial sense for you. Remember to always read the fine print to determine if there are any "hidden" costs in the lease such as penalties for early termination of the lease, penalties for excess mileage during the term of the lease, and costs for non-covered repairs or maintenance during the term of the lease which the dealer or salesperson may not mention. Remember, the only terms which will be binding are the terms which are in writing in the lease agreement.

Financing Your Car.

If you buy from a dealer, check if a special financing program is available. If you finance through a bank, savings and loan or other credit institution, investigate financing rates, as they may differ.

If you finance your car, you will receive an installment contract. The contract must include:

- The cash sale price of the car;
- The amount of any down payment;
- The difference between the price and the down payment;
- The amount separately included for insurance or other costs, if any;
- Any fee for filing a lien on the car;
- The principal balance, which is the total of numbers 3, 4 and 5;
- The amount of the finance charge; and
- The balance owed by you, which is the total of numbers 6 and 7 above, the number of payments to be made and when the payments are to be paid.

Insurance.

Once you've purchased your car, you'll also need to insure it. In South Dakota, you are required to carry at least \$25,000 worth of coverage for bodily injury to, or death to any one person in any one accident and a limit of not less than \$50,000 worth of coverage for bodily injury to or death to more than one person in any one accident. You are also required to have at least \$25,000 worth of insurance for harm or damage to property of others in an accident. The law requires you to provide written proof of your insurance upon demand of any law enforcement officer who may stop you for a suspected traffic violation. Your insurance company will provide you with this documentation when you buy your insurance. Shop around for the best rates and coverage as rates differ from company to company for the same coverage.

Accidents.

Unfortunately, having a car may mean having an accident. If you have an accident, you must stop as soon as you can without endangering traffic and give your name and address to the owner of the other vehicle. If you hit an unattended car, you must leave this information in a conspicuous place on the car. If someone is injured, or the property damage to one of the cars is over \$500, you must call a law enforcement officer.

Speed.

Speed limits are those posted on traffic signs. If no signs are posted, the maximum limits are 15 or 25 miles per hour in residential and urban areas, 55 and 65 miles per hour on state or county highways, and 75 miles per hour on the interstate outside of urban areas. Also, no person may drive slower than 40 miles per hour on the interstate highway, or at an unreasonably slow speed elsewhere. Remember, however, that regardless of the limit posted the basic rule is: You may only drive as fast as is safe under the prevailing conditions. During heavy rain, snow, fog or other unsafe conditions, you must keep your speed to a level that is reasonable and prudent under the conditions as they exist (i.e. so that you can safely stop your vehicle without injury or damage should the need arise).

HUNTING LAWS

Hunting is a major sport and industry in South Dakota. Every fall, thousands of hunters take to the woods, fields, and sloughs in pursuit of game. The majority of hunters follow and obey the law while they hunt. However, there inevitably are some who, either by ignorance or intent, violate both the law and the sense of sportsmanship which the law attempts to instill.

Generally a hunter is required to purchase a license from the state before hunting. The possession of a license means that the hunter agrees to abide by the laws and regulations governing where hunting is permitted, the number and sex of animals permitted to be taken, the times of the year and hours of the day during which he or she may hunt, and similar requirements. Violation of such laws and regulations can lead not only to criminal penalties but civil liability as well. For certain violations, the hunter may lose his or her license for up to a year and in case of a subsequent conviction for hunting certain big game animals during a closed season or without a license, the hunter may lose his hunting privileges for a period of five years.

No person may hunt, fish, or trap on private land without the permission of the landowner or renter of the land. If a person is convicted of knowingly trespassing while hunting, the court will revoke the person's hunting, fishing or trapping license for one year. Hunters convicted of violating any wildlife law or rule which carries a maximum punishment of more than a \$200.00 fine shall also lose their license for one year, as will any person who hunts without a license or who takes game during the closed season.

In addition to the criminal penalties that may be suffered, a hunter may also be liable for civil damages to the state for certain offenses. These range from \$1,000 for each deer, antelope, or bobcat unlawfully taken to \$10,000 for each mountain goat or bighorn sheep that is killed. A hunter may also have to pay \$100 for each game bird (pheasants, ducks, etc.) taken out of season or without a license, and \$200 for each wild turkey. These civil liabilities may also be assessed if the hunter exceeds the legal limit.

There are also penalties for harassing game or other hunters, for illegal use of a motor vehicle while hunting, discharge of a weapon from a motor vehicle, and illegal transportation of wild game. State law prohibits any person from refusing to permit inspection and count of game. During such searches, law enforcement authorities are permitted to stop motor vehicles, trailers and campers for inspecting and counting game.

Compliance with hunting laws and regulations assures that there will be adequate numbers of animals in the future and that our natural resources are protected. If you see someone violate a hunting or fishing regulation, please call the TIPs Hotline at 1-800-592-5522. You don't have to give your name nor do you have to appear in court, and the state pays rewards of up to \$200 for information leading to the arrest of individuals committing game or fish violations.

REGISTERING TO VOTE

The right to vote is a cornerstone of a democratic system. Through the elective process, the citizens of a community express their will on issues and individuals who will represent them.

Any citizen of the United States who is 18 years of age on election day and is a resident of South Dakota may vote in an election. To be eligible to vote, one must be registered in the county where the voter claims residence. Registration may be done at the County Auditor's office, at the City Finance office in the community where the voter resides, or with any notary public authorized by a county auditor to register voters. The voter must be registered at least fifteen days before the election in order to be eligible. It is not necessary to re-register before each election.

College students may register in the county where they attend school if they are in good faith making the county their residence, or they may be registered in their home county and vote by absentee ballot. Absentee ballots can be obtained by mail or at the auditor's office. They may not, however, be registered in two counties. Voters who are overseas at the time of an election or out of the state because of military service may also vote by absentee ballot.

State law requires employers to allow an employee to leave work without loss of pay for two consecutive hours during the time the polls are open to vote. An exception to this requirement is if the employee has a two hour consecutive period while the polls are open during which he or she is not expected or required to be present at work. Polls in South Dakota are open from 8:00 a.m. to 7:00 p.m., except for a general election, in which case all polls are open from 8:00 a.m. Central Time and 7:00 a.m. Mountain Time to 8:00 p.m. Central Time, 7:00 p.m. Mountain Time.

SELECTIVE SERVICE

Despite our all-volunteer military, in July 1980, Congress re-established the registration system of Selective Service in the event that it would be necessary to reintroduce the draft. All male citizens and other male persons living in the United States who were born on or after January 1, 1960 must register with the Selective Service System within 30 days after their 18th birthday. Registration has been made simple; all a registrant must do is complete a form available at the nearest post office and leave it with the postal clerk. The postal clerk will ask for some type of identification, such as a driver's license, while checking the form. An acknowledgment letter will be sent by the Selective Service within 90 days. Some government benefit programs require proof of Selective Service registration before the applicant may participate.

If a registrant moves before reaching his 26th birthday, he is required to notify the Selective Service of his new address. Forms can be obtained at any post office, or you may simply send a letter to Selective Service, Box 4638, North Suburban, IL 60197-4638. The letter should include the individual's full name, Selective Service number, Social Security number, and date of birth.

The government has instituted criminal penalties for those who evade registration. Penalties may include imprisonment and a fine.

DISCRIMINATION IN THE WORKPLACE

Various legal protections have been created in an effort to eliminate or ban discrimination or harassment of individuals and groups on the basis of race, color, creed, religion, sex, ancestry, disability or national origin. The laws which have been put in place provide protection from such discrimination and a remedy in the event the laws are violated.

South Dakota law defines a number of practices as being unfair and discriminatory. It is unfair and discriminatory to discharge an employee or to treat an employee unequally in hiring, training, promotion, layoff, compensation, or any term of employment because of race, sex, color, creed, religion, ancestry, disability or national origin. Additional federal protections exist prohibiting discrimination.

If an individual believes that they have been the victim of discrimination in the work place, a complaint can be filed with the State Division of Human Rights, 500 East Capitol Avenue, Pierre, South Dakota, 57501-5070, stating the name and address of the employer whom they allege has engaged in the discriminatory activity. The statement should also set out the facts upon which the complaint is made. A complaint must be made within 180 days after the alleged discrimination has occurred.

Upon receiving a complaint, the Division will open a file and investigate the claim. If there is probable cause to believe discrimination has occurred, the department will attempt to eliminate the discriminatory or unfair practice by discussing it with the employer and trying to reach an agreement settling the complaint. In those cases in which agreement cannot be reached, the Division may refer the complaint to the Commission of Human Rights. The Commission, if it believes circumstances warrant, may then start formal proceedings against the employer, with the ultimate decision being made following a hearing. At the hearing, both parties may be represented by a lawyer and present witnesses and evidence on their own behalf.

If the Commission finds that discriminatory or unfair activity has occurred, the Commission will serve a "cease and desist" order requiring the employer to stop such practices. The Commission may require the employer to take certain affirmative actions such as hiring, reinstating, or upgrading employees and to give back pay to those employees who have been the victims of the discriminatory conduct. If the Commission finds that there has been no discriminatory conduct, it will dismiss the charges.

USING A LAWYER

When do I need a lawyer?

Many people think they need a lawyer only after a problem arises. Actually, the best time to see a lawyer is before trouble occurs. Preventive legal work is one of the most valuable services a lawyer can perform. By eliminating potential problems before they occur, you can save time, money, and needless worry.

Some of the times in which you may wish to consult a lawyer are:

- Buying or selling real estate.
- Signing a lease or contract.
- Divorce or adoption.
- When a lawsuit is brought against you, or when you want to start a lawsuit.
- If you are arrested or charged with a crime.
- When starting a business.
- Drafting a will.

- When you have been injured, either on the job, or in an accident, or because of a defective product.
- Buying or selling a car.
- Estate planning.

How do I select a lawyer?

If you do not know a lawyer, there are several sources that you may use to help you select one. The State Bar of South Dakota provides a Lawyer Referral Service, which you can use free of charge. The service can be reached by dialing, toll free, 1-800-952-2333. The Lawyer Referral Service will send you a list of lawyers in your area to choose from, and which have agreed to give you an initial consultation for a small or reasonable fee or perhaps no fee at all. After meeting with that attorney, you can decide whether to retain him or her for further representation. Other methods of selecting a lawyer are recommendations from friends, family members, and co-workers, or consulting the Yellow Pages. South Dakota also has several federally funded programs which offer free legal services, in civil matters only, to individuals who meet certain income guidelines.

What should I look for in a lawyer?

When you select a lawyer, ask about the lawyer's reputation in the community, his or her experience with your type of legal problem (don't hesitate to ask about this on your first visit), look for communication skills, an ability to talk to you in language you can understand and a willingness to keep you informed about the progress of your case, fees, etc.

When you hire a lawyer, you should expect him to adequately investigate and prepare your case, negotiate settlements if a fair agreement can be reached, keep you informed about what is going on in your case, answer your questions, discuss fees with you at your first visit, be candid with you about your problem and your prospects for success, and keep confidential anything you tell him. Likewise, your lawyer will expect that you will be completely honest about all the facts concerning your case, be on time for appointments, take his or her advice, call for appointments rather than just dropping in without warning, understand that no lawyer can guarantee results in a contested matter, and pay a reasonable fee for the work performed.

Can I change lawyers?

You may discharge your attorney at any time, simply by informing him or her of your wishes. It is best to give your lawyer notice that you will be changing lawyers, because it may be necessary for that lawyer to ask the court for permission to withdraw.

Even if you discharge your lawyer, you are still obligated to pay for any services which have already been performed on your behalf and costs which have been incurred.

Credits

AS YOU TURN 18 is a public education project of the

**State Bar of South Dakota
Young Lawyers Section
222 East Capitol
Pierre, South Dakota 57501-2596.**