



# How to Remove (Vacate) a Default Judgment

## WHAT IS A DEFAULT JUDGMENT?

A default judgment means a judgment that a person or company who filed a lawsuit won the case automatically. The plaintiff won because you did not respond to the summons and complaint, or you did not appear in court when you were supposed to. This happens fairly regularly because people are often not properly notified about lawsuits. Having a judgment may allow the plaintiff to freeze your bank account or garnish your wages. You can ask the court to remove (“vacate”) the judgment if you can establish that the plaintiff should not have received the judgment.

## HOW DO I VACATE A JUDGMENT?

To vacate a judgment, you have to file a written request, called an “**Order to Show Cause to Vacate the Default Judgment**” with the court that entered it. The most common bases for vacating a judgment are:

- **Improper Service:** You may vacate a judgment if the court lacked jurisdiction over you because you were not properly served with court papers. Generally, there are three correct ways to be served: (a) in person, where the process server gave you the summons and complaint directly, (b) by “substituted service,” where the process server gave the summons and complaint to another adult at your residence or place of business and mailed you a copy, or (c) by “nail-and-mail,” where the process server attached a copy of the summons and complaint to the door of your residence and mailed you a copy. If you were not served with court papers one of these ways, the judgment against you is probably not valid. There is no time limit for vacating a judgment on the ground that you did not receive proper service.
- **Fraud, Misrepresentation, or Other Misconduct:** You may vacate a judgment for this reason where, for example, you received court papers, then you called the plaintiff’s attorney to set up a payment agreement, and the plaintiff’s attorney told you not to worry about going to court, but then obtained a default judgment against you anyway. There is no time limit for vacating a judgment on this ground.
- **Excusable Default:** You may vacate a default judgment if have a reasonable excuse for why you did not appear in the case as well as a “meritorious defense.” A defense is a reason why the plaintiff should not have won the case (for example, you had already paid the debt that the plaintiff sued you on). An Order to Show Cause alleging excusable default must be filed within one year after you are served with the judgment. (If you never received the judgment, the one year may not have started yet.)

## WHAT DO I NEED TO VACATE A JUDGMENT?

- Get the **index number** of the case. You may be able to find the index number by searching for your name on the “e-courts” system at <https://iapps.courts.state.ny.us/webcivil/ecourtsMain>. You can also call the plaintiff’s attorney for this information, or you can look for it on your credit report. If your bank account has been restrained it will be on the notice you get from your bank.
- Go to the court with your index number and **ask for the file. Copy the file**, including the “**affidavit of service**,” which explains how the process server supposedly served you. Review

the file to figure out what grounds you have to vacate the judgment. For example, the affidavit of service may state your address incorrectly, or may claim to have served someone you don't know or doesn't actually exist. Note that if the case was brought a long time ago, the file may be in archives and take several months to retrieve from storage. In that case, you should decide whether to go forward without the information in the file or to wait.

### **WHAT PAPERS AM I REQUIRED TO FILE TO VACATE A JUDGMENT?**

The Order to Show Cause to Vacate a Default Judgment ("OSC") form is available on Do It Yourself computers in each civil courthouse in New York City. You can also access these forms online at [http://www.nycourthelp.gov/diy/nyccivil\\_civil.html](http://www.nycourthelp.gov/diy/nyccivil_civil.html). This program will create OSC papers based on the answers you provide to questions the program asks. You will need your court papers with you in order to complete the questions. It is especially helpful to have the "affidavit of service" (see above) with you when you complete this form.

If your bank account has been frozen or your wages garnished, the Do It Yourself program will allow you to ask the court to release the restraint or garnishment. Additionally, if you never filed an Answer in the case, the program will ask you questions to create a proposed Answer. You should consult our fact sheet entitled "*I Am Being Sued For A Debt: What Should I Put In My Answer?*" to help you with this.

### **WHAT HAPPENS AFTER I FILE THE PAPERWORK?**

When you file your OSC, the court clerk will give you a date for a hearing and instruct you how to send your paperwork to the plaintiff's attorney. You must follow the clerk's instructions on how to send these papers. Keep proof that you sent the paperwork, either by a return receipt of certified mail or a certificate of mailing. You must appear in court on time on the date of your hearing.

At the hearing, if the judge grants your OSC, he or she will issue a Decision/Order that vacates the judgment and dismisses the case or restores it to the calendar. This means the case has now been reopened. The court will often accept your Answer, which is a formal written response to the claims the plaintiff made against you in its Complaint, or give you additional time to file your Answer.

### **WHAT ARE THE PROS AND CONS OF VACATING A JUDGMENT?**

Pros:

- No fear your bank account will be re-restrained unless a judgment is entered again.
- If the plaintiff took money from you, the court usually requires the plaintiff to return those funds. You should ask the judge to include that requirement in the Decision/Order.
- Judges generally grant requests to vacate default judgments based on improper service because it is a well known problem.

Cons:

- The process of vacating a default judgment can take a few weeks from the time you file the Order to Show Cause to the time you get a Decision.
- You may have to continue to fight the case so that another default judgment is not entered. This means that you have to attend subsequent court dates.

### **CAN I GET ANY ADDITIONAL ASSISTANCE?**

Because there are so many consumer debt lawsuits in New York City, legal services organizations cannot provide representation to everyone. One place where you can get free legal advice is the Civil Legal Advice and Resource Office (CLARO). The CLARO program is staffed by volunteer attorneys and law students who give brief advice to self-represented defendants in these cases. Their times and locations vary by borough, and you can visit [www.claronyc.org](http://www.claronyc.org) or [lawhelpny.org/consumer](http://lawhelpny.org/consumer) to learn more, or you can ask the court clerk when the CLARO program in your county meets.