

Motion to Set Aside Default Pack

Introduction and Instructions

What this Pack Contains

This product contains (1) two Sample Motions to Vacate or Set Aside a Default, (2) an annotated motion to vacate, (3) a sample Memorandum in Support of Motion to Set Aside, (4) a sample affidavit, (5) a sample “proposed Answer and counterclaim;” (6) some case law notes, (7) a report explaining what motions to vacate are, how they are used, and what to do with them, (8) these instructions, and (9) a video: *Motion to Vacate – Some Nuts and Bolts*. When you file your motion to vacate, you will need to file a motion, memo in support, affidavit, and (most likely) the proposed answer.

The article and case notes are supplied in pdf form only, but the other documents are supplied in both pdf form (ease of reading) and Open Office (Word compatible for ease of manipulating the documents for your own use). If you do not already have Open Office or Word, you can get Open Office for free at OpenOffice.org. Not only will that help you cut and paste materials here, but it will also help your finished product look sharper and more professional.

Other Important Source

You should also look at my materials on how to conduct legal research – [Easiest Way to Do Legal Research for People Being Sued for Debt](#) and [Library Research for People Being Sued for Debt](#) because overturning a default judgment is likely to require some research.

Disclaimer

None of the materials provided here are intended as legal advice. Rather, they are an explanation of the laws regarding default and samples of ways people have responded to them. I hope they will guide you in creating your own motion to vacate.

General Explanation

Sorry about the complexity of the materials in this product, but motions to vacate defaults involve a collision between two fundamentally important concepts of the law: the need for “finality” (an end to the dispute); and the policy in favor of judgments “on the merits” (a decision based on the actual rights and evidence rather than one side's failure to satisfy some technicality). States handle these issues in very different ways even though, on the surface, they sometimes appear very similar. The materials here try to prepare you for the real complexity of the issue you're facing.

Expect Opposition

Creating a motion to vacate takes some work, and you need to do as good a job on it as possible. The **debt collector will strongly oppose** it, and the judge often won't *want* to grant it. When the debt collector got a default judgment, it got everything it asked for in its petition for essentially *no* effort. It got the right, without delay or further notice to you to start looking for and garnishing your wages and bank accounts. Without that default judgment, the debt collector must spend time and

money – and it may be unsuccessful – in getting another judgment. It will be delayed in the collection process indefinitely, and during that time things could happen to reduce the amount of money it will be able to find and collect. Thus from the point of view of the debt collector, that default judgment is extremely valuable, and it will exert maximum efforts to keep it. On the other hand, if you can get the judgment vacated, there's a good chance the debt collector will drop the suit. This battle, then, can be for “all the marbles.”

Judges' approach to motions to vacate vary. Many judges really did become judges for good reasons, and they do want to be fair. On the other hand, they have a lot of cases. As I often point out, it isn't uncommon for a judge to have over 500 cases set for a single day – when the summonses are supposed to be answered. And they have much to do the rest of the week, too. So even good judges can be glad to see cases go as quickly as possible, and not all judges are energetic or justice-minded. If everybody defended their cases, the courts would soon get completely bogged down, and *all* the judges know that.

Knowing that the whole case may depend on what you do in this motion, you must be prepared to exert maximum effort yourself. You will need to understand much of your whole case right from the beginning. That's because for most jurisdictions you must state facts in your proposed Answer that would actually constitute a defense to the claim against you – so you need to know how to do that, and because if you win the motion you want to take the initiative on the rest of the case as quickly as possible..