

Tenant Rights: Default Judgment

- When a landlord wins an eviction case in court, the court will enter a **judgment for possession** in the landlord's favor.
- A **judgment for possession**, also known as an “**eviction**” or an “**eviction judgment**,” is an order from the court stating that the landlord is entitled to possession of the premises.
- This can happen after a trial, if a tenant fails to show up or file an Answer by the date and time in their Summons, or if a tenant fails to live up to a settlement agreement approved by the court.

How do I avoid a default judgment?

If you are the defendant in an eviction case, you have the right to fight the eviction in court by presenting your defenses to the judge. You can do so by filing an Answer listing your defenses and then appearing in court for the eviction trial.

However, there are certain circumstances where the court will enter a **default judgment for possession** (“default judgment” for short) against you—meaning the judge orders a judgment for possession in the landlord's favor **without** hearing or reviewing your defenses.

This can happen in three situations:

1. You do not file with the court an Answer **on or before** the date and time specified in your Summons; **or**
2. You do not **appear in court** on the date and time specified in your Summons.
3. You do not appear in court for a trial or hearing.

If you are in one of these situations, the judge **will** enter a default judgment against you **unless** the judge independently notices some significant problem with either the pleadings (the initial demand, the Summons, or Complaint) or with the service of those documents (how the landlord claims to have delivered those documents to you, the tenant).

To avoid a default judgment, if you receive a Summons and Complaint, it is extremely important for you to **either** file an Answer with the court on or before the date in your Summons, **or** to appear in court at the time specified in your Summons. Once you have done either or both of those things, you must also appear in court at the time of your trial.

If you fail to do so, the judge will very likely enter a default judgment against you, which can stay on your record for seven (7) years. ***This is true even if you move out before your Answer date or trial date.***

I have a default judgment on my record—what happens now?

When a judge enters a default judgment against you, that is just the first in a series of steps to remove you from the premises. The judge must then wait at least forty-eight (48) hours after entry of the default judgment to issue the **writ of restitution**, which is a written order from the court to the Sheriff to restore possession of the property from the tenant to the landlord.

After the court issues the writ of restitution, the Sheriff cannot execute the writ on a residential tenancy until at least ten (10) days after the default judgment was entered. In other words, if the court issued a default judgment against you, the Sheriff must wait at least ten (10) days after the default judgment before coming to the property to remove you and your belongings from your home.

If the Sheriff comes to serve a writ of restitution, the Sheriff will place your belongings on the curb or lawn. No one is required to safeguard your items (and in all likelihood no one will). Therefore, if the judge orders a judgment for possession/eviction, it is in your interest to move out before the Sheriff comes so that you can protect your belongings. You can contact the Sheriff's Office to ask if there is a time scheduled for them to serve the writ, but they are not required to

give you a time and may show up at a different time than they say they will.

You can also reach out to your landlord to ask the landlord to let you stay in the unit longer than the timeframe above. Even though your landlord does not have to negotiate with you, they may agree to give you more time to move. If your landlord **does** agree to give you more time, you should get this agreement in writing, sign the agreement, have the landlord sign it, and then file this agreement with the court (you can contact the clerks of the court that entered the eviction order to talk about how to do this). Be sure to make a copy of this agreement to show the Sheriff in case the Sheriff comes to execute the writ before the move-out time in any agreement you reach.

Can I get rid of a default judgment on a record?

If you have a default judgment of eviction on your record, it is possible—but very difficult—to persuade a judge to set that aside. If you want to file a motion with the court asking the judge to set aside the default judgment **before** the writ of restitution has been executed, you should also IMMEDIATELY file a **Motion for Stay of Execution** with the court (attached). This motion is your request for the court to pause all proceedings, including the execution of the writ, while you prepare your request for the judge to set aside the default judgment. You should send a copy of this motion to the opposing party (your landlord or your landlord's attorney) and you may have to pay a filing fee, unless you file a motion to waive that fee and the court grants it (attached).

At the same time or immediately after you file the **Motion for Stay of Execution**, you should file a **Motion to Set Aside Judgment**.

In the Motion to Set Aside Judgment, you must establish two things:

1. You have a legal defense to the eviction action. In other words, there is a **legal reason** that you should be able to remain in the premises and the plaintiff should not have won;

AND

2. You have a **good reason** for not filing an Answer, appearing in court at the time specified in the Summons, or appearing in court at the time of your scheduled trial.

Unless both of these things are true, you will probably not succeed if you ask the court to set the default judgment aside. As with the Motion for Stay of Execution, you must send a copy of this motion to the landlord or her attorney and you must sign the “certificate of service” at the bottom of the motion describing how you sent the copy (for example, by certified mail or by email).

Some examples of when a judge may set aside a default judgment are:

1. You never received the Summons and Complaint

- This is a **legal defense** to the eviction action because the judge does not have jurisdiction to hear an eviction claim if you were not properly served the Summons and Complaint.
- This is also a **good reason** for not filing the Answer, since you did not have any way to know that you had to file the Answer.

2. You were in a serious accident on the date the Answer was due and you were unable to appear in court

- This is **not** a **legal defense** to the eviction action, so you would also have to describe your legal defenses; for example, your landlord gave you a 10-day demand to cure a lease violation and you cured the violation in that time period.
- This is a **good reason** for not filing the Answer or appearing in court on the date in the Summons.

To complete a Motion to Set Aside, please refer to the attached [JDF 78](#). Although it is not legally required, you should also consider filing an Answer along with the Motion to Set Aside. Like the Motion to Set Aside in JDF 78, the Answer should also list all defenses you would have raised at your trial.

I filed the motions—what happens next?

After you file these motions, the judge will decide on whether she plans to set a hearing date. Stay in touch with the clerks to see if a hearing date has been scheduled. If a hearing is scheduled, it will be your burden to prove a) that you had a good reason that you did not file an Answer or appear in court, and b) that you had a legal defense to the eviction claim. Since you must persuade the judge of these two things, you should bring any evidence you have to support these arguments to

the hearing. You should talk to the clerks about how to file evidence or exhibits, because you may be required to file these before the hearing date.

If the judge agrees to set aside the default judgment, the judge will either proceed immediately to an eviction trial or set another date for the eviction trial. You should therefore be prepared to present the defenses against eviction—be prepared to testify and to present any evidence or exhibits that help your case, and also be prepared to call witnesses that support your defenses. **If your witnesses are not available the date of the hearing on the Motion to Set Aside, be sure to ask the court to schedule the trial on a different date.**

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