

HOW TO ASK THE COURT TO VACATE A DEFAULT JUDGMENT OF FORECLOSURE

What is a default judgment?

- You are in default if you do not respond to a Mortgage Foreclosure Complaint and do not file an Appearance or Answer with the court.
- If you are in default, the judge may enter a default judgment in favor of the other party without hearing from you first.
- You may be able to vacate (undo) the default judgment by filing a *Motion to Vacate Default Judgment of Foreclosure*.

When should I file my *Motion to Vacate*?

- Do not wait! File your *Motion to Vacate Default Judgment of Foreclosure* as soon as you learn that a default judgment has been entered against you.
- The court is more likely to grant your *Motion to Vacate Default Judgment of Foreclosure* if you file it no later than 30 days after the date the default judgment was entered against you.
- You can file the *Motion to Vacate Default Judgment of Foreclosure* up until the date the Plaintiff files a Motion to Confirm the Foreclosure Sale.

NOTE: If you have legal reason to challenge (quash) the claim that you were served with the summons and a copy of the Foreclosure Complaint, you need to file a Motion to Quash under [735 ILCS 5/2-301](#) before you file your *Motion to Vacate a Default Judgment of Foreclosure* or at the same time under [735 ILCS 5/2-619.1](#). You may want to consult with a lawyer about whether you have a legal reason to challenge (quash) service.

What do these terms mean?

- **Order:** A direction given by a judge requiring or allowing a person to do or not do something.
- **Judgment of Foreclosure:** A court document that a judge signs allowing the bank to sell the property.
- **Vacate an Order or Judgment:** to undo an order or judgment that has been signed by a judge.

When can I file a *Motion to Vacate Default Judgment of Foreclosure*?

- Your name is listed on the Summons and the Mortgage Foreclosure Complaint as a “Defendant”;
- An “Order of Default” has been entered; AND
- A “Judgment of Foreclosure” was entered.

NOTE: Each party in default must file a *Motion to Vacate Default Judgment of Foreclosure*, either separately or together.

What forms do I fill out to ask the judge to vacate a Default Judgment of Foreclosure?

- ***Motion to Vacate Default Judgment of Foreclosure*** asks the judge to undo the previous order allowing the bank to sell the property; AND
- ***Notice of Motion to Vacate Default Judgment of Foreclosure*** tells all parties in the foreclosure case that you are asking the judge to undo the Default Judgment of Foreclosure.

Where can I find the forms that I need?

- You can find the forms at: illinoiscourts.gov/Forms/approved/.

What costs will I need to pay to ask the court to vacate a Default Judgment of Foreclosure?

- There may be a fee to file your *Motion to Vacate Default Judgment of Foreclosure* with the Circuit Clerk.
- If you cannot afford to pay the filing fee, you can ask the court to file for free or at a reduced cost by filing the *Application for Waiver of Court Fees* found at illinoiscourts.gov/Forms/approved/.

What do I do after I fill out my *Motion to Vacate Default Judgment of Foreclosure*?

Step 1: File your forms with the Circuit Clerk in the county where the court case is filed.

- You must electronically file (e-file) court documents unless (1) you are an inmate in a prison or jail and you do not have a lawyer, (2) you have a disability that keeps you from e-filing, or (3) you qualify for an exemption from e-filing.
 - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer; or (2) you have trouble reading or speaking in English.
 - If you qualify for an exemption, fill out a *Certification for Exemption from E-Filing* found here: illinoiscourts.gov/Forms/approved/default.asp.
 - To receive an exemption, file the original and 1 copy of your *Motion to Vacate Default Judgment of Foreclosure*, and the *Certification*, with the Circuit Clerk’s office in person or by mail.
- To e-file, create an account with an e-filing service provider.
 - Visit illinoiscourts.gov/service-providers.htm to select a service provider. Some service providers are free while others charge a

processing fee. For instructions on how to e-file for free with Odyssey eFileIL, see the self-help user guides here:

illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp

- If you do not have access to a computer or if you need help e-filing, take your forms to the Circuit Clerk's office where you can use a public computer terminal to e-file your forms.
 - You can bring your forms on paper or saved on a flash drive.
 - The terminal will have a scanner and computer that you can use to e-file your forms

Step 2: Ask for a court date.

- Ask the Circuit Clerk if you have to schedule a court date or if one will be scheduled automatically.
- If you need to schedule the court date, ask the Circuit Clerk how to do so. The Circuit Clerk may schedule the court date or you may have to speak with other court staff.
- When you get your court date, ask if the court will send notice of the court date to the other party or if you need to.
- Enter the date and time in section 1 of the *Notice of Motion to Vacate Default Judgment of Foreclosure*.

Step 3: Send a copy of your *Motion to Vacate Default Judgment of Foreclosure* to the other parties.

- You must send your *Motion to Vacate Default Judgment of Foreclosure* to the other parties in the case. If a party has a lawyer, send the form to the lawyer.
- You may send your *Motion to Vacate Default Judgment of Foreclosure* to the other parties personally, by mail, third-party commercial carrier (e.g., FedEx or UPS), or through the court's electronic filing manager or an approved e-filing service provider.
 - You may send your *Motion to Vacate Default Judgment of Foreclosure* to a party by email if they have listed their e-mail address on a court document. Complete the Proof of Delivery with information of how you sent the form to each party. It has room for 3 parties. If you are sending your form to more than 3 parties, fill out and file one or more *Additional Proof of Service* forms with the main form.

Step 4: Get ready for your court date.

- Decide and write down:
 - What you want to ask the judge to do for you; AND
 - What you will say to the judge if asked to tell your side of the case.

- Gather and make copies of pictures and documents you want the judge to see. Bring the original for the judge and one copy for you and each of the other parties in the case.

Step 5: Go to your court date.

- Bring these items with you to court:
 - A copy of the Mortgage Foreclosure Complaint and Summons;
 - Two copies of your completed and stamped *Motion to Vacate Default Judgment of Foreclosure* and *Notice of Motion to Vacate Default Judgment of Foreclosure*;
 - An *Order to Vacate Default Judgment of Foreclosure*; AND
 - Other documents related to your mortgage or home such as: proof of your payment history, loan modification packet, information from a housing counselor, real estate sale contract, proof of employment or other income.
- Get to the courthouse at least 30 minutes early
- Go to the courtroom number listed on your court form. If your forms do not have a courtroom number look for a list of cases at the courthouse or ask the Circuit Clerk.
- Check in with the courtroom staff and wait for your name and case number to be called.
- When your case is called, walk to the judge and introduce yourself, and briefly tell the judge what you are asking for. The judge will let you know what will happen next.

How do I present my case to the judge?

Step 1: Tell the judge your side of the case and answer questions.

- Bring any important documents relating to your foreclosure including documents mentioned above.
 - Give a copy to the judge and a copy to the other parties. Be prepared to explain why the document is important.
- The judge decides what documents can be considered in making a decision about your case.

Step 2: What do I do when the other party presents their case?

- The other party will also get to present their case by testifying, giving the judge evidence, and questioning witnesses.
- You will get to see any documents and photos the other party brings to court. If you do not think the judge should consider them in making a decision about your case, tell the judge why.
- You may ask questions of the other party's witnesses. Write down your questions while they are speaking to the other party or judge.

Step 3: What happens after both sides present their case?

- The judge has to make a decision. The decision is called a court order.
- If the judge needs more information to make a decision, the judge may set up another court date. Make sure you understand what information is needed and get it before the new court date.
- If the judge needs to think about it more, the judge may let you know the decision later by mailing a court order or at another court date.
- If the judge has enough information, the judge may decide right then and fill out a court order. Get a file-stamped copy of the order.
- If the other party was not in court to get a copy, you must send them a copy by 5:00 p.m. on the date you get the order. Fill out and file a *Proof of Delivery* court form with the Circuit Clerk to show that you sent the copy. You may find the *Proof of Delivery* at: illinoiscourts.gov/Forms/approved/.