

How to Set Aside a Default Judgment

The article tells you how to ask the judge to set aside (cancel) a default judgment made without you.

Texas Forms to Set Aside a Default Judgment

[Motion to Set Aside Default Judgment and Notice of Hearing](https://texaslawhelp.org/sites/default/files/pr_dj_135_motion_to_set_aside_default_judgment_final.pdf)

[/pr_dj_135_motion_to_set_aside_default_judgment_final.pdf](https://texaslawhelp.org/sites/default/files/pr_dj_135_motion_to_set_aside_default_judgment_final.pdf)

[1]

[Order on Motion to Set Aside Default Judgment](https://texaslawhelp.org/sites/default/files/pr_dj_218_order_on_motion_to_set_aside_default_judgment.pdf)

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What is a default judgment?

A “default judgment” is a court order made without the respondent because:

1. the respondent was served and did not file an answer by the deadline, **or**
2. the respondent filed an answer and was given notice of a hearing but did not show up for the hearing.

Can I ask the judge to set aside (cancel) a default judgment?

If you are the respondent, you can ask the judge to set aside (cancel) a default judgment made without you if:

1. you file a [Motion to Set Aside Default Judgment](#) by the deadline, **and**
2. you can show that you did not file an [answer](#) or did not show up to the hearing due to either:
 - a. **lack of notice** which means that either:
 - you did not file an [answer](#) because you were not properly served with [citation](#), **or**
 - you filed an [answer](#) but did not come to a hearing because you did not get proper [notice](#) of the hearing.

- OR -

- a. **accident or mistake** which means that either:
 - you did not file an [answer](#) because of accident or mistake rather than intentional or conscious indifference, **or**



- you filed an answer but did not come to a hearing because of accident or mistake rather than intentional or conscious indifference.

Note: If you are asking the judge to set aside the default judgment due to accident or mistake you must also show that you have a **good defense to the case** (good reason the judge should rule in your favor) **and** that canceling the default judgement will **not cause delay or harm** to the other side.



What is the deadline to file a Motion to Set Aside Default Judgment?

You must file a Motion to Set Aside Default Judgment and Notice of Hearing **within 30 days** of the date the default judgment was signed by the judge. See **Texas Rules of Civil Procedure, Rules 329(b)**. (<https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>) [3]

Exception 1: If you first learned about the default judgment **more than 20** days after it was signed by the judge, your **30 day deadline** to file the Motion to Set Aside Default Judgment begins on the date you received notice of the default judgment from the clerk or the date you actually found out about the default judgment (whichever happened **first**). But, even if this exception applies, your 30 day deadline to file the Motion to Set Aside Default Judgment **cannot begin more than 90 days** after the date that the default judgment was signed by the judge. So the **latest** you could file a Motion to Set Aside Default Judgment is 120 days after the date the default judgment was signed by the judge. See **Texas Rules of Civil Procedure, Rules 306(a)(4)**. (<https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>) [3]

Exception 2: If you were served by publication, you have two years from the date of the default judgment to ask for a new trial. See **Texas Rules of Civil Procedure, Rule 329**. (<https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>) [3]

Exception 3: If you were on active military duty when the default judgement was signed by the judge you have additional time. Talk to a lawyer about how to proceed. You can use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [4] to chat with a lawyer online.

WARNING! If you do not file your Motion to Set Aside Default Judgment within 30 days of the the date of the default judgment, it is very important that you talk with a lawyer.

Should I talk to a lawyer before filing a Motion to Set Aside Default Judgment?

Yes. A lawyer can review your forms and tell you whether or not you have a good legal reason to ask the judge to set aside the default judgment. A lawyer can also help you get ready for your hearing.

If you need help finding a lawyer, you can:

- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [5] to search for a lawyer referral service, legal aid office or self-help center in your area.
- Check our **Legal Clinic Calendar** (<https://texaslawhelp.org/legal-clinic-calendar>) [6] to learn if there is an upcoming legal clinic near you.
- Use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [4] to chat online with a lawyer or law student.



How do I ask the court to set aside a default judgment?

Step 1: Schedule a hearing.

Call the clerk's office. Tell the clerk you want to schedule a hearing on a *Motion to Set Aside Default Judgment*. The clerk will give you a date and time for the hearing. Make sure the hearing date is far enough away. The other side must receive a copy of your *Motion to Set Aside Default Judgment and Notice of Hearing* **at least 3 days** before the hearing date.

Step 2: Fill out these forms.

- **Motion to Set Aside Default Judgment and Notice of Hearing** (https://texaslawhelp.org/sites/default/files/pr_dj_135_motion_to_set_aside_default_judgment_final.pdf) [1]

Fill out this form completely in blue or black ink and sign it.

Remember to:

- write the specific facts that show how your failure to file an answer or appear at the hearing was due to improper service or improper notice of the hearing, **or**
- write the specific facts that show how your failure to file an answer or failure to appear at the hearing was an accident or mistake and you

have a good defense, **and**

- fill out the *Unsworn Declaration* completely and sign it, **and**
- write the date and time of the hearing, **and**
- write the full physical address of the court where the hearing will be held, **and**
- fill out and sign the *Certificate of Service*.



WARNING: You must sign the motion form under penalty of perjury. This means it's a crime to lie on the form.

- ***Order on Motion to Set Aside Default Judgment***
(https://texaslawhelp.org/sites/default/files/pr_dj_218_order_on_motion_to_set_aside_default_judgment.pdf)
[2]

Fill out this form completely in blue or black ink (except for the judge's signature).

Step 3: Turn in your motion form.

Turn in your completed *Motion to Set Aside Default Judgment and Notice of Hearing* form at the clerk's office and get a file-stamped copy for both you and the other side.

Step 4: Send a file-stamped copy of your motion to the other side.

Send a file-stamped copy of the *Motion to Set Aside Default Judgment and Notice of Hearing* to the other side. Send it on the same day you file it. If the other side has a lawyer, send it to the lawyer instead of directly to the other side. You can send it by:

- fax
- email
- commercial delivery service (such as FedEx or UPS)
- personal delivery
- certified mail, return receipt requested and regular mail. (*This way may take too long.*)

Keep proof that you sent the *Motion to Set Aside Default Judgment and Notice of Hearing* to the other side. You must bring proof to your hearing.

□ **Step 5: Go to the hearing.**

Be ready to explain to the judge why the default judgment should be set aside. Bring proof that you sent the *Motion to Set Aside Default Judgment and Notice of Hearing* to the other side. Bring the *Order on Motion to Set Aside Default Judgment* for the judge to sign. Remember, the judge may or may not set aside the default judgment.



Where can I read the law about setting aside a default judgment?

Read the law here: **Texas Rules of Civil Procedure, Rules 306(a)(4); 320–329.**

(<https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>) [3]

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Links

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[3] <https://www.txcourts.gov/media/1445439/trcp-all-updated-with-amendments-effective-may-1-2020.pdf>

[4] <https://texaslawhelp.org/ask-question>

[5] <https://texaslawhelp.org/legal-help/legal-help-finder>

[6] <https://texaslawhelp.org/legal-clinic-calendar>

Cause Number _____

Complete this section so that it looks exactly like the Petition filed in your case.

In the (check one):

Court Number District Court
 County Court at Law

_____ County, Texas

Motion to Set Aside Default Judgment and Notice of Hearing

Print your answers.

1. My name is: _____
First Middle Last

2. I am the: (Check one.) Petitioner in this case. Respondent in this case.

3. A default judgment was signed by the Court on: _____
Month / Day / Year

4. I am filing this motion: (Check one box.)

no more than **30 days** after the date the default judgment was signed by the Court.

more than **30 days** after the default judgment was signed by the Court **and:**

✓ I did not find out about the default judgment until (date) _____ which is more than **20 days** after the date the default judgment was signed by the court, **and**

✓ it has been no more than **90 days** since the date the default judgment was signed by the court.

5. The default judgment should be set aside due to: (Check box 5a or box 5b.)

5a. **Lack of Notice** (If you checked 5a, check one box below and complete the requested information.)

I did not file an answer because I was not properly served with citation.

I filed an answer but did not appear at the hearing because I did not receive proper notice of the hearing.

(State specific facts that show how your failure to file an answer or failure to appear at the hearing was due to improper service or improper notice of the hearing.)

I ask the Court to grant this Motion to Set Aside Default Judgment.

Respectfully submitted,



_____	_____
<i>Your Signature</i>	<i>Date</i>
_____	()
<i>Your Printed Name</i>	<i>Phone</i>
_____	_____
<i>Mailing Address</i>	<i>City State Zip</i>
_____	_____
<i>Email Address</i>	<i>Fax Number (if available)</i>

Unsworn Declaration

(Texas Civil Practice and Remedies Code, Section 132.001)

I declare under penalty of perjury that: 1) I am above the age of eighteen years, 2) I am fully competent to make this affidavit, 3) I am the person asking the Court to set aside the default judgment, and 4) the facts stated in this *Motion to Set Aside Default Judgment* are within my personal knowledge and are true and correct.

My name is: _____,
First Middle Last

my date of birth is: _____/_____/_____, and
Month Day Year

my address is: _____
Street Address City State Zip Code
and _____
Country

My email address is _____
Name of Document

Signed in _____ County, _____,
County State

on this date: _____/_____/_____.
Month Day Year



Your signature

Notice of Hearing

The above motion is set for hearing on _____ at _____:_____ a.m. p.m.

at the _____ County Courthouse, located at:

Physical Address of Courthouse

City

State

Zip



Signature of Judge or Clerk (if required in your County)

Certificate of Service

I certify that I delivered a copy of this document to each party in this case, or if a party is represented by a lawyer to the party's lawyer, by: *(Check one.)*

Hand delivery to the other party: _____

Hand delivery to the other party's lawyer: _____

Email to this email address: _____

Certified mail, return receipt requested to this address: **(Note: This method may take too long.)**

Commercial delivery service (for example FedEx) to this address:

Fax to fax #: _____

Electronic service through the electronic filing manager. **(Note: The method is required if you electronically file (e-file) this document and the email address of your spouse or your spouse's attorney is on file with the electronic file manager.)**



Signature of Party Asking to Set Aside Default Judgment

Date

Cause Number _____

Complete this section so that it looks exactly like the Petition filed in your case.

In the (check one):

- _____
Court Number
- District Court
 County Court at Law

_____ County, Texas

Order on Motion to Set Aside Default Judgment

On (date) _____ the Court considered the Motion to Set Aside Default Judgment of _____ and ORDERS that the motion is:

GRANTED. The default judgment signed by the Court on (date) _____ is set aside.

DENIED.

SIGNED on _____
JUDGE PRESIDING