

Getting Started

Motion to Vacate Default Judgment of Foreclosure

IMPORTANT: This getting started guide and the instructions are not legal advice. They are only meant to help you learn how to ask the judge to withdraw the previous order allowing the bank to sell your property. Your use of the forms does not guarantee you will be successful in court.

To learn how to fill out the forms and file them with the court, read the HOW TO ASK THE COURT TO VACATE A DEFAULT JUDGMENT OF FORECLOSURE instruction sheet and the instructions on the forms.

Names of forms:	<ul style="list-style-type: none">• <i>Motion to Vacate Default Judgment of Foreclosure</i>• <i>Additional Defendant Signatures, Names, & Addresses (if needed)</i>• <i>Notice of Motion to Vacate Default Judgment of Foreclosure</i>• <i>Order to Vacate Default Judgment of Foreclosure</i>
Purpose of the forms:	<ul style="list-style-type: none">• Ask the court to withdraw the previous order allowing the bank to sell your property.• Tell everyone else in the court case that you are asking the judge to withdraw the Default Judgment of Foreclosure.• Tell everyone the date and time of the court hearing on your <i>Motion to Vacate Default Judgment of Foreclosure</i>.
Types of cases the forms CAN be used for:	Mortgage foreclosure cases in which a Default Judgment of Foreclosure has been entered.
Types of cases the forms CANNOT be used for:	Any other types of cases.
Special information or papers needed to complete the forms:	<ul style="list-style-type: none">• Mortgage Foreclosure Complaint and Summons;• Order for Default; AND• Judgment of Foreclosure you received.
Statutes covering the forms:	735 Illinois Compiled Statutes , section 5/15-1101 through section 5/15-1706.
Where to find the forms and instruction sheet:	http://www.illinoiscourts.gov/Forms/approved/
For more information:	Read the HOW TO ASK THE COURT TO VACATE A DEFAULT JUDGMENT OF FORECLOSURE instruction sheet that comes with these forms. You may also find more information, resources, and the location of your local county self-help center at www.illinoislegalaid.org/foreclosure .

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*.
- If possible, you should file your *Motion to Vacate Default Judgment* not later than 30 days after the date the default judgment was entered against you.

NOTE: If you have legal reason to challenge (quash) service you need to file a *Motion to Quash* before or you file your *Motion to Vacate a Default Judgment* or jointly under [735 ILCS§ 5/2-619.1](http://www.illinoiscourts.gov/Forms/approved/). You can find the *Motion* form at: <http://www.illinoiscourts.gov/Forms/approved/>. You may want to consult with a lawyer about whether you have a legal reason to challenge (quash) service [735 ILCS 5/2-301](http://www.illinoiscourts.gov/Forms/approved/).

What do these terms mean?

- **Order:** A direction given by a court or 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:** Once an order or judgment has been signed by a judge, the only way for the judge to vacate (undo) it is to enter another order that withdraws (vacates) the first order.

Who may 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.
- Each party in default must file a *Motion to Vacate Default Judgment*, 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 withdraw 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 withdraw the Default Judgment of Foreclosure.

Where can I find the forms that I need?

You can find the forms at:

<http://www.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 the fee, you can ask the court to file for free. Fill out and file an *Application for Waiver of Court Fees* to ask the court for a fee waiver. This is a separate set of forms you can find at: <http://www.illinoiscourts.gov/Forms/approved/>.

What do I do after I fill out my forms?

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

- Make copies of your forms for yourself and each party in the case.
- Call the Circuit Clerk and ask how much it will cost to file your forms and the types of payment (cash, check, credit, online) they take.
- If you cannot afford the fee, fill out and file an *Application for Waiver of Court Fees* found at: <http://www.illinoiscourts.gov/Forms/approved/>. If you already have a fee waiver for this court case, you do not need do this.
- File your forms with the Circuit Clerk in person. You may be able to file by mail or online depending on the county where the court case is filed.
- The Circuit Clerk will stamp your forms. This stamp is your proof that the forms were filed with the court.
- How to File In Person
 - Go to the courthouse in the county where your court case is filed.
 - Give the Circuit Clerk your original forms and the copies to stamp.
 - The Circuit Clerk will keep the original forms and give back your copies.
 - Pay the filing fee or file your *Application for Waiver of Court Fees*.
- How to File By Mail
 - If you will be asking for a fee waiver, there may be local rules requiring you to file your *Application for Waiver of Court Fees* in person. Ask the Circuit Clerk if you have to file your *Application for Waiver of Court Fees* in person.
 - In Cook County, you must go in person to have your fees waived.
 - If you do not need to appear in person, mail your original forms including your *Application for Waiver of Court Fees* and one copy to the Circuit Clerk to stamp.
 - If you do not need to have your fees waived, mail your original forms and one copy to the Circuit Clerk to stamp.

- Include the *Letter to the Circuit Clerk* found at: <http://www.illinoiscourts.gov/Forms/approved/>.
- Include a self-addressed and stamped envelope for the Circuit Clerk to mail the copy to you.
- Include payment for the filing fee or your *Application for Waiver of Court Fees*.
- How to File Online
 - Check your local Circuit Clerk's website to see if online filing is an option for you at: <http://www.ilcircuitclerks.org/illinois-court-clerks/>.
 - Follow the instructions for filing online provided by the Circuit Clerk.
 - Pay the filing fee as instructed online or file your *Application for Waiver of Court Fees*.

Step 2: Send a copy of your forms to the other party.

- After filing, you must send a copy of your forms to each party in the case.
- If a party has a lawyer, send the copies to the lawyer.
- You may hand deliver or mail your forms to the other parties. If they have agreed, you may email your forms. The *Proof of Delivery* on your forms must state the way you sent them.
- Check with the court to see if you need to deliver another copy to the judge's office.
- You must send your copies by 5:00 p.m. on the date you file your forms even if you are filing by mail or online.
- Keep one copy of the forms for your own records.

Step 3: 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 Stay a Foreclosure Sale*.
- 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:

<http://www.illinoiscourts.gov/Forms/approved/>.

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 people 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*;
 - *Order to Vacate Default Judgment of Foreclosure*; AND
 - Other papers 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 party. Be prepared to explain why the document is important.
- The judge decides what materials 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.
- 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.

STATE OF ILLINOIS, CIRCUIT COURT _____ COUNTY	MOTION TO VACATE DEFAULT JUDGMENT OF FORECLOSURE	For Court Use Only
Instructions ▼	_____ Plaintiff <i>(Name of Bank or Mortgage Company)</i> v. _____ Defendants	
Enter above the county name where this case was filed.	_____ Case Number	
Enter the name of the bank or mortgage company as Plaintiff.		
Enter your names as Defendants.		
Enter the Case Number from the Complaint you received.		

Enter your full names as Defendants. You will be called "Defendants" on the rest of this form even if there is only one person using this form.

You can file this Motion by yourself or with any other Defendants listed in the Complaint you received.

In **A1**, enter the complete address of the property involved in this foreclosure case listed in the Complaint.

Defendants: _____
Your Names

A. Defendants state:

1. The address of the property involved in this foreclosure case:

Street Address, Apt #

City State ZIP

2. Defendants are the borrowers of a mortgage loan on the property involved in this foreclosure case:

Yes No

3. Defendants live in the property involved in this foreclosure case and it is their main home:

Yes No

4. The property involved in this foreclosure case is a single family home or has 1 to 4 residential units:

Yes No

In **A2**, check "Yes" if you have a mortgage loan for the property involved in this foreclosure case.

In **A3**, check "Yes" if you live in the property involved in this foreclosure case.

In **A4**, check "Yes" if the property involved in this foreclosure case is a single family home or has 1 to 4 separate units where people live.

In **A5**, check "Yes" if you went to court and saw a judge in this case about the property involved in this foreclosure case.

In **A6**, enter the date the judge signed the Judgment of Foreclosure and Sale you received.

In **A7**, check (a.) OR (b.) If you check (a.), also check the reason you were not at the court hearing when the judge ordered the foreclosure of your property.

In **A8**, check "Yes" in the first part if you have applied to get your mortgage loan changed so that you can keep the property. In the second part, check the box about whether the modification is under the HAMP program.

In **A9**, check "Yes" if you have a contract to sell the property as a short sale.

5. Defendants have already been in front of a judge about this foreclosure case::

Yes No

6. The judge signed the order for a Judgment of Foreclosure and Sale on:

_____, 20 _____
Date

7. a. I was not at the court hearing when the judge ordered the foreclosure because:

I was late to court because _____

I did not make it to court because _____

I did not get a notice of the court hearing because _____

Other: _____

b. I was at the court hearing when the judge ordered the foreclosure but:

the judge did not give me extra time to answer.

Other: _____

8. Defendants have a loan modification application pending:

Yes No Do Not Know

It is a HAMP loan modification:

Yes No Do Not Know

Under the terms of the modification, the lender is not permitted to go forward with the case at this time (attach a copy of the modification contract to this *Motion*).

Yes No Do Not Know

9. Defendants have a short sale contract for the property being sold as a result of a foreclosure:

Yes No Do Not Know

B. Under §2-1301 of the Illinois Code of Civil Procedure, Defendants ask the Court to:

1. Vacate the default order and judgment;
2. Allow Defendants to file their appearance;
3. Grant Defendants time to answer;
4. Award other such relief as the Court deems just and equitable; AND/OR
5. Set a date for Defendants to appear before the judge.

Under the Code of Civil Procedure, [735 ILCS 5/1-109](#), making a statement on this form that you know to be false is perjury, a Class 3 Felony.

Defendants certify that everything on the *Motion to Vacate Default Judgment of Foreclosure* is true and correct. Defendants understand that making a false statement on this form is perjury and has penalties provided by law under [735 ILCS 5/1-109](#).

Defendant Signature

Defendant Printed Name

Street Address, Apt #

City

State

ZIP

Phone

Defendant Signature

Defendant Printed Name

Street Address, Apt #

City

State

ZIP

Phone

Defendant Signature

Defendant Printed Name

Street Address, Apt #

City

State

ZIP

Phone

Defendants have attached the *Additional Defendant Signatures, Names, & Addresses*

Check if you need more room and attach the *Additional Defendant Signatures, Names, & Addresses* Form.

In 2, enter the date you send this form to the other parties. You must send this form by 5:00 p.m. on the same day it was filed with the Circuit Clerk.

Proof of Delivery

1. I sent the *Motion to Vacate Default Judgment of Foreclosure*.

2. At or before 5:00 P.M. on: _____, 20_____
Date

3. To:

Name:

First

Middle

Last

Address:

Street, Apt #

City

State

ZIP

Email: _____

By:

Hand Delivery

Regular, First-Class Mail, deposited into the U.S. Mail with postage paid

Email

In 3, enter the full name and address of the parties or lawyers you are sending a copy of this form, and check if you will send copies of this form by hand, by mail, or by email.

If a party has a lawyer, you must send a copy of this form to the lawyer.

CAUTION: You may only send this form by email if the other party has agreed to receive documents in the lawsuit by email.

Enter the Case Number given by the Circuit Clerk: _____

Name: _____
First Middle Last

Address: _____
Street, Apt # City State ZIP

Email: _____

- By: Hand Delivery
 Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
 Email

Name: _____
First Middle Last

Address: _____
Street, Apt # City State ZIP

Email: _____

- By: Hand Delivery
 Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
 Email

Under the Code of Civil Procedure, [735 ILCS 5/1-109](#), making a statement on this form that you know to be false is perjury, a Class 3 Felony.

After you finish this form, sign and print your name.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under [735 ILCS 5/1-109](#).

Your Signature

Print Your Name

In **3**, enter the full name and address of the parties or lawyers you are sending a copy of this form, and check if you will send copies of this form by hand, by mail, or by email.

If a party has a lawyer, you must send a copy of this form to the lawyer.

CAUTION: You may only send this form by email if the other party has agreed to receive documents in the lawsuit by email.

3. To:

Name: _____
First Middle Last

Address: _____
Street, Apt # City State ZIP

Email: _____

- By: Hand Delivery
 Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
 Email

Name: _____
First Middle Last

Address: _____
Street, Apt # City State ZIP

Email: _____

- By: Hand Delivery
 Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
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Your Signature

Print Your Name

