

Do you want to re-open your civil court case?

HOW TO:

- Ask the Court to allow you to re-open your civil court case after you already had a default judgment entered against you.
 - 1) What is a default judgment? A default judgment is when a court has decided that you owe money to a person or business who has sued you, even though you were not in court to tell your side of the story.

WHEN TO USE:

- **You will need to file your paperwork within six months of the entry of default, if you did not respond to the lawsuit due to:** mistake, inadvertence, surprise or excusable neglect.
 - 1) **Mistake:** A court may set aside a judgment upon a showing of mistake. The mistake may be one of fact or law, but *must be material*. Basically, mistake of law is when you honestly make a mistake as to what the law requires.
 - 2) **Surprise:** A surprise is when an unexpected condition or situation caused you to not file a timely response to the lawsuit.
 - 3) **Excusable Neglect:** This is the most common ground for re-opening a case. In this case, the court will decide whether you have a reasonable excuse for not responding to the lawsuit. The Court will make a decision based on the particular facts of your case to determine if your excuse is reasonable. **This is the reason you should use if you did not file an answer because you thought you just had to go to your court date.**

Self-Help Center Superior Court, County of Santa Clara located at 99 Notre Dame Avenue, San Jose, CA 95113
408-882-2926

www.sccselfservice.org
Santa Clara County
Self-Help website

www.sccsuperiorcourt.org
Santa Clara County
General website

www.courtinfo.ca.gov/selfhelp
State of California
Self-Help website

Set-aside 6 months
Revised 1-23-04

INSTRUCTIONS:

A. Fill out the attached blank forms (type or print neatly in blue or black ink) using the attached sample forms as a guide:

- **Notice of Motion and Motion to Set Aside Default and Default Judgment**
- **Declaration of Defendant**
- **Proposed Answer (982.1(35))**
- **Proof of Service by Mail (SCL-0031)**

B. How to File Your Papers – Follow these easy steps *in order*, from 1-4

1. Make 2 copies of your Notice of Motion, Motion, Declaration and Proposed Answer.
2. Call the other party in the case to ask them about their availability for a court date.
3. Take your papers to the clerk's office at 191 North First Street, San Jose, CA (or the South County Courthouse at 12425 Monterey Rd. San Martin, CA 95046 if that is where your case was filed) and ask one of the clerks for a hearing date (please choose a date that is available to the other side). The clerk will write the hearing date, time and department on your original papers. You must transfer the same information to the copies.
 - **Note: this court date should be at least one month out because you must serve your paperwork at least 21 days before the date set for hearing (and add five days if you serve by mail).**
 - a. The clerk will file the original copies of your paperwork. **EXCEPT YOU WILL KEEP THE ORIGINAL COPY OF YOUR ANSWER.** The clerk will also endorse file your copies.
 - b. You will have to pay your "first paper" filing fee when you file this paperwork. Your fee will be \$152.00 if complaint is \$10,000 or less, \$302.50 if complaint is over \$10,000 but less than \$25,000 and \$296.20 if the complaint is over \$25,000.

c. **If your income is low and you want to ask not to pay the filing fee**, fill out and turn in an **Application for Waiver of Court Fees and Costs** packet (#982(a)(17) and 982(a)(18)). You can get the packet from the clerk's office or the Self-Service Center. Turn in these forms at the same time you turn in your paperwork to the court. The judge will determine if you qualify. If you do not qualify, you will have 10 days to pay your fees or your paperwork will not be considered.

4. **Serving the papers** – one copy of the entire set of papers must be served by mail to the other party or their attorney if they have one.
- **You cannot serve the papers yourself.** The papers must be served by an adult an adult (18 years or older) who is not a party to the case. Whoever mails ("serves") the papers must complete and sign a **Proof of Service by Mail** form which is included in this packet.
 - **Important:** Bring the original Proof of Service form to the Court with you the day of the hearing or file the original Proof of Service with the County Clerk's office before the hearing and bring an endorsed copy to the hearing.

C. When you come to Court

Bring a copy of all of the papers in your case and also bring documents which help to prove the information in your declaration.

D. After your court date

If the judge grants your motion to set-aside the default judgment, you will need to file the original copy of your answer. After you have filed your answer, you will continue with the lawsuit.