

# **HOW TO VACATE A DEFAULT JUDGMENT** **SMALL CLAIMS**

**A default judgment means that the court has decided that you owe money.**

This is a result of the person suing you in small claims court and you failed to appear at the hearing. You cannot appeal this kind of judgment and have a new trial until you “vacate the default judgment”, that is, until you have the judgment removed or erased.

## **To vacate a default judgment, do the following:**

1. Get the form called *Notice of Motion to Vacate Judgment* from the small claims clerk.
2. Fill the form out and file it with the small claims clerk with a filing fee. You must do this within 30 days of the date of mailing that is written on the *Notice of Entry of Judgment* you received from the court. You should have a good reason for not having appeared in court when you were supposed to.
3. If the reason you did not go to court was because you were not served with a copy of the claim, you have up to 180 days after you find out about the default judgment against you to file the *Notice of Motion to Vacate Judgment* form.

## **Filing the Form.**

When you file the form, the small claims clerk will set a date on which you and the person suing you are to appear in court. The judge will decide whether to vacate the judgment against you or not.

### **To help the judge decide in your favor.**

Bring whatever evidence you can to the hearing to show why you were unable to come to court the first time. An example of what to bring might be a letter from a doctor or a hospital bill.

### **If the judge agrees to vacate the judgment.**

The original case will probably be heard right then. Be prepared to tell your side of the story and present your evidence in an organized and concise manner at that time.

### **If you have witnesses to help your case who could not be present.**

You can ask the judge for a continuance. The judge may or may not grant the continuance.

### **If the judge decides not to vacate the judgment.**

You can only appeal the judge's denial of the *Motion to Vacate Judgment*. You cannot appeal the judgment against you. You must file the appeal within 10 days of the judge's decision.

### **To file the appeal.**

Get a form called *Notice of Filing Notice of Appeal* from the small claims clerk. Fill it out and file it with the small claims clerk. A fee is required.

### **If the judge decides not to grant your appeal or vacate the judgment.**

You are responsible for paying the judgment.

**If the judge does grant your appeal and vacates the judgment.**

The original case will usually be heard right then. Be prepared to present your case, including any evidence you have, at the time of the hearing. Remember, your case will only be heard if the judge grants your appeal.