



How to Apply for Relief if Your Landlord Gets a Judgment Against You

Note: You may have options if your landlord got a judgment against you. Use these forms and instructions to ask the judge to set aside (or undo) a judgment your landlord obtained against you. A “judgment” is a judge’s final decision in the lawsuit. The judgment may be called a “default judgment.” “Default” means that you (the defendant) did not answer or appear in the lawsuit and never told the judge your side of the story. You can use this packet to write your Motion to ask the judge to undo the judgment against you so that you can tell your side of the story. It is up to the judge to decide whether or not to undo the judgment. The judge may still enter a judgment against you after hearing your side of the story.

These instructions and forms may not be right for your case. They can’t take the place of advice from a lawyer. Talk to a lawyer if you have **any** questions.

Print these forms single-sided, with writing on one side of the page. Do not change these forms. If you change the forms, you might lose language you

Who Can Use These Forms?

You can use these forms if your landlord sued you in Justice Court and got a judgment against you because you did not file a written answer or you did not appear in court. You must have a **good reason** for why you didn’t file a written answer or appear in court. It’s up to the court to decide whether you had a good reason. Examples of good reasons may include:

1. You were never personally served with the summons and complaint. The summons and complaint are the court papers filed by the landlord to start the lawsuit against you. “Personally served” means that someone handed you the court papers.
2. You couldn’t afford to pay the \$30.00 filing fee for your answer, and you didn’t know that you could ask the Court to waive that fee.
3. You thought you had to have an attorney representing you, and you didn’t have an attorney.

4. You and your landlord had reached an agreement about your tenancy, and you didn't think you needed to do anything in response to the court papers.
5. You filed a written answer with the Court, but you never received any notice of when to appear for a hearing, so you didn't appear at the final hearing.

What Happens After I File these Forms With the Court?

After you file your Motion and Brief to Set Aside Default Judgment, this is what will happen:

1. The Court will sign an Order Setting Hearing on Defendant's Motion and Brief to Set Aside Default Judgment.
2. The Court will hold a hearing. You and the landlord must appear at the hearing. At the hearing you must tell the judge why you didn't answer or appear earlier in the lawsuit. You must also show that you have good reasons for why the judgment that the judge signed is not correct.
3. After the hearing, the judge will sign a written Order granting or denying your motion.
 - A) If the judge grants your motion, the judgment against you will no longer be in effect. The judge will order you to file a written answer to the landlord's complaint by a certain date. The judge will also set a future hearing date. At that hearing, the judge will hear the entire dispute between you and your landlord. The landlord will testify and may also have witnesses to testify to support what the landlord said in the complaint. You will testify and may also bring witnesses to testify to defend against what the landlord said in the complaint. After the hearing, the judge will make a decision about the dispute and will sign a new judgment.
 - B) If the judge denies your motion, the judgment against you will remain in effect. If you want to contest that judgment, you would have to file an

appeal to the district court. You can find a form for filing a Notice of Appeal at <http://courts.mt.gov/library/topic/appeal.mcp>x -- choose "Notice of Appeal from City/Justice Court to District Court."

What Forms Will I Need to Ask the Judge to Set Aside a Default Judgment Against Me?

To ask the Justice Court judge to set aside the default judgment you will need to fill out and file these forms:

- Defendant's Motion and Brief to Set Aside Default Judgment
- Order Setting Hearing on Defendant's Motion and Brief to Set Aside Default Judgment
- Order to Set Aside Default Judgment
- Affidavit of Inability to Pay (not included in this packet, so ask the clerk of court for this form if you cannot afford to pay the fee the court charges to file your Answer)

The **Defendant's Motion and Brief to Set Aside Default Judgment** is for you to complete and sign. The motion tells the court why the court should set aside (or undo) the default judgment against you. You must have a **good reason** for why you didn't file a written answer or appear in court, like one of the examples used earlier in this form. The Motion also describes the defenses that you have to the eviction lawsuit. You can find more information on defenses in the "Answering Your Landlord's Complaint to Evict You" form packet. That form packet is available on MontanaLawHelp.org in the Housing section under the "Getting Evicted / Ending Your Rental" topic. After you complete and sign the Motion, you must send a copy of it to your landlord or to your landlord's attorney if your landlord is represented by an attorney.

The **Order Setting Hearing on Defendant's Motion and Brief to Set Aside Default Judgment** is for the clerk or judge to fill in, except for the case

information (or caption) that you will fill in. After the clerk or judge signs the order, it will tell you and your landlord when to appear for the hearing on your Motion.

The **Order Setting Aside Default Judgment** is for the judge to fill in, except for the case information (or caption) that you will fill in. The judge will fill in and sign the order after the hearing on your Motion. This order will tell you and the landlord whether the judge is undoing the judgment against you. (The judge may choose not to use this form, and may write out his or her own Order, and that's okay. It is still a good idea to give this form to the clerk.)

The **Affidavit of Inability to Pay** is a form you can use to ask the court for permission not to pay the fees the court charges to file your Motion to Set Aside Default Judgment. This form is not included in this packet. If you can't afford to pay the filing fee for the Motion, ask the clerk of court for an Affidavit of Inability to Pay. Courts may use different names for this form. The Affidavit will require you to provide information about your income and expenses. After you fill out the Affidavit and sign it, the clerk of court will give it to the judge to review. If the judge decides that you can't afford the filing fee, the judge will allow you to file your Motion without paying the filing fee. If the judge decides that you can afford the filing fee, the judge will not allow you to file your Motion until you pay the filing fee.

Important: If you can't afford to pay the filing fee, be sure to file your Affidavit of Inability to Pay well before your 30-day deadline to file the Motion to Set Aside. You need to allow the judge enough time to review your Affidavit. If the judge has not approved your Affidavit by your 30-day deadline, the clerk of court will not let you file your Motion unless you pay the fee, even if it is the last day you are allowed to file your Motion.

What Words Do I Need to Know?

A **Plaintiff** is someone who files a lawsuit in court. If your landlord has obtained a default judgment against you, your landlord is the Plaintiff.

A **Defendant** is someone who is or was sued. If your landlord obtained a Default Judgment against you, you are the Defendant.

A **Motion to Set Aside Default Judgment** is the document you file with the Court, to ask the Court to undo the judgment entered against you. The Motion tells the Court that the judgment was entered against you by mistake, inadvertence (an accident), surprise, or excusable neglect. The Motion tells the Court that you have a good defense to what the plaintiff asked for in the lawsuit. In the Motion, you must check the appropriate boxes for any defenses that apply to you.

What if I am an Active Duty Servicemember?

If you are on active duty in the military, the Servicemembers Civil Relief Act (SCRA) may apply to you and your dependents. The SCRA may help protect you from a default judgment while on active duty. Most parts of the SCRA do not apply automatically. You must take action to inform the Court that the SCRA applies to you. For more information, contact your nearest Armed Forces Legal Assistance (AFLA) office or commanding officer. To find an AFLA office near you, go to <http://legalassistance.law.af.mil/content/locator.php>.



How Long Do I Have To File the Motion to Set Aside Default Judgment?

You have 30 (thirty) days after the date the judge signed the judgment to file your Motion to Set Aside Default Judgment with the clerk of court. If you were a service member on active duty at the time the judgment was entered, you may


have more time – contact Armed Forces Legal Assistance to find out – see the paragraph above. When you count the 30 days, you count every day, including weekends and holidays. You start counting on the day after the date the judge signed the judgment. It's best to file your Motion within 30 days of that date. But if you received a copy of the judgment by mail, you can add three more days to the 30-day deadline.

Where Do I File My Motion to Set Aside Default Judgment?


You must file your Motion in the court that entered the judgment against you. You can find the name of the court at the top of the Judgment.

How Do I Use These Forms?

1 Fill in the Forms

- Fill in all of the blanks in the **Defendant's Motion and Brief to Set Aside Default Judgment** form, starting on page 12 of this packet. Be sure to put a good address and phone number for yourself at the top of the Motion. 

The Court will use that address and phone number to communicate with you about the lawsuit – the Court must be able to reach you while the lawsuit is pending.
- Be sure at least one box is checked in Sections 1, 2 and 3 of the Motion. Be sure you complete Section 4 of the Motion.
- Sign and date the Motion at the end. You must sign the Motion in front of a notary public. The notary will fill out the bottom part that begins with "SIGNED AND SWORN."

- Fill out and sign the Proof of Service in front of a notary. Write in the date that you will be mailing to the plaintiff a copy of your Motion. Look at the 

landlord's court complaint to see whether the complaint was filed by the landlord or an attorney for the landlord. In the Proof of Service section of your Motion, write out the name and address of the person who signed the complaint (the landlord or an attorney) – this information is usually in the top left-hand corner of the complaint. The notary will fill out the bottom part that begins with "SIGNED AND SWORN."

- On the **Order Setting Hearing on Defendant's Motion and Brief to Set Aside Default Judgment** form and the **Order Setting Aside Default Judgment** form, you will fill in only the caption. The name of the court is the same as the name of the court at the top of the Judgment. The judge will fill out the rest of each order. Fill out the caption for **both** order forms. The caption for the first form looks like this:

IN THE JUSTICE COURT _____, COUNTY, MONTANA BEFORE _____, JUSTICE OF THE PEACE	
State of Montana	
_____ (<i>name of your landlord</i>) Plaintiff, v. _____ (<i>your name</i>) Defendant(s).	Cause No.: _____ Order Setting Hearing on Defendant's Motion and Brief to Set Aside Default Judgment

2 Make Copies

- Make two copies of your completed Motion to Set Aside Default Judgment, including any attachments.
- Make one copy of each Order.

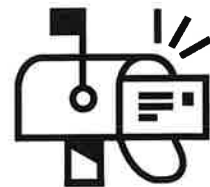
3 File the Forms at the Office of the Clerk of Court

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- Go to the office of the clerk of court that signed the Judgment.
- If you cannot afford the fee for filing your Motion, ask the clerk of court for an Affidavit of Inability to Pay. This form may be called something different in your court.
- File your original Motion to Set Aside Default Judgment with the clerk.
- Ask the clerk to stamp your two copies of the **Motion to Set Aside Default Judgment** as “Filed.” One copy is for you to keep. The other is for you to send to the landlord or to the landlord’s attorney if the landlord is represented by an attorney. Be sure to take your copy of the Motion to Set Aside Default Judgment with you to your hearing.
- Give the **Order Setting Hearing on Defendant’s Motion and Brief to Set Aside Default Judgment** to the clerk.
- Give the **Order Setting Aside Default Judgment** to the clerk. Ask the clerk to “lodge” the Order in the file. “Lodging” means that the clerk will not officially file the document in your court file, but will just keep the Order inside the court file so the judge can look at it in the future. If the clerk will not lodge the Order, you will need to keep the Order in a safe place until your hearing. You will need to take the Order with you to the hearing so you can ask to give it to the judge then.

4 **Mail your Motion**

- On the same day you file your Motion to Set Aside Default Judgment, mail a copy of your Motion to the landlord or landlord’s attorney. Use the address in the top left hand corner of the first page of the Plaintiff’s complaint.



- It is a good idea to have proof that you actually mailed your Motion to your landlord or your landlord's attorney. You can get proof by going to the U.S. post office and asking for a Certificate of Mailing. The post office charges more for the Certificate of Mailing than a regular letter. The receipt that you get from the post office is your proof that you actually mailed your Motion to the correct address on a certain date. **Be sure to keep the Certificate of Mailing receipt, and take it with you to your hearing.**

5 Wait for an Order Setting Hearing

- Within 10 business days after you file your Motion to Set Aside Default Judgment, the court will notify you in writing of the date and time of the hearing. If you do not hear from the court within this time, call the clerk of court and ask about the hearing date.
- If you want any witnesses to testify at your hearing, you may need to subpoena them before the hearing. A subpoena orders a person to come to court even if the person does not want to. Once you know the hearing date, you can ask the clerk of court to issue subpoenas for your witnesses. You must provide the name and address of each witness. You don't need a subpoena if your witness will come to the hearing willingly.

6 Go to Your Hearing at the Date and Time Set by the Court

- Bring your copy of your Motion and any other documents you filed with the court with you to your hearing. You will also need to bring the Order Setting Aside Default Judgment if the clerk would not let you lodge it when you filed your Motion.



- Arrive at the courthouse at least 15 minutes before your hearing will start. Dress like you were going to an important job interview.
- Check with the clerk of court's office to find the right courtroom for your hearing. In some courts, you will have to check in with the clerk of court before going to your courtroom. After you have talked to the clerk of court, go to your courtroom and wait for the judge to say your name and case number. **Remember to call the judge "Your Honor."**
- If the clerk would not let you lodge the **Order Setting Aside Default Judgment** when you filed your Motion, you may need to give it to the judge. At the beginning of the hearing, when the judge asks if you are ready, tell the judge "Your Honor, I have a proposed Order for your consideration." Then ask if the judge wants you to hand the Order form to him or her. The judge may or may not take the Order form from you. It is okay if the judge does not want the blank Order – it just means that the judge prefers to write the order himself or herself.
- Be prepared to tell the judge why the judgment entered against you should be set aside. Tell the judge why you did not file a written answer to the lawsuit or why you did not appear at the prior hearing. Those reasons should be stated in your Motion. If there are any papers that support what you say, show them to the judge. If you have witnesses to support what you say, bring those witnesses to the hearing, and ask them to testify.

Where Can I Get Legal Help?

These organizations may be able to help you:



- **Montana Legal Services Association (MLSA)** gives free legal help to low-income people. To find out if you qualify for MLSA, apply online at mtlsa.org or call the MLSA HelpLine at 1-800-666-6899.
- **The State Bar Lawyer Referral and Information Service (LRIS)** refers people to Montana lawyers who might be able to help, for a fee. Call LRIS at 1-406-449-6577.
- **The Court Help Program** can give you information you need to understand your legal rights and responsibilities, and can direct you to resources that will help you help yourself. Go to courts.mt.gov/selfhelp to find the Court Help Program center nearest you.
- **The State Law Library** can help you find and use legal resources such as books, forms, and websites. You can visit the Law Library website at www.lawlibrary.mt.gov. Or you can contact a Reference Librarian at (800) 710-9827 or by email at mtlawlibrary@mt.gov.

Please take a short survey about these forms.

When you are done with the forms, please take our online survey at this address:

http://www.surveymonkey.com/s.aspx?sm=fCBhbhbJj4MdOWw_2fjsCjlg_3

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Or you can access the survey on the “Forms” page of the State Law Library website, at www.lawlibrary.mt.gov. Your answers will help make the forms better. Thank you!

(your name)

(your mailing address)

(city) (state) (zip)

(your phone number)

Defendant

IN THE JUSTICE COURT

_____, COUNTY, MONTANA

BEFORE _____, JUSTICE OF THE PEACE

<p>_____ (name of your landlord)</p> <p style="text-align: center;">Plaintiff,</p> <p>V.</p> <p>_____ (your name or names)</p> <p style="text-align: center;">Defendant(s).</p>	<p>Cause No.: _____</p> <p style="text-align: center;">Defendant's Motion and Brief to Set Aside Default Judgment</p>
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I, _____, defendant in this suit, file this motion to set aside the default judgment. In support of my motion, I show the Court as follows:

Rule 22 of the Montana Justice and City Court Rules of Civil Procedure allows the judge to "relieve a party from any judgment or other order taken against the party by mistake, inadvertence, surprise or excusable neglect..." if the request for relief is made within 30 days of judgment and is supported by affidavit showing good cause. This sworn motion serves as my affidavit.. Rule 22 tracks the language of Rule 60(b) of the Montana Rules of Civil Procedure, which applies to district courts.

As the Montana Supreme Court held, “For good cause shown, the court may set aside an entry of default [under Rule 55(c)] and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” *In Re the Marriage of Winckler*, 2000 MT 116, ¶14, 299 Mont.428, 2 P.2d 229.

The Montana Supreme Court has laid out four criteria that must be met in order to show good cause to set aside a default entered by the clerk:

(1) the defaulting party proceeded with diligence; (2) the defaulting party’s neglect was excusable; (3) the defaulting party has a meritorious defense to the claim; and (4) the judgment, if permitted to stand, will affect the defaulting party injuriously. *Winckler*, ¶15

In *Winckler*, the Court found that the pro se respondent met his burden to show that his neglect in failing to answer his wife’s petition was excusable. In that case, Mr. Winckler misunderstood a letter from his wife’s attorney and thought that the attorney would be sending him a proposed property settlement instead of proceeding to a default hearing. *Winckler*, ¶19.

I meet the four-part test set out in *Winckler* for setting aside a default, for these reasons:

1. DILIGENCE

I filed this motion as soon as I found out about the judgment. The judge signed the judgment on _____ (fill in date).

(check if applicable) I received a copy of the judgment in the mail, so I am allowed to add 3 days for mailing to the 30-day deadline. (Rule 6C of the Montana Justice and City Court Civil Procedure allows me to do that.) I am filing this motion within thirty-three days after the judge signed the Judgment.

(check if applicable) I did not receive a copy of the judgment in the mail. I found out about the judgment in another way. I am filing this motion within 30 days of the signing of the judgment.

2. EXCUSABLE NEGLECT (check all that apply)

I didn't intentionally ignore the lawsuit. These are the reasons that I didn't file a written answer with the Court, and/or didn't appear at the final hearing: _____

I talked to my landlord and thought we had made an agreement, and that I didn't have to respond to the lawsuit.

I filed a written answer with the Court, but I never received a notice of trial from the Court.

I didn't file a written answer or appear at the trial because there was an emergency in my life. This is what happened:

I thought the matter was resolved. This is why I thought it was resolved:

Other *(write out your reasons, if not covered by the options above):*

DEFENSES (check all that apply)

- I'm asking the Court to set aside this judgment because I have good defenses to what the Court ordered in the judgment. This is a summary of my defenses (I will provide more detail at the hearing:

- I moved out of the rental premises before the landlord ever filed the court complaint, and the court complaint is only for possession of the premises, not for any money owed. I moved out on _____ (give date).

- The landlord's complaint was based on nonpayment of rent. After the landlord's complaint was filed in court, I paid the rent I owed in full, and the landlord accepted that money.

- I do not owe the amount that my landlord is suing me for. These are the reasons:

3. INJURY (check all that apply)

- This judgment, if allowed to stand, will be harmful to me and/or my family members. The harm includes:

- Losing my/our home
- Instability of having no permanent housing
- Risk of changing school districts for my/our children if we have to move
- Risk of losing access to transportation
- Other *[Tell the judge in your own words how this judgment (if allowed to stand) would hurt you or your family.]*:

Under these circumstances, the Court is within its authority to set aside the default, as it did in *Winckler*. In *Winckler*, the Montana Supreme Court upheld the trial court's decision to set aside the default. The Court found that Mr. Winckler's default was unintentional, based upon his mistaken belief that dispute was in the process of being settled and no written answer was required. *Winckler*, ¶ 22. The Court reversed the district court's denial of Mr. Winckler's motion to set aside the default, finding that such denial was an abuse of discretion. *Winckler*, ¶ 23.

Montana courts favor a dispute's resolution on the merits rather than by default judgment. See e.g. *Winckler*, ¶ 23. In the interest of fairness, I ask the Court to set aside the default entered against me.

Request for Relief

I respectfully ask the Court to set aside and vacate the default judgment, and to proceed to hear the merits of the case and render a decision based on the merits of the

case. I ask the Court to suspend enforcement of the judgment and any writ of possession, until this case is decided on its merits. I further request any additional relief to which I may show myself entitled.

Respectfully submitted,

(Your signature)

(Print your name on the line above)
Defendant

STATE OF MONTANA)
):ss
COUNTY of _____)

I, _____, after being first duly sworn upon my oath, state as follows:

I am over 18 year old and fully competent to make this verification. Unless otherwise indicated, all statements of fact made in the foregoing motion are based on my personal knowledge and are true.

(Your signature)

SUBSCRIBED AND SWORN to before me this ____ day of _____,
20_____.

(SEAL)

Name (printed): _____
Notary Public for the State of Montana.
Residing at _____
My Commission Expires _____

Proof of Service

(to be filled out and signed in front of a notary)

STATE OF MONTANA)
):ss
COUNTY OF _____)

I sent, or am sending as soon as I have filed my Motion to Set Aside Default Judgment, a full and complete copy of my Motion to Set Aside Default Judgment to the Plaintiff by first class mail, postage prepaid on _____.
(date you mailed or are mailing the Motion)

This is the address I am using to mail a copy of my Answer to the Plaintiff:

Name: _____
(Plaintiff's name – if Plaintiff's lawyer is the one who filed the court complaint, put the lawyer's name here)

Address: _____
(Plaintiff's address – or Plaintiff's lawyer's address—from the top left corner of the Complaint)

_____)
(city) (state) (zip)

Signature: _____
(sign your name)

SIGNED AND SWORN to before me by _____ this
_____ day of _____, 20_____.

(SEAL)

Name *(printed)*: _____
Notary Public for the State of Montana.
Residing at _____
My Commission Expires _____

IN THE JUSTICE COURT

_____, COUNTY, MONTANA
BEFORE _____, JUSTICE OF THE PEACE

<p>_____ (name of your landlord)</p> <p>Plaintiff</p> <p>v.</p> <p>_____ (your name or names)</p> <p>Defendant(s).</p>	<p>Cause No.: _____</p> <p>Order Setting Hearing on Defendant's Motion and Brief to Set Aside Default Judgment</p>
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On this day, the Court considered the Defendant's Motion and Brief to Set Aside Default Judgment. Pursuant to Rule 22 of the Montana Justice and City Court Civil Rules, a hearing on this motion must be set within 10 (business) days.

IT IS THEREFORE ORDERED that a hearing is set for _____, 20____, at _____ o'clock ____M. The purpose of the hearing is for the Court to decide whether to set aside the default judgment entered against Defendant in this cause. If after hearing the Court decides to grant Defendant's motion to set aside the default judgment, the Court will set a future date for trial on the merits.

IT IS FURTHER ORDERED that there will be no execution of the judgment and no enforcement of any writ of possession until further order of this Court. The Defendant

may remain in possession of the rental premises pending the final decision on this motion.

Signed on _____, 20_____.

Presiding Judge

Copies to:
Plaintiff
Defendant

IN THE JUSTICE COURT

_____, COUNTY, MONTANA

BEFORE _____, JUSTICE OF THE PEACE

<p>_____ <i>(name of your landlord)</i></p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>_____ <i>(your name or names)</i></p> <p style="text-align: center;">Defendant(s).</p>	<p>Cause No.: _____</p> <p style="text-align: center;">Order Setting Aside Default Judgment</p>
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On _____, 20____, the Court held a hearing on Defendant's Motion and Brief to Set Aside Default Judgment.

The defendant appeared in person, and the Plaintiff:

- Appeared in person:
 - With counsel.
 - Without counsel.
- Did not appear.

Based on the testimony and evidence presented, the court makes the following:

Findings of Fact:

1. The Defendant (s) rented the Plaintiff's property located at:

Street Address

City

State

Zip

2. Plaintiff filed an action for possession in this Court, and Defendant(s) failed to:

answer

appear at trial.

3. A Default Judgment was previously entered against Defendant(s) on

_____.

4. The Defendant's Motion and Brief to Set Aside Default Judgment was timely filed.

5. Defendant's motion is well-founded and is based on good cause.

6. The defendant(s) have shown that the defendant(s): (1) proceeded with diligence; (2) any neglect was excusable; (3) the defendant(s) have a meritorious defense to the claim; and (4) the judgment, if permitted to stand, will affect the defendant(s) injuriously.

Conclusions of Law:

The defendant(s) have met the requirements of Rule 22 of the Montana Justice and City Court Civil Rules for setting aside the judgment.

Order:

This Court orders that:

The defendant's motion to set aside default judgment is GRANTED.

Trial on the merits is set for the _____ day of _____, 20____,
at _____ o'clock __.M.

The defendant may remain in possession of the rental premises pending the Court's final decision.

The defendant's motion to set aside default judgment is DENIED.

The defendant must vacate the premises on _____,
20_____.

Signed on _____, 20_____.

Presiding Judge

Copies to:

Plaintiff

Defendant