

Information or instructions: Motion for summary judgment

PREVIEW

1. The purpose of a summary judgment is to obtain relatively quickly either a partial or complete judgment if all or part of the allegations in a case can be decided by the court as a matter of law.
2. This includes situations where factual questions have been resolved by admissions or documents and no controverting material issues of fact are disputed.
3. See TRCP 166A applicable to summary judgments.
4. The following form assumes that no factual issues exist and therefore asks the court to grant the motion as a matter of law.
5. Procedure:
 - a. Attach to the motion an affidavit in support of the motion for summary judgment.
 - b. Set the matter for hearing;
 - c. Afford opposing counsel at least 21 days' notice prior to the hearing;
 - d. After attending the hearing, present the court with an order.

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Form: Motion for summary judgment

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1. TRCP 166a has been amended effective September 1, 1997. If a summary judgment is not rendered on the whole case, the Judge may examine the pleadings and evidence on file and interrogate counsel to ascertain what material fact issues exist and then make an order specifying the facts that are established as a matter of law, and direct such further proceedings in the lawsuit that are just.
2. After adequate time has passed for discovery, a party may move for summary judgment (without presenting any evidence to support the motion) on the grounds that there is no evidence to support one or more essential elements of a claim or a defense on which an adverse party has the burden of proof at the trial.
3. The motion must state the elements on which the other party is deficient.
4. The court must grant the motion unless the respondent produces summary judgment evidence which raises a genuine issue of material fact.
5. The motion must be specific and does not authorize general no evidence motions.

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Form: Motion for summary judgment

PREVIEW

CAUSE NUMBER _____

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

MOTION FOR SUMMARY JUDGMENT

[Name of party], "Movant," files this Motion for summary judgment per to TEX. R. CIV. P. 166A.

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1 The pleadings, affidavits, discovery requests, depositions and briefs filed in the above entitled and numbered cause, constitute grounds for granting Movant's Motion for Summary Judgment.

2. Movant incorporates by reference the above mentioned pleadings, affidavits, depositions, etc. as if duly recited at length in this motion.

3. Based on the evidence contained in those documents and as incorporated by reference, there are no genuine issues of material facts or no disputed issues of fact applicable to this Motion.

THIS DOCUMENT

4. As grounds for granting this Motion, [Name of Movant] incorporates by reference, as if fully copied at length in this motion, the affidavit of [Name of Affiant].

5. For additional grounds in support of this Motion, Movant states the following: [state remaining grounds].

6. If a summary judgment is not rendered in favor of [Name of Movant] for the relief prayed for in this Motion and a trial is necessary, moves the court, at the hearing on this Motion, by examining the evidence and pleadings before it, and by interrogating counsel, to ascertain what material facts, if any, are actually controverted in good faith and according to law, and to then enter

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an order granting a partial summary judgment which specifies the uncontroverted facts and directs any further proceedings in this action which are justly required.

PREVIEW

PRAYER

[Name of Movant], respectfully moves this Honorable Court to grant this Motion for Summary Judgment and that receive a judgment against [Name of opposing party], be awarded costs, and have such further and other relief both in law and in equity to which the court deems is entitled

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Respectfully Submitted,

[Law Firm Name]

By _____

[Attorney's Name]

THIS DOCUMENT

Attorney for [Plaintiff/Defendant or Movant]

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading or document has been served upon all attorneys of record and any parties who are not represented by an attorney on _____.

Attorney for: [Other attorney's client's name]

Attorney's name: [Other attorney's name]

Attorney's address [Other attorney's address]

THANK YOU

Type of Service:

___ U.S. Mail, Certified Return Receipt Request No. _____.

___ U.S. Mail, First Class.

___ Hand delivery by name of delivery service.

___ Facsimile transmission to _____ [fax number] before 5 p.m.

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PREVIEW
[Attorney's signature]

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CAUSE NUMBER **PREVIEW**

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.
[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

AFFIDAVIT IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT

State of Texas
County of

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BEFORE ME, on this day personally appeared [Name of Affiant], known to me to be the person whose Name is subscribed to the foregoing instrument, and who being by me duly sworn, and acknowledged to me that [he or she] is [state status in cause, such as: Plaintiff] in the above-entitled and numbered cause and as such states that [he or she] has read the foregoing Motion for Summary Judgment and that the Motion and the facts stated in the motion are true and correct and that [he or she] has personal knowledge of the facts and further that [he or she] is competent to testify to the facts and states more particularly as follows:

1. My name is [Affiant].
2. I am of sound mind, and capable of making this affidavit, and I am fully competent to testify to the matters stated in this affidavit.
3. I have personal knowledge over each of the matters stated in this affidavit, and each of the matters stated in this affidavit is true and correct.
4. I have personal knowledge over the facts stated in this affidavit because [explain Affiant's relationship to the facts so that the affidavit is clear as to how he came to have personal knowledge over the matters stated in the affidavit].
5. [State the specific facts that the party has within his or her own personal knowledge that justify the granting of the Motion for Summary Judgment.]

Signed on _____.

THANK YOU

[Client's name]

Subscribed and sworn to before me on _____ by

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Signature of officer

Notary's typed or printed name

My commission expires:

[or Notary's Stamp]

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CAUSE NUMBER **PREVIEW**

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.
[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

ORDER GRANTING SUMMARY JUDGMENT

On the court considered [Movant's name] Motion for Summary Judgment.
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After considering the motion, the court decided that the motion should be granted.

[State: granted or denied. If the motion is denied state denied and delete the remaining paragraphs]

The Court decided, after having examined the pleadings on file and the summary judgment evidence, that no genuine issues of fact exist and [Movant's name] is entitled, as a matter of law, to summary judgment.
THIS DOCUMENT

It is ORDERED that [Movant's name] have and recover of and from [Losing Party's Name] judgment as follows:

1. [State judgment amount rendered];
2. Pre-judgment interest at the rate of percent per annum;
3. Post-judgment interest at the rate of percent per annum from the date of judgment until paid;
4. Costs of Court; and,
5. Attorney fees in the amount of \$[Amount]; for all of which let execution issue.

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PREVIEW

APPROVED AS TO FORM AND SUBSTANCE:

[Law Firm's or Attorney's Name]
Attorney for [Plaintiff or Defendant]
[Address]
[Telephone & facsimile numbers]
Texas Bar no. [Number]

APPROVED AS TO FORM ONLY:

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[Law Firm's or Attorney's Name]
Attorney for [Plaintiff or Defendant]
[Address]
[Telephone & facsimile numbers]
Texas Bar no. [Number]

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