

**Information & Instructions: Default judgments**

**PREVIEW**

1. A default judgment is used to obtain a final judgment when a Defendant after having been served, fails to answer on a timely basis.

a. If a default judgment is for a predetermined amount of money, i.e., liquidated damages, it may be proved simply by the Petition and the supporting affidavits, contracts or promissory notes.

b. If the damages are unliquidated, i.e., an amount that must be proved at trial, then a hearing must be held at the time of the default judgment to prove up the damages.

2. Prior to obtaining a default judgment, the attorney should satisfy the following minimum requirements to prevent the judgment from being later overturned:

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a. The defendant must have been properly served.

b. If service has been effected through the secretary of state the court file must contain proof that the citation was actually forwarded to the defendant. Furthermore, the appropriate certificate from the secretary of state's office should also be included in the court file.

c. If the defendant was served by substituted service instead of by personal service, the record must show that the officer used "due diligence" in attempting to serve the defendant. A proper motion and order for substituted service should be obtained and placed in the court file prior to the use of substituted service.

d. If the defendant has been served by publication, the attorney must have secured an "attorney ad litem " to represent the defendant.

e. The citation must be on file with the clerk for at least 10 days prior to the judgment. See TRCP 107, 239.

f. If the defendant is in the armed services, special service of citation procedures must be used. If the defendant is not in the armed services, the Default Judgment should contain an affidavit attached to the Judgment (and included in the court file) stating that the defendant is not in the armed services.

g. If the damages are liquidated, the Petition and contract should be sufficient to prove damages. If however, the damages are unliquidated, (not proved by an instrument in writing), the damages must be "proved up" pursuant to an evidentiary hearing. An example of unliquidated damages is a reasonable amount of attorney fees for breach of contract.

h. All default judgments should be accompanied with a certificate of last known address that states the last known address of the defendant, and the required sailor and service man's report of the court in a mail notice of the judgment to the defendant at that address.

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i. If attorneys' fees are requested, an affidavit of attorneys' fees should also be attached.

**PREVIEW**

3. Procedure

a. Ascertain whether or not damages are liquidated or unliquidated.

b. Take appropriate steps to "prove up" damages.

c. Insert the information in the form listed below.

d. Verify proper service and return date for defendant's answer.

e. Complete the Default Judgment form.

f. Complete the Certificate of Last Known Mailing Address.

g. Include the affidavit that the defendant is not in the military and the affidavit of attorney's fees.

h. File all the above Default Judgment forms with the court.

i. If damages are unliquidated, set a hearing to prove up the damages.

j. Some courts require a motion to be filed for default judgment. The motion simply requests that the court grant the default judgment. Other courts allow the filing and entry of the default judgment without a Motion.

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Form: Motion for default judgment

**PREVIEW**  
CAUSE NUMBER \_\_\_\_\_

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

**MOTION FOR DEFAULT JUDGMENT**

[Name], Plaintiff moves for a judgment against [Name], Defendant.

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1. The Defendant was served on [Date].
2. Although the Defendant was duly served with process, Defendant failed to appear and answer. Consequently Defendant has made default.
3. The return of service has been on file in this cause for at least ten (10) days.
4. A certified copy of the completed and returned citation is attached to this motion as Exhibit A.

**THIS DOCUMENT**

**PRAYER**

Plaintiff prays that the court grant this Motion for Default Judgment and enter a default judgment against the Defendant.

Respectfully Submitted,

**THANK YOU** \_\_\_\_\_  
[Law Firm Name]

By \_\_\_\_\_

\_\_\_\_\_  
[Attorney's Name]

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Attorney for Plaintiff  
[Attorney's Address]  
[Telephone Number]

[Facsimile Number]  
[Bar Card Number]  
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Form: Default judgment

**PREVIEW**  
CAUSE NUMBER \_\_\_\_\_

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

**DEFAULT JUDGMENT**

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In the Court heard Plaintiff's Motion for Default Judgment against Defendant [Name].

1. The appeared in person and by and through Plaintiff's attorney of record.
2. Defendant, [Name] was duly served of process on [date], however, Defendant [Name] failed to appear on [his or her] behalf, but wholly made default.
3. The Court finds that the citation with the officer's return has been on file more than ten (10) days exclusive of this date and the day of service, accordingly the Defendant has been properly served with citation of this lawsuit.

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4. The Court therefore finds that the Plaintiff, [Name], ought to recover of and from the Defendant, [Name], the sum of \$[Amount], plus attorney fees in the amount of \$[Amount], and that costs of suit be taxed against Defendant, [Name].
5. The Court further finds that Plaintiff is entitled to such other and further relief at law or in equity to which Plaintiff may show himself or herself justly entitled.

**THANK YOU**

It is therefore, ORDERED, ADJUDGED AND DECREED by this Court that Plaintiff, [Name], should have and recover of the Defendant, [Name], the sum of \$[Amount], plus reasonable attorney fees in the amount of \$[Amount], together with all costs expended in this behalf, plus interest at the rate of [Amount] percent from entry of judgment and that execution issue.

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Signed on \_\_\_\_\_

**PREVIEW**

\_\_\_\_\_  
**JUDGE PRESIDING**

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
[Law Firm's or Attorney's Name]

Attorney for Plaintiff

[Address]

[Telephone & facsimile numbers]

Texas Bar no. [Number]

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APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
[Law Firm's or Attorney's Name]

Attorney for Defendant

[Address]

[Telephone & facsimile numbers]

Texas Bar no. [Number]

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Form: Affidavit on attorney fees

# PREVIEW

The State of Texas

County of \_\_\_\_\_

## EXHIBIT "A"

### AFFIDAVIT ON ATTORNEY'S FEES

BEFORE ME, the undersigned authority, on this day personally appeared [name], who is personally known to me as the attorney of record for Plaintiff,[name of plaintiff], and [his or her] oath being duly sworn, deposed and said:

1. "I am an attorney licensed to practice law in the State of Texas since, [date].
2. My Texas Bar Card Number is \_\_\_\_\_.
3. "I certify that reasonable compensation for the time and effort devoted to the above-entitled and numbered cause is the sum of \$ [Amount]."
4. "The above-requested attorney fees are based upon the following: [describe the legal work performed which justifies the attorney fee award]."

\_\_\_\_\_  
Affiant's Signature

Affiant on oath swears that the statements are true and correct, as based on his or her personal knowledge and Affiant has.

State of Texas

County of [County Name]

Subscribed and sworn to before me on \_\_\_\_\_ by [Name]

\_\_\_\_\_  
**THANK YOU**

Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires:

\_\_\_\_\_  
[or Notary's Stamp]

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Form: Certificate of last known mailing address

# PREVIEW

## CERTIFICATE OF LAST KNOWN MAILING ADDRESS

I, the attorney for Plaintiff, hereby certify that based upon a review of Plaintiff's records and records of the public domain, the last known mailing address of [name], Defendant in the above entitled cause is

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\_\_\_\_\_  
[Name]

Attorney for Plaintiff

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# THIS DOCUMENT

# THANK YOU

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Form: Affidavit of military status

# PREVIEW

The State of Texas  
County of \_\_\_\_\_

## NONMILITARY AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned Affiant, known to me as \_\_\_\_\_, who being by me duly sworn, on oath stated:

1. "I am attorney of record for [Name], Plaintiff in the above entitled and numbered cause.
2. Based on a review of Plaintiff's records and records in the public domain, Defendant, [Name], was not in any branch of the military service when this suit was filed.
3. Defendant has not been in military service at any time since then, and Defendant is not now in any military service of the United States of America."

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\_\_\_\_\_  
Attorney for Plaintiff

State of Texas  
County of [County Name]

# THIS DOCUMENT

Subscribed and sworn to before me on \_\_\_\_\_ by [Name]

\_\_\_\_\_

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

# THANK YOU

My commission expires:

\_\_\_\_\_  
[or Notary's Stamp]

**Information & Instructions: Required check to see if the defendant is an active member of the armed forces/military-The Servicemembers' Civil Relief Act ("SCRA")**

**PREVIEW**

1. Prior to obtaining a default judgment you must search the Defense Manpower Data Center's website to see if the defendant is in the military. You will need the Defendant's first and last name plus his or her social security number.
2. Then log on to Defense Manpower Data Center's website <https://www.dmdc.osd.mil/scra/owa/scra.home>)and perform the search.
3. Print out the Defense Manpower Data Center report and attach it to the following affidavit.

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State Of Texas  
County of \_\_\_\_\_

# PREVIEW

## APPLICANT'S SOLDIERS & SAILORS AFFIDAVIT

Before me, the undersigned notary, on this day, personally appeared [Name of person signing the affidavit], a person whose identity known to me. After I administered an oath to him, upon his oath, he said:

1. "My name is [Name of person signing the affidavit]. I am attorney for the applicant in this cause. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. [Name of the Defendant] the Defendant, is not in the military. I have knowledge of this fact because I requested that the Department of Defense Manpower Data System, an organization of the U.S. Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database, which is the official source of data on eligibility for military medical care and other eligibility systems, execute an inquiry as to whether [Name of the Defendant], the Defendant, is on active duty in any of the armed forces. As a result of this inquiry, it was determined that the Defendant is not on active duty in the military. Attached is a true and correct copy of the verification from the Department of Defense Manpower Data Center that indicates the Defendant is not currently on active military duty."

Respectfully submitted,  
[Law Firm's Name]

# THANK YOU

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By [Name of person signing the attorney]  
Texas Bar Card No. [Bar card number]  
[Attorney's address]  
Attorney For [Name of Defendant]

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State of Texas  
County of [County Name]

# PREVIEW

Subscribed and sworn to before me on \_\_\_\_\_ by [Name]

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\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

**PLEASE DO NOT COPY**

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
[or Notary's Stamp]

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## THANK YOU

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Form: Notice regarding default judgment

**PREVIEW**  
[Date]

[Addressee]

Dear [Name]:

I am writing to inform you that a Default Judgment was entered against you On \_\_\_\_\_ for \$ [Amount].

Since this Judgment was signed over 30 days ago, the Judgment has now been abstracted and filed in the County Clerk's office in [County,] Texas.

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My client, [name], desires to revoke this matter. I therefore request that you contact me within 10 days of receipt of this letter to work out a payment arrangement.

If I do not hear from you within the above described time period, post judgment collection procedures may be initiated against you. This can include but is not limited to post judgment depositions and/or interrogatories. My client can also request the constable to attach all of your nonexempt property to satisfy the debt.

As you can see, this is a serious situation. To avoid added cost and inconvenience, please contact me immediately concerning this matter. A copy of the abstracted Judgment is enclosed.

**THIS DOCUMENT**  
Sincerely,

[Attorney's name]

Enclosures

**THANK YOU**

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