

Information or instructions: Default judgment for unliquidated damages

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. This default judgment in the form that follows may be used where evidence has been introduced in order to justify the damages claimed. The amount that must be proved at trial, and 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:

a. The defendant must have been properly served.

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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.

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e. The citation must be on file with the clerk for at least 10 days prior to the judgment. See TRCP 107, 259.

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.

THANK YOU
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 serviceman's report so that the court may mail notice of the judgment to the defendant at that address.

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

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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 prefer 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.

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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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THANK YOU

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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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The above entitled and numbered cause came on for trial on _____, The Court being regularly in session at the place where the cause was commenced, in which cause Plaintiff is [Name], and the Defendant is [Name], the Judge in Open Court regularly called this cause in its order on the docket. The Plaintiff was present in Court and although duly served with process on [Date], Defendant failed to appear and wholly made default;

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The Citation with officer's return in record having been on file more than ten (10) days exclusive of this date and the date of service, the Plaintiff announced ready for trial and the cause was tried to the Court without a jury. The Court, having reviewed the pleadings on file, the evidence submitted at trial, and the exhibits thereto is of the opinion that Plaintiff's cause against Defendant is meritorious. Accordingly, the Court found that Plaintiff is entitled to recover of and from the Defendant its actual damages in the amount of \$[Amount].

THANK YOU
FURTHER, the Court finds that Defendant's conduct was intentional and malicious and that Plaintiff is entitled to recover the maximum damages allowed under the Texas Deceptive Trade Practices Act in the amount of \$[Amount].

FURTHER, the Court found that Plaintiff is entitled to recover its reasonable attorney fees in the amount of \$[Amount of attorney's fees].

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It is ORDERED by this Court that Plaintiff recover from Defendant the sum of \$[Total
damages] together with attorney fees in the amount of \$[Attorney's fees], and interest at the rate of
[Interest rate] percent (%) from entry of judgment, and that execution should issue.

Signed on _____.

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

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[Law Firm's or Attorney's Name]
Attorney for Plaintiff
[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 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

[Name]

Attorney for Plaintiff

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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."

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

My commission expires:

[or Notary's Stamp]

THANK YOU

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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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THANK YOU

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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, executed 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

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]

_____.

Signature of officer

Notary's typed or printed name

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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 revolve 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.

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Sincerely,

[Attorney's name]

Enclosures

THANK YOU

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