

# Applying to set aside a default judgment in the County Court of Victoria

---

## This fact sheet covers:

- ▶ What is a default judgment?
  - ▶ How to apply to have a default judgment set aside
  - ▶ What happens if the default judgment is set aside
- 

**This is a factsheet for people who want to apply to set aside a default judgment of the County Court of Victoria.**

This factsheet is intended to assist people who are not represented by a lawyer.

Throughout the factsheet there are links to documents and helpful resources which will assist you in progressing your matter.

This factsheet contains general information only and is not intended to be legal advice.

## What is a default judgment?

A default judgment is an order that can be made against a defendant in a case if they have failed to respond to claims made against them.

If you have a default judgment entered against you it is likely to have been made in the following circumstances:

- you failed to file an appearance within 10 days from the date you were served with the plaintiff's claim
- you failed to file a defence to the plaintiff's claim within 30 days of filing your appearance
- you filed a defence but it has been struck out by an order of the Court

## Can I undo a default judgment?

If you have found out that a default judgment has been entered against you and you wish to defend the claim, you can apply to have the judgment set aside. You need to act quickly.

In deciding whether to set aside the default judgment, the Court will weigh up the merits of your defence against the prejudice which may be suffered by the other party in setting aside the default judgment.



## Steps for setting aside default judgment

### Step 1: Get to know Court procedures

Read the following documents carefully, as they provide important information and guidance:

- Order 21 – [County Court Civil Procedure Rules 2018](#)
- [County Court of Victoria – Commercial Division practice note](#)

### Step 2: Get the documents you need together

- Summons – [Form 46A](#)
- [Affidavit](#)
- Certificate Identifying Exhibit – [Form 43A](#)
- Copy of the default judgment order

### Step 3: Complete your documents

	Definition	What to include
<b>Summons</b>	A document that alerts the Court and the other parties to the proceedings that you are applying to set aside the default judgment.	State the order you are asking the Court to make.  For example: “ <i>The default judgment dated [insert date] is set aside pursuant to Rule 21.07 of the County Court Civil Procedure Rules 2018</i> ”.
<b>Affidavit</b>	A document in which you will need to explain why the Court should set aside the default judgment. In the affidavit you should include all reasons you are relying upon, with each reason in a numbered paragraph.	<ul style="list-style-type: none"> <li>• Details of your defence to the plaintiff’s claim. This is the most important issue to address in your affidavit.</li> <li>• Reasons why you failed to appear when the case was heard. If you failed to file a notice of appearance or notice of defence, you need to explain why.</li> <li>• If there has been any delay in applying to set aside the default judgment or launching your proceedings for a new trial, you need to explain the reasons for the delay and why the delay would not prejudice the other parties.</li> </ul>
<b>Exhibit</b>	An attachment to an affidavit.	Complete an exhibit cover sheet for each exhibit.



#### **Step 4: File your documents**

Once you have completed your documents you need to file them with the Court.

When the Court seals the Summons you will be given a date when the application will be heard in front of a judge.

There is a filing fee associated with the Summons – refer to the [County Court fee table](#). If you intend on claiming financial hardship you will need to file a [Fee Waiver Application](#).

#### **Step 5: Serve your documents**

You need to serve sealed copies of the documents on the other parties as soon as possible.

If you are serving an individual, you need to leave the documents with them in person.

If you are serving a company, you need to post the documents to the registered office of the company.



#### **Further Reading**

Please read the following documents carefully, as they provide important information and guidance on how to effect service:

- Order 6 – [County Court Civil Procedure Rules 2018](#)
- [County Court of Victoria's information for serving documents](#)

## **What happens if the default judgment is set aside?**

If the Court orders the default judgment be set aside, it will likely order that you are to pay the plaintiff's legal costs thrown away by reason of entry of the judgment and costs and inconvenience of the application to set aside.

The Court will make orders for filing of a defence giving you the opportunity to respond to the plaintiff's claim.



#### **Website**

Justice Connect operates a service which assists people representing themselves in the County Court of Victoria. If you would like to apply for assistance from the Service, please lodge an enquiry at <https://help.justiceconnect.org.au/vicsrs/>.