

# The OTHER Kind of Motion to Vacate

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## When the Court Lacked Jurisdiction, the Judgment is Voidable

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## Voidable Judgments – the Other Kind of Motion to Vacate

Most of the time when people talk about motions to vacate they're talking about motions to vacate a default that occurred as a result of failure to respond to a properly served lawsuit. There is another kind of motion to vacate, though, for people where the court did not have proper jurisdiction. If that's your situation, this is a better way.

### A Quick Review

Once a lawsuit is properly served on a defendant, the court has "jurisdiction" (the power to address the claims made in the suit) at least provisionally. If a defendant fails to respond appropriately to such a suit, the plaintiff will probably get a default order and judgment. That is what happens in a large majority of debt cases.

An "appropriate" response that will prevent a default judgment is either:

- An Answer, or
- a motion to dismiss the suit.

It is also possible to file a motion "for more definite statement" in some states, as well. The point is, though, that every allegation in the petition must either be moved against or answered. If that happens, a default judgment should never be issued.

If you fail to answer and the court awards a default judgment, you can ask the court to give you another chance by asking it to “vacate” the default and allow you to defend the case. I discuss what this is, what the time limits are, and how to do it in several articles, see, e.g., [Overcoming Default Judgments](#).

## Voidable Judgments

But what if the court does NOT have or get proper jurisdiction over you?

This can happen in two common ways: the debt collector does not manage to serve you properly; or the debt collector sues you in a court that doesn’t have power over you (because you live somewhere else). Other ways are possible, but these are by far the most common.

If you find out that you are being sued in a court that lacks jurisdiction *before* judgment, you can move to dismiss the case on that basis, but that can defeat the whole purpose of the rule – since in order to do so you would have to appear (“specially”) in the court to do it, and if you’re far away, that’s impractical. Another way to handle the situation is to let the court rule and then attack the judgment in the correct court. That also has significant drawbacks, so if you know about the situation before judgment, it can present a tough question.

But most people do not learn about suits where the courts lack jurisdiction before judgment. They find out about them later. What do you do if that happens?

## No Authority, No Judgment

The good news is that there is NO time limit on a voidable judgment. The court never had authority to enter the judgment, and “all” you have to do is establish that fact. You can do that at any time, and it completely undoes the judgment. It is called “void ab initio,” meaning “from the beginning” as if it never existed.

## Burden of Proof

The bad news is that you can have a high burden of proving that the court did not have authority over you. Most courts require you to present “clear and convincing” evidence of the facts that you were not subject to the court’s jurisdiction. In the case of residency – you were living in California but sued in Florida, that isn’t necessarily so hard.

In the case of sewer service – where you weren’t served, but the process server swore you were, it can be much more of a challenge. Still, almost everybody I’ve known who tried it succeeded. That’s because the process servers normally describe the person to whom they theoretically gave the petition, and they usually won’t know your age or body shape, and often guess incorrectly your gender and race. If their affidavit says they served a woman 5’2” eyes of blue and you’re obviously not that, you’re good. Other things obviously aren’t as easy to prove.

## What you Have to Prove

You have to prove by good evidence that the court lacked jurisdiction over you.

## What you Do Not Have to Prove

You won't have to prove you made any mistake (you didn't) or that the substance of the judgment (i.e., you owe \$2,000) was wrong in any way. You do not need to allege or prove any "defense" to the suit, in other words. Attack the jurisdiction, and the case goes away.

## What you Should Not Have to Prove

You shouldn't have to prove you didn't receive notice of a sewer service filing. Suppose, for example, you found it in the trash in a nearby dumpster. Most courts require proper service and not "notice" of the suit. But I'm afraid you can't count on the courts to apply that rule consistently. You will not want to offer proof or any indication that you heard about the case in any way prior to judgment. If you became alerted to the fact that a process server was around and do some research in the court files, you will want to disguise the fact and cover your trail.

## Special State Rules

The rules for this sort of motion to vacate are NOT the easily found rules in the rules of civil procedure. You must research your state's rules for voidable judgments and follow whatever rules you find there.

## Products Related to this Article

We do not have a product directly related to this article if you are moving to void a judgment. You may find our [Motion to Vacate Pack](#) helpful in showing you the form of motions and proof, but it does not contemplate the rules you would need to follow. I emphasize, again, that in filing a motion to void a judgment entered without jurisdiction, you would not want or need to include a "proposed Answer," and you would not need to allege a defense (although claiming a defense wouldn't hurt and might help).

You would probably find our memberships useful, particularly if the situation with the debt collector that brought you here is not the only one you're facing.

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