Even after the Judge gives the landlord a "judgment" to evict you, you may make a written request to the Judge that the eviction be "stayed" or delayed, and that the case be reopened. This packet contains the legal papers used to ask the Judge to do this: an *Affidavit in Support of Motion to Vacate Default Judgment in Landlord Tenant Proceeding* (DC-421), and an *Order to Show Cause to vacate a Landlord Tenant Judgment* (DC-420). This packet also contains this sheet of instructions, and a list of 9 questions to help you put your information in the right place on the forms.

The *Affidavit in Support of Motion to Vacate Default Judgment in Landlord Tenant Proceeding* (DC-420.4) is your sworn statement explaining to the judge why you believe the Judge should sign the *Order to Show Cause* and delay your eviction. If you are being evicted and you did not come to court when you were supposed to, you must show two things in the *Affidavit*:

1. A good reason for not going to court when you were supposed to, such as "I never received the court papers" or "I was sick" (see Question 7), and;
2. A good defense against the landlord's claim in the petition, such as "I paid the rent in full," or "I need repairs" (see Question 8).

The *Order to Show Cause to vacate a Landlord Tenant Judgment* is a court order that you are asking the judge to sign that puts the court case back on the court's calendar, and tells the landlord and Sheriff not to evict you. It tells the landlord to come to court and show why what you want should not be granted.

To file your *Affidavit* and request a Judge sign your *Order to Show Cause*:

- **Go to the <u>Court Clerk's Office</u> with the completed form**s.

- Ask the Clerk to have the Judge sign the *Order to Show Cause.*

- Ask the Clerk if you should wait or return early the next day.

- Tell the Clerk if your eviction is scheduled for that same day, or if you have been given a "72 hour notice."

If the Judge signs the *Order to Show Cause*, it will have a date when you and the petitioner (the landlord or someone who represents the landlord) must appear in court to explain why the court should or should not vacate the default judgment. The *Order to Show Cause* may also tell the Sheriff and petitioner not to evict you (this is called a "stay"). The *Order to Show Cause* will also tell you that you must give a copy to ("serve") the Sheriff and petitioner. After you "serve" the petitioner and the Sheriff, you must come back to the court by a certain date to file another copy of the *Order to Show Cause* with another form called "proof of service" that describes how you gave the petitioner and Sheriff a copy of the *Order to Show Cause*.

These forms are designed to be filled in by the respondent who wants to vacate a default judgment in a landlord tenant proceeding, and who can swear in an affidavit as to certain facts involved in the legal action. The questionnaire on the next page is meant to assist you in filling in the right information in the right fields, and is not meant to advise a legal strategy.

If you are NOT the respondent who wants to vacate a default judgment in a landlord tenant proceeding, or if you need assistance completing the questionnaire or the affidavit or order to show cause, or if you have other questions, contact an attorney for legal advice.

Questions to assist in preparing *Order to Show Cause to vacate a Landlord Tenant Judgment* **(DC-420.3) and** *Affidavit in Support of Motion to Vacate Default Judgment in Landlord Tenant Proceeding* **(DC-420.4) forms**

1. What is your name?

Type your name the same way it is written on the court papers that started the case (you are the respondent/tenant).

2. What is the landlord (petitioners) name?

Write the name of the petitioner (your landlord) the same way it is written on the court papers that started the case.

3. What is the case number or index number in the action?

Landlord Tenant cases in Suffolk County District Court will start with BRLT, BALT, HULT, ISLT, or SMLT prefix, then up-to six numerals, a dash or slash, and then the year filed, for example: BRLT 123456-2007.

4. Where do you live now?

The court will use this address to contact you. A "PO BOX" is acceptable only if a street address is also provided.

5. Why did the landlord/petitioner file a court case against you?

It is written on the court papers that started the case, probably either "Non-payment" - the landlord claims you owe rent and is suing to collect the overdue rent and to evict you if you do not or cannot pay it, or "Holdover " - the landlord wants you evicted for reasons other than nonpayment of rent

6. When was the default judgment entered against you?

Enter the date as a Month, Day, Year

7. Why didn't you appear in court?

8. What meritorious defense do you have to fight this court case?

9. In which District Court did the Judge order your eviction?

> I am not sure or I do not know.
>
> 2nd District Court-Babylon, 30 East Hoffman Ave, Lindenhurst NY 11757
>
> 3rd District Court-Huntington, 1850 New York Avenue, Huntington Station, NY 11746
>
> 4th District Court-Smithtown, #C158 North County Complex, Veterans Memorial Hwy, Hauppauge, NY 11787
>
> 5th District Court-Islip, 3105 Veterans Memorial Highway, Ronkonkoma, NY 11779
>
> 6th District Court-Brookhaven, 150 West Main Street, Patchogue, NY 11772

At a Motion Term of the District Court of the State of New York, County of Suffolk

Present: Hon. _____
                   Judge of the District Court

_____

_____
                 Petitioner

                          -against-

_____
                 Respondent

Order to Show Cause to Vacate Default Judgment in Landlord Tenant Proceeding

Index No. _____

Upon the affidavit of _____, Respondent, sworn to on the ____ day of _____, 20____, and upon all prior papers and proceedings,

Let the Petitioner show cause at a Motion Term of this Court to be held at the Courthouse located at _____ on the ____ day of _____, 20____, at 9:30 AM or as soon thereafter as the parties can be heard, why an order should not be entered vacating the default on appearance date and/or the judgment granted in favor of the Petitioner and setting the matter down for trial, and why the Respondent should not have such other and further relief as may be just and proper.

Sufficient reason being presented for the relief requested, it is

Ordered that pending the hearing of this motion, the Sheriff and the Petitioner and all Petitioner's agents are stayed from conducting any proceedings to enforce the judgment, and further it is

Ordered that the Respondent serve a copy of this order on the Petitioner, or Petitioner's attorney if one has been retained, at _____, and the Suffolk County Sheriff at 360 Yaphank Avenue, Yaphank NY 11980 by Personal Delivery by the ____ day of _____, 20___.

All papers the Petitioner desires to submit in opposition to the Respondent's motion must be served on the Respondent and forwarded to the court prior to the hearing date. **Personal appearance** is required and **oral statements** will be considered.

Dated: _____   Enter,

_____   _____
                                                                              District Court Judge

This order, together with proof of service, must be returned to the Court Clerk's office on or before _____

DC-420.3 (11/08)

DISTRICT COURT OF THE COUNTY OF SUFFOLK

_____

_____

Petitioner

-against-

_____

Respondent

Affidavit in Support of Motion to Vacate Default Judgment in Landlord Tenant Proceeding

Index No. _____

STATE OF NEW YORK
COUNTY OF SUFFOLK } ss.:

_____, being duly sworn, deposes and says:

1. I am the Respondent in the above entitled action.

2. That I reside at _____ .

3. That this is an action for _____ .

4. That on _____ _____, _____, a default judgment was entered by this court.

5. That I did not appear/answer because _____

_____

_____

6. That I have a meritorious defense; specifically [*state the facts which support your defense in as much detail as possible and attach any supporting documentation*]

_____

_____

7. No previous application for this relief has been made.

WHEREFORE, deponent respectfully requests an order vacating the judgment entered on the _____ day of _____ , _____ , or such further relief as may be just and proper.

sign in the presence of a Notary Public or Court Clerk⇨ _____

print name⇨ _____ , *Respondent*

Sworn to before me
this ___ day of _____, 20___.

_____

Notary Public - Court Clerk
affix stamp / seal

DC-420.4 (11/08)