

CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
CUYAHOGA COUNTY, OHIO
JUDGE CHERYL M. WILTSHERE

Name: _____
Address: _____
City, St, zip: _____
Telephone No. _____
Plaintiff(s)

vs.
Name: _____
Address: _____
City, St, zip: _____
Telephone No. _____
Defendant(s)

1. I am the plaintiff (or) defendant in this case.
2. On _____, 20____, the court () dismissed or entered a judgment in this case.
3. I am asking his court to set aside that dismissal or judgment and hold a new hearing, for the following reasons (if you missed your hearing or court date, explain why here. Attach copies of documents, etc.):

4. If the order is set aside, I will present evidence to show that (explain here the claim or defense you will present to the court if a new hearing is granted. Attach copies of documents, receipts, etc.):

5. I am making this motion within a reasonable time (explain why in filing this motion):

X

(Signature)

SERVICE CLAUSE

I (check one) sent a copy of this motion by regular mail (or) other _____ (specify) to plaintiff(s)/counsel if plaintiff has counsel (or) defendant(s)/counsel if defendant has counsel at the address of record on ____/____/____.

(Signature)

WAIT! READ THIS BEFORE YOU FILL OUT THIS MOTION!

***FILING THIS MOTION WILL NOT STOP A MOVE OUT. YOU MUST FILE A SEPARATE MOTION FOR STAY TO ASK THE COURT TO STOP A MOVE OUT! THE MOVE OUT WILL GO FORWARD UNLESS THE COURT ISSUES AN ORDER SAYING IT WILL NOT!**

• What is a ‘Motion for Relief from Judgment’?

A motion for relief from judgment is filed by a party that wants the Court to change its mind about a judgment it has issued, and rule the other way.

• What law covers a ‘Motion for Relief from Judgment’?

Rule 60(B) of the Ohio Rules of Civil Procedure tells a Court what must be included in this Motion and what to look for. (<http://supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf> is the link to the Ohio Rules of Civil Procedure)

• Do I need an attorney to file this motion?

Because this Motion has very specific requirements and because the Civil Rule 60(B) has many aspects, you should speak to a licensed attorney before filing this Motion. These instructions are provided only to offer general information about this type of Motion.

• What does a Court consider when ruling on a Motion for Relief from Judgment?

The Court looks at **three things** when ruling on any Motion for Relief:

- 1. Timeliness** – was the Motion filed within a reasonable time? (if your motion is based on mistake, new evidence or fraud, the time must be reasonable; and less than a year after the original judgment)
- 2. Good Cause** – you must have a good reason for filing this motion, which may include mistake, inadvertence, surprise or excusable neglect. “Good cause” refers to why you did not present this information to the Court previously. If you missed your hearing, the Court will consider the reason for your failure to appear.
- 3. A Valid Claim or Defense** – you must show the Court that you had a good claim or defense to the lawsuit. The party who files the motion must show (in the motion and with attachments, if possible) exactly what you would have said to prove your claim.

• If my motion is denied, can I file another one, with additional information?

In general, a party cannot file more than one motion for relief based upon arguments that were raised or could have been raised in a prior motion to vacate. For this reason, it is important to fill out the motion completely, and attach any documentation you would like the Court to consider.

• What is ‘service’ and what do I have to do to properly serve this motion?

Service is when you officially give a copy of the motion you are going to file, with all the attachments, to the other side. It is required for **every item that you file** with the Court.

- 1. BEFORE YOU FILE, mail or hand-deliver** a copy of the motion and attachments to the other side’s attorney (or directly to them if they don’t have an attorney); **AND**
- 2. Fill out and sign** the section of the motion that shows the Court how and to whom you delivered the copy.

• What does it cost to file this Motion?

The party filing the motion usually has to pay a fee to the Clerk of Courts. Contact the Clerk’s Office at 216-664-4870, or <http://clevelandmunicipalcourt.org/home.html> (click on the words ‘Clerk of Courts’ at the bottom, then the ‘fees’ tab at the top of the page) for a list of fees.

If you cannot afford the filing fee, you can file a ‘poverty affidavit’ which, if approved, will let you pay all or some of the filing fee at a later date.

Contact the Cleveland Legal Aid Society for a sample ‘Poverty Affidavit’ (216-687-1900)

This instruction sheet is not legal advice. Housing Court Specialists are not attorneys and cannot give you legal advice. Because this Motion (or form) will have an impact on your rights, you should contact a licensed attorney to help you.