

# MISSISSIPPI CENTER FOR JUSTICE

## **Consumer Protection Toolkit**

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# Student Loan Options

## Overview

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### ***What is the difference between a grant and a loan?***<sup>1</sup>

A grant is money given to a student that does not have to be repaid, and is colloquially called “free money”. Grants generally do not have to be repaid unless the student withdraws from school. Grants are offered for many different reasons. To be eligible for a grant, the student must first submit a FAFSA form and then work with their college to determine for which grants they qualify.

A loan is money given to a student that must be repaid, usually with interest. The federal government and private lenders offer loans. Federal loans are funded or guaranteed by the federal government. Private loans are funded by banks or other lenders like credit unions, state agencies, or schools.

### ***Should I choose a grant, a federal loan, or a private loan?***<sup>1</sup>

First, students should max out their grants because a grant is “free money” that does not have to be repaid. Next, students should look to federal loans. Federal loans have better interest rates and repayment plans than private loans. However, students should be careful about the amount of loans they receive because they will have to pay the loans back with interest. Students should not take out more loans than they absolutely need. Last of all, students should consider private loans if necessary.

### ***How does FAFSA work?***<sup>2</sup>

FAFSA is the Free Application for Student Aid. It is used across nearly all colleges to determine a student’s eligibility for financial aid, including grants, loans, and work-study programs. FAFSA is either need based or non-need based.

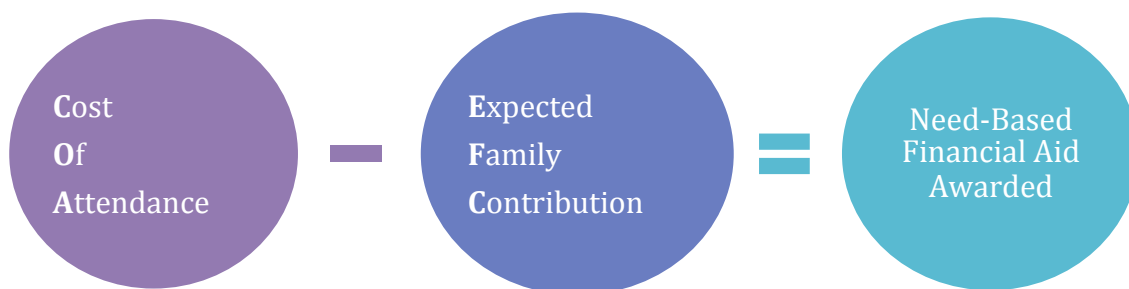
Student eligibility requirements:

1. Must be a US citizen, US national, or an eligible non-citizen
2. Must have a valid social security code number
3. Must have a high school diploma or GED
4. Must be registered with US Selective Services (if a male over the age of 18)
5. Must complete FAFSA form, thereby promising to use any aid for educational purposes only
6. Must not owe any refunds on any federal student grants
7. Must not be in default on any student loans

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8. Must not have been found guilty of the sale or possession of illegal drugs during a period in which federal aid was being received

Need-based aid depends on the student's expected monetary family contribution (EFC), the student's year in school, the student's enrollment status, and the cost of attendance at the student's college (COA). The amount a student is eligible for is calculated by subtracting the student's EFC from the student's COA. Some examples of need-based aid are the Federal Pell Grant, FSEOG, direct subsidized loans, Federal Perkins Loan, and federal work-study programs.



Non-need based aid is calculated by subtracting the financial aid awarded to the student from the student's COA. Some examples of need-based aid are direct unsubsidized loans, Federal PLUS loan, and the TEACH grant.



### **What grants are available?** <sup>4</sup>

Some Federal Grants:

- Federal Pell Grant
- Federal Supplemental Educational Opportunity Grant (FSEOG)
- Teacher Education Assistance for College and Higher Education (TEACH) Grant
- Iraq and Afghanistan Service Grant

General Mississippi Grants:

- Mississippi Tuition Assistance Grant (MTAG)<sup>5</sup>

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- Mississippi Eminent Scholars Grant
- Nissan Scholarship
- Mississippi Higher Education Legislative Plan
- Mississippi Law Enforcement Officers and Fireman Scholarship

### Career-Specific Mississippi Grants:

- Healthcare Professions Loan/ Scholarship for Undergraduates
- Healthcare Professions Loan/ Scholarship for Undergraduates
- Graduate and Professional Degree Loan/ Scholarship
- State Medical Education Loan/ Scholarship
- State Dental Loan/ Scholarship
- Critical Needs Alternate Route Teacher Loan/ Scholarship
- Mississippi Teacher Loan Repayment Program
- Critical Needs Teacher Loan/ Scholarship
- Graduate Teacher, Counselor School Administration Loan/ Scholarship

### ***What is the difference between a federal and a private loan? <sup>1</sup>***

Federal loans are funded or guaranteed by the federal government. Private loans are nonfederal loans funded by banks or other lenders, such as credit unions, state agencies, or schools. After maxing out on eligible grants, students should then use to federal loans if necessary.

#### Federal Loans:

- Lower, fixed interest rate
- More flexible repayment options
- Student will not need to make payments until after leaving school or dropping below half-time enrollment
- No credit check or need for a cosigner (for most)
- Interest rate for subsidized loans is paid by the government while the student is in school
- Interest rate for unsubsidized loans may be tax-deductible
- Loans can be consolidated into a Direct Consolidation Loan
- There is no prepayment penalty fee
- Most offer forbearance or deferment options if the student is struggling to repay loans
- Loan forgiveness options are available for students who go on to work in the public sector

#### Private Loans:

- Interest rates vary depending on the student's credit score and are generally higher

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- Interest rates are not fixed, so the bank can raise the interest rate over the years
- Most require the student to pay interest while still in school
- Most require a credit check and often require a cosigner
- Loans cannot be consolidated into a Direct Consolidation Loan
- Most have prepayment penalty fees
- There are few options for forbearance or deferment
- Most do not offer forgiveness programs

### **Two federal loan options:**

#### PLUS:

PLUS is a federal loan for graduate and professional students, and parents of undergraduates. When awarded to the parent, the loan cannot be transferred to the child, and the parent who receives the loan is responsible for repayment. PLUS is awarded for up to cost of attendance minus any other financial aid the student receives. The 2014-2015 interest rate for PLUS was 7.21%. The recipient must pass a credit check or have a cosigner.

#### Perkins:

Perkins is a federal student loan for low-income undergraduate or graduate students. Not all schools offer Perkins loans. The school is considered the lender because the loan is provided by the student's school using a combination of school and federal funds. The interest rate is 5% and the borrower must begin repayments nine months after leaving school. The loan is limited to \$5,500/year as an undergraduate, totaling a maximum of \$27,500. Graduate and professional students are limited to \$8,000/year, totaling a maximum of \$60,000 including undergrad.

## Repayment of Loans<sup>1</sup>

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### **What are the requirements for the repayment of loans?**<sup>3</sup>

A student's loan repayment requirements depend on the type of loan received. Students should be able to find their loan repayment schedule on the promissory note, the legal document that they signed when taking out the loan. It is important that the student does not let their loan go into default. Default can be prevented by knowing when the first loan payment is due, and meeting all monthly payments thereafter. Federal loans generally have a longer period of time before default occurs.

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### **Federal Loan Repayment**<sup>3</sup>

Federal loans often do not have to be repaid until the student leaves school or if the student drops below half-time enrollment. Each loan is unique, so the student should know when their grace period ends and when their first payment is due. Federal loans offer several repayment plan options, including the ability to tie monthly payments to the student's income. Additionally, the federal government pays the interest of federal subsidized loans while the student is still in school. The interest from unsubsidized loans is tax-deductible. Federal loans can often be consolidated into a Direct Consolidation Loan.

There are many options if the student is struggling to repay the loan. Most federal loans offer forbearance or deferment options, and do not have a prepayment penalty fee. Finally, students may be eligible to have a portion of their loans forgiven if they work in public service after graduation.

### **Private Loan Repayment**<sup>3</sup>

Private loans often require the payment of interest while the student is still in school. The repayment plan options depend on the lender, as do the forbearance and deferment options for struggling students. Prepayment penalty fees also depend on the lender. The interest rate for private loans is not fixed, meaning it can increase from year to year. Private loans do not have any subsidy options. Private student loans cannot be consolidated into a Direct Consolidation Loan. It is unlikely that the lender will offer a loan forgiveness program.

## **Consequences of Defaulting on Student Loans**<sup>1</sup>

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### **What is Default?**

When a student misses a certain number of payments on their student loan, that loan is said to go into default. Federal loans go into default after about nine months of missed payments, but private loans can go into default with as little as one missed payment. It is vital that students know when their first payment is due and they do not allow the loan to go into default. Students can find the exact details of their repayment schedule on their promissory note, which is the legal document the student signed when taking out the loan.

### **What is Delinquency?**

Delinquency occurs the first day after a student misses a payment. This step occurs before the loan goes into default. It is serious- loan providers will report all delinquencies of at least ninety days to the three major credit bureaus. This will lead to a bad credit rating, which will make it hard to take out further loans and will result in a higher interest rate. Other consequences include difficulty signing up for utilities, getting home owner's insurance, getting a cellphone plan, and getting approval to rent an apartment.

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### **What are the Consequences of Defaulting?**<sup>6</sup>

When a student goes into default, any of the entities they owe money to can take action to recover it. Once the loan is in default, the entire unpaid balance of the loan and any interest can be immediately due and payable. This leads to a variety of consequences:

- The loan debt will increase because of late fees, additional interest, court costs, collection fees, attorney's fees, and many other costs from the collection process.
- The student can lose eligibility for deferment, forbearance, and repayment plans, and eligibility for further federal student aid.
- The student's account is assigned to a collection agency and reported to credit bureaus, damaging the student's credit rating.
- The student's federal and state tax returns may be withheld in order to collect on the loan.
- The student's employer can withhold money from your pay and send it to the government, called wage garnishment.
- Similar to wage garnishment, if the student becomes a federal employee, they risk have 15% of their disposable pay withheld and sent to the government in a process called Federal Salary Offset.
- The loan holder can take legal action against the student.
- The student may not be able to buy or sell assets like real estate.
- It will take years to reestablish credit and recover from default.

### **How to Correct a Mistaken Default**

If the student believes their loan went into default by mistake, there are many steps that can correct the error. If the student is attending school on at least a half-time basis, they should contact their school's registrar and get a full record of attendance for all schools attended. Then, talk to the loan provider to find out what their records say for the student's last date of attendance. Provide the lender with the student's correct attendance documents if the lender's records are incorrect and request that the information be corrected.

If the student has a deferment or forbearance, talk to the loan provider to confirm the start and end dates of any deferments or forbearances applied to the student's loan. Provide the lender with the student's correct loan documents if the lender's records are incorrect and request that the information be corrected.

If the student made payments that were not credited to their account, ask the loan provider for a statement of all the payments made. Provide the lender with the student's correct payment history if the lender's records are incorrect and request that the information be corrected.

### **How to Correct a Default**

Students should be proactive against default. If the student fears not making a payment, they should talk to their lender directly. Many lenders offer plans such as forbearance and deferment to help those struggling with payments.

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When the student goes into default, the first step is to talk to the agency billing them. It is important to fully explain your situation and ask what options are available to get out of default. Some options that may be available are:

- **Loan repayment.** This involves repaying the loan in full. Some entities, like the federal government, work to get students affordable monthly payment options. It is important to talk to the loan provider and collection agency to start repayment quickly.
- **Loan rehabilitation.** Loan rehabilitation occurs when the student has made a certain number of loan payments after defaulting, and the loan is purchased by a lender. Once the loan is rehabilitated, the student will again be eligible for options like deferment, forbearance, and loan forgiveness. Loan rehabilitation also removes the default status on the loan, removes the default status reported to national credit bureaus, removes wage garnishment, and removes any withholding of tax refunds. However, after rehabilitation, the student's monthly payments will probably be greater than during the rehabilitation period and collection costs will be added to the total amount owed. Also, reported delinquencies will not be removed from the credit report.
- **Loan consolidation.** Loan consolidation allows the student to pay off the combined balances for one or more federal student loan to create a new single loan with a fixed interest rate. Usually, the student must make at least three consecutive on-time payments prior to consolidation.

## Who Should Apply for a Loan?

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### ***First, Exhaust Grants and Scholarships***

Students should not apply for loans until they have exhausted their grant and scholarship options. Grants and scholarships are free money that does not need to be paid back, whereas loans must be repaid with interest. FAFSA helps students identify applicable grants.

### ***Second, Analyze Your Unique Circumstances***<sup>1</sup>

Next, students should reflect on their unique situation. Students are recommended not to apply for more loans than their expected first year salary. The student needs to know whether they qualify as a dependent or independent student, and how much money they may receive from their family through the year. It is important that students do not take out more loans than they need, and that students return extra money promptly. Additionally, there are many loan forgiveness programs for students who work in the public sector after graduation. It is important for those students to apply for loans that qualify for public service loan forgiveness programs.

### ***Third, Choose Federal Loans if Loans are Necessary***



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Students should exhaust their federal loan options. There are many benefits to choosing federal loans over private, most poignantly in regard to their interest rate. The federal government pays for the interest of subsidized loans while the student is in school. Additionally, even if the student is only eligible for an unsubsidized federal loan, federal loans have a fixed interest rate. The interest rate on private loans is not fixed and can go up from year to year. Lastly, federal loans often do not need to be repaid until after graduation, whereas most private loans mandate the payment of interest while the student is still in school.

### Loan Advice<sup>7</sup>

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1. Get organized- read all mail and notices, and keep copies of any important documents in a file.
2. Only loan out money that you need. If your loan is more than you need, then you should return the extra in a timely manner.
3. Consider working part-time or work study options to cut down on expenses.
4. Know the length of your grace period, and do not miss the first payment.
5. Pick the repayment option that works best for you and gets you out of debt fastest. Extending the life of the loan means increasing the amount you will have to pay in the long run. Most experts recommend that repayment not exceed 8-10% of your monthly gross income.
6. If you have multiple loans at different rates, pay the high-interest debt first. Those will cost you the most in the long run. For example, if you have a credit card with 15% interest and a student loan with 8%, put extra cash toward the 15% credit card debt first.
7. Remember that student loans can be cancelled or forgiven. This generally happens in cases of extreme hardship or if you work in public service. The standards are hard to meet, but are worth looking into if you're struggling.
8. Avoid defaulting on loans. Federal loans generally go into default after nine months of missed payments; private loans, about one. Know your options, including deferment, forbearance, and flexible payment plans.
9. Be aware of scams. There is no charge to apply for loan cancellation or forgiveness programs, so do not to pay for those. It only makes sense to pay someone to help with loans if the problems are so severe that you need a lawyer, for example in the case of harassment by a lender, bankruptcy, or being sued.

<sup>1</sup> <http://www.forbes.com/sites/laurashin/2013/09/19/taking-out-student-loans-do-it-right-with-these-8-tips/>

<sup>2</sup> <https://studentaid.ed.gov/fafsa/next-steps/how-calculated>

<sup>3</sup> <https://studentaid.ed.gov/repay-loans>

<sup>4</sup> <http://www.collegescholarships.org/grants/states/mississippi.htm>

<sup>5</sup> <http://riseupms.com/state-aid/mtag/>

<sup>6</sup> <https://studentaid.ed.gov/repay-loans/default#what-to-do>

<sup>7</sup> <https://bigfuture.collegeboard.org/pay-for-college/loans/8-tips-for-taking-out-student-loans>

# Banks and Overdrafts

## What Services are Available?

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Each bank offers a variety of services at its branch, online, through its app, and via text and calling services to your mobile device. It is important to make use of these options to regulate your account activity and prevent fraudulent or mistaken transactions.

### ***What services are available at branches?***

Branches offer dozens of services, including checking accounts, saving accounts, reloadable money cards, debit cards, credit cards, auto loans, student loans, mortgages, home equity, business banking, commercial banking, merchant services, retirement planning, college planning, mutual funds, and many more.

### ***What services are available online?***

Many banks offer services online similar to what is available in store. Account holders make profiles on their specific bank's website and have access to the services. Also, account holders attach an email account to the website profile and receive further updates via email. For example:

- **Bill Pay:** Account holders can set up payments online for bills. The account holder just adds the recipient and schedules either a one-time or recurring payment.
- **Account Alerts:** Banks will inform the account holder when transactions or withdrawals exceed preset limits, when the account holder's online ID or password is changed, and when the account holder's mailing address has been updated.
- **Paperless Statements:** The bank will email account holders when monthly statements are available to be viewed online.

### ***What services are available on the bank's mobile app?***

The majority of banks have created their own mobile apps that can be accessed on a smartphone. The apps offer many services, for example:

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- **Bill Pay:** After adding recipients, account holders can send payments.
- **Check Deposit:** Account holders can deposit checks.
- **Quick Pay:** Account holders can send, receive, or request money using the recipient's email address or phone number.
- **Transfer Money:** Account holders can move money between connected accounts, generally a checking and a savings account.

## Bank Fees

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### ***What bank fees exist?***

It is important to fully understand your agreement with your bank so that you know what fees you may encounter. Some potential fees include:

- **Overdraft Fee:** Most banks charge between \$30-\$40 when an account is overdrawn. The bank may close your account or report you to Chexsystems if you do not repay the overdraft amount and fee.
- **Early Account Foreclosure:** If the account is held open for less than the mandated amount of time, the bank may issue a fee of about \$25.
- **Monthly or Annual Maintenance-** Some banks, like the Bank of America, charge \$17/month for maintenance. However, banks generally have a variety of ways to waive the fee, for instance having at least \$750 in savings.
- **Minimum Balance:** Some banks charge a monthly fee for a low account balance. For example, Citibank charges \$15/month for a checking account with less than \$6,000.
- **Returned Deposit Fee:** If you deposit a check that bounces, you could get charged a fee of around \$15 for a domestic check and \$25 for an international check.
- **Foreign Transaction Fee:** Some banks charge a fee for buying something in a foreign country. Bank of America charges a 3% fee on foreign purchases using its credit card (even if the transaction is in US dollars).
- **Lost Debit Card Fee:** Bank of America charges \$5 to replace lost debit cards.
- **Paper Statement Fee:** Some banks charge around \$2/month for paper statements because paper statements are costly and not environmentally friendly. Banks want to encourage checking account balances online.
- **Redeeming Rewards Fee:** Some banks charge a processing fees for using accumulated rewards points. These fees are rare, but they do exist.

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- **Returned Mail Fee:** When you move, a mail forwarding request may not be sufficient notice for your bank. Banks generally have “return service requested” printed on their mail, so mail gets sent back to the bank if it does not reach the intended recipient. US Bank charges \$5 fee for the second and subsequent months that a statement is undeliverable.

## What is an Overdraft? <sup>1</sup>

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### ***How does an overdraft occur, and what is the Overdraft Protection Law?***

An overdraft occurs when an account holder attempts to make a transaction using more money than is available in their account. After the Overdraft Protection Law was passed in 2010, banks could no longer process overdrawn transactions that were not preauthorized. That includes ATM withdrawals and debit transactions. However, the law does not apply checks or automatic bill payments, and those can incur fees.

Before the Overdraft Protection Law was enacted, banks automatically entered their customers into overdraft coverage programs. That resulted in hefty fines for overdrawing on accounts, even if the amount was small or the overdraft was done unintentionally. Now, transactions for accounts without sufficient funds are rejected unless customers opt-in to overdraft protection from their bank.

### ***What are the options for overdraft protection?***

After the Overdraft Protection Law was enacted, consumers must opt-in to overdraft fees from their bank. Generally, when signing up for a new bank account, most banks offer three different options in regard to overdrawing.

First, you can opt out of overdraft coverage. Overdrawn transactions are rejected at the point of sale. There will be no fee, but also no purchase. However, bounced checks and recurring automatic payments are not included and can still incur a fee. This option is recommended due to the high penalties for overdrawing an account.

Second, you can opt in to overdraft coverage. The bank will process transactions with insufficient funds, but charge an overdraft fee for it. Your transactions will not be declined, but you will face a fine of about \$30-\$40. The majority of people who opt in do end up overdrawing multiple times, leading to high penalty fees that must be repaid to return to good standing with the bank. This option is not recommended.

Third, you can opt in to overdraft protection. The bank will transfer funds from a linked account to cover an insufficient transaction. A fee of about \$10-\$12 still applies, but it is much lower than an overdraft fee.

### **What are the Consequences for an Overdraft?**<sup>3</sup>

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The ramifications of overdrawing an account can be mild to severe, and vary greatly by institution. If you overdraw on an account, it is vital that you do not continue writing checks on it. Intentionally overdrawing an account is a form of theft and fraud, and can be prosecuted as such. Additionally, it is very important to talk to your bank and remedy the situation to prevent the bank from reporting you to Chexsystems and/or a collection service, which can destroy your credit report and ability to open future bank accounts.

First, most banks charge \$30-\$40 for an overdraft. If you do not repay the overdraft and the fee, you may lose check writing privileges with the bank. If the overdraft is severe or goes unpaid for a significant amount of time, the bank may assess another fee. The bank may also close your account involuntarily and report you to Chexsystems or a debt collector. Chexsystems is a service that maintains a list of people who are known for account mishandling, including overdrawing accounts. Each record is kept for five years.<sup>2</sup> The closure of a bank account does not affect your credit score. Your credit score is affected if your debt is reported to a debt collector.

If you continue writing checks on an overdrawn account, you may face legal action both from the bank and the merchant to whom the check is written. Intentionally overdrawing on a bank account constitutes theft and fraud, so a bank may press criminal charges. If so, you can be arrested and convicted of passing bad checks, which may include a jail sentence or fine. Also, you can be taken to small claims court by the merchant for the amount due to them.

Overall, overdraft fees vary greatly from bank to bank. Some have limits on the number of overdraft and insufficient funds charges per day, while others do not have a cap. Some do not charge overdraft fees for less than \$5, while others charge fees on all regardless of the size. It is important to be proactive when an overdraft occurs and talk to your bank to find out what actions have been taken against you.

### **How to Fix an Overdraft**<sup>4</sup>

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It is important to be proactive when an overdraft occurs. Overdrafts can occur both mistakenly and intentionally, and need to be remedied promptly to avoid long-term consequences.

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First, confirm that your account has been overdrawn. This can be done by using an online or mobile account, or calling your bank's account activity line. Look at your transactions to make sure there are no duplicate or fraudulent charges.

Next, you need to contact your bank. If the account was legitimately overdrawn, you should ask about their overdraft correction policy. If the account was overdrawn due to fraud or duplicate transactions, you should cooperate with the bank to fix the situation.

It is important to fix the situation promptly to avoid adverse effects to your credit score or cumulating fees.

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<sup>1</sup> <https://studentaid.ed.gov/repay-loans/default#what-to-do>

<sup>2</sup> [https://www.consumerdebit.com/consumerinfo/us/en/chexsystems/faqs.htm#FAQ\\_03](https://www.consumerdebit.com/consumerinfo/us/en/chexsystems/faqs.htm#FAQ_03)

<sup>3</sup> <http://classroom.synonym.com/happens-bank-account-closed-due-being-overdrawn-14080.html>

<sup>4</sup> <http://budgeting.thenest.com/fix-bank-overdrafts-21624.html>

# Foreclosures

## Overview

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### ***What is a Foreclosure?***

A foreclosure is a legal process by which a lender attempts to recover the balance of a loan from a borrower who has defaulted on their loan payments. In the housing context, this typically occurs when a homeowner defaults on their mortgage payment, and the bank, or other lending source, takes back possession of the house and sells it to recover the outstanding amount due on the loan.

### ***Types of Foreclosure***

There are generally two types of foreclosure. The first is a judicial foreclosure. In this type of foreclosure, the lender will file a lawsuit against the homeowner to start the foreclosure proceeding. While this type of foreclosure is available in Mississippi, it is not commonly used.

The second type of foreclosure is a nonjudicial foreclosure. This type of foreclosure is the predominant type in Mississippi. In these nonjudicial foreclosures, the Court is not involved in the sale of the property. Rather, the mortgage holder has the power to sell the house because of a “power of sale” clause typically included in the mortgage agreement itself. Without the Court involved, these foreclosures can typically be completed in a shorter amount of time than judicial foreclosures, usually about 60-90 days depending on the exact dates of the required notices.

### ***Typical Foreclosure Process***

While foreclosures do not happen overnight, they can happen faster than one might expect if the proper avoidance steps are not taken. Because nonjudicial foreclosures are by far the most used in Mississippi, we will focus our attention on the typical foreclosure process of nonjudicial foreclosures. In Mississippi, once a homeowner defaults on their payment, the lender has no legal obligation to notify the homeowner of the foreclosure sale. However, most power of sale clauses include a requirement of a 30-day notice of acceleration. During this period, the homeowner must pay the balance of the loan to avoid the home going into foreclosure. At the end of this period, the loan is “accelerated.” Once the loan is accelerated, the lender may proceed with the sale of the home.

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Mississippi law only requires that the lender provide notice of the sale of the home. In accordance with the law, the lender must publish the notice of the foreclosure sale in a newspaper for three consecutive weeks before the sale. The notice must also be posted to the courthouse door.<sup>1</sup> There is no state requirement that the lender directly notify the homeowner, however, as mentioned above, most mortgage agreements usually contain a power of sale clause that includes a requirement of a 30-day notice of acceleration.

While a lender may move forward with the notice of the foreclosure sale as soon as a homeowner misses a monthly payment, here is a brief overview of what typically happens once you, as a homeowner, start missing payments on your mortgage:

- Once you miss a monthly payment, your bank or creditor will probably contact you by letter or phone informing you that you are behind on your mortgage payment.
- If you miss a second payment, the lender likely will call to discuss why you have missed consecutive payments. At this point, you should be prepared to explain why you have missed the payments and what you are doing to try to fix the situation. At this time, if you can make one payment, you should do so to avoid falling three months behind.
- After you miss the third payment, you will likely receive a “Demand Letter” or “Notice to Accelerate.” In that letter, your lender will include the amount you owe by a specific date. Once you reach this date without having paid the balance of the loan, the lender may move forward with the foreclosure sale, as described above.

## Avoiding Foreclosure

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### ***What Should You Do When You Are Late On Payments?***

Once you miss a monthly payment, or know that you are going to miss a payment, the best thing you can do is contact your lender right away. You should explain why you are unable to make the payment and whether the problem is temporary or permanent. Additionally, you should be prepared to give details about your income, expenses, and other assets. Lenders do not want your home, they want to work with you to get the payments for the loan.

If contacting your lender is too uncomfortable, you can talk to a HUD-approved housing counseling agency. HUD-approved counselors will help you go through your options and potential plans to avoid foreclosure for a minimal price or even free of charge. You can find a local HUD-approved counselor by calling: (800) 569-4287.



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Open all of the mail received from the lender and return any calls from the lender. The mail may include important legal notices or repayment options. The worst thing you can do is to ignore the problem. As discussed above, the lender can move forward with the foreclosure whether or not you cooperate with the process.

If at all possible, you should try to look for ways to increase the amount of money available for mortgage payments by decreasing spending in other areas. Some ways to increase spending money might be cancelling cable TV, packing lunches, or finding another part-time job. Additionally, look at the possibility of selling other assets (jewelry, extra car, etc.). Some of these suggestions may not solve the entire problem, but they will at least send a positive message to the lender that you are working towards making your mortgage payments.

Finally, avoid foreclosure recovery scams and foreclosure prevention companies. The difference between a scam and a legitimate company can be hard to evaluate. At best, you will pay a large fee to a foreclosure prevention company that will perform services that a HUD-approved counselor or you could do yourself for a minimal charge or even free. In this scenario, it is still best to use that money to pay for your mortgage. Alternatively, in your attempt to hire a foreclosure prevention company, you might have fallen for a foreclosure recovery scam. Again, you will lose a significant amount of money that could have gone to mortgage payments and have gained no ground in preventing your foreclosure.<sup>2</sup>

### ***Identifying Foreclosure Scams***

#### Loan Modification Scammers

Loan modification scammers claim that they will talk to your lender about lowering your monthly payment or interest rate. They will usually try to get you to send them your monthly payments instead of sending it directly to your lender. In reality, they will do nothing for you other than take your money.

#### Loan Sharks

Loan sharks will claim that they will give you a loan to help you catch up on your missed mortgage payments. While this may seem attractive, in reality these loan sharks will give you a loan with such high interest rates that you will not be able to afford it. In the end, you will end up in a far worse situation than you were before you got the loan.

#### Deed Theft

In this process, programs design this type of fraud to look like a loan procedure, in that they will ask you to sign a lot of paperwork so that they can help you catch up on your mortgage payments. In reality, the papers you sign give them the deed to your house. This is why it is always important to read any papers you sign carefully at any step of the foreclosure process.

#### Sale-Leaseback

A sale-leaseback occurs when someone offers to buy the home, taking control of the mortgage payments, but allows you to keep living there by paying them rent. Again, this may look like an attractive option to get out of debt, but the homeowner will lose

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control of the property as well as control of the rent price. Once the sale occurs, the new owner has total control of the property and the ability to raise the rent price if he or she so chooses.

### Forensic Loan Audits

Some companies will promise that they can find a mistake or illegality with your mortgage agreement in exchange for a fee. In reality, these companies rarely find something that can help the homeowner, and you, as a homeowner, end up wasting a lot of money that could have gone towards the mortgage payments.

### ***Mortgage Modification Options***

Once it becomes apparent that you will not make a mortgage payment, or you have already missed a mortgage payment, you still have options to avoid losing your home. One of those options is to modify your mortgage payment by negotiating with your lender. Here are some examples of mortgage modification programs designed to help you keep your home.

### Home Affordable Modification Program (HAMP)

The HAMP can help lower your monthly mortgage payment to 31% of your monthly pre-tax income. Each modification is individualized, however, so it is important to pay attention to what is being agreed upon. In a typical HAMP modification, the monthly mortgage payment can drop 40%.<sup>3</sup> The interest rate for this type of modification can start as low as two percent. After five years at the initial interest rate, the interest rate may increase one percent or less per year for three or four years, but will never exceed the market rate at the time of the modification. Typically, the final interest rate after the increases will be around 5%.<sup>4</sup>

There are other programs that institute a similar version of mortgage modification, but backed by other programs. Those programs include Federal Housing Administration (FHA), USDAs Special Loan Servicing, and the Department of Veteran Affairs (VA).

### Principle Reduction Alternative (PRA)

A PRA is especially useful when you owe more money on the house than the house is actually worth. In a PRA, the unpaid principal balance of the modified loan is divided into an interest-bearing principal amount and a non-interest-bearing Forbearance Amount. If the homeowner can successfully establish a timely payment history over a three-year period on the interest-bearing principal, then the Forbearance Amount can be reduced to nothing.<sup>5</sup>

### Second Lien Modification Program (2MP)

This program is designed to help homeowners who have successfully modified their first mortgage using HAMP and who need help with their second mortgage. In order to qualify for this program, you must have already successfully modified your first mortgage using HAMP.

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### Home Affordable Refinance Program (HARP)

HARP is another program that can help adjust your mortgage if you owe more than your home is worth. The HARP program can help lower your monthly payment, reduce your interest rate, and secure a fixed-rate mortgage.<sup>6</sup>

### Home Affordable Unemployment Program (UP)

This program is designed for people who are unemployed. It provides a temporary reduction or suspension of mortgage payments for at least 12 months while the homeowner is seeking re-employment. To qualify, you must be unemployed and eligible for unemployment benefits and not previously have received a HAMP modification.

### Home Saver (through Hardest Hit Fund)

This program is specific to the state of Mississippi. It is designed for those individuals who have experienced particularly severe involuntary hardship, so it is for people who have lost their job or had their income reduced by 15% or more. Home Saver gives the homeowner a 0% interest loan that is forgiven, or disappears, at a rate of 20% a year. The only time a homeowner must repay the loan is if the house is sold or refinanced during the five-year loan.<sup>7</sup> The whole idea of this program is to help those who have fallen behind on mortgage payments due to unforeseen or involuntary changes in financial circumstances.

There are several iterations of this program, each designed for individuals in specific circumstances. The Mortgage Payment Assistance Program specifically helps those who are unemployed or underemployed. The Mortgage Payment Assistance with Education Program helps those who enroll in community college or a four-year institution at their own expense. The Reinstatement Only Program helps those who have fallen behind on mortgage payments while unemployed and have since returned to work. Each program has its own qualifications and specifics. For more information, visit <https://www.mshomesaver.com>.

All of the programs listed and described in this section were initiated either by the federal or state government. Beyond using one of these programs, a homeowner may simply negotiate with the lender to achieve a way around foreclosure. You may be able to reach agreements that do not necessarily conform to the exact requirements of these programs. In general, a lender does not want to take over your property, so they are amenable to negotiation if you remain honest and forthright about your financial situation and the steps you are taking to remedy your unfortunate circumstances.

### **Other Options**

If a mortgage modification proves impossible, there are still several options available before your house is sold at foreclosure. One of those options is a pre-foreclosure sale, also known as a short sale. This occurs when the homeowner sells the house at fair market value and, in doing so, is able to pay the balance of the debt on the mortgage. If you can properly negotiate with your lender, they may accept payment of the sale price even if it is less than what is owed.

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Another similar option is a deed-in-lieu of foreclosure. Again, in negotiating with your lender, you may be able to voluntarily give the property to the lender in replacement of the money owed on the mortgage. Both of these options are good options to avoid a foreclosure when foreclosure seems inevitable. It allows you, as the homeowner, to maintain a good credit history and to avoid the emotional pain of going through foreclosure.

### **Redemption**

Once the foreclosure sale occurs, there is no right of redemption in the state of Mississippi. Redemption, in other states, allows the homeowner to pay the foreclosure sale price plus interest and other fees to keep the house, however Mississippi does not have this statute.

An equitable right of redemption, however, is an option if it is done before the actual foreclosure sale. At any time prior to the foreclosure sale, the homeowner may keep the house by paying off the debt plus interest and other fees.<sup>8</sup> This includes the three week time period after the loan has been accelerated and before the actual foreclosure sale.

## Renter when Landlord Forecloses

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### ***What should you do as a renter when your landlord loses property through foreclosure?***

Unfortunately, there is little that renters can do when their landlord goes through foreclosure. In 2009, Congress passed the Protecting Tenants at Foreclosure Act (PTFA), which protected renters during a time of rampant foreclosures. The PTFA protected renters' rights in this exact situation. However, the Act expired in December of 2014 and was not extended. Until congress passes additional legislation, renters whose landlords are foreclosed on are left with few courses of action.

As the renter, you can always sue your ex-landlord in small claims court. Many leases contain a "covenant of quiet enjoyment" clause. Eviction due to your landlord's foreclosure would constitute a violation of this clause. Although your landlord may not have much money due to her foreclosure, a judgment in your favor will be valid for a long time.

To prepare for a possible suit, and generally to protect yourself in this situation, you should take the following steps:

- First, keep all documents related to the lease.
- Second, continue paying rent to your landlord. Even though your landlord is losing the property paying rent is important to maintain your full protections under the law. Failure to pay rent could directly result in eviction.

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- Finally, since renters in this situation are—at this time—no longer protected under the PTFA, you should begin looking for property immediately upon learning your landlord may be losing the property through foreclosure. Unfortunately, you may only have 30 days or less after foreclosure to vacate the property.

<sup>1</sup> Miss. Code. Ann. § 89-1-55 (West)

<sup>2</sup> [http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding\\_foreclosure/foreclosuretips](http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure/foreclosuretips)

<sup>3</sup> [http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding\\_foreclosure](http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure)

<sup>4</sup> <http://www.makinghomeaffordable.gov/programs/lower-payments/Pages/hamp.aspx>

<sup>5</sup> <http://www.irs.gov/uac/Principal-Reduction-Alternative-Under-the-Home-Affordable-Modification-Program>

<sup>6</sup> <http://www.harp.gov/About>

<sup>7</sup> <https://www.mshomesaver.com>

<sup>8</sup> Miss. Code. Ann. § 89-1-59 (West)

# Consumer Debt Cases in Justice Court

## Overview<sup>1</sup>

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### ***What is Justice Court?***

Justice Court is also known as Small Claims Court. It deals with civil controversies that involve less than \$3,500.00. Civil matters are disputes between private individuals and do not involve the possibility of jail time or a fine. If you are sued by a representative of the government and face jail time or a fine, that is a criminal matter.

### ***What cases does Justice Court handle?***

Generally Justice Court cases involve collection actions, evictions, replevin actions, and suits for small damages in minor vehicle and other accidents. This court does not handle domestic matters like divorce or child custody.

### ***Do you need a lawyer?***

No, you are not required to have one. Also, the amounts in dispute are generally so small that it is not cost-effective to hire a lawyer. However, it can be beneficial to consult a lawyer about possible defenses.

### ***What should you bring to court?***

You should bring all relevant documents to the trial. You will not be able to leave during your court session to retrieve anything, so make sure to have it with you before getting to the courthouse.

### ***How should you dress in court?***

You should dress respectably and conservatively, with no hats, tee shirts, flip flops, or revealing clothes. If you have any religious beliefs that require you to dress differently, it may be a good idea to call and inform the Court Clerk before the trial to avoid misunderstandings. Do not bring any firearms or weapons to court.

### ***How should you deal with counter-claims?***

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If you have claims against the person suing you, you may or may not want to file them at the Justice Court before the case. For example, if your claim exceeds \$3,500, you may want wait and file in County Court.

If you want to file a counter-claim, you can do so before trial in your Answer. The counter-claim will be heard at trial along with the original claim.

### ***Should you bring witnesses?***<sup>2</sup>

You can bring witness to court. If you want to bring a witness to your trial and they do not want to appear, you can make a request for a subpoena. Subpoena requests must be given in writing to the Court Clerk in a reasonable time before the trial. The Clerk will issue the subpoena. Subpoenas cost money and take time to be served, so it is important to bring requests to the Clerk early.

It is important to talk to your witnesses before bringing them to court and to choose helpful ones. Some witnesses do not have helpful information or only vague stories that will not help your side. You can also bring an expert witness. If so, you will want to pick an expert witness with expertise or professional training that is relevant to your case, and who will make the situation clearer to the judge. Also, it is vital that you choose witnesses that bring something meaningful to the case, or else you may aggravate the judge.<sup>3</sup>

If a subpoenaed witness does not appear at the trial, they have violated Mississippi law. You can request that the judge issue a continuance if a subpoenaed witness does not appear.

### ***How should you react to a lawsuit?***

Read the following steps carefully to determine your best course of action and response.

## **Understand the Lawsuit and File a Response**<sup>1</sup>

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Upon receipt of the Summons, it is important to carefully look it over and do the following:

1. When you get the Summons, first look at the date and time of the court date. Make accommodations to be present. If you are not present and on time, the plaintiff will win on default.
2. Next, look at the Affidavit, sometimes called the Declaration. It should be attached to the Summons. If it is not, you should go to the Justice Court Clerk at the Justice Courthouse and request a copy. The Affidavit explains the amount that the plaintiff believes you owe him/her and for what reason.

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3. It is a good idea to go to the Justice Courthouse to see if there is anything else in the court file. Also, you should go to the Courthouse to file an Answer to the plaintiff's Summons.
4. In non-eviction hearings an Answer is not required. However, it is a good idea to file an Answer with the County Clerk before the hearing. The Answer is a response to the plaintiff's claims, which states whether or not the claims are valid and for what reason. Then, take two copies of the Answer home with you—one for you, and one to give to the Plaintiff at the trial.
5. If you want to bring a witness, you may either just bring them to court or submit a subpoena for their presence before the trial. Subpoenas cost money and must be submitted early, whereas bringing a willing witness is free. However, subpoenaed witness must appear or will be violating Mississippi law. Other witnesses do not have the same motivation to show up to your case on time.

Your next steps will vary depending on whether the plaintiff's claim is valid.

### **If the Plaintiff's Claim is Valid<sup>1</sup>**

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The plaintiff's claim is either valid or invalid. If you believe the claim is valid, meaning that the plaintiff is rightfully suing you for a debt owed, then follow the following steps. If the claim is not valid, go to "If the Plaintiff's Claim is Invalid."

1. If you can afford it, you should consult a lawyer to discuss your options and possible defenses. Many lawyers charge only a small fee for a consultation. However, due to the small sums being sought after in Justice Court, hiring a lawyer is often not cost-effective.
2. You can call the plaintiff to make an agreement to repay the sum out of court. This is ideal because it will benefit your credit history to repay the plaintiff and have him/her dismiss the suit before a judgment is taken.
3. If you do make an agreement with the plaintiff, make sure to have it in writing and signed by both parties. Communicate your agreement to the court. You don't want to pay the plaintiff, and then have the plaintiff continue suing you for what you already paid.
4. If you do not make an agreement, you should go to the trial. Show up at least half an hour early to your court date. Bring any relevant documents, remind any non-subpoenaed witnesses to appear, and dress respectfully.



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5. If the plaintiff does not appear, the Justice Court is required to dismiss the case with prejudice under Rule 2.06 of the Uniform Rules of Procedure for Justice Court. You will not be legally required to pay the debt.
6. If the plaintiff appears, you can tell the court that you agree with the Plaintiff and work out a payment plan. Most creditors are satisfied if you can agree to a payment plan and stick to it, and will agree not to enroll the judgment so long as you stick to the plan. This is beneficial because you will not have a judgment against you on your credit history.

### **If the Plaintiff's Claim is Invalid<sup>1</sup>**

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The plaintiff's claim is either valid or invalid. If you believe the claim is invalid, meaning that the plaintiff is wrongfully suing you for a debt you do not owe, then follow the following steps. If the claim is valid, go to "If the Plaintiff's Claim is Valid."

1. If you can afford it, you should consult a lawyer to discuss your options and possible defenses. Many lawyers charge only a small fee for a consultation. However, due to the small sums being sought after in Justice Court, hiring a lawyer is often not cost-effective.
2. Show up early to your court date. About half an hour early is recommended. Bring any relevant documents, remind any non-subpoenaed witnesses to appear, and dress respectfully.
3. If the plaintiff does not appear, the Justice Court is required to dismiss the case with prejudice under Rule 2.06 of the Uniform Rules of Procedure for Justice Court. You will not be legally required to pay the debt.
4. You will have the opportunity to cross-examine the plaintiff and to explain to the court why you believe the plaintiff should not get the requested relief. Afterward, the plaintiff may have a chance for rebuttal, and then the judge will issue a ruling.

### **The Court Proceedings<sup>1</sup>**

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It is vital that you show up on time for your trial and are prepared to examine your plaintiff if you are representing yourself. Here is a basic outline of Justice Court proceedings:

1. The court will call the cases set for hearing that day. This is called the docket. If you are not present while the docket is called, the plaintiff will get a default judgment and you will be required to pay the debt.
2. You must wait for your case to be called. When your case is called, the proceedings begin.
3. First, the plaintiff will explain to the court why they are owed the money or relief requested.
4. Then, the defendant will cross-examine the plaintiff.
5. Next, the defendant will testify.
6. The plaintiff will then cross-examine the defendant.
7. Lastly, the plaintiff may be allowed a rebuttal.
8. After the proceedings, the judge will make a decision.

## Facing an Eviction in Court

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### ***What to do When Faced with an Eviction Notice***

An eviction notice is not a legally binding notice to leave the premises. The only way a landlord can legally evict you, as a tenant, is when the Court evicts you after the landlord has properly served you with a summons. An eviction notice is merely a predecessor to a summons that basically alerts the tenant that the landlord wants the tenant evicted.

The first thing you should do is read the eviction notice carefully to figure out why the landlord wants you evicted. Additionally, you should read the lease agreement to see if anything in the eviction notice contradicts provisions set up in the lease agreement. There may be lots of reasons why a landlord wants a tenant evicted, and not all are legitimate.

The best thing you can do when served with an eviction notice is to try to reach an agreement with the landlord outside of court and before the landlord serves you

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with a summons. It is important to identify why the landlord wants you evicted, so that you can properly negotiate a solution.

### ***What to do When Faced with a Court Summons for Eviction***

If the landlord serves you with a summons, then the situation is slightly different. Again, the first steps should be to read the summons (to identify why the landlord is trying to evict you) and to read the lease agreement. The summons is not an immediate notice to evict, but rather a notice from a Justice Court date where an eviction proceeding will take place.

The summons will identify the date, time, and place of the eviction proceeding. Under the Declaration or Affidavit section attached to the summons, the landlord will list his reason(s) for suing for eviction. If this section is not attached, go to the Court Clerk and request a copy.

### ***How to Respond to a Court Summons for Eviction***

If the landlord is suing you for nonpayment of rent, you can avoid eviction by paying the overdue rent plus any costs the landlord accrued in pursuing the eviction. This can be done either before the eviction hearing or at the hearing itself. Additionally, if the notice for eviction included nonpayment as the reason of eviction, payment of overdue rent before the summons is issued should prevent a tenant from ever receiving a summons in the first place.

Other arrangements can be worked out with the landlord as well. Any pre-trial agreements should be written down, signed, and filed with the Clerk.

When the landlord is suing the tenant for nonpayment of rent, you are entitled to three days notice of the hearing. If the landlord is suing for any other reason, you are entitled to at least five days notice of the hearing. If the summons does not comply with these requirements, you should challenge the date of the hearing. This can be done by writing why you want to challenge the summons in the your answer to the summons. The answer should be filed with the Clerk.

### ***Defenses to Eviction***

There are a number of possible defenses that you might have as a tenant when served with a summons for eviction. Any defense you might have should be explained in your answer to the summons. Here are some examples of tenant defenses:

- Overdue rent to the landlord was already paid, or will be paid at eviction hearing
- Landlord failed to give 3 days notice of how much was owed prior to filing the summons

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- The landlord filed the suit in bad faith, or for reasons other than those described in the landlord's summons
- The landlord filed for eviction because the tenant exercised rights protected by law. For example, the tenant requested repairs on the property
- The landlord was untruthful in the summons or lied about certain facts
- The landlord did not file an affidavit when they filed for eviction (the landlord did not give a reason for the eviction)
- The landlord's actions were the actual causes for the reason for the eviction

### **Claims Against the Landlord**

If there are any claims that you wish to make against the landlord, you should write those out in the Counterclaims section. Claims that would go under this section are claims that the landowner owes the tenant money. This could be due to a number of reasons, including never receiving a reimbursement for repairs or a lowered adjustment to rent that was not recognized by the landowner.

### **Filing the Answer**

Once you have written out the Answer, you should sign the statement in the presence of a notary public. The notary will then stamp the document. Often, the courthouse will have a notary. If the courthouse does not have a notary, you would need to find a public notary elsewhere, like a bank.

You should get two copies of the Answer from the Court Clerk, both stamped as "filed." You should keep one copy and give the other to the landlord by the time of the eviction hearing.

### **Witnesses**

If your answer contains defenses or counterclaims that might require a witness to corroborate your argument, it is important to ask them to attend the hearing. If a witness does not agree to come to the hearing and you believe that their testimony is important enough to make them attend, you can have the Court subpoena them as witnesses. This makes appearing as a witness a legal obligation.

### **The Hearing**

Attend the hearing. If you do not attend the hearing, the Judge could give a default judgment against you, meaning that the property owner has successfully evicted

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you. It is important to dress appropriately at the hearing. This means no t-shirts, no shorts, no sandals, no hats, etc.

Bring any documents that could help you prove your case. Like calling witnesses, there may be additional materials that will help the Judge believe your version of events as opposed to the landlord's. Evidence of rent payments, past agreements, letters, mailing receipts, and checks are all possible examples of the kinds of documents that might help.

If your landlord is not present when the docket is called, you will be the one given a default judgment against the landlord, meaning you will not be evicted. If your landlord is there, then your case will be heard in the order given.

### ***The Order of the Hearing***

The landlord will go first and have the opportunity to tell the judge why you should be evicted. Then, you get an opportunity to ask the landlord questions about what they said in what is called cross-examination. Afterwards, you have an opportunity to tell your own story. Here, you would bring up any evidence that you have and talk about the defenses you have chosen and/or the counterclaims you wrote down in your answer. The landlord will also get a chance to question you. When both sides are finished speaking, the judge makes his decision.

If the judge rules in your favor, you are not evicted. If the judge rules in the landlord's favor, the court issues a removal warrant. The removal warrant allows a government representative (sheriff, marshal, etc.) to evict you from the residence on a date specified in the warrant.

As a tenant, you have the right to appeal the judge's decision within 30 days of the first hearing. Additionally, you would need to file a request for a "supersedes bond" before the removal date specified on the warrant if you do not wish to be removed while your appeal is ongoing.

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<sup>1</sup><http://www.mslegalservices.org/files/AC8781EA-F782-E918-A202-A93D67A92215/attachments/0F33BCF8-A715-503D-FC0E-4E44AF627C6F/264421HOW%20TO%20REPRESENT%20YOURSELF%20IN%20CIVIL%20CASES%20IN%20JUSTICE%20COURT.pdf>

<sup>2</sup>[https://courts.ms.gov/rules/msrulesofcourt/rules\\_procedure\\_justicecourt.pdf](https://courts.ms.gov/rules/msrulesofcourt/rules_procedure_justicecourt.pdf)

<sup>3</sup><http://research.lawyers.com/mississippi/ms-witnesses-at-small-claims-court.html>