

Summary of Sections 2-1301 and 2-1401, Code of Civil Procedure (735 ILCS 5)

Timeline for defendants seeking to vacate an order of default	Statute	Standard the court must apply
From entry of default judgment to filing of motion for order approving sale (OAS).	2-1301(e)	Substantial justice. May include: 1) the diligence, or lack thereof, on the part of the defaulter; 2) the presence or absence of a meritorious defense; 3) the severity of the penalty resulting from entering the default order; and 4) the relative hardships on the parties arising from grant or denial of the default.
From filing of the OAS to 30 days after entry of the OAS.	2-1301(e)	<p>Section 15-1508(b) requires that the court enter the OAS unless: 1) public notice as required section 15-1507(c) was not given; 2) the terms of sale were unconscionable; 3) the sale was conducted fraudulently; or 4) justice was otherwise not done.</p> <p><i>McCluskey</i> requires a showing of a meritorious defense and that justice was otherwise not done (that the default was not the result of the defendant's negligence) in order for the court to not only refuse to confirm the sale, but also vacate the default order.</p>
From 31 days after entry of the OAS to either 90 days (if notice given) or one year (if no notice given) after entry of the OAS.	2-1301(g)	<p>Available only to a defaulted defendant who was served by publication and who has not been served with proper notice. (See section 2-1302, Illinois Supreme Court Rule 113(d), Illinois Supreme Court Rule 113(f)(1), and section 15-1508(b-5) for notice requirements.)</p> <p>A qualifying defendant is limited to an interest in the proceeds of sale only. (See section 15-1509(c).)</p>
From 31 days after entry of the OAS to two years after entry of the OAS or vesting of title, whichever comes first.	2-1401(a)	<p>The court reviews the motion for: 1) the existence of a meritorious defense or claim; 2) due diligence in presenting the defense or claim in the original action; and 3) due diligence in filing the section 2-1401 petition.</p> <p>(Must be supported by affidavit and served on all parties in the original action, current record title holders of the property, current occupants, and any individual or entity that had a recorded interest in the property before the filing of the petition as set forth in Illinois Supreme Court Rule 105.)</p>
Vesting of title.	2/1401(a)	<p>Once title vests, section 15-1509(c) acts as an entire bar of all claims of parties to the foreclosure and all claims of any nonrecord claimant with notice of the foreclosure (by publication under section 15-1502(2)(c)).</p> <p>Exception—Under section 2-1401(f), a party may file a motion to challenge the court's jurisdiction at any time, even more than two years after judgment is entered, and/or after title has vested.</p> <p>Exception to exception—Under section 15-1505.6(a), any motion to quash service by a residential foreclosure defendant must be brought within 60 days of the earlier of: 1) the date of the filing by the moving party of his appearance; or 2) the date the moving party participated in a hearing without filing his appearance. Defendants who file substantive motions may be deemed to have waived service.</p>