

I'm being sued: What can I do?

According to the Constitution, every person enjoys fundamental guarantees – including those who are sued in a proceeding, regardless of whether they are responsible or convicted. At the judicial level, the Right to Due Process and Effective Judicial Protection are the main characters in the procedural course of the case. Therefore, our civil procedural legal system contemplates the actions that the defendant can take to defend himself.

Article 688 of the Judicial Code states that “the defendant may, in answering the complaint, in his pleadings or by means of ordinary appeals, raise or avail himself of defenses (excepciones). Defenses are comprised by the facts that prevent or extinguish totally or partially the claim or modify it.” In other words, a person being sued, in addition to his right to answer the complaint, has certain defenses available to him.

Below, we list the most common defenses, according to Article 690 of the Judicial Code:

1. Payment;
2. Remission of debt;
3. Set-off;
4. Novation of the obligation;
5. Fraud or violence that intervened in the contract;
6. The deceit of the burden sued;
7. Nullity of the act or contract;
8. Settlement;
9. Res judicata;
10. Request ahead of time;
11. The obligation sued is conditional, and the condition is not fulfilled;
12. Statute of limitations; and
13. Force majeure or act of God.

It is important to note that a defense does not need a technical name to submit it. In other words, the fact that an exception has not been given a name does not mean that the facts or allegations upon which the defendant claims to defend himself will be ignored.



Some of these defenses are of prior and extraordinary ruling (previo y especial pronunciamiento); that is, the Judge issues his decision on the defenses before issuing his decision on the merits. The defenses of prior and extraordinary ruling are the defense of res judicata, extinction of the claim for constructive abandonment of the lawsuit, and judicial settlement, as indicated in article 694 of the Judicial Code. Therefore, the judge decides the rest of the defenses when issuing his ruling on the merits.

From a strategic point of view, it is essential to always keep in mind that when submitting a defense, the main objective is that the defendant is favored, based on the facts and evidence proposed in his defense in order to extinguish all or part of his responsibility or the obligation claimed.

In Alcogal, we have an extensive team of lawyers specialized in litigation before Panamanian courts, led by the firm's partners, Dr. Jorge Federico Lee and Dr. Alejandro Ferrer. If you are the subject of a lawsuit, the recommended first step is to seek legal advice of lawyers with proven experience in the country.