

## **USLegal Pamphlet on Writ of Mandate**



### **INTRODUCTION**

A writ of mandate is an order to a public agency or governmental body to perform an act required by law when it has neglected or refused to do so. The writ is issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. It is also referred to as a writ of mandamus. A person may petition for a writ of mandamus when an official has refused to fulfill a legal obligation, such as ordering an agency to release public records. It is a remedy that is used when there are no other remedies available. It is appropriate to use in situations where an official has failed to carry out a required duty, rather than requiring the official to act in a matter over which s/he has

discretion. For example, a decision to deny a building permit for construction with minor or inconsequential variances from code requirements involves discretion, so an appeal would be more suitable as a remedy. However, one would seek mandamus if the permitting office acknowledged that all requirements had been met, but still refused to issue the permit, as required to do by law. The exercise of administrative discretion is not interfered upon by the court, but it will do so if there has been an illegal exercise of the discretion. There is an illegal exercise of discretion where:

- The order is made without, or in excess of, jurisdiction
- The order is made in bad faith, or
- The authority is influenced by extraneous consideration.

Mandamus is an extraordinary writ, to be issued only where there is:

- A clear legal right in the petitioner to the order sought

- An imperative duty upon the respondent to perform, accompanied by a refusal to do so
- The lack of another adequate remedy; and
- Properly invoked jurisdiction of the court.

### **TYPES OF MANDAMUS**

There are three kinds of mandamus:

**Alternative Mandamus:**  
A mandamus issued upon the first request for relief. It is an order to the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it.

**Peremptory Mandamus:**  
An absolute and unqualified order to the defendant to do the act requested. It is issued when the defendant defaults on, or fails to show sufficient cause in answer to, an alternative mandamus. In some emergency situations or when there is no conceivable reason for the government not to follow the law, then the peremptory writ will be issued after a notice of hearing without the alternative writ.

**Continuing Mandamus:**  
A mandamus issued to a lower authority in general public interest asking the officer or the authority to perform its tasks expeditiously for an unstipulated period of time to prevent a miscarriage of justice.

**WHEN A WRIT OF  
MANDATE MAY BE SOUGHT**

Examples, among others, of when writs of

mandate have been issued by federal courts include when a trial judge refused to dismiss a case even though it lacked jurisdiction; refused to reassign a case despite a conflict of interest; stopped a trial for arbitration or an administrative remedy; denied a party the opportunity to intervene, to file a cross-claim, or to amend a pleading; denied a class action; denied or allowed the consolidation or severance of two trials; or entered an order limiting or denying discovery of evidence.

The writ of mandamus can also be issued in a mandamus proceeding, apart from any judicial proceeding. Generally, such a petition for a mandamus order is filed to force a judicial or government officer to perform a duty owed to the petitioner. For example, state law may require the attorney general and each district attorney to make available to the public a report on wiretaps and other interceptions of oral communications conducted by law enforcement officers. If the report is not made available, a person may

compel its production by filing an action for mandamus. In some states, residents bring "taxpayer actions" against public officials for wasting public funds through mismanagement of a government agency, and request a writ of mandate to force the official to stop wasting money and fulfill his duty to protect the public finances. The writ of mandate may also be used in some states for interlocutory appeals. In this context, the party seeking the writ is treated on appeal like a plaintiff, the trial court becomes the defendant, and the opponent is named as the "real party in interest."

Some states have replaced with statutory procedures. In New York, this is known as an Article 78 review after the civil procedure law provision that created the relevant procedure. In other states, such as Illinois, the state court of last resort has original jurisdiction in mandamus actions.