

FEDERAL RULES OF CIVIL PROCEDURE

FRCP 12 (b) HOW PRESENTED.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- 1) **lack of jurisdiction over the subject matter,**
- 2) lack of jurisdiction over the person,
- 3) improper venue.
- 4) insufficiency of process,
- 5) insufficiency of service of process
- 6) failure to state a claim for which relief can be granted.

FRCP 12 (h) WAIVER OR PRESERVATION OF CERTAIN DEFENSES

- (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.
- (2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or order under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.
- (3) **Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.**

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