

STANISLAUS COUNTY SUPERIOR COURT Turlock Division <u>www.stanct.org</u> (209) 530-3100

Revised 9/6/2019

Ex Parte Stay of Execution Unlawful Detainer

This packet includes the necessary forms to request a Temporary Stay of Execution of a judgment in an eviction case.

NOTE: You must be a named defendant in the case unless your case is a foreclosure. If you are not named as a defendant in the case, these are not the correct forms to file.

You may want to seek legal advice to determine if these additional forms are appropriate for you to file. The Clerk's Office cannot give legal advice.

Judicial Council forms, local forms and information are available in the Clerk's Office, the Stanislaus County Law Library and on the following Websites:

Stanislaus County Superior Court

- http://www.stanct.org/courts/index.html
 Local forms
- <u>http://www.stanct.org/courts/forms/index.html</u> Judicial Council's Self-Help website
- <u>http://www.courts.ca.gov/selfhelp</u>
 For more information on Libraries, Websites, or Self-Help Legal Books
- <u>http://www.courts.ca.gov/selfhelp/lowcost/libraries.html</u> California Superior Court's Interactive Electronic Forms Program

Superior Court Self-Help Center: 800 11th Street, Room 220, Modesto PROVIDING ASSISTANCE TO PARTIES REPRESENTING THEMSELVES

> Provides services by appointment only. For more information, please refer to our website: www.stanct.org/self-help-center

> > Email: Smallclaims.advisor@stanct.org

Telephone: (209) 530-3178

This packet of forms is used to request a temporary stay of the execution of a judgment for eviction and allows you to request an extension of time before you are permanently locked out of the premises.

You should file this request at least 48 hours before your lock out date to ensure you will get a timely hearing. The hearing will be set by the Clerk's Office at the time you file your documents.

NOTE: This is not automatically granted. It will be up to the judge to decide at your hearing. You must be prepared to pay rent for <u>each day</u> you are requesting to delay your move out date. You can only ask for up to 40 days from the date of the entry of Judgment. The court will order you to pay rent directly to the plaintiff or deposit it with the Court. The amount will be the daily rate times the amount of days you are requesting to extend the move out date.

1. <u>GIVE 24-HOUR NOTICE</u>: You must give the plaintiff or plaintiff's attorney 24 hours' notice of your intent to seek an order to Stay the Execution of Judgment. You do this by contacting the plaintiff or their attorney by telephone and stating:

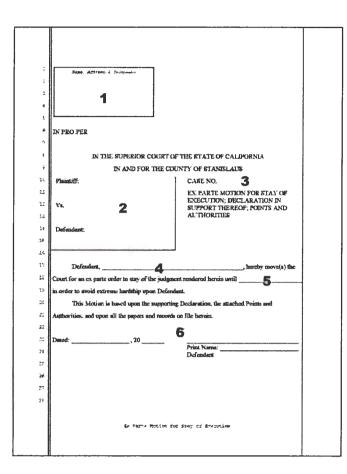
"I will be submitting a request to Stay the Execution of Judgment 24 hours from the time of this call."

Note: Remember the date and time of the call and any response you received.

 <u>PREPARE THE DOCUMENTS</u>: Complete the enclosed paperwork. Refer to the instructions provided in this packet. EACH defendant filing the stay must sign it.

<u>NOTE - FILING FEES</u>: There will be a filing fee due at the time you present your documents for filing unless you qualify for a fee waiver. Please contact the clerk's office for questions regarding the filing fee as it changes periodically. If you need a Fee Waiver Packet, you can obtain one from the Clerk's Office or download it from the Court's website.

- FILING YOUR DOCUMENTS: Take the original and 2 copies (copies will be made for you
 if you have a fee waiver) to the Clerk's Office. The clerk will file mark your Ex Parte
 Motion and set a hearing date.
- 4. <u>SERVING YOUR DOCUMENTS</u>: A copy of the file marked documents must be given to the Plaintiff or Plaintiff's Attorney before your hearing date. Someone other than you and over the age of 18 must HAND DELIVER a copy of the documents to them. The person serving the documents to the Plaintiff or Plaintiff's attorney cannot live in the home with your or be named as a defendant in the case.
- <u>FILE THE PROOF OF SERVICE</u>: If possible, file the Proof of Service with the Clerk's Office before your hearing date. Otherwise, bring it with you to your hearing.
- 6. <u>BE SURE TO ATTEND YOUR HEARING</u>: if the judge grants the stay, the courtroom clerk will notify the Sheriff's Office that the lock out date has been delayed.



Ex Parte Stay of Execution

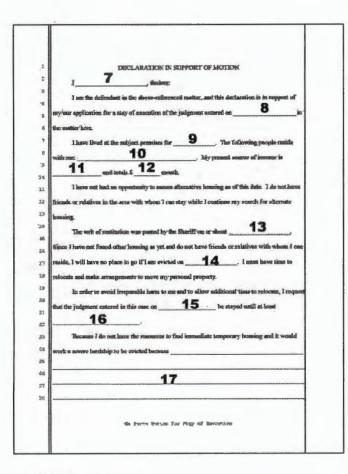
Directions

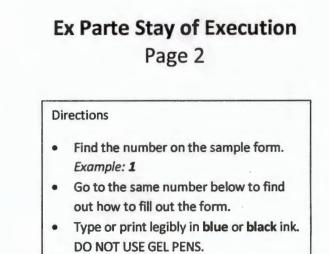
- Find the number on the sample form. *Example:* **1**
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in **blue** or **black** ink. DO NOT USE GEL PENS.

- 1. Write your name, address and phone number.
- 2. Write the name of the Plaintiff and the Defendant as they appear on the Complaint.
- 3. Write in your case number as it appears on the Complaint.
- 4. Write in name.
- 5. Write in the date you wish are requesting the Court temporary state the lockout. You can ask for up to 40 days from the date of entry of the judgment.

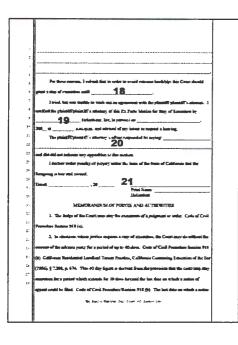
NOTE: You will be required to pay rent for each day you request for the extension of time to move out.

6. Write in the date, print your name and sign.





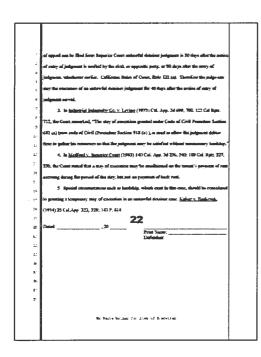
- 7. Write in your name.
- 8. Write in the date the Judgment was entered.
- 9. Write the length of time you have lived at the residence.
- 10. Write in who else resides there with you. (Example: My two children or My boyfriend, etc.)
- 11. Write in from what source you earn your monthly income. (Example: Employment or Unemployment or social security, etc.)
- 12. Write in the amount of your monthly earnings.
- 13. Write in the date the Sheriff posted the lockout notice.
- 14. Write in the date scheduled for the lockout. (You can find this on the lockout notice.)
- 15. Write in the date the Judgment was entered. (Same as Item No. 8 above.)
- 16. Write in the date you are requested the lockout be extended to. (Same as Item No. 5 on previous page.)
- 17. You must tell the court was hardship you would suffer. (*Example: You are elderly, a single parent with children, very low income, disable or ill.*)



Ex Parte Stay of Execution Page 3

Directions

- Find the number on the sample form. *Example:* **1**
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in **blue** or **black** ink. DO NOT USE GEL PENS.
- 18. Write in the date you are requesting the extension to.
- 19. Write in how you contacted the plaintiff or plaintiff's attorney, along with the date and time you contacted the plaintiff or plaintiff or plaintiff's attorney
- 20. Write in any responses made by the plaintiff or plaintiff's attorney.
- 21. Write in the date, print your name and sign.

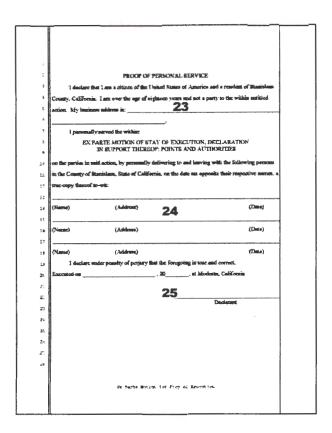


Ex Parte Stay of Execution Page 4

Directions

- Find the number on the sample form. *Example:* **1**
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in **blue** or **black** ink. DO NOT USE GEL PENS.

23. Write in the date, print your name and sign.

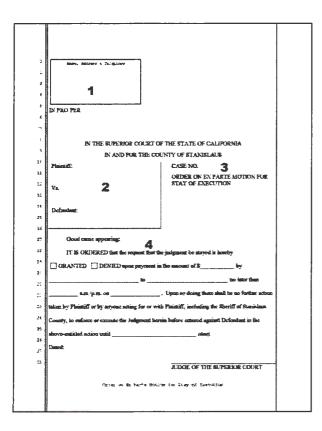


Ex Parte Stay of Execution Page 4

Directions

- Find the number on the sample form. *Example:* **1**
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in **blue** or **black** ink. DO NOT USE GEL PENS.

- 24. A copy of all documents must be hand delivered to the Plaintiff or Plaintiff's Attorney by someone over 18 years of age and NOT YOU <u>and</u> not a party to the action. Write in the address of the person who will be hand delivering a copy of the documents to the Plaintiff or Plaintiff's Attorney.
- 25. Write in the name and address of the plaintiff or plaintiff's attorney where the documents are to be delivered.
- 26. Have the person who will be delivering the copy date and sign. Make a complete 2 copies and have the person deliver one copy to the plaintiff or the plaintiff's attorney.
- 27. Take the original and one copy to the Clerk's office for filing.



Ex Parte Stay of Execution Page 5

Directions

- Find the number on the sample form. *Example:* **1**
- Go to the same number below to find out how to fill out the form.
- Type or print legibly in **blue** or **black** ink. DO NOT USE GEL PENS.

- 1. Write in your name, address and telephone number.
- 2. Write the name of the Plaintiff and the Defendant as they appear on the Complaint.
- 3. Write in your case number as it appears on the Complaint.
- 4. Leave blank and the Court will complete the rest on the date of the hearing.

1		
1		
2	Name, Address & Telephone	
3		
4		
5		
6		
7	IN PRO PER	
8		
9		F THE STATE OF CALIFORNIA
		UNTY OF STANISLAUS
10	Plaintiff:	CASE NO.
11	**	EX PARTE MOTION FOR STAY OF EXECUTION; DECLARATION IN
12	Vs.	SUPPORT THEREOF; POINTS AND AUTHORITIES
13		All months
14	Defendant:	
15		
16		
17	Defendant,	, hereby move(s) the
18	Court for an ex parte order to stay of the judgme	
19	in order to avoid extreme hardship upon Defend	
20	This Motion is based upon the supportin	
21	Authorities, and upon all the papers and records	on file herein.
22		
23	Dated:, 20	Print Name:
24		Defendant
25		
26		
27		
28		
	Ex Parte Motion fo	or Stay of Execution

	DECLARATION IN SUPPORT OF MOTION
	I, declare:
	I am the defendant in the above-referenced matter, and this declaration is in support of
	my/our application for a stay of execution of the judgment entered on ir
	the matter here.
	I have lived at the subject premises for The following people reside
,	with me: My present source of income is
	and totals \$ month.
-	I have not had an opportunity to secure alternative housing as of this date. I do not have
1	friends or relatives in the area with whom I can stay while I continue my search for alternate
	housing.
1	
	The writ of restitution was posted by the Sheriff on or about
	Since I have not found other housing as yet and do not have friends or relatives with whom I car
	reside, I will have no place to go if I am evicted on I must have time to
1	relocate and make arrangements to move my personal property.
	In order to avoid irreparable harm to me and to allow additional time to relocate, I reques
t	that the judgment entered in this case on be stayed until at least
-	
	Because I do not have the resources to find immediate temporary housing and it would
1	work a severe hardship to be evicted because
-	
_	
-	
	Ex Parte Motion for Stay of Execution

1	
2	
3	
4	For these reasons, I submit that in order to avoid extreme hardship; this Court should
6	grant a stay of execution until
7	I tried, but was unable to work out an agreement with the plaintiff/plaintiff's attorney. I
8	notified the plaintiff/plaintiff's attorney of this Ex Parte Motion for Stay of Execution by
.0	(telephone, fax, in person) on,
.1	200ata.m./p.m. and advised of my intent to request a hearing. The plaintiff/plaintiff's attorney's office responded by saying:
.2	
.3	and did/did not indicate any opposition to this motion.
.4	I declare under penalty of perjury under the laws of the State of California that the
.5	foregoing is true and correct.
.6	Dated:, 20
.8	Print Name: Defendant
9	MEMORANDUM OF POINTS AND AUTHORITIES
0	1. The Judge of the Court may stay the execution of a judgment or order. Code of Civil
1	Procedure Section 918 (a).
2	2. In situations where justice requires a stay of execution, the Court may do without the
3	consent of the adverse party for a period of up to 40 days. Code of Civil Procedure Section 918
5	(b). California Residential Landlord Tenant Practice, California Continuing Education of the Bar
6	
7	(1986), § 7.208, p. 674. This 40 day figure is derived from the provision that the court may stay
8	execution for a period which extends for 10 days beyond the last date on which a notice of
	appeal could be filed. Code of Civil Procedure Section 918 (b). The last date on which a notice
	Ex Parte Motion for Stay of Execution

of appeal can be filed form Superior Court unlawful detainer judgment is 30 days after the notice
 of entry of judgment is mailed by the clerk or opposite party, or 90 days after the entry of
 judgment, whichever earlier. California Rules of Court, Rule 122 (a). Therefore the judge can
 stay the execution of an unlawful detainer judgment for 40 days after the notice of entry of
 judgment served.

3. In <u>Industrial Indemnity Co. v. Levine</u> (1975) Cal. App. 3d 698, 700, 122 Cal Rptr.
712, the Court remarked, "The stay of execution granted under Code of Civil Procedure Section
681 (a) (now code of Civil (Procedure Section 918 (a)), is used to allow the judgment debtor
time to gather his resources so that the judgment may be satisfied without unnecessary hardship."
4. In <u>Medford v. Superior Court</u> (1983) 140 Cal. App. 3d 236, 240; 189 Cal. Rptr. 227,
230, the Court stated that a stay of execution may be conditioned on the tenant's payment of rent
accruing during the period of the stay, but not on payment of back rent.

5. Special circumstances such as hardship, which exist in this case, should be considered in granting a temporary stay of execution in an unlawful detainer case, <u>Kaiser v. Hankcock</u>,
(1914) 25 Cal.App. 323, 328; 143 P. 614.

20 Dated: _____, 20 _____

Print Name: ______ Defendant

Ex Parte Motion for Stay of Execution

1 2 3 4 5 6 7	Name, Address & Telephone		
8	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	IN AND FOR THE COU	NTY OF STANISLAUS	
10	Plaintiff:	CASE NO.	
12		ORDER ON EX PARTE MOTION FOR STAY OF EXECUTION	
13	Vs.		
14	Defendant:		
15			
16			
17	Good cause appearing:		
18	IT IS ORDERED the Ex Parte Motion for	r Stay of Execution is hereby	
19	GRANTED DENIED upon payment in	the amount of \$ by	
20	to	no later than	
21 22		Upon so doing there shall be no further action	
23	taken by Plaintiff or by anyone acting for or with		
24	County, to enforce or execute the Judgment herei		
25	entitled action until		
26	Dated:		
27			
28		JUDGE OF THE SUPERIOR COURT	
	Order on Ex Parte Motion	n for Stay of Execution	

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		POS-020
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.: FAX NO.	(Optional):	
E-MAIL ADDRESS (Optional):	1.1	
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STAN	VISLAUS	
STREET ADDRESS: 300 STARR AVENUE		
mailing address: 300 STARR AVENUE		
CITY AND ZIP CODE: TURLOCK, CA 95380		
BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
PROOF OF PERSONAL SERVICE-	—CIVIL	CASE NUMBER:
 (Do not use this Proof of Service to shift). 1. I am over 18 years of age and not a party to this action. 2. I served the following documents (specify): 	ow service of a Summons an	d Complaint.)
 The documents are listed in the Attachment to Proof I personally served the following persons at the address, or a. Name: b. Address: c. Date: d. Time: 		ocuments Served) (form POS-020(D)).
 Time: The persons are listed in the Attachment to Proof of a 	Personal Service—Civil (Persc	ns Served) (form POS-020(P)).
4. lam		
a not a registered California process server.		dependent contractor of a
b a registered California process server.	registered Californ	
	d exempt from regis	tration under Business & Professions

Code section 22350(b). 5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):

6.	I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7.	I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)	

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

INFORMATION SHEET FOR PROOF OF PERSONAL SERVICE—CIVIL

(This information sheet is not a part of the Proof of Service form and does not need to be copied, served, or filed.)

NOTE: This form should **not** be used for proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Use these instructions to complete the Proof of Personal Service (form POS-020).

A person at least 18 years of age or older must serve the documents. There are two main ways to serve documents: (1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document.

The person who personally served the documents must complete a proof of service form for the documents served. You cannot serve documents if you are a party to the action.

INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

The proof of service should be printed or typed. If you have Internet access, fillable versions of the form are available at www.courtinfo.ca.gov/forms.

Complete the top section of the proof of service form as follows:

<u>First box, left side</u>: In this box print the name, address, and phone number of the person *for* whom you served the documents.

<u>Second box, left side</u>: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are listed on the documents that you served.

First box, top of form, right side: Leave this box blank for the court's use.

<u>Second box, right side</u>: Print the case number in this box. The number should be the same as the case number on the documents that you served.

Complete all applicable items on the form:

- 1. You are stating that you are over the age of 18 and that you are not a party to this action.
- List the name of each document that you delivered to the person. If you need more space, check the box in item 2, complete the Attachment to Proof of Personal Service-Civil (Documents Served) (form POS-020(D)), and attach it to form POS-020.
- Provide the name of each person served, the address where you served the documents, and the date and time of service. If you served more than one person, check the box in item 3, complete the *Attachment to Proof of Personal Service–Civil (Persons Served)* (form POS-020(P)), and attach it to form POS-020.
- 4. Check the box that applies to you. If you are a private person serving the documents for a party, check box "a."
- 5. Print your name, address, and telephone number. If applicable, include the county in which you are registered as a process server and your registration number.
- 6. You must check this box if you are not a California sheriff or marshal. You are stating under penalty of perjury that the information you have provided is true and correct.
- 7. Do not check this box unless you are a California sheriff or marshal.

At the bottom, fill in the date on which you signed the form, print your name, and sign the form at the arrow. By signing, you are stating under penalty of perjury that all the information that you have provided on form POS-020 is true and correct.