

## **Guide To Request A Stay Of Execution**

This packet will help guide you in requesting that the court delay the date that the sheriff is scheduled to lock you out of your home. There are a few steps that you will need to do to make sure your best chance of delaying the lock out.

Please review this step-by-step guide carefully!

### **Frequently Asked Questions**

#### **What Is A Stay Of Execution?**

This is a request filed with the court asking that a judge delay the date that the sheriff is scheduled to lock you out of your home. This will grant you more time to seek out resources or help in addressing the lock out.

#### **How Many Days Can I Request For A Stay Of Execution?**

Typically, you can ask for up to forty days. However, the judge has the power to order a shorter stay of execution than requested.

#### **How Do I Request A Stay Of Execution?**

This packet will help guide you in requesting the stay. There are a few steps that you will need to do to make sure your best chance of delaying the lock out. The steps are laid out in detail later.

#### **How Do I Calculate How Much I Need To Pay The Court For The Stay?**

The amount that you must pay to the court for the duration of your stay depends on your current portion of the monthly rent. You will need to divide your current portion of the monthly rent by thirty. Then, you will multiply that amount by the number of days you are requesting.

$$(\text{Monthly rent}) \div (\text{thirty days}) = (\text{daily rent})$$

$$(\text{daily rent}) \times (\text{number of days requested}) = (\text{total due to court})$$

*For example:* Your monthly rent is \$1,600.00. You want to ask for a forty-day stay. You will have to pay \$2,133.33 to the court.

$$1,600 \div 30 = 53.3333 \quad | \quad 3.3333 \times 40 = 2,133.33 \quad | \quad \text{Total due to court: } \$2,133.32$$

**IMPORTANT!** Before you begin filling out the form that is attached, it is important to bear in mind that the judge will only grant your request for a stay of execution if are able to deposit rent for the duration of the stay with the court. If you cannot deposit the money with the court, your request will be denied.

### **What If My Rent Is Subsidized By The Housing Authority?**

If you have a housing assistance payments contract (AKA your “HAP Contract”) with a housing authority—such as the Oakland Housing Authority—calculate the amount you need to pay using only the amount of rent that you are responsible for, not the total amount of rent.

*For example:* Your portion of the rent is \$300.00. The Oakland Housing Authority pays \$1,700.00. You want to ask for a forty-day stay. You will have to pay \$400.00 to the court.

$$300.00 \div 30 = 10 \quad | \quad 10 \times 40 = 400 \quad | \quad \text{Total due to court: } \$400.00$$

### **What If The Court Grants Me A Shorter Stay Than I Requested?**

The court has power to delay the sheriff up to forty days. But, this does not mean that the court will always grant you the delay that you requested.

This is okay. You will have to apply for another stay application to delay the sheriff again. In your additional request, you will be able to ask for more time up to a maximum of forty days.

### **What If The Court Denies My Application And My Lock Out Is In Two Or More Days?**

In this instance, you have time to re-apply for a stay application. This time, explain to the judge in more detail why you need more time. There is no guarantee that the judge will grant your second request for a stay, but it does not hurt to ask again.

## **What If The Court Denies My Stay Application And My Lock Out Is Tomorrow?**

In this situation, your priority is to build an emergency kit and find temporary shelter.

In a backpack or sturdy bag, make sure you place the following items:

- Important documents (SSN cards, birth certificates, ID cards, etc.)
- Prescription medications
- Water
- Cell phone with chargers and a backup battery
- Food (at least a three-day supply of non-perishable food)
- Manual can opener (for food)
- Whistle
- Moist towelettes, garbage bags and plastic ties
- Feminine supplies and personal hygiene items
- Duct tape
- Paper and pencil
- Sweater or jacket (waterproof if possible)

Place this kit by your front door, ready to grab if you have to leave in a hurry.

Also, begin contacting friends, family, churches, local shelters, etc. for temporary housing.

On your lock-out date, be present at your home. The sheriff may come to your home anytime.

When the sheriff knocks on your door, answer the door, respectfully explain your situation to the officer, and ask if they can come back another day. It is unlikely that the officer will agree to this, but it does not hurt to ask.

## **Instructions**

### **Step 1: Give Notice To The Landlord**

You must give the landlord or their attorney notice of your intent to request a stay of execution. Typically, it's required that you give at least 24-hours' notice of your intent to request a stay of execution. But, it is okay if you give less than 24-hours' notice.

When you call, read the landlord or their attorney the following:




My name is \_\_\_\_\_. I am calling for \_\_\_\_\_ in regards to the eviction lawsuit, \_\_\_\_\_ versus \_\_\_\_\_, case number \_\_\_\_\_.

I am calling to give notice that on \_\_\_\_\_, at or before 12:00 p.m., I will be applying for a \_\_\_\_-day stay of execution of judgment at the civil clerk's office located at the René C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, California 94612.

Please leave a message if you intend to oppose. I can be reached at \_\_\_\_\_.

Be sure to write down the name of the person you spoke with and the date and time of you call.

## Step 2: Prepare Your Request

|  |   |  |
|--|---|--|
| 1  | _____   |  <div>On these lines, write your name, mailing address, and phone number.</div>           |
| 2  | _____   |  |
| 3  | _____   |  |
| 4  | _____   |  |
| 5  | Defendant in Pro Per  |  |
| 6  |   |  |
| <div>Write the name of the plaintiff here. </div> |   |  |
|  | SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA   | Write the number of the case here. It will start with either "RG" or "HG."   |
|  | HAYWARD HALL OF JUSTICE   |  |
| 11   | _____   | Case No.: _____  |
| 12   | Plaintiff,  | Limited Civil Case   |
| 13   | v.  | <b>DEFENDANT'S EX PARTE APPLICATION FOR A MEMORANDUM OF POINTS &amp; AUTHORITIES AND DECLARATION FOR A STAY OF EXECUTION OF JUDGMENT</b>                                   |
| 14   | _____   |  |
| 15   | Defendant.  | Levying Officer File No. _____   |
| 16   |   | Write the sheriff's officer number here. This number will be on the notice to vacate.  |
| 17   |   |  |
| 18   | <b>I. APPLICATION FOR STAY OF EXECUTION</b>   |  |
| 19   | I, _____, apply to the Court for a _____-day stay of  |  |
| 20   | judgment under sections 918 & 1176 of the Code of Civil Procedure, rules 3.1200 & 8.822 of the Code of Civil Procedure, and rule 3.650 of the Local Civil Rules.  |  |
| 21   | I will suffer irreparable harm and immediate danger if the Court does not grant my application. The Alameda County Sheriff's Office is scheduled to evict me from my home at _____ on _____ at 6:01 a.m. I do not have enough time to secure alternate housing before my scheduled vacate date and I will become homeless if the Court denies my request. |  |
| 22   | Defendant Decl. ¶ 6.  |  |
| 27   | I make this application based on this application, the memorandum of points and authorities, my declaration, and any matters that the Court may take under judicial notice.   |  |
| 28   |   |  |
| <div>1</div> <div>Defendant's Ex Parte Application A Stay Of Execution Of Judgment</div>   |   |  |

Write your portion of the monthly rent.

Write the date and the time you called to give notice of this request.

3. I gave proper notice of this application. On \_\_\_\_\_, at \_\_\_\_\_, I called the plaintiff to let them know that I was requesting a stay of execution from the Court.

My rent is \$ \_\_\_\_\_.

5. I can deposit \$ \_\_\_\_\_ with the Court to pay for the duration of my stay.

6. I ask that the Court take the following into consideration:

This is your space to explain your situation to the court and explain why you need a delay.

Look on the next page for guidance on what to write.

Write how much you will pay into the court for the duration of your stay if it is granted.

Look on the next page for guidance on how to calculate this amount.

### ***How To Calculate The Amount Of Your Stay***

The amount that you must pay to the court for the duration of your stay depends on your current portion of the monthly rent. You will need to divide your portion of the monthly rent by thirty. Then, you will multiply that amount by the number of days you are requesting.

*For example:* Your monthly rent is \$1,600.00. You want to ask for a forty-day stay. You will have to pay \$2,133.33 to the court.

$$1,600 \div 30 = 53.3333 \mid 53.3333 \times 40 = 2,133.33 \mid \text{Total due to court: } \$2,133.32$$

If you have a HAP contract with a housing authority calculate the amount you need to pay using only the amount of rent that you are responsible for, not the total amount of rent.

### ***What You Tell The Court***

The court is reading your stay application looking for “extreme hardship” you will suffer from an eviction. In the space provided, **explain in detail what hardships you will suffer**. *Think about answering these questions like these:*

- Do you have children who attend school? Will this eviction frustrate their ability to, for instance, attend classes or do homework?
- Do you have friends and family that may be able to provide you with shelter if you are evicted on the date stated in the notice to vacate?
- Do you have any disabilities that may slow your ability to move out by the date stated in the notice to vacate?
- Do you have any medical conditions that will be affected if you don't have shelter?
- Do you take any medicines that must be kept refrigerated?
- Did you lose because you didn't appear at a hearing and are trying to find a lawyer to see what your options may be?
- Do you live in subsidized housing?
- Do you need time to find a storage space for your belongings?

### **Step 3: File Your Request**

You may file your documents by leaving them at a drop box located at either:

*René C. Davidson Courthouse*

1225 Fallon St.

Oakland, California 94612

*Hayward Hall of Justice*

24405 Amador St.

Hayward, CA 94544

You may also be able to fax file your documents if you contact one of the legal aid offices. The Self-Help Center will have a list of organizations that may be able to provide assistance.

After you file your request, call the clerk of Department 511 at 510-690-2720 to let them know that you filed a request for a stay of execution. If possible, try to email a copy of your request to Department 511 through [dept511@alameda.courts.ca.gov](mailto:dept511@alameda.courts.ca.gov).

You will need to check in with the clerk on occasion that same day to see whether your stay request was granted.

### **Step 4: Pay For The Duration Of The Stay**

If the court granted your stay, you must pay to the court for the duration of your stay. The court will only accept cash, cashier's checks, or money orders, made payable to the "Clerk of the Superior Court of California."

*IMPORTANT!* It is possible that the court grants a shorter stay than you requested. That's okay. You may be able to apply for another stay at another time.

Be sure to ask the clerk for:

- 1) Two copies of the order granting your request for a stay of execution, and
- 2) Two copies of the receipt proving payment for the duration of the stay



**Step 5: Take A Copy Of The Order And The Receipt To The Sheriff's Office**

Take a copy of the order and the receipt to the Sheriff's Office, located at:

*René C. Davidson Courthouse*

1225 Fallon St., Room 104

Oakland, California 94612

If you can, fax a copy of the order and receipt to the Sheriff's Office. Their fax number is 510-272-6811.

If you cannot fax or drop off a copy of the order and the receipt, give them a call at 510-272-6910. When you call, double check that the court clerk notified the sheriff of the stay order. If not, advise them that the court has issued a stay and that the court clerk can confirm this.

This makes sure that the sheriff knows that the court granted your request.

*IMPORTANT!* The sheriff sometimes makes mistakes, so be sure to keep your copy of the order and the receipt with you just in case the sheriff comes to your home on the date listed on the notice to vacate. If this happens, explain to the sheriff that the court granted a stay of execution and show them a copy of the order and the receipt.

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3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 Defendant in Pro Per  
6  
7

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
9 HAYWARD HALL OF JUSTICE

10 \_\_\_\_\_,  
11 Plaintiff,  
12  
13 v.  
14 \_\_\_\_\_,  
15 Defendant.  
16 \_\_\_\_\_

Case No.: \_\_\_\_\_

Limited Civil Case

**DEFENDANT'S EX PARTE APPLICATION,  
MEMORANDUM OF POINTS & AUTHORITIES,  
AND DECLARATION FOR A STAY OF  
EXECUTION OF JUDGMENT**

Levying Officer File No. \_\_\_\_\_

17  
18 **I. APPLICATION FOR STAY OF EXECUTION**

19 I, \_\_\_\_\_, apply to the Court for a \_\_\_\_\_-day stay of execution of  
20 judgment under sections 918 & 1176 of the Code of Civil Procedure, rules 3.1200 & 8.822 of the Rules  
21 of Court, and rule 3.650 of the Local Civil Rules.

22 I will suffer irreparable harm and immediate danger if the Court does not grant my application.  
23 The Alameda County Sheriff's Office is scheduled to evict me from my home at \_\_\_\_\_  
24 \_\_\_\_\_ on \_\_\_\_\_ at 6:01 a.m. I do not have enough time to secure alternate  
25 housing before my scheduled vacate date and I will become homeless if the Court denies my request.  
26 Defendant Decl. ¶ 6.

27 I make this application based on this application, the memorandum of points and authorities, my  
28 declaration, and any matters that the Court may take under judicial notice.

## II. MEMORANDUM OF POINTS & AUTHORITIES

### a. The Court May Stay Execution Of A Judgment In Unlawful Detainer Proceedings

A court must stay a judgment “when the court finds that the moving party will suffer extreme hardship in the absence of a stay and that the nonmoving party will not be irreparably injured by its issuance.” Cal. Civ. Proc. Code § 1176.

Under the Court’s local rules, “Stays involving possession of real property will usually be granted only on condition that the payment of the reasonable rental value is paid to the court in advance if rent would otherwise become due.” Loc. Civ. R. 3.650.

### b. This Court Has Express Authority To Stay Execution Of A Judgment Up To 100 Days

A trial court may stay a judgment up to “10 days beyond the last date on which a notice of appeal could be filed.” Cal. Civ. Proc. Code § 918. A notice of appeal must be filed no later than:

“(A) 30 days after the trial court clerk serves the party filing the notice of appeal a document entitled “Notice of Entry” of judgment or a filed-endorsed copy of the judgment, showing the date it was served;

“(B) 30 days after the party filing the notice of appeal serves or is served by a party with a document entitled “Notice of Entry” of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or

“(C) 90 days after the entry of judgment.”

Cal. R. Ct. 8.822(a)(1). Thus, the Court has authority to grant a stay of up to 100 days, depending on which contingency under rule 8.822(a)(1) is triggered.

## III. DECLARATION OF DEFENDANT

I, \_\_\_\_\_, declare the following:

1. I have personal knowledge of the foregoing and can competently testify to these facts if called upon to do so by the Court.

2. I am a party to this matter.

3. I gave proper notice of this application. On \_\_\_\_\_, at \_\_\_\_\_, I called the plaintiff to let them know that I was requesting a stay of execution from the Court.

4. My rent is \$\_\_\_\_\_.

5. I can deposit \$\_\_\_\_\_ with the Court to pay for the duration of my stay.

6. I ask that the Court take the following into consideration:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Declarant