



STANISLAUS COUNTY SUPERIOR COURT
Turlock Division
www.stanct.org
(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
- <http://www.stanct.org/courts/forms/index.html>
- Judicial Council's Self-Help website
- <http://www.courts.ca.gov/selfhelp>
- For more information on Libraries, Websites, or Self-Help Legal Books
- <http://www.courts.ca.gov/selfhelp/lowcost/libraries.html>
- 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 each day 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. GIVE 24-HOUR NOTICE: 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.

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

NOTE - FILING FEES: 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.

3. 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. SERVING YOUR DOCUMENTS: 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.
5. FILE THE PROOF OF SERVICE: 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. BE SURE TO ATTEND YOUR HEARING: 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

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Case, Address & Telephone

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IN PRO PER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

Plaintiff: _____

Vs. **2**

Defendant: _____

CASE NO. **3**

EX PARTE MOTION FOR STAY OF
EXECUTION; DECLARATION IN
SUPPORT THEREOF, POINTS AND
AUTHORITIES

Defendant, **4** _____, hereby move(s) the
Court for an ex parte order to stay of the judgment rendered herein until **5** _____
in order to avoid extreme hardship upon Defendant.

This Motion is based upon the supporting Declaration, the attached Points and
Authorities, and upon all the papers and records on file herein.

Dated: _____, 20 **6** _____

Print Name: _____
Defendant

Ex Parte Motion for 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.

Ex Parte Stay of Execution Page 2

DECLARATION IN SUPPORT OF MOTION

I 7, 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 8 in the matter here.

I have lived at the subject premises for 9. The following people reside with me: 10. My present source of income is 11 and totals \$ 12 month.

I have not had an opportunity to secure alternative housing as of this date. I do not have friends or relatives in the area with whom I can stay while I continue my search for alternate housing.

The writ of restitution was posted by the Sheriff on or about 13. Since I have not found other housing as yet and do not have friends or relatives with whom I can reside, I will have no place to go if I am evicted on 14. I must have time to 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 request that the judgment entered in this case on 15 be stayed until at least 16.

Because I do not have the resources to find immediate temporary housing and it would work a severe hardship to be evicted because:

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Ex Parte Writ for 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.

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 what hardship you would suffer. (Example: You are elderly, a single parent with children, very low income, disable or ill.)

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For these reasons, I submit that in order to avoid extreme hardship, the Court should grant a stay of execution until 18.

I tried, but was unable to reach out or agreement with the plaintiff/plaintiff's attorney. I contacted the plaintiff/plaintiff's attorney of this Ex Parte Motion for Stay of Execution by 19 Hefley, Inc. in person on 20 at 20 a.m./p.m. and advised of my intent to request a hearing. The plaintiff/plaintiff's attorney's advice responded by saying 20.

and did not indicate any opposition to this motion.

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

Date: 20 21
Print Name: Mark
Debitant

MEMORANDUM OF POINTS AND AUTHORITIES

1. The Judge of the Court may stay the execution of a judgment or order. Code of Civil Procedure Section 913 (a).

2. In instances where justice requires a stay of execution, the Court may do without the consent of the adverse party for a period of up to 40 days. Code of Civil Procedure Section 913 (b) California Residential Landlord/Tenant Practice, California Continuing Education of the Bar (1986) § 7.206, p. 674. This 40 day figure is derived from the provision that the court may suspend for a period which extends for 30 days beyond the last day on which a notice of appeal could be filed. Code of Civil Procedure Section 916 (b) The last date on which a notice

By _____ Notary Public for State of California

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'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.

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of appeal can be filed from Superior Court unreviewed decision judgment in 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 judgment may the execution of an unreviewed decision judgment the 40 days after the notice of entry of judgment served.

3. In *Industrial Indemnity Co. v. Leitch* (1979) Cal. App. 3d 699, 700, 122 Cal. Rptr. 712, the Court stated, "The stay of execution granted under Code of Civil Procedure Section 913 (a) from Code of Civil Procedure Section 913 (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 *McLeod v. Superior Court* (1983) 140 Cal. App. 3d 226, 242; 189 Cal. Rptr. 227, 230, the Court ruled 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 unreviewed decision case. *Kabat v. Bankcard*, (1994) 25 Cal.App. 2d, 320; 143 P. 614

Date: 20 22
Print Name: Mark
Debitant

By _____ Notary Public for State of California

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

1	PROOF OF PERSONAL SERVICE
2	
3	I declare that I am a citizen of the United States of America and a resident of Stanislaus
4	County, California. I am over the age of eighteen years and not a party to the within entitled
5	action. My business address is: 23
6	
7	I personally served the within:
8	EX PARTE MOTION OF STAY OF EXECUTION, DECLARATION
9	IN SUPPORT THEREOF, POINTS AND AUTHORITIES
10	on the parties in said action, by personally delivering to and leaving with the following persons
11	in the County of Stanislaus, State of California, on the date set opposite their respective names, a
12	true copy thereof to-wit:
13	
14	(Name) (Address) 24 (Date)
15	
16	(Name) (Address) (Date)
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18	(Name) (Address) (Date)
19	I declare under penalty of perjury that the foregoing is true and correct.
20	Executed on _____, 20____, at Modesto, California
21	25
22	Declarant
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28	EX PARTE MOTION FOR 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.

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 and 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

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Name, Address & Telephone
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IN PRO PER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

Plaintiff: _____
Vs. **2**
Defendant: _____

CASE NO. **3**
ORDER ON EX PARTE MOTION FOR
STAY OF EXECUTION

Good cause appearing: **4**
IT IS ORDERED that the request that the judgment be stayed is hereby
 GRANTED DENIED upon payment in the amount of \$ _____ by
_____ to _____ no later than
_____ a.m. / p.m. on _____. Upon so doing there shall be no further action
taken by Plaintiff or by anyone acting for or with Plaintiff, including the Sheriff of Stanislaus
County, to enforce or execute the Judgment herein before entered against Defendant in the
above-entitled action until _____ day.

Dated: _____

JUDGE OF THE SUPERIOR COURT

Order on Ex Parte Motion for 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 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.

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Name, Address & Telephone

IN PRO PER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

Plaintiff:

Vs.

Defendant:

CASE NO.

EX PARTE MOTION FOR STAY OF
EXECUTION; DECLARATION IN
SUPPORT THEREOF; POINTS AND
AUTHORITIES

Defendant, _____, hereby move(s) the
Court for an ex parte order to stay of the judgment rendered herein until _____
in order to avoid extreme hardship upon Defendant.

This Motion is based upon the supporting Declaration, the attached Points and
Authorities, and upon all the papers and records on file herein.

Dated: _____, 20 _____

Print Name: _____
Defendant

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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 _____ in 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 friends or relatives in the area with whom I can stay while I continue my search for alternate housing.

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 can reside, I will have no place to go if I am evicted on _____. I must have time to 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 request 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 work a severe hardship to be evicted because _____

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For these reasons, I submit that in order to avoid extreme hardship; this Court should grant a stay of execution until _____.

I tried, but was unable to work out an agreement with the plaintiff/plaintiff's attorney. I notified the plaintiff/plaintiff's attorney of this Ex Parte Motion for Stay of Execution by _____ (telephone, fax, in person) on _____, 200__ at _____ a.m./p.m. and advised of my intent to request a hearing.

The plaintiff/plaintiff's attorney's office responded by saying: _____

and did/did not indicate any opposition to this motion.

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

Dated: _____, 20 _____

Print Name: _____
Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1. The Judge of the Court may stay the execution of a judgment or order. Code of Civil Procedure Section 918 (a).

2. In situations where justice requires a stay of execution, the Court may do without the consent of the adverse party for a period of up to 40 days. Code of Civil Procedure Section 918 (b). California Residential Landlord Tenant Practice, California Continuing Education of the Bar (1986), § 7.208, p. 674. This 40 day figure is derived from the provision that the court may stay 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

1 of appeal can be filed form Superior Court unlawful detainer judgment is 30 days after the notice
2 of entry of judgment is mailed by the clerk or opposite party, or 90 days after the entry of
3 judgment, whichever earlier. California Rules of Court, Rule 122 (a). Therefore the judge can
4 stay the execution of an unlawful detainer judgment for 40 days after the notice of entry of
5 judgment served.
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7 3. In Industrial Indemnity Co. v. Levine (1975) Cal. App. 3d 698, 700, 122 Cal Rptr.
8 712, the Court remarked, "The stay of execution granted under Code of Civil Procedure Section
9 681 (a) (now code of Civil (Procedure Section 918 (a)), is used to allow the judgment debtor
10 time to gather his resources so that the judgment may be satisfied without unnecessary hardship."
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12 4. In Medford v. Superior Court (1983) 140 Cal. App. 3d 236, 240; 189 Cal. Rptr. 227,
13 230, the Court stated that a stay of execution may be conditioned on the tenant's payment of rent
14 accruing during the period of the stay, but not on payment of back rent.
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16 5. Special circumstances such as hardship, which exist in this case, should be considered
17 in granting a temporary stay of execution in an unlawful detainer case, Kaiser v. Hancock,
18 (1914) 25 Cal.App. 323, 328; 143 P. 614.
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20 Dated: _____, 20 _____

Print Name: _____
Defendant

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Name, Address & Telephone

IN PRO PER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

Plaintiff:

CASE NO.

ORDER ON EX PARTE MOTION FOR
STAY OF EXECUTION

Vs.

Defendant:

Good cause appearing:

IT IS ORDERED the Ex Parte Motion for Stay of Execution is hereby

GRANTED DENIED upon payment in the amount of \$ _____ by

_____ to _____ no later than

_____ a.m./p.m. on _____. Upon so doing there shall be no further action

taken by Plaintiff or by anyone acting for or with Plaintiff, including the Sheriff of Stanislaus

County, to enforce or execute the Judgment herein entered against Defendant in the above-

entitled action until _____ (date).

Dated:

JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS 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	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**.
2. I served the following **documents** (specify):

The documents are listed in the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)).

3. I personally served the following **persons** at the address, date, and time stated:

- a. Name:
- b. Address:
- c. Date:
- d. Time:

The persons are listed in the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P)).

4. I am

- | | |
|---|--|
| a. <input type="checkbox"/> not a registered California process server. | c. <input type="checkbox"/> an employee or independent contractor of a registered California process server. |
| b. <input type="checkbox"/> a registered California process server. | d. <input type="checkbox"/> exempt from registration 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:

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

Second box, left side: 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.

Second box, right side: 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.
2. 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.
3. 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.