

1 **Research Guide: Appeal and Stay of Execution for Eviction**

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3 **Law Library for San Bernardino County**

4 **Research Guide, www.sblawlibrary.org, (909) 885-3020. (updated as of January 2015)**

5 **Disclaimer**

6 The information in this research guide is intended to assist patrons with their legal research and is in
7 no way intended to replace the counsel of an Attorney. Any decisions about how to proceed must be
8 determined by the patron. The library staff can recommend and refer you to print and web-based
9 resources that will help you find answers to your law-related questions. The staff at the Law Library
10 for San Bernardino County cannot explain or interpret the law itself and we are not permitted to give
11 legal advice.

12 From the Judicial Council of California, <http://www.courts.ca.gov/1289.htm>

13 **If the landlord wins the Eviction Lawsuit (Unlawful Detainer)**

14 If the judge or jury decides the landlord has the right to evict you, the judge will give the
15 landlord a Judgment of Possession. The judge or jury may also order you to pay back rent,
16 damages, and costs, like filing fees and attorney fees (if this is in the rental agreement). The
17 landlord may also be able to get money for the rent that he or she could have gotten for the rental
18 unit while you were there illegally. If the court finds that you only stayed in the unit to be mean,
19 spiteful, or to make the landlord suffer, the court may order you to pay a penalty of up to \$600.

20 The court will give the landlord a *Judgment of Possession* (Form UD-110). This gives the
21 landlord possession of the property.

22 Then, the landlord must fill out have the court clerk issue a *Writ of Execution* (Form EJ-130) and
23 take the writ to the sheriff. This lets the sheriff remove and lock you out of the property.

24 The sheriff will serve you with a notice to vacate the property. This gives you 5 days to move. If
25 you do not move, the sheriff will remove you from the rental unit and lock you out.

26 **Is there anything I can do after I lose the Eviction? Post judgment filings**

27 The side that loses can appeal or can file a motion to set aside (cancel) the judge's order. There
28 are strict deadlines to do this, and the side appealing needs a legally valid reason to do it. If you
are thinking of appealing, talk to a lawyer.

If you appeal or try to cancel the judge's order, the eviction is NOT stopped. The only way for
you to stop or delay the eviction is to ask for a stay of execution.

Even if you do not appeal, you may want more time to move out. If the landlord will not agree
to it, you will also have to file a Request for a Stay of Eviction ("Stay").

1 **Stays of Execution**

2 You have to file the stay as soon as you get a notice from the sheriff giving you 5 days to leave
3 the unit.

4 A stay will delay the eviction. If the judge lets you remain in the rental unit longer, you will have
5 to pay the rent for that period of time. The amount of time you can stay will depend on the
6 county and the case.

7 You need a good reason to ask for more time. And there are no court forms to ask for a stay, so
8 talk to a lawyer for help. Find a legal aid office near you or more help finding a lawyer.

Remember, you must act very quickly or you will not be able to delay the eviction.

9 **Where do I get the forms to file the Motion to Stay?**

10 Motions are custom forms that you create/draft yourself on pleading paper (paper numbered
11 down the left side, exactly like the paper this guide is printed on).

12 **So how do I draft a motion?**

13 Motions include several parts:

- 14 • The application or motion typically called a “Notice of Motion” (This tells the court
15 what you want to do);
- 16 • A Memorandum of Points and Authorities (The law that allows the court to grant your
17 application/motion);
- 18 • A Declaration (This is your statement of facts, a chance to tell your story);
- 19 • An Order for the Judge to sign if he grants your application/motion.

20 **Is there an example I can use to help me draft this motion?**

21 A sample of what this type of Motion might look like is provided below. But you will have to
22 decide whether the sample is the correct form for your situation. You may need to modify the
23 form so it fits your case.

24 Blank Pleading paper (paper numbered down the left side, exactly like the paper this guide is
25 printed on) is available at <http://www.sblawlibrary.org/forms.html>

26 **What do I do after I draft my forms?**

27 Once you have drafted the forms to your specifications you can file them with the court.

28 Typically, the clerk will assign a hearing date for your application/motion. You will most likely

1 need to serve the other party involved and file a **Proof of Service**. Some courts will serve the
2 papers for you.

3 **For information about service of papers and proof of service, please refer to one of the**
4 **following research guides:**

- 5 ➤ *Personal Service of Court Papers*, published by the Sacramento County Public Law
6 Library, <http://www.saclaw.org/Uploads/files/Step-by-Step/PersonalService.pdf>
- 7 ➤ *Proof of Service by Mail*, published by the Sacramento County Public Law Library,
8 <http://www.saclaw.org/pages/pos-mail.aspx>
- 9 ➤ *Service of Notice and Other Papers*, published by the San Diego County Public Law
10 Library,
11 http://www.sdcpll.org/resources/guides/Service_of_Notice_and_Other_Papers.pdf
- 12 ➤ Proof of Service Forms, <http://courts.ca.gov/forms.htm?filter=POS>

13 **The Judicial Council Forms for Appeals:**

14 Available online at courts.ca.gov/forms

15 Information of Appeal Procedures for Limited Civil Cases: [APP-101-INFO](#)

16 Notice of Appeal/Cross Appeal: [APP-102](#)

17 Appellant's Notice Designating Record on Appeal: [APP-103](#)

18 Proposed Statement on Appeal: [APP-104](#)

19 Proof of Service: [APP-109](#)

20 POS INFO: [APP-109 INFO](#)

21 ***Defendant in [Pro Per](#) is a person who handles his/her case without an attorney. It is**
22 **typical for you to alert the court of your [Pro Per](#) status on pleadings you file with the court.**

1 _____
2 _____
3 Defendant in Pro Per
4
5

6 IN THE SAN BERNARDINO SUPERIOR COURT
7 STATE OF CALIFORNIA

8 _____,) Case No.: _____
9 Plaintiff,) NOTICE OF MOTION FOR STAY OF
10) ENFORCEMENT; POINTS AND
11 vs.) AUTHORITIES; DECLARATION
12) Date: _____
13 _____,) Time: _____
14 Defendant.) Dept: _____

14 NOTICE OF MOTION FOR STAY OF ENFORCEMENT

15 PLEASE TAKE NOTICE that on _____ [date], at _____ [time],
16 in _____ [Dept. no] at _____ [address], California,
17 Defendant _____ [name of defendant] will move for an order from the Court
18 under CCP § 1176 staying enforcement of the _____ [judgment/order]
19 entered on _____ [date]. Specify effect of judgment or order; e.g., returning
20 possession of premises to landlord]

21 _____ . This motion is
22 made on the grounds that _____ [name of defendant], defendant will suffer
23 extreme hardship, and _____ [name of plaintiff], plaintiff, will suffer no
24 irreparable injury if enforcement of the judgment is stayed pending appeal.

25
26 This motion is based on all pleadings, papers, and records in this action and the following
27 memorandum of points and authorities and declaration.

28 Dated: _____.

Respectfully Submitted,
By: _____

DECLARATION

I, _____, declare: I am the defendant in the above-entitled case.
(Enter your Statement of Facts Related to the case)

1. This action was begun on _____ [date] to obtain possession of the premises at _____ [address and for money damages]. On _____ [date], a judgment/an order was entered against me, permitting the landlord to evict me. Notice of appeal from this _____ [judgment/order] was filed on _____ [date].

2. I will suffer extreme hardship if enforcement of the judgment/order is not stayed pending appeal in that _____ [specify facts].

4. _____ [Name], plaintiff, will suffer no irreparable injury if enforcement of the judgment/order is stayed in that _____ [specify facts].

5. The interest of plaintiff in performance of the judgment/order will be protected by payment into court of the monthly rent as it becomes due, and can be further protected by _____ [suggest alternatives to secure performance, e.g., furnishing security].

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

Executed on _____, at _____, California.

Dated: _____

Respectfully Submitted,

By: _____

Defendant in Pro Per

1 **POINTS AND AUTHORITIES**

2 Under Code of Civil Procedure §1176, this court is empowered to grant a stay pending
3 appeal, on condition that defendant pay into the court the amount of the monthly rent as it
4 becomes due.

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6 Dated:_____.

7 Respectfully Submitted,
8 By:_____

9 Defendant in Pro Per

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Defendant in Pro Per

IN THE SAN BERNARDINO SUPERIOR COURT
STATE OF CALIFORNIA

_____) Case No.: _____
Plaintiff,)
vs.) ORDER
_____,)
Defendant.)

ORDER OF COURT

The motion of the defendant for an order for Stat of Execution came on for hearing by the court on _____ [date].

IT IS HEREBY ORDERED that the Stay of Execution be granted under the following terms:

Dated: _____.

Judge of the Superior Court