

# VACATING A JUDGMENT AND STAYING ENFORCEMENT OF A WRIT OF RESTITUTION

---

If you do not deliver a written response ("notice of appearance" or "answer") to an eviction summons and complaint for unlawful detainer on time, or if you do not appear at a show cause hearing, then a final judgment may be entered against you and a writ of restitution may be issued. If the eviction summons required that you pay rent money into the court or file a certification by the deadline and you did neither, a writ of restitution may also be issued.

A writ of restitution directs the sheriff to physically remove you and your personal possessions from the property you are renting. This is called "enforcing the writ." A judgment states the amount of money you owe the plaintiff (your landlord). The money owed may be collected by garnishing your wages or bank accounts, or by seizing your personal property and having it auctioned.

If you receive a judgment or a writ of restitution and you believe you had a good reason for not responding to the eviction summons or appearing at the show cause hearing, you may ask the court to vacate (or withdraw) the judgment and stay (or temporarily stop) the eviction. If the court agrees that you may have had good reasons for not responding or appearing, enforcement of the writ of restitution may be stayed or postponed until a hearing on your motion to vacate the judgment is held. You may start the procedure for vacating the judgment and staying the writ any time before the writ is enforced by doing the following:

## **Step 1: NOTIFY THE LANDLORD'S (PLAINTIFF'S) ATTORNEY.**

**(Note: If the landlord is representing himself or herself, then follow all of these procedures with the landlord directly)**

The court will not temporarily stop the eviction until you have notified your landlord's attorney of the specific time that you will be going to court to stay the writ of restitution. You should telephone the attorney and try to agree on a date and time to meet in the Ex Parte Department of the Superior Court where you must present your documents. If the attorney does not want to meet you in court, you should try to agree on a date and time when the hearing will be held on your motion to vacate and stay the eviction. The hearing on the motion to vacate is usually held within 3 to 10 days from the date you present your documents to the court.

If you cannot reach your landlord's attorney after trying for more than one-half day, or if you reach the landlord's attorney but are not able to agree on a time to meet at court, on a hearing date for the motion to vacate or on temporarily stopping the eviction, then you may give notice of the time that you will go to court to try to stay the writ of restitution. It is recommended that you give at least three hours notice and longer notice if possible.

You may give the notice by telephone and you should leave a message with a receptionist, secretary or on an answering machine if you are unable to speak to your landlord's attorney directly.

Your message should identify the case by name of plaintiff, name of defendant and case number, and should state the date and time you are going to the Ex Parte Department to present your documents. The message should also state what you will be asking the court to do. For example, "I will be asking the court to set a hearing date on my motion to vacate judgment and to stay the writ of restitution until after the hearing." When you go to court, your request for a stay of the writ of restitution will then be reviewed and a hearing date and time on your motion to vacate may be set by the judge or court commissioner.

## **Step 2: PREPARE YOUR DOCUMENTS**

You must prepare a Motion and Declaration to Vacate Judgment and Stay Enforcement of Writ of Restitution, and an Order to Show Cause and To Stay Enforcement of Writ of Restitution. You may do this by filling out the attached motion and order in the following manner:

### **A. Motion and Declaration to Vacate Judgment and Stay Enforcement of Writ of Restitution.**

This document tells the court why the judgment against you should be vacated and the eviction stopped. On the first page, fill in the names of the parties and the case number, and complete the blanks.

In paragraph 2, explain your reasons for bringing the motion. First state your "procedural defenses," that is, the good reason(s) why you did not respond to the summons and complaint on time or appear at a show cause hearing. For example:

- i. I was not served with a summons and complaint.
- ii. I responded to the summons and complaint in time, but a writ of restitution was issued anyway without a hearing.
- iii. I was not able to answer the summons and complaint or appear at the show cause hearing because. . . .

In the same space, also tell the court about your defense to the eviction. For example:

- i. I paid my rent.
- ii. I did not pay my rent because my landlord did not make needed repairs.

iii. My landlord is evicting me because of my race or disability or other illegal discrimination.

Hint: The court will usually not accept reasons such as "I need more time to move."

In paragraph 3, fill in the name of the person or persons (including yourself) whose declarations are being submitted in support of the motion.

In paragraph 4, fill in any state or local laws or other legal authority that you are relying on in support of your motion.

Finally, sign the motion and print your name, address and telephone number under your signature.

In the "declaration" part of the form, which is your declaration, state the facts and details that support the reasons for your motion; if you are submitting additional declarations that support your declaration, you may want to refer to them as appropriate (additional declarations should be attached to your motion). For example: "I came back from the store and found the eviction summons and complaint inside my screen door. Nobody else was home while I was away at the store." "I paid my rent in cash and my landlord refused to give me a receipt." At the end of the declaration, briefly describe your attempts to notify your landlord's attorney that you are going to court. Sign the declaration and fill in the place where you signed it and the date.

#### B. Order to Show Cause and To Stay Enforcement of Writ of Restitution

This order sets the date and time for the hearing on your motion to vacate judgment. It is at this hearing that the court will listen to you and the landlord and make a decision regarding your motion and the eviction case. The order also stays enforcement of the writ of restitution until after that hearing.

You need to fill in the names of the parties and the case number yourself, and sign the document. The judge or court commissioner in the Ex Parte Department will fill in the rest.

### **Step 3: GET COURT APPROVAL OF THE MOTION HEARING DATE.**

In order to obtain a hearing date and in order to postpone the eviction until after the hearing, you must bring the completed documents to the Superior Court's Ex Parte Department. [You should consult with the county court clerk's office to find out this department's hours of operation.] Once there, give your documents to the clerk behind the counter and wait for your name to be called.

The judge or court commissioner will review your motion and other documents. He or she will probably ask you about the notice that you gave the landlord's attorney of your plans to appear in court to stay the writ. You may be asked to attempt notice to your landlord's attorney again. Once the judge or commissioner is satisfied that you have made sufficient effort to notify the landlord's attorney, you may be given a hearing date on your motion and an order stopping the eviction until after that date if the judge or commissioner finds that you may have a legal basis for vacating the judgment.

#### **Step 4: FILE AND SERVE THE PAPERS.**

After the judge or commissioner fills in the hearing date and time and signs the order to show cause, you must file the original of the document with the clerk's office. You **must** also deliver a certified copy of the order to the sheriff's office unless the court has authorized you to deliver a photocopy.

Before filing the originals with the clerk, make two copies of each document. One copy is for your records and the other is for delivery to your landlord's attorney or the landlord if the landlord has no attorney. Next, ask a clerk for their filing stamp and stamp the first page of your copies. Give the originals to the clerk and ask the clerk to give you a certified copy of the Order to Show Cause and To Stay Enforcement of Writ of Restitution (unless the judge or commissioner agrees to include in the order your request that you be allowed to serve a photocopy of the order on the sheriff instead of a certified copy). There will be a charge (usually several dollars) for the certified copy. Then take the certified copy (or photocopy if permitted) of the order to the sheriff's office. **YOUR EVICTION WILL NOT BE STOPPED UNLESS YOU TAKE THIS COPY TO THE SHERIFF.**

Finally, deliver one set of copies to your landlord's attorney, or to the landlord if he or she is not represented by an attorney. Keep the other set for yourself and bring your copies to the hearing on your motion to vacate judgment.

#### **Step 5: ATTEND THE MOTION TO VACATE HEARING.**

On the date set for the hearing, be sure to bring your answer to the complaint for unlawful detainer, receipts, letters, photos, other proof of your defenses, and witnesses (if any).

**WARNING: It is not a good idea to file this motion simply to delay an eviction. This process should only be used if you believe you have a valid defense to the eviction which you want the court to hear. If you lose, you may owe more money for court costs and attorney's fees.**

**It is important to realize that the hearing on the motion to vacate may be an opportunity for both parties to present their case again and may be handled like a**

**show cause hearing on the eviction itself. The result may be a larger judgment against you and/or liability for additional attorney's fees.**

The laws of the State of Washington (RCW 2.32.090) prohibit any of the court clerks from practicing law. If you have any questions or problems, please seek professional legal advice. You have the right to be represented by an attorney at the hearing, but you are not entitled to have an attorney appointed for you at public expense in a civil proceeding if you cannot afford one. It is up to you to arrange for any legal assistance.

### **WHERE TO GET LEGAL ASSISTANCE**

You may call the Northwest Justice Project's CLEAR line at 1-888-201-1014, Monday through Friday between 9:30 a.m. and 12:30 p.m.

Forms and brochures on evictions and other landlord-tenant problems are available through the Northwest Justice Project's web site at: [www.nwjustice.org](http://www.nwjustice.org)

6314

---

**This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.  
This information is current as of the date of its printing, August 2002.**

© 2002 Northwest Justice Project — 1-888-201-1014, TDD 1-888-201-9737

(Permission for copying and distribution granted to Washington State Access to Justice Network and to individuals for non-commercial purposes only.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
~ .

IN THE SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY

|               |   |                        |
|---------------|---|------------------------|
|               | ) |                        |
|               | ) |                        |
| Plaintiff(s), | ) | NO. _____              |
|               | ) |                        |
| vs.           | ) | MOTION AND DECLARATION |
|               | ) | TO VACATE JUDGMENT AND |
|               | ) | TO STAY ENFORCEMENT OF |
| Defendant(s). | ) | WRIT OF RESTITUTION    |
|               | ) |                        |

1. Relief requested. The defendant(s) move(s) the court for an order vacating the judgment entered in this action and staying enforcement of the writ of restitution until the motion can be heard.

2. Statement of facts and issues. This motion is based on the following grounds:

---



---



---



---

3. Evidence relied upon. This motion is based on the attached declaration of

---

1 4. Authority and argument. This motion is made pursuant to CR 55 and CR 60 and  
2 (other) \_\_\_\_\_

3 Dated: \_\_\_\_\_.

4 \_\_\_\_\_  
Defendant(s) (Signature)

5 \_\_\_\_\_  
Defendant(s) Name (Print)

6 \_\_\_\_\_  
Address

7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 Telephone Number

10  
11 DECLARATION

12 I, \_\_\_\_\_, declare as follows:

13 1. I am the defendant in this unlawful detainer action.

14 2. I request that the judgment entered in this action be vacated and that  
15 enforcement of the writ of restitution be stayed until the motion to vacate judgment can  
16 be heard for the following reasons: \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
~ .

\_\_\_\_\_ I gave, or attempted to give, the following notice that I was requesting a stay to  
my landlord's attorney: \_\_\_\_\_  
\_\_\_\_\_

I certify under penalty of perjury under the laws of the  
state of Washington that the foregoing statement is true.

Signed in \_\_\_\_\_, Washington on \_\_\_\_\_.  
(City) (Date)

\_\_\_\_\_  
Signature

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
~ .

IN THE SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_ COUNTY

|               |   |                           |
|---------------|---|---------------------------|
|               | ) |                           |
| Plaintiff(s), | ) | NO.                       |
|               | ) |                           |
| vs.           | ) | ORDER TO SHOW CAUSE AND   |
|               | ) | TO STAY ENFORCEMENT OF    |
|               | ) | WRIT OF RESTITUTION       |
| Defendant(s). | ) | (Clerk's action required) |
|               | ) |                           |

This matter came on for hearing before the undersigned on the defendant(s)'s motion to vacate judgment and to stay enforcement of the writ of restitution. The court having reviewed the motion and declaration, it is

ORDERED as follows:

1. The plaintiff(s) and the defendant(s) in this action shall appear in Room \_\_\_\_\_,

\_\_\_\_\_ County Courthouse, \_\_\_\_\_  
(Address)

, Washington \_\_\_\_\_, on \_\_\_\_\_  
(Zip Code) (Date)

at \_\_\_\_\_ a.m./p.m. and show cause why the relief requested in the defendant(s)'s motion should not be granted.

2. Enforcement of the writ of restitution issued in this action for property located at

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
~ .

\_\_\_\_\_ is stayed  
until further order of the court.

3. The defendant is authorized to serve a photocopy of this order on the sheriff in lieu of a certified copy.

4. A copy of the motion and declaration to vacate judgment and to stay enforcement of writ of restitution and this order shall be served on the plaintiff(s)'s attorney no later than \_\_\_\_\_, and, if necessary, the time for notice of hearing on this motion is shortened accordingly.

5. Other \_\_\_\_\_

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

\_\_\_\_\_  
Judge/Court Commissioner

Presented by:

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant(s) Name (Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number