

Are you being Evicted and Need More Time To Move?

(not for residents of Morgan Hill, San Martin, or Gilroy)

Step 1	How many days do you want to stay in the home? Monthly Rent: \$ _____ ÷ 30 = \$ _____ ➔ This is the daily rate of your “stay” <ul style="list-style-type: none">You can only request up to 40 days. If the judge agrees, you will have to pay up front.The “stay” will not erase past due rent, it just buys more time to move out.The clerk will only take a money order, cash, or certified check.
Step 2	Giving notice to your landlord (or their attorney) <ul style="list-style-type: none">Call the landlord’s attorney (or the landlord if no attorney) before 10:00 a.m., at least one court day before you have to move out (see next page for more detail). Let them know you are going to court for a “stay of eviction”.Write down the phone #, the name of the person you spoke with, the date/time you called.
Step 3	Complete the following pleadings in blue or black ink: <ul style="list-style-type: none">Ex Parte Motion for Stay of Execution; Declaration of Defendants; Order (Pleading form)
Step 4	Make 3 copies <i>in addition to the original.</i>
Step 5 <i>There is a filing fee unless the fee is waived.</i>	Go to Court: Bring the forms plus copies and the Sheriff’s 5-day notice to the court located at: <ul style="list-style-type: none">191 North First Street San Jose, CA 95113 Monday-Friday from 8:30am to 4:00pm.Go directly to the Clerk’s Office by 8:15 am and tell them you want a “Stay of Eviction.” You must arrive on time for the judge to consider your request.You will have to file your forms and pay a filing fee or turn in a fee waiver.They will give you a “hall pass” to Department 19.The clerk will keep your original forms and give you back your copies. Go to Department 19 in the Courthouse located at 161 N. First St. (the building next to 191 N First St.). When you arrive to the courtroom, check in with the Deputy and give him or her a copy of your forms.The landlord or their attorney may also decide to come to court to argue against your request. If he or she does come to the hearing, you need to give him or her a copy of your forms also.If the judge grants your request, look at the Order to see how many days you were granted (and how much you have to pay to buy these extra days).
Step 6	Pay the Clerk: <ul style="list-style-type: none">By the end of that court day, so no later than 4:00 p.m., but preferably right after the Judge signs your order, go to the Clerk’s office on the main floor and pay the clerk for the extra days.The clerk will take a <u>money order</u>, <u>cash</u>, or <u>certified check</u> only. When you pay, the clerk will file the judge’s signed order.Remind the clerk to fax the signed order to the Sheriff’s office (so the Sheriff will know not to evict you yet).



How do I calculate how much I'll have to pay for a Stay?

- You will have to pay the daily rate the home is worth (look at the Complaint or the Judge's order (if s/he ordered that the landlord was charging too much rent)).
- The daily rate starts on the date of the Judgment, not the day you want the Stay to start. This means you might be paying "back" rent a few days or a week PLUS the *extra* days you want.
- Multiply the daily rate by the number of days you want to buy (up to 40). Example: If rent is \$40 per day and you want to buy 15 days, you will pay \$600 to the Clerk's office if the judge approves your stay.
- This money is paid up front.

How do I give the landlord notice I want the Stay?

Look at the date and time you have to be out on the Sheriff's Notice to Vacate you received.

- You have to go to court ONE COURT DAY BEFORE the notice says you have to be out.
- To do that, you have to give the landlord notice ONE COURT DAY BEFORE THAT!
- As an example, if you have to be out at 12:01am on Tuesday, you have to go to court the Monday, the day BEFORE that, at 8:15 am AND you have to have called the landlord's attorney by 10 am the Friday BEFORE that.
- If you don't do all these steps, you will likely not be granted a Stay.

If you don't do all these steps you will lose your chance to stay.

The following chart explains in more detail:

If "Notice to Vacate" says you have to move out by:	The <u>latest</u> you must tell the other side (or their attorney) that you are filing a Motion to Stay:	The <u>latest</u> you can come to Court for a hearing about your Motion to Stay is:
Monday 12:01 am	Thursday at 10:00 am	Friday, 8:15 to 9 am
Tuesday 12:01 am	Friday at 10:00 am	Monday, 8:15 to 9 am
Wednesday 12:01 am	Monday at 10:00 am	Tuesday, 8:15 to 9 am
Thursday 12:01 am	Tuesday at 10:00 am	Wednesday, 8:15 to 9 am
Friday 12:01 am	Wednesday at 10:00 am	Thursday, 8:15 to 9 am
Saturday 12:01 am	Thursday at 10:00 am	Friday, 8:15 to 9 am
Sunday 12:01 am	Thursday at 10:00 am	Friday, 8:15 to 9 am
	This day is BEFORE the eviction day.	This day is BEFORE the eviction day.

This is an example of the LATEST times you can file to ask for a Stay. You can always come in for your "Stay" hearing BEFORE the day in the far right column. Just make sure to give the other party or their attorney notice the day BEFORE you come to Court for the hearing.

Other important things to know:

- Weekends and holidays are not considered a "court day."
- You cannot ask for a "stay" the day the Sheriff's notice says you have to be out.

Self-Help Center/Family Law Facilitator's Office
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