

**MOTION TO STAY EVICTION ORDER,
AFFIDAVIT/DECLARATION IN SUPPORT OF
MOTION TO STAY EVICTION ORDER, and
ORDER REGARDING MOTION TO STAY EVICTION ORDER
TENANT INSTRUCTIONS
(Forms #26, #27 and #28)**

This information explains how to file a Motion to Stay the Eviction Order.

WHAT IS A MOTION TO STAY?

Normally, after the court signs a summary eviction order, the order goes to the clerk's office and is then sent to the sheriff or constable for enforcement. The statute states within 24 hours from the receipt of the order the sheriff or constable must enforce the order. That means the sheriff or constable will lock you out within (as distinct from after) 24 hours. Form #26, Motion to Stay Eviction Order, is used to request the court to delay the enforcement of its summary eviction order. The Motion is your chance to tell the court why you need more time and why immediate eviction would be a special hardship for you. If a stay is granted, that means that the eviction order cannot be enforced until the date indicated by the court. After that date the sheriff or constable will lock you out.

**HOW MUCH TIME IS THE COURT AUTHORIZED
TO DELAY THE ENFORCEMENT OF ITS EVICTION ORDER?**

Under Nevada Revised Statutes (NRS) 70.010, a Justice of the Peace can stay an order for up to 10 judicial¹ days from the date of the eviction order. The time granted, if any, is totally within the court's discretion.

WHEN SHOULD YOU FILE THIS MOTION?

You need to file this Motion to Stay Eviction Order, Form #26, as soon as you can if you think the court is going to evict you. You may file this Motion whether or not you also file a Tenant's Affidavit/Declaration opposing the eviction.

If you also file a Tenant's Affidavit/Declaration contesting the eviction, you may also include your request for a stay in that document.

¹ "Judicial Days" do not include date of service, weekends or legal holidays.

If you have no defense to the eviction and do not file a Tenant's Affidavit/Declaration (for example, perhaps you have not been able to pay your rent) and if you wish the court to consider your request for a Stay, you should file your Motion for Stay before the end of the time period during which you are allowed to file your Tenant's Affidavit/Declaration. That way, the court will have your Motion when the landlord files his/her Landlord's Affidavit/Declaration requesting an Eviction Order.

Certainly you should file this Motion before the sheriff or constable has actually locked you out.

FILLING OUT FORM #26

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Body of the Motion

Put your name in the first blank.

Check either Number 1 or 2 to indicate whether the court has already ordered an eviction or that you anticipate an order.

If you select Number 1, fill in the date.

If you select Number 2, that you anticipate an eviction and you are not filing a Tenant's Affidavit/Declaration, you should attach the Notice you received that told you that you would have to file a Tenant's Affidavit/Declaration with the court to acquire a court hearing. That Notice should advise you when you have to file a Tenant's

Affidavit/Declaration. You should attach that Notice to the Motion to help the court identify which eviction action your Motion to Stay relates to.²

Then put the number of days (no more than ten) that you wish the court to stay the order. The number of days should be based on the statement of your circumstances that you provide in the Tenant's Affidavit/Declaration.

POINTS AND AUTHORITIES

You do not need to fill out anything here. The reason the Points and Authorities are here is because they explain the law that supports the motion.

SIGNATURE LINE AND RELATED INFORMATION

Sign and print your name where indicated in the signature block and put in the date.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the landlord or the landlord's attorney.

Fill in the address of the landlord or landlord's attorney. If the landlord is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the landlord is represented by an attorney, you should not send a copy to the landlord.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

² Normally the Tenant's Affidavit/Declaration is the first court document in a summary action. If you do not file a Tenant's Affidavit/Declaration, your Motion to Stay will be the first court document for your eviction case. It will require a filing fee or fee waiver.

FILING OUT FORM #27

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Body of Motion

Print your name on the line provided.

Number 1

This sentence states that you are the Tenant/Defendant in the caption.

Number 2

Check A if an order has been entered and give the date if you know it. Ask the clerk if you do not know it.

Check B if you think an eviction has not yet been ordered and provide the date requested, which would be the first calendar day after the last day you could have filed a Tenant's Affidavit/Declaration. Attach the Notice that informed you that you had the opportunity to file a Tenant's Affidavit/Declaration. This will help the court and clerk identify the eviction you wish to be stayed.

Number 3

Provide the date you were served the Notice you are attaching and indicate how you were served, either A or B (i.e., personally or by posting and mail).

Number 4

Check Number 4 if you agree that you owe the amount of rent due.

Number 5

Check Number 5 if you do not agree that you owe the amount of rent due.

Number 6

Check Number 6 if you do not contest the Landlord's allegations.

Number 7

This sentence states that you are not attempting to delay the proceedings. No explanation is necessary since your request is based on the needs you are describing in paragraph 10.

NUMBERS 8 AND 9

Numbers 8 and 9 will help the judge determine your circumstance, so choose one of these alternatives.

Number 8

Check Number 8 If your rent is subsidized.

Number 9

Check Number 9 if your rent is not subsidized.

Number 10

This is where you explain why you need the additional time, your circumstances that will make this eviction especially difficult for you, what your plans are for housing over the near term and/or whether or not you are working with some agency that is helping you find housing.

SIGNATURE AND NOTARY PUBLIC / DECLARATION SECTION

You have a choice between signing the document in front of a notary, making the document an affidavit, or signing a declaration without a notary. Generally, clerks are available to certify that you signed the document. However, both alternatives mean that if you are not being truthful, you could be prosecuted for perjury.

CERTIFICATE OF SERVICE

This document requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Provide the date and name of the document you delivered to the landlord or the landlord's attorney.

Fill in the address of the landlord or landlord's attorney. If the landlord is represented by an attorney, the Certificate of Service must indicate that the document is being sent to the attorney and indicate the attorney's address. If the landlord is represented by an attorney, you should not send a copy to the landlord.

Check the method by which the document was delivered.

The signature and printed name of the server are required.

FILLING OUT FORM #28

Fill in the top portion of this form as you have for your motion – as follows:

Heading

Fill in the name of the township and county of the Justice Court as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant as set forth on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned on the Five-Day Notice of Unlawful Detainer that was originally served on you by the landlord.

Body of Motion

There is nothing for you to do here. The judge will indicate whether the Motion is denied or granted, and if it is granted, the duration of the stay. You should expect that the sheriff/constable will require you to leave your home the day after the last day of the stay period.

Give the clerk the Order Regarding Motion to Stay Eviction Order, Form #28, when you file your Motion to Stay Eviction Order, Form #26, and the Affidavit/Declaration in Support of Motion to Stay Eviction Order, Form #27.

FILING FEES

If you have already filed a Tenant's Affidavit/Declaration, you may not be required to pay a filing fee for this Motion. There may be a fee, however, if you have not filed a Tenant's Affidavit/Declaration unless you now file for a fee waiver. If you do not have the money, you may file an Application to Waive Fees and Costs, Form #37. You will list all of your income (earnings, rental income and government checks) plus your assets (real property, bank accounts, motor vehicles, etc.) and expenses (rent, utilities, insurance, childcare, credit card payments, car payments, etc.) on this form. (See the specific instructions involved with this process – Forms #37, #38 and #39.) When you complete the Application to Waive Fees and Costs, file your Tenant's Affidavit/Declaration with it. The court will not officially file your Tenant's Affidavit/Declaration until either (1) the judge grants your Application to Waive Fees and Costs (and gives you an Order Regarding Waiver of Fees and Costs, Form #39) or (2) you pay the filing fee.

WHEN SHOULD YOU FILE YOUR MOTION TO STAY?

In order to be sure that the court will consider your motion, you should file the Motion before the last day of the time period stated on the Notice to file your Tenant's Affidavit/Declaration. For more information on how much time you actually have before an eviction order please refer to the relevant Tenant's Affidavit/Declaration instructions.