

DIRECTIONS FOR FILING

A MOTION TO SET ASIDE A DEFAULT JUDGMENT

IN DISTRICT COURT

[If the default judgment comes from Small Claims Court, go to that court and ask the small claims clerk for information about setting aside a default judgment.]

Read these directions completely and carefully before filling out the attached forms.

When someone sues you, that person is called the plaintiff and you are the defendant. The plaintiff will have you served with court papers and you will have to file an answer **in writing** in the same district court where the plaintiff filed the lawsuit. If you do not file an answer, you will lose **by default**. The court's decision against you is called a **default judgment**. If you file an Answer but then do not go to a hearing that is scheduled by the court, a default judgment can also be entered against you. Sometimes, it is possible to ask the court to reopen your case, that is, you can ask the court to allow your case to start again and give you another chance to tell your side of the story. You have to file a motion to set aside the default judgment. **The papers you will need to file are attached.** Three of the papers are:

1. Motion to Set Aside a Default Judgment (Form A)
2. Affidavit (Form B)
3. Order (Form C)

ATTENTION TENANTS, if you were being sued because you were being evicted besides the judgment by default, there might be a court order (Writ of Restitution) to the sheriff or the constable to evict you, and also another order (Writ of Execution) to take your personal property. If there are such orders, you should file Form D, also attached. This is the form number **4** listed below. If the judge agrees with you, no one will put you out or take your property.

4. Motion to Stay Execution of Writ of Restitution and/or Execution and Order (Form D).

When and where do you need to file all these papers?

You must file them with the district court within three months after the judgment was signed by the judge. There are some exceptions to this three-month rule but do not let the three months pass thinking that one of the exceptions will apply. That

probably will not be the case.

How to fill out these forms

Form A ("Motion") - Write your name, address and phone at the top as indicated on the form.

Have the court papers with which you were served in front of you so you can copy the information you need.

Copy from those court papers the name of the court, the county and the department in order to fill in the blanks at the top center of Form A. Write the plaintiff's name above the word "plaintiff," and the defendant's name above the word "defendant." Copy the civil number too (it will look like 110407886).

Fill the rest of the blanks as indicated.

The second paragraph mentions Rule 60(b), and then there is another "()" that you need to fill in with a number. You will find what number to use after reading page 4 about "Rule 60 of Utah Rules of Civil Procedure". Rule 60 gives you the following reasons for setting the judgment aside:

- 60(b) (1) mistake, inadvertence, surprise
 - 60(b) (2) new evidence
 - 60(b) (3) fraud
 - 60(b) (4) the judgment is void
 - 60(b) (5) judgment was satisfied or discharged
- OR
- 60(b) (6) any other reason

As you can see, this rule has 6 different reasons to be used and each reason has a different number. For example, if you just did not know what to do when you were served with the court papers, you can use reason (1) . If that is the case, fill the "()" in the second paragraph of Form A with a **1**. It will look like this: 60(b) (1). We recommend that you don't use reason (6) unless nothing else applies to your case. The most often used reason is "mistake" or "inadvertence."

Don't forget to complete the "Certificate of Mailing" on page 2 of Form A. Date it and sign it.

Form B - The Affidavit is a statement under oath and needs to be signed in front of a notary. You can find a notary at the public library.

Fill the top portion in the same way you filled out the first form.

Fill the blanks in paragraphs 2, 3, and 4 explaining your situation

in your own words. If somebody else was also sued along with you, that other defendant will also have to fill out and sign a separate affidavit.

Form C ("Order")- This is an Order which will be signed by the judge if he or she agrees that you have good reasons for filing these papers. Fill out this form, leave the signature line for the judge to use.

Form D ("Motion to Stay") - This form is only for tenants who are being evicted and the judge has signed an order for the sheriff or constable to change the locks and/or take the tenant's property.

Fill out the top portion in the same way you did with the other forms, and fill in the blanks as indicated. Date it and sign it on the signature line provided for you but leave the judge's signature line in the "Order" section for the judge to use. This form also has a certificate of mailing which you must complete and sign. Utah law says that a tenant who wishes to stop the eviction must post a bond in an amount set by the judge. Therefore, just filing the "Motion to Stay" won't be enough. You will have to ask a court clerk to immediately find a judge to whom you can plead your case for an order stopping the eviction.

What to do with all the forms

1. You will need the original set of forms that you filled out and two complete copies.
2. In order to file your papers, take the original set of forms to the court and give it to the clerk.
3. Send one copy of the complete set to the plaintiff or the plaintiff's attorney if there is one.
4. Keep the other copy of the complete set for yourself.

What will happen next

IF YOU JUST FILED FORMS "A", "B", AND "C", this is what will happen:

1. The plaintiff will have an opportunity to respond to your papers within 10 business days (plus 3 additional calendar days for mailing if you mailed the papers).
2. You may then write a response to the plaintiff if you want to. You have 5 calendar days to do this.

3. Wait for the court to tell you when the hearing will take place. If you do not receive notice of a court hearing within 10 business days after the plaintiff received your Motion and Affidavit, call the court clerk and ask for a hearing date. At the hearing, explain your side of the story to the judge and listen to the judge's decision.

4. If the judge denies your motion, the judgment remains in effect and the plaintiff can try to collect what you owe.

5. If the judge grants your motion, the judge will sign Form C ("Order"). **THAT DOES NOT MEAN THAT YOU WON YOUR CASE.** It only means that you are given another opportunity to **respond to the original papers that had been served on you.** **Write your answer and file it within the time the judge gives you to do so.**

IF YOU ARE A TENANT WHO FILED FORM D ("Motion to Stay") TO PREVENT AN EVICTION, the most important thing for you will be to take that form to the judge and ask the judge to sign the Order in the form to stop the sheriff or the constable from putting you out or taking your property. If the judge signs it, you will be able to remain in your home and wait until the court decides on the rest of the case. (Read the five steps of the procedure above) If the judge does not sign it, you will have to move. Even if you must move out, the judge can still set aside the default judgment and give you another chance to argue your case in court.

RULE 60 OF UTAH RULES OF CIVIL PROCEDURE

RELIEF FROM JUDGMENT OR ORDER

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to

move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Your name: _____

Address: _____

Phone: _____

Pro Se _____

IN THE _____ COURT, STATE OF UTAH

_____ COUNTY, _____ DEPARTMENT

_____,
Plaintiff,

vs.

_____,
Defendant(s)

:
:
: MOTION TO SET ASIDE
: DEFAULT JUDGMENT and
: REQUEST FOR HEARING

:
:
: Civil No. _____
:
: Judge _____

Defendant(s) move(s) the court to set aside the default judgment entered against (them) (him) (her) on _____ (date).

This motion is brought pursuant to Rule 60(b) () of the Utah Rules of Civil Procedure.

This motion is supported by the attached affidavit of defendant(s) _____.
(your name or names)

REQUEST FOR HEARING

Defendant(s) hereby request(s) a hearing be scheduled on this motion to set aside.

DATED this _____ day of _____, _____.

SIGNATURE

CERTIFICATE OF MAILING

I certify that I mailed a copy of the above Motion to Set
Aside and Request for Hearing, and Affidavit to plaintiff or
plaintiff's attorney, _____

(name and address of plaintiff or attorney) on this _____ day of
_____, _____.

SIGNATURE

Your name: _____
Address: _____
Phone: _____
Pro Se _____

IN THE _____ COURT, STATE OF UTAH
_____ COUNTY, _____ DEPARTMENT

_____	:	
Plaintiff,	:	AFFIDAVIT of
vs.	:	_____
	:	(your name)
	:	Civil No. _____
_____	:	Judge _____
Defendant(s)	:	

I, _____ (your name), having been sworn and being under oath, allege as follows:

1. I am the defendant in this lawsuit.
2. A default judgment was entered against me on

(date)

3. I did not answer the summons and complaint in this lawsuit because _____

_____.

4. I believe that I have valid legal defenses to this lawsuit. Those are _____

Signature

In the County of _____, State of Utah, on this _____ day of _____, _____, before me the undersigned notary, personally appeared _____ who proved to me his/her identity through documentary evidence in the form of a _____ to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signing was voluntary and the document truthful.

NOTARY PUBLIC

Form B

Your name: _____
Address: _____
Phone: _____
Pro Se _____

IN THE _____ COURT, STATE OF UTAH
_____ COUNTY, _____ DEPARTMENT

Plaintiff,

vs.

Defendant(s)

:
:
: ORDER
:
:
: Civil No. _____
:
: Judge _____
:

Defendant's motion to set aside default judgment is granted.
The default judgment entered on _____ for plaintiff
(date)
and against defendant is set aside.

Defendant must file an answer or other responsive pleading
on or before _____.
(date)

DATED this _____ day of _____, _____.

JUDGE

Your name: _____
Address: _____
Phone: _____
Pro Se _____

IN THE _____ COURT, STATE OF UTAH
_____ COUNTY, _____ DEPARTMENT

_____ , Plaintiff,	:	
	:	
vs.	:	MOTION TO STAY
	:	EXECUTION OF WRIT
	:	OF RESTITUTION and/or
	:	EXECUTION and
	:	ORDER
	:	
_____ , Defendant (s)	:	Civil No. _____
	:	
	:	Judge _____

Defendant moves for a stay of entry of judgment pursuant to Rule 62(a), Utah Rules of Civil Procedure, to halt the execution of the Writ of Restitution issued by this Court on _____ (date) and/or Writ of Execution issued by this Court on _____ (date). The stay should be in effect until the Court rules on defendant's Motion to Set Aside Judgment which is being filed with this motion. This motion is supported by the attached affidavit. This stay should be issued without security.

DATED this _____ day of _____, _____.

Signature

ORDER

Upon reading the foregoing motion and supporting affidavit and good cause appearing,

IT IS ORDERED that execution of the Writ of Restitution

issued on _____, and/or the Writ of Execution
(date)
issued on _____, be stayed pending a ruling
(date)
on defendant's Motion to Set Aside Judgment.

JUDGE

CERTIFICATE OF MAILING

I certify that I mailed a copy of the foregoing Motion to Stay Execution of Writ of Restitution and/or Writ of Execution and Order to _____
(name of plaintiff or plaintiff's attorney)

(address)

on this _____ day of _____, _____, postage prepaid.

Signature

Form D