

# STOPPING AN EVICTION ORDER

(Motion to Stay Order of Restitution)

**Q: What is an Order of Restitution?**

A: “Order of Eviction” would mean the same. This is the court order telling the tenant how much time the tenant has before the tenant can be physically removed and the locks changed. It is sometimes called a *Writ of Restitution*, which also means the same thing. “Restitution” means restoring possession of the premises to the landlord. If you get an Order of Restitution, call Utah Legal Services right away.

**Q: How is an Order of Restitution given to the tenant?**

A: The order can be served personally or it can be posted in a conspicuous place (on the door). Service or posting of the order starts the time period before the locks can be changed. [If you own a manufactured/mobile home and are being evicted from a mobile home park, the process and timing are different. Please call Utah Legal Services right away.]

**Q: How much time do I have before the locks are changed?**

A: Read the order. If the order says that the tenant has 3 days to leave, “day zero” is the day the order was delivered or posted; it doesn’t count. The tenant should leave before midnight of the third calendar day. The sheriff or constable might not return at midnight but almost certainly will come back the next morning. If the order says the tenant has 72 hours, the sheriff or constable will likely come back 72 hours later to physically remove the tenant and change the locks. If the order says it is *immediate* then the sheriff or constable can remove the tenant and change the locks right away without warning. An immediate Order of Restitution is usually only signed by a judge when the tenant has filed a written Answer to the eviction complaint but did not appear as the court hearing scheduled some days after the Answer was filed. [Note: The 3 days or 72 hours will start as soon as the order is posted on the door even if the tenant is not there to see it. If the time passes before the tenant returns home, the locks may already have been changed.]

**Q: How can I get more time before being evicted?**

A: Two ways to get more time: by agreement with the landlord or by getting a court order that stays (“stops”) the Order of Restitution. Contact the landlord or the lawyer to ask if you can stay longer. The landlord can tell both the lawyer and the constable to stop the eviction. Some landlords and their lawyers will allow tenants to pay money to stay a few more days. Some landlords and their lawyers will only allow a tenant to stay if the tenant agrees to pay all the amounts due, including attorney fees and court costs. Look at <http://www.utahlegalservices.org/public/self-help-uploads/eviction-whats-the-worst-that-can-happen-to-me> for more information before signing such an agreement.

**Q: How can I get a court order to stay (“stop”) the Order of Restitution before it takes effect?**

A: This is not easy, even for a lawyer. You must get a judge’s attention right away. You must write out your reasons why the eviction should not occur. If you filed an Answer but did not go to the hearing or you already went to court and the judge ordered you to leave, there is little hope of getting a stay. If you did not answer the original complaint and the eviction order was issued by default, you should write out several pieces of paper with the following titles. Make sure the court’s case number is on each paper.

**Motion (and memorandum) to Stay Order of Restitution.** It is best to use the forms provided by the State:

[http://www.utcourts.gov/howto/filing/motions/docs/01\\_Motion.pdf](http://www.utcourts.gov/howto/filing/motions/docs/01_Motion.pdf) and  
[http://www.utcourts.gov/howto/filing/motions/docs/04\\_Memorandum.pdf](http://www.utcourts.gov/howto/filing/motions/docs/04_Memorandum.pdf)

Write out why you did not respond to the summons and complaint. Also explain why you do not believe you should be evicted. In other words, you must tell the judge why you didn’t file an Answer and explain what defenses you would have included in your Answer. [Note: If the reason for eviction was nonpayment of rent and you got the original 3-day

*notice to pay or vacate but could not pay all amounts due during that 3-day period then you almost certainly do not have a defense to eviction. Asking to stop the eviction order in such cases likely won't work.]* Make sure to put your contact information on this paper: where the court can contact you.

**Request for Hearing.** In your Motion to Stay Order of Restitution, you should request a hearing. If the judge orders a hearing, the court clerk may be able to print out the notice for the hearing. If not, you should fill out:

[http://www.utcourts.gov/howto/filing/motions/docs/07\\_Notice\\_of\\_Hearing.pdf](http://www.utcourts.gov/howto/filing/motions/docs/07_Notice_of_Hearing.pdf)

It is possible – but not likely – that the judge will stop the eviction without scheduling a hearing. If the judge believes you might have a good reason for stopping the eviction, the judge may temporarily stop your eviction until the hearing.

**(proposed) Order on Motion to Stay Order of Restitution.** To stop the eviction, a judge MUST issue an order saying that the prior Order of Restitution is stayed (“stopped”). It is NOT enough just to get a hearing scheduled. Get a copy of this form provided by the State courts:

[http://www.utcourts.gov/howto/filing/motions/docs/08\\_Order\\_on\\_Motion.pdf](http://www.utcourts.gov/howto/filing/motions/docs/08_Order_on_Motion.pdf)

Fill out the upper portion of page 1. Submit this form with your Motion and memorandum. The judge will either grant or deny your Motion using this form. If the judge grants your Motion, you will need to have a certified copy of this Order if the constable comes to evict you under the original order. If the judge denies your Motion, you must move out.

**Certificate of Mailing.** Use the “Certificate of Service” pages attached to each of the forms you downloaded from the State court’s website or write a statement on a separate piece of paper saying you mailed copies of the motion and the hearing request to the landlord’s lawyer (or to the landlord if no lawyer). Include the full mailing address. Then make a photocopy of all the papers and mail them to that address.

**Take the original papers to the courthouse.** Ask the clerk to file the papers in your eviction case and to immediately tell the judge’s clerk that you have filed the papers and that your request needs immediate attention. (If the judge assigned to your case is not available, ask that the papers be given to another judge.) It is best to wait in the courthouse for a response **unless** you are about to be locked out under the original Order of Restitution. In that case, it’s better for you to be moving your possessions out of the rented premises rather than waiting for a judge’s response.

You may be required to post a bond (pay money into court) before a judge will stop the eviction. The judge may schedule another court hearing but this alone does not stop the eviction. To stop the eviction, you must get another piece of paper issued by the court that stays (“stops”) the prior eviction order.

**Q: Can I get an order letting me back into the rental property after I have been ordered out?**

A: Almost never. Getting such an order is difficult and would take several weeks. Once a lockout has occurred by court order, you must file the same papers as above but the judge will not schedule a hearing. Instead, the landlord will have at least 2 weeks to respond in writing to your Motion. Then you can ask the judge to decide using this form: [http://www.utcourts.gov/howto/filing/motions/docs/06\\_Request\\_to\\_Submit\\_for\\_Decision.pdf](http://www.utcourts.gov/howto/filing/motions/docs/06_Request_to_Submit_for_Decision.pdf) [It is always possible to appeal an eviction but that is a complicated process and can take a year or more for a decision.]

**Q: How do I get my personal property if I have been locked out?**

A: During the first five business days after a lockout, the landlord must provide reasonable access at no cost for the tenant to retrieve clothing; identification; documents relating to finances, immigration, employment, medical conditions and public benefits; prescription medications and all necessary medical equipment. For all other property, the landlord may require payment of removal and storage costs first. Please read our flyer

<http://www.utahlegalservices.org/public/self-help-uploads/request-for-return-of-personal-property>.

*If you get a written eviction notice or are served with an eviction complaint or any other court papers, please call us. The sooner you contact us, the more likely it is we can help. By the time an Order of Restitution is issued, it is often too late.*