

# Vacate a default eviction judgment and stop a writ of restitution

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If you didn't go to court and a sheriff posted an eviction notice on your door, you can ask a judge to cancel the eviction if you have a defense. Includes forms and instructions for a Motion to Vacate Default and Stay Enforcement of Writ of Restitution.

## 1. Fast facts

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### What is a motion to vacate?

This written request asks a judge to withdraw or take back (to **vacate**) a previous order issued in your case, such as eviction orders (judgment for unlawful detainer and writ of restitution).

We use the word "order" here to refer to an order or a judgment.

Generally, a judge will approve your Motion to Vacate if you can convince them that you didn't have a fair chance to present your case before the order was issued. If you did have that chance, **don't** file a Motion to Vacate. This is **not** an appeal. An appeal asks a higher court to change a lower court's decision. A Motion to Vacate asks the same court to take back its own decision.

**Judges rarely approve a Motion to Vacate.** Before filing this motion, make sure you have solid legal grounds for it. Otherwise, a judge could decide against you and order you to pay the other side's costs, including attorney's fees. Try to talk to a lawyer before you file.

## What is a motion to stay?

This written request asks a judge to pause (to **stay**) a previous order temporarily while they consider another request, such as a motion to vacate or motion for reconsideration or revision.

Your motion to vacate a default eviction judgment can also include a request to **stay the writ of restitution** (pause the eviction order). If the judge approves it, a stay will temporarily stop the sheriff from evicting you while the judge decides whether to vacate the eviction judgment. **You must ask for an emergency hearing on this motion.**

## Deadline!

You can file a motion to stay and vacate any time before the sheriff carries out (enforces) the writ and evicts you. **The sooner, the better.** It takes time to get the paperwork filed, reviewed by a judge, and sent to the sheriff.

You can still ask a judge to vacate a default after you've been removed from the property. But it's much harder to get back into a rental once you're out.

A lawyer can help you figure out if your motion is timely before you file.

### **(I just want more time to move. Can I file this motion to buy time?)**

**No.** Needing more time to move is **not** a solid legal ground to ask for a motion to vacate. Your motion would be considered "frivolous" or in bad faith. You could owe more money to the landlord for court costs and attorney's fees.

If you just want more time, try to make an agreement with the landlord or their attorney on a move out date instead. If you reach an agreement, one of you must put it in writing and everyone involved should sign and date it. Then you must deliver a copy of the signed agreement to the Sheriff to stop them from enforcing the eviction notice (Writ of Restitution). You can read about this law at RCW 59.18.390(1) (<https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.390>).

## **2. Reasons to vacate**

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You must file your Motion to Vacate based on a reason listed in Superior Court Civil Rule 60

(<https://www.courts.wa.gov/courtrules/superiorCourtCivilRules.cfm?Rule=Relief%20From%20Judgment>)

. The most common reason is if you didn't get proper notice of the hearing or trial where the judge issued the order.

The judge can vacate an order if you prove any of these:

- **Mistake, inadvertence, surprise, excusable neglect or irregularity** in getting the order.

Use this reason if you didn't get proper notice of the hearing or if you reasonably misunderstood the notice.

- **Unavoidable casualty or misfortune** preventing you from taking part in the case.

Use this reason if something happened, outside of your control, that stopped you from responding on time or going to the hearing.

- **Clerical mistakes** in the order, or other parts of the court record.

Use this reason if you just need to correct a typo or other mistake in the order.

- **Newly discovered evidence** which you couldn't have discovered by reasonable effort (due diligence) in time to move for a new trial under Civil Rule 59(b)

(<https://www.courts.wa.gov/courtrules/superiorCourtCivilRules.cfm?Rule=New%20Trial,%20Newly%20Discovered%20Evidence>)

. Use this reason if you found out about important information that could affect the judge's decision **more than 10 days after** the order was issued. But **only** use this if you couldn't have found that same information earlier with reasonable efforts.

If you find out important new information **within 10 days** of when the order is issued, you must file a Motion for Reconsideration instead of a vacate.

- **Fraud, misrepresentation or other misconduct** of the other party.  
Use this reason if you can prove that the other party lied, broke rules, or used fraud to get the order.
- **You were served by publication and it's been less than 1 year** since the judge issued the order.

These reasons are less common, but a judge also vacate an order if you prove one of these:

- One of the parties **died** before the order was issued.
- The judgment has been **satisfied**, released, or discharged, or a prior judgment upon which it's based has been reversed or otherwise vacated, or it's no longer fair (equitable) that the judgment should apply going forward.
- The judgment or order is **void**.  
Usually this means the judge didn't have authority to issue the order in the first place. This is a complicated legal question. Talk to a lawyer if you think this applies.
- The order relied on a poor decision by someone **under age 18** who's asking to vacate the order before they turn **19**.
- The order was issued against someone **under age 18 or** who didn't have the mental capacity to understand it (a person of **unsound mind**).  
**Don't** use this reason if the person had a Guardian ad Litem (GAL) in the case. This is only a reason to vacate if the court record shows the judge didn't know about the age or mental condition of the person when they issued the order.
- **Any other reason justifying relief**.  
Use this if you have other good reasons that don't fit any other category. It's rarely successful on its own. It's most useful when you have one of

the reasons listed above and you also want to explain how the order is deeply unfair or causes great hardship.

Needing more time to move is **not** a solid legal ground to ask for a motion to vacate.

### 3. Improper notice

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The most common reason a judge will vacate an order is for improper notice. You can file a Motion to Vacate if you didn't get advance notice that someone filed a court case against you or that a hearing was scheduled in the case. You have a right to be notified of court proceedings against you.

When someone sues you (starts a lawsuit against you in court), they must have someone else over age 18 deliver a copy of the court papers to you, usually in person (personally served on you). This gives you notice that the case is happening.

**Alternative Service.** In eviction cases (unlawful detainer), the law allows the landlord to serve you another way if the process server isn't able to hand you the court papers in person. After trying to personally serve you at different times of day at least 3 times over at least 2 days, a process server is allowed to serve you by posting a copy of the papers on your door and sending you a second copy by regular mail, and a third copy by certified mail. You can read the

law about alternative service at [RCW 59.18.055](https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.055)  
(<https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.055>).

If you were served and you responded, you should then get notice of everything that happens in the case. Those later notices could come by mail or hand delivery.

Sometimes the person who starts (who files) a court case against you doesn't serve you at all, or they fail to serve you with papers later in the case after you respond.

### **How can I find out if the landlord claimed to have served me?**

Contact the Superior Court Clerk's office for the court that issued the Writ of Restitution you got from the Sheriff. The Writ should have the name of the court and the case number at the top. The court clerk can look up your case using this information.

If you didn't get any court papers before the Writ was served, ask the court clerk how to get copies of the **Summons** and **Complaint** that started the case. You want to see these papers to know what the landlord said about you.

Ask the court clerk's office if the landlord filed any **proof of service** with the court. This form should explain how and when they had you served.

There are several names for a Proof of Service form. It can also be called a Return, Certificate, Affidavit, or Declaration of Service. For

papers later in the case, it could be a Proof of Mailing or Hand Delivery.

If there is proof of service in your court file, see what it says. If it isn't accurate, think about how to prove it's wrong.

**Example:** The proof of service says you were handed papers at a time you were working. Ask your boss or coworker to write and sign a statement (declaration) under penalty of perjury to prove you were working and didn't get served.

If there's **no** form showing that the other party claimed to serve you, that's also helpful for your argument that you were never served.

**You can lose your right to notice if you fail to respond by your deadline after being properly served** (even if the case hasn't been filed yet). If you fail to respond, the other party can ask a judge to default you and sign orders without further notice to you. If that's your situation, you probably **can't** vacate the order based on improper notice. Consider if any other possible reasons to vacate are true for you. Try to talk to a lawyer.

## 4. Step-by-step

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To file a Motion to Vacate Default and Stay Enforcement of Writ of Restitution, follow these steps:

1. **Fill out the forms** (except for the Proof of Personal Service).
2. **Call or visit the Superior Court Clerk's office.** Tell them you're filing a **Motion to Vacate Default and Stay a Writ of Restitution** in an unlawful detainer case. Ask the clerk when and how you can ask a judge to sign your proposed **Order to Show Cause and Stay Enforcement of Writ of Restitution**. This is called getting an "ex parte" order.

Many courts have an "Ex Parte" department to hear this type of Motion in person the same day you file, or the next day if you file later in the day. If you need to appear remotely, call the clerk's office to ask the clerk if it's possible. If your move-out deadline is soon, you should go in person.

3. **Call, email, or fax the landlord (or their lawyer, if they have one).** You must try to give the landlord advance notice that you'll be asking a judge to sign an "ex parte" order to stay (pause) the eviction. You must also tell them when you're going to do this so the landlord can come argue against it if they want.

You must tell your landlord your plan to go to court, even if the ex parte hearing will happen very soon. The judge can deny your motion if you haven't told your landlord you were coming to court.

You must describe your efforts to give the landlord notice in the **Motion** form (section 6). If possible, send the landlord a copy of your completed forms by email or fax.

If the landlord has a lawyer, you must notify the lawyer, not the landlord. The lawyer's contact information should be on the court papers you received (usually on the bottom right). You can also look up a lawyer's contact info on the [WSBA Legal Directory](https://www.mywsba.org/PersonifyEbusiness/Default.aspx?TabID=1536) (<https://www.mywsba.org/PersonifyEbusiness/Default.aspx?TabID=1536>)

4. **Make copies.** You need your original plus **3 copies** of each completed form including proposed orders:

- 1 for yourself
- 1 for the landlord (or their lawyer, if they have one)
- 1 for the judge as a working copy (if those are required in your county)

Organize the copies in sets, so there's one set for each person who needs a copy. You don't have to give the landlord a copy of the Proof of Personal Service. Put each set of papers into an envelope addressed to each party, with your return address. You'll use these sets for service.

5. **Follow the clerk's instructions to file your Motion and have a judge sign your Order to Show Cause "ex parte."** Give your completed forms

to the judge.

Tell the judge how you notified the landlord (or their lawyer) you'd be asking for this ex parte order. The judge may not listen to you if you didn't try to give the landlord advance notice.

Tell the judge why there are good legal reasons your eviction judgment should be vacated (canceled). If you weren't notified about the eviction hearing, say so. If you did know about it, say why you couldn't be there. The judge may ask you to explain your situation a little more. Tell the judge how you'd be harmed if the judge allows the eviction to continue right now. Ask the judge to sign the **Order to Show Cause and Stay Enforcement of Writ of Restitution**.

If the judge signs your **Order to Show Cause**, they'll also put a date and time in the Order to schedule your next hearing. You'll have to come back to court for that hearing to explain why you have a defense against eviction, and why the judge should vacate the default judgment.

Before you leave ex parte:

- **Ask the judge's clerk how you can get a copy** of the signed Order to Show Cause. You'll need **4 copies**. They don't need to be "certified." You may need to pay for them (or get 1 copy now and make copies later).

It's best to get at least 1 copy of the signed Order from the clerk if you can. You can also ask the clerk to help you "conform" your copies. Hand the clerk your extra copies of the

unsigned Order to Show Cause. Ask the clerk to stamp them with the date and judge's signature. You'll also need to copy over the hearing information onto each copy. There's no fee for conforming your copies.

If possible, take a clear picture of each page of the original Order on your cell phone after the judge signs it. Review your photo to make sure you can read the text. You can show this to the sheriff.

- **Ask if the clerk will file** your original Motion and the signed Order to Show Cause directly from the ex parte courtroom, or if you need to bring them back to the clerk's office for filing. (Different courts do this differently.) You may be given a slip with instructions to file the original documents with the clerk's office.

If you're told to file yourself, **you must do this before leaving the courthouse!** Your order won't be effective if it's not filed. Give the clerk the originals of all your forms and the signed order. Ask the clerk to stamp your copies to show the date you filed the originals. Take the stamped copies back from the clerk. The clerk keeps the originals.

- Ask the clerk if the judges require working copies before a hearing, and if they must be labeled in a certain way. (You may need to write the date and time of the hearing in the upper right corner.) If required, label and deliver working copies to the judge.

6. **Deliver a copy of the signed Order to Show Cause and Stay Enforcement of Writ of Restitution to the County Sheriff's office.**

You must give them a copy so they know that your eviction has been paused for now. You can call them to ask if they'll accept it by fax or email, or if you must deliver it in person.

Make sure the Sheriff gets the Order before the move-out deadline in your Writ of Restitution.

7. **Have someone else deliver copies of the court papers to the landlord (or to their lawyer, if they have one).** You must have the landlord personally served with copies of your Motion, the signed Order to Show Cause, and your proposed Order on Motion to Vacate. **Do this by the deadline listed in the Order to Show Cause (section 4).**

The person who serves the landlord must be age 18 or older and not involved in the lawsuit. You can get a friend to do this, or you can pay a professional process server. Don't use anyone who lives at the rental with you or is named in the eviction case.

You must serve the landlord by the deadline! If you don't, they can ask a judge to lift the stay and you could be evicted right away.

8. **Have the server fill out and sign the Proof of Personal Service form.**  
**Make 2 copies.** File the original with the Superior Court Clerk. Bring your copy to the hearing.
9. **Mark your calendar with your next hearing date and time.** The Order to Show Cause will say when you must come back for your next hearing.
10. **Confirm your hearing, if needed.** In some counties, you must contact the clerk's office to confirm that you want your hearing to happen on the day it is scheduled. If you don't confirm by the deadline, **your hearing will be canceled.** Ask the court clerk for instructions.

If your hearing is canceled, the stay will be lifted and you could be evicted right away.

11. **Review any response. Reply if needed and allowed in your county.**  
The other party must give you a copy of any response they file. You don't have to reply, but you may want to if they bring up new issues or say things that aren't true.

Ask the court clerk if replies are allowed in your county and, if so, when they are due. If allowed, you can file a declaration from yourself or others replying to the other party's response. Limit your reply to addressing issues in the other party's response. Serve a copy of your reply on the other party by the deadline. Deliver working copies to the

judge if required in your county.

12. **Go to the Show Cause Hearing.** At this hearing, you must explain why you have a defense against eviction, and why the judge should vacate the default judgment. Bring any witnesses or documents that will help you prove your case.

Read chapter 5 for how to get ready and what to expect at your hearing.

13. **If you disagree with the judge's decision, try to talk to a lawyer right away.**

You might want to file a motion for revision or reconsideration. You must file those motions **within 10 days** of the order you want to change.

## 5. Hearing

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**Need an interpreter?** You have the right to interpreter services in court at no cost to you. Each court should have a contact person for interpreter requests. As soon as you find out about a court date, contact the court to ask for an interpreter.

**Need accommodations?** Ask for accommodation for a disability that limits your ability to take part in a court hearing or trial. Each court should have a contact person for ADA requests. You can use

the state's Request for Accommodation form

(<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=71>)

(<https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=71>)

. As soon as you find out about a court date, contact the court to make this request.

At the show cause hearing, both you and the landlord will have a chance to explain why the eviction judgment and Writ of Restitution should (or should not) be undone.

## Get ready for the hearing

Try to go to court before the day of your hearing or check the court clerk's website to see if you can watch a hearing online. Watch how the court generally does hearings. Try to make some notes to yourself about the main points to make at your hearing.

**Organize your paperwork.** Plan to bring your set of court papers and your copies of any papers the other parties gave you in response. Bring extra copies of any proposed orders you want the judge to sign.

**Get to your hearing early.** Try to figure out before the day of the hearing how you will get there and how long it will take. Give yourself time to get through security, and to the right courtroom. If you aren't there on time, the judge could cancel the hearing, or the other party may win.

**Bring** your paperwork, a pad of paper, and a dark pen to take notes. Dress neatly. Try not to bring your children if you can make other arrangements for

them. The judge usually won't let them sit in the courtroom.

**When you get to the courtroom,** tell the person in charge in the courtroom (the clerk or bailiff) your name and your case name and number. Take a seat. When the judge walks in the room, stand.

If your hearing is online, follow these [tips for phone and video hearings](#).

Your case will be one of several that are scheduled for the same time on the court calendar (called a docket). Listen to the judge and wait for them to call your name. When they call your name, tell the court you are present. Stay in court until they call your case for hearing.

## **When your case is called**

In most cases, the judge will have read your papers before the hearing. The judge will make a decision based on the paperwork filed by both parties in advance.

You usually won't be able to testify, have witnesses testify, or otherwise give evidence at the hearing. You'll just get to tell the judge briefly what you want and why. This means you want to prepare beforehand by making notes about the main points you want to say to the judge.

**If the other party gets a lawyer:** If another party's lawyer contacts you or shows up at a hearing, you may decide to get one

yourself. If so, tell the lawyer and the judge you need to postpone (continue) the hearing. The lawyer may ask you to sign some documents. **Don't sign anything you don't understand.**

If the other party shows up at the hearing, each of you will get to tell your side of the case. Stand while speaking. Tell the judge briefly what you want and why. Try to keep your argument short. Only outline your main points. You may have as little as 5 minutes to speak. Don't repeat everything in your papers. If you brought proposed orders, ask permission to hand them up to the judge.

If the judge asks you a question, try to answer it directly. **Don't interrupt the judge.**

**If the other party doesn't show up**, the judge may ask for your proof of service. Bring a copy of that to show the judge. Ask the judge to sign your proposed orders.

If you couldn't serve the other party in time, or you don't have proof of service, ask the judge to reschedule your hearing.

## Hearing the judge's decision

After the judge has heard both sides, the judge decides on the requests. Listen carefully. Make notes. Usually, the judge gives their decision out loud, then it must be put in writing in a court order.

It's best to bring **proposed orders** so the judge can sign them at your hearing. If no one brought proposed orders, the judge may tell you, the other party, or the other party's lawyer to write the orders and come back later for the judge to sign. The judge could schedule another hearing in a week or two just for signing orders.

If the other party prepared the orders, read them carefully. Make sure they say what the judge said. If you're not sure, **don't sign the orders**. Ask to go back before the judge to make sure the order says what the judge said.

**If the other party didn't show up for the hearing**, send them copies of the court orders. Follow the rules to serve papers *after* a case starts.

## 6. Forms

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Form attached:

**Notice of Appearance (general civil)** (NJP General 005)

Form attached:

**Motion to Vacate Default and Stay Enforcement of Writ of Restitution**

(NJP Housing 632)

Form attached:

**Order to Show Cause and Stay Enforcement of Writ of Restitution** (NJP

Housing 633)

Form attached:

**Order on Motion to Vacate Default and Writ of Restitution** (NJP Housing 634)

Form attached:

**Proof of Personal Service (general civil)** (NJP General 001)

Follow the general rules to format and fill out court documents.

## **Tips for filling out the Notice of Appearance (NJP General 005)**

**Caption:** Fill in the top area with the name of the court, the parties' names, and the case number if there is one on the papers you received.

**Form section 1:** You must put an address where you agree to accept legal papers for this case. If you're afraid to give your home address, use an address where you'll know immediately if papers arrive about your case. This could be a post office box or "in care of" a friend's address. If you agree to accept legal papers by email, put an email address you check often.

**Form section 2:** Put when and how you plan to serve the other party, or wait to fill this out until after you've served them.

Date and sign. Put the city and state where you signed

## **Tips for filling out the Motion and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution (NJP Housing 632)**

Fill out the **motion** form to explain what you want the judge to do and why they should do it.

### **Form section 3. Motion to Vacate**

Fill in the date that the Order for Writ of Restitution was signed by the judge or commissioner. If you never received a copy of the order, you should call the Superior Court clerk to request a copy.

### **Form section 5. Declaration: Reasons to vacate the order**

Explain your reasons for the motion. You must cite to solid legal grounds. First, state the reasons why you did not respond to the summons and complaint on time or appear at a show cause hearing. Some **examples** of good reasons:

- The landlord did not serve me with a summons and complaint.
- I responded to the summons and complaint in time. The court issued a writ anyway without a hearing.
- I could not answer the summons and complaint or appear at the show cause hearing because (give your reason).

Next, explain your defense to the eviction. **Examples:**

- I paid my rent.
- I paid what I owed on a deposit installment plan.
- I didn't pay my rent because my landlord didn't make needed repairs.
- My landlord is evicting me because of my race or disability or other illegal discrimination.

**Warning!** A judge usually won't accept reasons such as "I need more time to move."

Put facts and details supporting the reasons for your motion. **Examples:** "I came back from the store and found the eviction summons and complaint inside my screen door. Nobody was home while I was at the store." "I paid my rent in cash. My landlord refused to give me a receipt."

If you have other evidence (proof) supporting your reasons, you should describe what it is, and attach it to your Motion, if possible. (**Examples:** Emails, texts, receipts.) You can also attach statements (declarations) from witnesses.

Make sure to attach your evidence (proof) to your motion.

#### **Form section 6. Declaration: Notice to Plaintiff.**

Briefly describe how you tried to notify the landlord (or their lawyer) that you are going to court.

Sign the declaration. Put the place and date you signed it.

### **Tips for filling out the Order to Show Cause and to Stay Enforcement of Writ of Restitution (NJP Housing 633)**

Generally, an **Order to Show Cause** is an order that schedules a hearing to decide whether to grant (approve) or deny the motion when all parties can be present.

Use this form to ask the judge to order a hearing date to decide if there are solid legal grounds to approve your motion. This form also asks the court to pause (stay) the eviction order (writ of restitution). You may ask the court to sign this in **ex parte** court.

**If you need an interpreter**, check the box for that in the top right part of this form and put your language. When you file, ask the court clerk if you need to do anything else to request an interpreter for your hearing.

**Form section 2. The court orders...** Leave this blank. The judge will fill out a hearing date if they sign the order.

**Form section 3. Stay:** Fill in the address for your rental property. This tells the Sheriff not to evict anyone from that specific address until the court gives a further order.

**Form section 4. Service on Plaintiff:** Leave the date blank. The judge will fill this in.

**Form section 6. Other orders (if any):** Leave this blank. The judge may put something here.

**Presented by the Defendant.** Sign and print your name.

## **Tips for filling out the Order on Motion to Vacate Default and Writ of Restitution (NJP Housing 634)**

Fill out the **order** form the way you want the judge to sign it. This is a **proposed order** you'll ask the judge to sign at after the Show Cause Hearing

hearing. If you're not sure about something in the order, leave it blank for the judge to complete.

## **Tips for filling out the Proof of Personal Service (NJP General 001)**

Have your server fill out this form after they've served the other party. Follow the rules for personal service.

Check to be sure your server filled out the date of service, who the papers were delivered to, and how they were delivered. Also be sure the form lists all documents that were served. If your server leaves out a form, you won't have proof it was served

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[Vacate a default eviction judgment and stop a writ of restitution](#)

Superior Court of Washington, County of \_\_\_\_\_

Petitioner / Plaintiff:

\_\_\_\_\_

And Respondent / Defendant:

\_\_\_\_\_

No. \_\_\_\_\_

Notice of Appearance

(No mandatory form)

## Notice of Appearance

To: Petitioner / Plaintiff or their Attorney (*name*): \_\_\_\_\_

And to the Superior Court Clerk

1. **Appearance.** My name is: \_\_\_\_\_. I am filing this notice to appear in this case. I must be notified of any court hearings and receive copies of any papers filed in this case.

I agree to accept legal papers for this case at the following address/es:

\_\_\_\_\_  
*Street or mailing address* *city* *state* *zip*

☐ Email (*optional*): \_\_\_\_\_

2. **Proof of service.** I declare: on (*date*): \_\_\_\_\_, I served or will serve a copy of this Notice of Appearance to the Petitioner / Plaintiff or their Attorney named above by (*check all that apply*):

☐ **hand delivery** ☐ **first class mail** ☐ **certified mail** to (*address*):

\_\_\_\_\_  
*Street or mailing address* *city* *state* *zip*

☐ **fax to:** \_\_\_\_\_ ☐ **email to:** \_\_\_\_\_  
(*only if allowed by agreement, order, or your county's Local Court Rule*)

I declare under penalty of perjury under the laws of the State of Washington that the facts I have provided on this form are true.

Signed at (*city and state*): \_\_\_\_\_ Date: \_\_\_\_\_

▶ \_\_\_\_\_

*Respondent / Defendant signs here*

\_\_\_\_\_  
*Print name*

Superior Court of Washington, County of \_\_\_\_\_

Plaintiff/s (*landlord*):

\_\_\_\_\_

vs.

Defendant/s (*tenant*):

\_\_\_\_\_

No. \_\_\_\_\_

Motion and Declaration to Vacate Default  
and Stay Enforcement of Writ of Restitution  
(*No mandatory form*)

## Motion and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution

**Use this form** if you missed an eviction hearing and the judge issued orders by default. Use this form together with the Order to Show Cause and Stay Enforcement of Writ of Restitution (NJP Housing 633) and Order on Motion to Vacate Default and Writ of Restitution (NJP Housing 634).

### To the person filing this motion:

To schedule a hearing on this motion, you must ask the court to sign the *Order to Show Cause and Stay Enforcement of Writ of Restitution* (NJP Housing 633). Contact the Superior Court Clerk's office for the procedure in your county. The *Order to Show Cause* may be signed "ex parte" (without the other party there). However, **you must notify the other party in advance** when you plan to ask the court to sign the *Order to Show Cause*.

After a judge signs the *Order to Show Cause*, you must have someone else **personally serve** a copy of this *Motion* and the *Order* on the other party.

### To the person receiving this motion:

If you don't agree with the requests in this motion, file a statement explaining why the court should not approve those requests. You may file other written proof supporting your side.

### To both parties:

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

Bring proposed orders to the hearing. You can use the form *Order on Motion to Vacate Default and Writ of Restitution* (NJP Housing 634).

1. **My name is** \_\_\_\_\_. I am the defendant in this case.

2. **Request for hearing (show cause) and stay**

I ask the court to order the Plaintiff to go to court for a hearing and show why the court should not approve my motion to vacate a default judgment.

I also ask the court to stay enforcement of the judgment and writ of restitution until the court decides my motion to vacate.

3. **Motion to Vacate**

I ask the court to vacate the judgment, writ of restitution, and any other orders entered on (date) \_\_\_\_\_. These orders were entered by default.

4. **Legal Authority**

I make this motion according to CR 62 (stay of proceedings or enforcement), CR 60 (relief from judgment or order), CR 55 (default judgments), and *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 437 P.3d 677 (2019) (holding the court has inherent equitable authority and discretion to stay a writ of restitution without bond for a defaulted party).

5. **Declaration: Reasons to vacate the order**

I declare:

The court should vacate these orders because (*explain*):

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**6. Declaration: Notice to Plaintiff**

I declare:

I notified the Plaintiff (or their attorney, if they have one) that I would be filing this motion and requesting a stay in the following way: *(describe any calls, emails, texts, or other ways you gave notice)*:

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**Person making this motion fills out below:**

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at *(city and state)*: \_\_\_\_\_ Date: \_\_\_\_\_



\_\_\_\_\_  
*Person making this motion signs here*                      *Print name here*

I agree to accept legal papers for this case at *(check all that apply)*:

☐ the following address *(this does **not** have to be your home address)*:

\_\_\_\_\_  
*Street or mailing address*                      *city*                      *state*                      *zip*

☐ Email: \_\_\_\_\_

Superior Court of Washington, County of \_\_\_\_\_

Plaintiff/s (*landlord*):

\_\_\_\_\_

vs.

Defendant/s (*tenant*):

\_\_\_\_\_

No. \_\_\_\_\_

Order to Show Cause and Stay Enforcement  
of Writ of Restitution

(*No mandatory form*)

Clerk's action required: 2

☐ Need interpreter (*language*) \_\_\_\_\_

## Order to Show Cause and Stay Enforcement of Writ of Restitution

*Use this form with the Motion and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution (NJP Housing 632) and Order on Motion to Vacate Default and Writ of Restitution (NJP Housing 634).*

### 1. Findings

The court has reviewed the **Motion to and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution** filed by the Defendant.

The court finds there is reason to approve this order pursuant to CR 55, 60, and 62.

### 2. The court orders the Plaintiff/s and Defendant/s in this action to:



Go to court on: \_\_\_\_\_ at: \_\_\_\_\_ ☐ a.m. ☐ p.m.  
*date* *time*

at: \_\_\_\_\_ in \_\_\_\_\_  
*court's address* *room or department*

\_\_\_\_\_  
*docket / calendar or judge / commissioner's name*

☐ Online or phone: \_\_\_\_\_

At the hearing, you must show why the court should **not** approve the requests made by the defendant.

**3. Stay**

Enforcement of the Writ of Restitution issued in this action for property located at  
(address) \_\_\_\_\_  
is stayed until further order of the court.

**4. Service on Plaintiff**

**Defendant must** have a copy of this Order and the Motion and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution served on Plaintiff (or their attorney, if Plaintiff is represented by an attorney in this case).

Service must be done by (date) \_\_\_\_\_. If necessary, the time for notice of hearing on this motion is shortened accordingly.

**5. Service on Sheriff**

Defendant is authorized to serve a non-certified photocopy of this Order to the county sheriff's office. The Sheriff shall accept a non-certified copy of this order provided by the Defendant or the court clerk.

**6. No bond required**

Defendant is not required to post bond to stay the Writ of Restitution pending a motion to vacate a default. *Randy Reynolds & Assocs. v. Harmon*, 193 Wn.2d 143, 437 P.3d 677 (2019).

**7. Other orders (if any)**

\_\_\_\_\_  
\_\_\_\_\_

**Ordered.**

\_\_\_\_\_  
Date



\_\_\_\_\_  
Judge or Commissioner

Presented by the Defendant



\_\_\_\_\_  
Sign here

\_\_\_\_\_  
Print name

Superior Court of Washington, County of \_\_\_\_\_

Plaintiff/s (*landlord*):

\_\_\_\_\_

vs.

Defendant/s (*tenant*):

\_\_\_\_\_

No. \_\_\_\_\_

Order on Motion to Vacate Default and Writ  
of Restitution

(*No mandatory form*)

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## Order on Motion to Vacate Default and Writ of Restitution

**Use this form** with the *Motion and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution* (NJP Housing 632) and *Order to Show Cause and Stay Enforcement of Writ of Restitution* (NJP Housing 633).

### 1. Basis

The court has considered the **Motion and Declaration to Vacate Default and Stay Enforcement of Writ of Restitution** and supporting documents filed by the Defendant, any response from the Plaintiff, other documents from the court record identified by the court, if any, and any testimony or argument.

A show cause hearing was held on (*date*) \_\_\_\_\_.

### 2. Findings

The court finds good cause to approve this order.

Other findings (if any): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3. Order

- ☐ The motion to vacate is denied.
- ☐ The motion to vacate is granted.

The order/s or parts of order/s entered for this case on (date) \_\_\_\_\_  
shall be vacated as follows:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**Ordered.**

\_\_\_\_\_  \_\_\_\_\_  
Date Judge or Commissioner

**Parties or their lawyers fill out below.**

This order (*check any that apply*):

- ☐ is an agreement of the parties  
☐ is presented by me  
☐ may be signed by the court without notice to me

Plaintiff signs here **or** lawyer + WSBA #

This order (*check any that apply*):

- ☐ is an agreement of the parties  
☐ is presented by me  
☐ may be signed by the court without notice to me

Defendant signs here **or** lawyer + WSBA #

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*Print Name*
*Date*

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*Print Name*
*Date*

\_\_\_\_\_ Court of Washington, County of \_\_\_\_\_

In re:

Petitioner/s or Plaintiff/s:

\_\_\_\_\_

And Respondent/s or Defendant/s:

\_\_\_\_\_

No. \_\_\_\_\_

Proof of Personal Service

(No mandatory form)

## Proof of Personal Service

Server declares:

1. **My name is:** \_\_\_\_\_. I am **not** a party to this case.  
I am 18 or older.

2. **Personal Service.** I served court documents for this case to (*name of person served*): \_\_\_\_\_ by (*check one*):

☐ Giving the documents directly to the person being served.

☐ Giving the documents to (*name*): \_\_\_\_\_, a person of suitable age and discretion who lives at the same address as the person being served.

3. **Date, time, and place of service**

Date: \_\_\_\_\_ Time: \_\_\_\_\_ (*check one*) ☐ a.m. ☐ p.m.

Place:

\_\_\_\_\_  
*Street address*

\_\_\_\_\_  
*city*

\_\_\_\_\_  
*state*

\_\_\_\_\_  
*zip*

**4. List all documents you served (check all that apply)**

*(The most common documents are listed below. Check only those documents that were served. Use the "Other" box to write in the title of each document you served that is not already listed.)*

☐ Petition to/for \_\_\_\_\_

☐ Summons (*attach a copy*)

☐ Notice of Hearing (*for date*) \_\_\_\_\_

☐ Motion for \_\_\_\_\_

☐ Declaration of \_\_\_\_\_

☐ Subpoena   ☐ Duces Tecum

☐ Order on/for: \_\_\_\_\_

☐ Other:

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**5. Fees charged for service**

☐ None

☐ Fees: \$ \_\_\_\_\_ + Mileage \$ \_\_\_\_\_ = Total: \$ \_\_\_\_\_

**6. Other information (if any)**

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I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (*city and state*): \_\_\_\_\_ Date: \_\_\_\_\_



\_\_\_\_\_  
*Server signs here*

\_\_\_\_\_  
*Print name*