



# LEGAL AID SOCIETY OF HAWAII



## Eviction: How to Stop an Eviction When You Missed Your Hearing

Use this self-help packet if:

- you missed your Summary Possession hearing (Answer Date, Pre-Trial, etc.); AND
- the District Court entered a default judgment against you.

**YOU MUST FILL OUT AND FILE THESE PAPERS AS SOON AS POSSIBLE AFTER THE HEARING TO STOP YOUR EVICTION**

For more information on evictions, see Legal Aid's brochure "The Eviction Process." If you have counterclaims, see Legal Aid's brochure How to Answer and Counterclaim."

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## Eviction: How to Stop an Eviction When You Missed Your Hearing

If you missed your eviction hearing, the judge probably entered a *default judgment* against you and probably issued a “*Writ of Possession*” which is the document used to evict you. This means that you lost your case automatically and a sheriff can evict you immediately. If you stay in your housing after a judge has issued a “Writ of Possession,” you can be arrested for trespassing.

You can file forms that may allow you to: (1) stay in the unit until you have another hearing; and (2) have another hearing for the judge to decide whether to grant the writ.

To do this you need to ask the judge to reopen your case. **BUT, in order to re-open your case, you need to prove two things to the judge:**

- 1) you had a good reason for missing your hearing, AND**
- 2) you have a legal defense to the eviction.**

This packet provides you instructions for filling out the three (3) forms that you need to complete in order to reopen your case. Two of the forms are available in this packet but the other is a court form which you can get at your local district court or online at [http://www.courts.state.hi.us/self-help/courts/forms/court\\_forms.html](http://www.courts.state.hi.us/self-help/courts/forms/court_forms.html). **File these forms as soon as possible after the hearing you missed, because the sheriff can evict you at any time because a Writ was granted.**

### A Checklist of What You Need to Do:

- 1. Fill out the forms, following the directions in shaded print.
- 2. Make copies of each form and staple correctly (see the next page for copying and staple instructions).
- 3. Process your forms at District Court and get all your copies certified (4 sets).
- 4. Give a copy of forms to sheriff.
- 5. Give a copy to your landlord’s attorney (or landlord if s/he has no attorney).
- 6. Prepare for and go to your hearing.

### **Step One: Fill out the forms**

TYPE ALL FORMS IF POSSIBLE; if you cannot, print your forms very neatly in black ink.

#### 1. **Fill out the “Ex Parte Motion to Stay Execution of Writ of Possession”**

This form asks the judge to stop the sheriff from serving you with the “Writ of Possession,” which is the order used to evict you. The instructions for filling out this form are on the real form you will use. The directions are in shaded print. When you fill out this form, you can write or type over the shaded instructions.

2. **Fill out the “Motion to Set Aside Default Judgment”**

This form asks the judge to reopen your case. You are asking the judge to set a hearing date for you to explain why you did not come to your hearing. This form is not included in this packet. This form can be found at the Hawai'i State Judiciary website. Use the following address: <http://www.courts.state.hi.us/docs/form/oahu/1DC42.pdf>

Use the “Ex Parte Motion to Stay Execution of Writ of Possession” form as guidance. For clarity, the person filing the motion is the Defendant, the Movant, the Declarant, and the Filing Party. NOTE: this motion is made pursuant to the District Court Rules of Civil Procedure, Rule 55(c). Fill in accordingly in the proper section. Complete all sections up to the Certificate of Service. The Response to Motion/Certificate of Service and the Certificate of Service section that follows directly after is to be completed by the opposing party/landlord.

3. **Fill out the Declaration Form:**

Your Declaration is a typed/clearly printed page where you explain (1) **why you missed your hearing AND (2) what your eviction defense is (why you should not be evicted).** See the following box for more information on how to write your Declaration. You will need to attach the Declaration to both the “Ex Parte Motion to Set Aside the Default” and “Motion to Set Aside.”

Your Declaration

In your Declaration, you have to convince the Court that:

- (1) you have a good reason (“Good Cause”) for missing your hearing; AND
- (2) you have a legal defense to the eviction in the first place.

\*\*In this self-help packet, there is a Declaration form that you can use. It has “check-boxes” that you can simply check to fit your situation. Check the box that applies and neatly cross out the examples which do not apply to you. You can also include any additional information in the space provided (add another sheet of paper if you need to).

**You can attach the same Declaration to both the “Ex Parte Motion to Stay Execution of Writ of Possession” and the “Motion to Set Aside Default Judgment.” But make sure to include both a good reason for missing your hearing and a legal defense to the eviction.**

**What is “Good Cause” for missing my hearing?**

Good cause means “excusable neglect.” This does NOT mean that you did not know/understand court rules or that you lack legal sophistication. Good reasons for missing your hearing could be: (1) there was a medical emergency; (2) you were in the building but went to the wrong court room; or (3) you were just a few minutes late and you checked in with the court clerk.

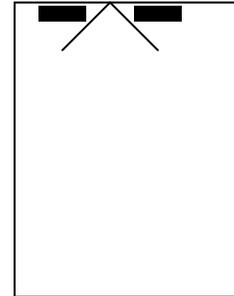
**What is a “Legal Defense” to the eviction action?**

If you do not have a legal defense to the eviction, even if you have a good reason for missing your hearing, the Court will not re-open your case. You need to show the judge that you have a good chance of winning the eviction, if the case was re-opened. (For example, if you were being evicted for non-payment of rent, you owe the rent, and you do not have the money to pay, the Court will not re-open your case.) Examples of legal defenses to the eviction could be:

- (1) you paid the rent & have receipts proving it;
- (2) you have valid counterclaims or affirmative defenses such as: your landlord locked you out or shut off your utilities; OR
- (3) your landlord is evicting you to retaliate for something you did.

## Step Two: Make Copies

1. Make four (4) sets of both Motion forms:  
1 of each original form plus 4 copies of each.
2. Make nine (9) copies of your declaration:  
Original plus 9. You need to attach one to each court form  
(Ex Parte Motion to Stay..” and Motion to Set Aside).
3. Put Copies into Sets: (10) total sets:  
  
Original “Ex Parte Motion” + Original Declaration  
4 copies of “Ex Parte Motion” + 4 Declaration copies  
  
Original “Motion” + Declaration  
4 copies of “Motion” + 4 Declarations copies
4. Staple one court form to one Declaration as shown below



## Step Three: Process Your Papers

1. Take the originals and copies to the District Court named on your landlord’s “Complaint for Summary Possession.” For example, if your landlord filed his paperwork in Hilo District Court, you also need to process your paperwork in Hilo. ***EXCEPTION FOR OAHU RESIDENTS: You need to file all your papers at the Honolulu District Court, even if your case was heard at another Court on Oahu.*** For court addresses and phone numbers, see the last page of this self-help packet
2. There is no cost for processing these forms. In Honolulu, you must first go to the Service Center Desk. The personnel there will direct you to the correct line. In courts other than Honolulu, if there is more than one line at the clerk’s office, look for the line for “Civil Filings -- Regular Claims.” Tell the clerk you would like to process your forms. The Court will keep the originals of your documents and give you the copies back with date-stamps on them.
3. **Wait for a Decision on your Ex Parte Motion To Stay Execution of Writ of Possession (if possible)**  
Politely tell the clerk that you would like to wait for a judge to review and sign the “Order” part of the “Ex Parte Motion....” Hopefully there will be a judge available to review and sign your form. However, if you are there in the afternoon, you may have to return to pick up the forms the next day. Otherwise, stay until a judge reviews the form and decides whether to grant or deny. The sheriff can evict you if you do not have a copy of the order granting the motion.

**If the Judge grants the “Ex Parte Motion to Stay Execution of Writ of Possession”** keep a copy with you and one at home. You must deliver one copy to the sheriff’s office so that the sheriff does not come to evict you. If the sheriff does show up to evict you with the landlord’s “Writ of Possession,” show the sheriff your signed copy. This form should stop your eviction. If the sheriff is uncertain, have him call Legal Aid.

***IMPORTANT: If the judge denies your Ex Parte Motion to Stay Execution...*** your landlord has a “Writ of Possession” to kick you out of your home, and the sheriff may come at any time to evict you - even if your hearing to re-open the case has not come up

yet. You most likely need to find a new place to live because the sheriff can evict you at any time.

Keep a copy of your “Motion to Set Aside...” with the hearing date and time with you, and another copy at home. If the sheriff comes with the “Writ of Possession” before your hearing, you can show the sheriff the “Motion to Set Aside...” and see if s/he will let you stay until the hearing. The sheriff does NOT have to let you stay, so be polite and see if the sheriff is sympathetic.

If the sheriff does not let you stay, you need to leave your housing. Take all your belongings--especially valuables--with you, if possible. If not, your landlord may put your things in storage, and you will have to pay for this. You need to get your things as soon as possible because if you do not, it may be considered abandoned property and may be thrown away.

4. Once you have the forms back, ask the clerk for 4 *certified copies* of each: one for you to hold, one to leave at home, one for landlord/landlord’s attorney, and one for the Sheriff’s office. (“Certified copies” means that the clerk will stamp a special stamp and sign the forms verifying that the paper is a true and accurate copy of the original.)
5. Getting a Hearing Date for Your Motion to Set Aside Default Judgment  
On the back of the “Motion to Set Aside Default Judgment,” there is a space for a hearing date. Make sure the clerk gives you a hearing date and time, and that the date and time are written exactly the same on all copies of the Motion. If your copies don’t have a hearing date, ask the clerk how you can get one.

**Step Four: Give Certified Copy of Ex Parte Motion to Stay Execution of Writ of Possession to Sheriff**

If the Judge approved your Ex Parte Motion to Stay..., take a certified copy of it to the Sheriff’s office. This tells them not to evict you. See last page for addresses.

**Step Five: Deliver Certified Copies of all Forms to Landlord’s Attorney**

You need to give a **certified** copy of **both** motions to the landlord’s attorney (or the landlord if s/he has no attorney). Deliver it as soon as possible.

**Step Six: Go To Hearing**

Even if you no longer live in your housing at the time of the hearing, you still need to go. The purpose of this hearing is to erase the default judgment that happened when you did not show up for your hearing. You will have a chance to explain to the judge (1) why you did not come to the hearing and (2) your legal defense to the eviction.

On your hearing date, show up on time or early and be sure you are in the right courtroom. Although the focus will be on why you did not come to your hearing, the judge may want to discuss your entire case; be prepared to discuss this.

What do I do with the copies I made?

After the judge grants the “Ex Parte Motion to Stay Execution of the Writ of Possession,” here’s how you distribute the copies you made:

1. Original copy of each goes to the court.
2. A certified copy to keep with you.
3. A certified copy to keep at your home.
4. A Certified copy to deliver to the Sheriff’s office. **(IMPORTANT!)**
5. A Certified copy to give to your landlord or your landlord’s attorney. **(IMPORTANT!)**

**How to Use Evidence:** It is a good idea to use documents, photographs, or other evidence as proof in your hearing. If you have some evidence you would like to use, bring in two extra copies to your hearing. One goes to the judge and one goes to your landlord's attorney (or landlord).

**IMPORTANT:** If you have your own claims against your landlord (for example, for locking you out, or shutting off your utilities), and you want to bring them up in this case, you need to ask the judge for *"leave of court to file a counterclaim."*

Call Legal Aid for trial tips and hints to use at your eviction trial, and for more information on counterclaims.

### Legal Terms

**Certified copies:** Copies of your court forms which have an imprint which says "certified" and the clerk's signature. By certifying the forms, the clerk says that they are exact copies of the original court forms on file with the Court.

**Default:** Losing a case automatically; this usually happens when you do not show up for a hearing.

**Ex Parte Motion to Stay Execution of Writ of Possession:** This form asks the judge stop your eviction temporarily while you are waiting for your hearing to explain why you did not come to your first hearing and your defense to the eviction.

**Motion to Set Aside Default Judgment:** This form asks the judge to give you a hearing so you can explain (1) why you missed your hearing and (2) your defense(s) to the eviction.

**Notarized:** A Notary Public witnessed you sign a form or document and placed his/her stamp on your document.

**Service of papers:** Delivering papers to the other party in a case.

**Summary Possession:** Process of a landlord getting possession of the property back from a tenant.

**Writ of Possession:** A court order giving the landlord back possession of the property from a tenant.

**REMEMBER:** This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.

EX PARTE MOTION TO STAY EXECUTION OF WRIT OF POSSESSION AND JUDGMENT FOR POSSESSION; DECLARATION; ORDER

IN THE DISTRICT COURT OF THE _____ CIRCUIT _____ DIVISION STATE OF HAWAII	
Plaintiff <b>Landlord's Name</b>	Reserved for Court Use
Defendant(s) <b>Your Name As Listed In The Landlord's Complaint</b>	Civil No. Same As Civil No. From Landlord's Complaint
	Filing Party(ies)/Filing Party(ies)' Attorney (Name, Attorney Number, Address, Telephone and Fascimile Numbers. Your Name, Address, And Phone No.
	<b>Defendant Pro Se (No Attorney)</b>
	<b>Date of Default, Judgment or Dismissal entered:</b>

**EX PARTE MOTION TO STAY EXECUTION OF WRIT OF POSSESSION AND JUDGMENT FOR POSSESSION**

This Motion is based upon District Court Rules of Civil Procedure, Rules 7, 55 (c) and 60 (b), and the declaration attached.

I am the Defendant and Movant in this case. I have attached facts (declaration) as to why this Motion should be granted.

A Judgment for Possession and Writ of Execution for Possession was entered against me on the above date. I have filed a Motion to Set Aside Default Judgment for reasons set forth in the attached declaration. I am requesting a Stay of the Judgment for Possession And Writ of Possession until the Motion to Set Aside Default Judgment is heard by this Court.

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAI'I THAT THE FOLLOWING AND ATTACHED ARE TRUE AND CORRECT.**

Date:	Name and Signature of Declarant
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**ORDER**

The Court having been presented with Defendants(s) Ex Parte Motion to Stay Execution of Writ of Possession and Judgment for Possession, ordered/filed on above date and good cause appearing therein, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff(s) Judgment for Possession and Writ of Possession above-mentioned by stayed until the hearing on Defendant(s) Motion to Set Aside Default Judgment.

Leave Blank	Leave Blank
Date:	Judge of the above-entitled Court

I certify that this is a full, true, and correct copy of the original on file in this office.
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**DECLARATION OF DEFENDANT**

I, \_\_\_\_\_, the Defendant in this eviction proceeding, hereby declare the following to explain why I did not attend my summary possession hearing:

- I was not served with a Summons and Complaint for this eviction proceeding, and therefore did not know that I had a hearing scheduled on \_\_\_\_\_.
- I was in the District Court building, but I went to the wrong courtroom and missed my hearing.
- I was unexpectedly delayed and was a few minutes late for my hearing. I checked in with the court clerk, who advised me that I had just missed my hearing.
- There was a medical emergency in my family and I was unable to make it to the courtroom on time.
- I was ill or hurt and unable to attend. For verification, a copy of a doctor's note is attached.
- The date that I was supposed to attend my hearing was not clear to me.

In addition, I would like to add the following information,

FURTHERMORE, I believe that the Writ of Possession should be stayed because I have a good defense to this eviction proceeding:

- I did not receive proper written notice from my landlord giving me the correct amount of days to mend the problem with my landlord.
- My landlord claims non-payment of rent, but I have check stubs and/or receipts proving that I have paid the rent.
- I have valid counterclaims and affirmative defenses to this eviction (e.g.  My landlord illegally entered my housing without my consent;  I was locked out of my housing;  My utilities were illegally shut off by my landlord.)

I have read this motion, know the contents, and verify that the statements are true to my personal knowledge and belief.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF HAWAII THAT THE ABOVE IS TRUE AND CORRECT.

Date:	Signature of Declarant: (Print and Sign Name)
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## Useful Names and Numbers

**Legal Aid Society of Hawaii:** <http://www.legalaidhawaii.org>  
LEGAL HOTLINE open Monday to Friday 9-11:30am & 1-3:30pm  
Oahu: 536-4302 Neighbor Islands: 1-800-499-4302

### District Court Street Addresses

#### **OAHU (First Circuit):**

File all forms at Honolulu District Court:  
1111 Alakea Street  
3<sup>rd</sup> Floor  
538-5151

#### **MAUI County (Second Circuit):**

Haopili Hale  
322-2022  
2145 Main Street  
Suite 137  
Wailuku  
244-2800

Molokai  
55 Makaena Street  
Kaunakakai

#### **KAUAI (Fifth Circuit):**

3059 Umi Street, Rm 111  
Lihue, HI  
246-3330

#### **BIG ISLAND (Third Circuit):**

Hilo: 75 Aupuni Street  
Hilo  
961-7470  
Kona: Old Kona Hospital  
Keakealani Bldg., Rm. 240  
Kealakekua

Hamakua: South Kohala Courthouse  
Waimea Civic Center  
67-5175 Kamamalu Street  
Kamuela  
885-4615

Lanai: 565-6447

### Sheriff's Offices

Oahu  
111 Alakea Street, 2<sup>nd</sup> floor  
(same bldg as District Court)  
538-5696

Maui  
2145 Main Street  
Wailuku

Big Island  
Hilo: 99 Aupuni Street, Ste 215  
933-4060  
Kona: Old Kona Hospital, Kealakekua Bldg.  
322-2022

Kauai  
3083 Akahi St., Lihue, HI  
246-3331 or 246-3332