

Stays

12012.1 STAY OF EXECUTION - WRIT OF POSSESSION REAL PROPERTY

The purpose of this section is to establish a standard response when a five-day notice to vacate on a Writ of Possession Real Property is interrupted by a stay of execution, and the stay is later lifted by the court without specifying a certain date by which the defendant must vacate the property.

(a) Third Party Claim of Right to Possession Stay

1. When a third party claim of right to possession is received after a five-day notice to vacate has been served or posted, but before a forcible eviction has taken place, all proceedings are stayed.
2. When an order is received lifting the stay and no specific date is given by the court for enforcement of the writ, there is no requirement that the defendant be given an additional notice to vacate.

(b) Bankruptcy Stay

1. All proceedings must stop when we receive an automatic stay from the Federal Bankruptcy Court.
2. The stay takes effect on the date it was filed with the court; it does not matter when we receive it.
 - i. We are not liable for any violations of the automatic stay unless we have been given proper notice.

(c) Third Party Claim of Right to Possession Stay

1. Upon receipt of a Minute Order on an eviction case, the processing clerk shall:
 - i. Examine the document to determine the date of the order.
2. Calculate the new evict date.
 - i. Go to CHGDEL, change EVICT DATE.
 - ii. Go to REPRNT, generate another service ticket, clearly highlighting the new EVICT DATE.
3. Issue the case to the field.

(d) Eviction Date Calculation

1. The defendant is entitled to a full five-day Notice to Vacate before we can perform the eviction.
2. When the five-days is interrupted by any Stay Order, the defendant is entitled to the days remaining.
 - i. Since we are stayed from the day we receive the Arrieta Claim until the date the Minute Order or Stay is issued, we cannot count those days in the five-day calculation.

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- ii. In order to calculate the new evict date, you must first calculate the number of days that had expired on the notice prior to our receipt of the Arrieta claim.
 - iii. Subtract this number from five-days to compute the remaining days' notice which must be given (if any) before the eviction takes place.
- (e) Bankruptcies filed prior to the Notice to Vacate Posting
 - 1. If the defendant filed bankruptcy before we posted the Notice to Vacate but did not notify us until after the posting, the Posting is voided.
 - 2. A new Notice to Vacate will need to be posted before we can continue with the eviction.
 - 3. The plaintiff is required to notify us to stop all enforcement actions after the defendant files bankruptcy.
 - i. The plaintiff is to be charged for the additional posting costs.
 - ii. We will not undo a completed eviction if the defendant waits until after the eviction is completed to notify us of a bankruptcy.

References

POST ORDER 11-04

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