



JOHN D'AGOSTINI

SHERIFF - CORONER - PUBLIC ADMINISTRATOR
COUNTY OF EL DORADO
STATE OF CALIFORNIA

March 26, 2020

The Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

RE: APPLICATION AND ORDER FOR TEMPORARILY SUSPENDING
EXECUTION OF WRITS OF POSSESSION ON CERTAIN PROPERTY

The Honorable Suzanne N. Kingsbury,

The Sheriff's Office is requesting your review of the attached Application and Order for temporarily suspending execution of writs of possession on certain property.

This request is brought due to the unique circumstances which COVID-19 has placed on the Nation, State of California and the County of El Dorado. It is my understanding the court has the authority to stay court orders. I also believe that staying evictions for a short duration is in the overall best interest of the County of El Dorado and consistent in nature with the direction of Governor Newsom and local Public Health Officer Dr. Williams to shelter in place; limiting potential exposure and spread of COVID-19.

Sincerely,

John D'Agostini
Sheriff-Coroner-Public Administrator

"Serving El Dorado County Since 1850"
HEADQUARTERS- 300 FAIR LANE, PLACERVILLE, CA 95667
JAIL DIVISION- 300 FORNI ROAD, PLACERVILLE, CA 95667
TAHOE JAIL- 1051 AL TAHOE BLVD., SOUTH LAKE TAHOE, CA 96150
TAHOE PATROL- 1360 JOHNSON BLVD., SUITE 100, SOUTH LAKE TAHOE, CA 96150

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

**APPLICATION FOR AND ORDER OF THE PRESIDING JUDGE
TEMPORARILY SUSPENDING EXECUTION
OF WRITS OF POSSESSION ON CERTAIN PROPERTY**

I.

FACTUAL BACKGROUND

On March 4, 2020, California Governor Gavin Newsom issued a proclamation of a State of Emergency for the State of California due to COVID-19.

On March 12, 2020, El Dorado County's Public Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of COVID-19 in the County of El Dorado, which declaration was ratified by the El Dorado County Board of Supervisors by Resolution No. 051-2020 on March 17, 2020.

On March 12, 2020, Sheriff John D'Agostini, as the County's Director of the Office of Emergency Services, proclaimed a local emergency based on conditions of extreme peril to the safety of persons and property within the territorial limits of the County of El Dorado as a result of the COVID-19 pandemic, which proclamation was ratified by the El Dorado County Board of Supervisors by Resolution No. 052-2020 on March 17, 2020.

On March 19, 2020, El Dorado County's Public Health Officer issued a directive, which directed that all individuals living in the County remain at their place of residence to the fullest extent possible, except as otherwise set forth in the directive.

On March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, which directed all California residents to immediately heed the California Department of Public Health's directives to stay home or at their place of residence except as needed to maintain continuity of operations of the identified federal critical infrastructure sectors.

On March 20, 2020, the El Dorado County Superior Court issued its Second Amended Interim Order which, among other things, reset all civil law and motion matters to on or after April 17, 2020.

II.

STATUS OF EVICTIONS HELD BY THE SHERIFF OF EL DORADO COUNTY

The El Dorado County Sheriff's Office currently holds approximately ten (10) post-writ eviction files in various stages of completion. The judgment dates on the underlying unlawful detainer actions range from 1/13/2019 through 3/12/2020. Typically, eviction "lockouts" occur one to two weeks after the office receives the file, writ of possession and letter of instruction

from the plaintiff. The writ of possession is often not issued or delivered to the Sheriff by the plaintiff until days, weeks or months after the entry of judgement.

The Sheriff has no control over when he receives eviction files, as the writ of possession may be enforced up to 180 days after its issuance. It is within the sole judgement of the plaintiff or their attorney regarding when to submit a writ of possession for execution. The Sheriff must exercise diligence in carrying out civil services - but the standard is not one of immediacy - it is one of reasonableness. Reasonableness encompasses all surrounding facts and circumstances, which in this case, must include COVID-19, and the associated response. Accordingly, pending resolution of this application, the Sheriff has temporarily deferred scheduling requests to execute writs of possession.

III.

THE REMEDIES PROVIDED FOR TENANTS FACING EVICTION ARE EFFECTIVELY UNAVAILABLE

Certain remedies exist for tenants facing eviction. One such remedy is found in California Code of Civil Procedure (CCP) § 1179, which provides, in part:

"The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion." (Code Civ. Proc., § 1179.)

CCP § 1179 allows the court to provide tenants with relief from forfeiture in unlawful detainer actions, where a hardship can be shown. Such relief is however subject to specific conditions, including the full payment of rent due. A motion under CCP § 1179 may be made by a tenant or any person with a property interest, or by the court on its own motion, at any time prior to the restoration of the property to the landlord or owner, and requires notice to the plaintiff five days prior to the hearing. Additionally, a stay of the enforcement of any order or judgement may be requested pursuant to California Code of Civil Procedure § 918, provided certain timeframes and criteria are met.

Given the status of the COVID-19 pandemic, the accompanying Governor's order for state residents to remain at home, public health recommendations for vulnerable people to shelter-at-home and the Court's order limiting public access and resetting civil law and motion matters until on or after April 17, 2020, it would be extremely difficult for an aggrieved party to seek the aforementioned relief in the time required prior to the Sheriff's execution of a writ of possession.

IV.

CONDUCTING EVICTIONS DURING THE COVID-19 PANDEMIC WILL NEGATIVELY IMPACT PUBLIC HEALTH AND SAFETY AND ARE CONTRARY TO THE INTENT OF THE GOVERNOR'S ORDER

Members of the El Dorado County Sheriff's Office have received numerous inquiries from March 16th through the present, including before and after the Governor's order(s), from persons facing imminent eviction. Some of these persons were facing a lockout date of Wednesday, March 18th 2020. Several individuals reported to El Dorado County Sheriff employees that they, or persons living with them, were concerned for their health and safety if imminently removed from their residence due to COVID-19. Due to the circumstances, the Sheriffs Office did not execute the March 18th, 19th, 25th, and 26th previously-scheduled evictions.

California has experienced a statewide housing crisis. Executing and enforcing writs of possession for real property at this time would likely cause the homeless population to increase within El Dorado County and would likely contribute to the COVID-19 crisis, by causing persons who may be vulnerable to COVID-19 infection to be placed in situations where they are more likely to contract and/or spread the virus, as opposed to remaining sheltered in their residence as ordered by the Governor and as directed by the County's Public Health Officer.

V.

CONSIDERATION OF THE INTERESTS OF LANDLORDS AND PROPERTY OWNERS

Landlords or property owners would understandably argue that by suspending the execution of writs of possession, a financial burden has been shifted to them by the government, since many landlords must pay mortgages, property taxes and other expenses associated with their rental properties, regardless of whether or not their tenant fails to pay rent. Landlords would likely argue they need to obtain replacement tenants as soon as practical in order to minimize financial losses from a non-paying tenant. Such concerns have not been overlooked.

Nothing within this request would alleviate a tenant's duty to pay rent or to maintain the premises. Damages could be sought by the landlords against non-paying or tortious tenants, if the landlord so desires. Additionally, by requesting only a limited stay of the Sheriff's execution of writs of possession, any such harm is minimized to the maximum extent possible.

VI.

CONCLUSION

While the Sheriff retains a level of discretion in managing his operations and allocating his resources and possesses additional authority to respond to the declared local and state emergency, the Sheriff recognizes his role in carrying out lawful court orders and further recognizes that, in ordinary circumstances, he should remain a neutral third party when processing and executing civil services. However, the complications in properly and lawfully

conducting evictions in light of the rapidly evolving situation in this unprecedented time, taking into consideration the statutes, Governor's orders, and limited access to the courts, warrant the current request.

Suspending the execution of all writs of possession for real property issued by this court, through April 16, 2020, or upon a further order from the court after an evaluation of the circumstances, is within the authority of the Court pursuant to Code of Civil Procedure § 918 (“... the trial court may stay the enforcement of any judgment or order”), is in the interest of public health and safety, and will comply with the spirit and intent of the law, the Governor's orders, along with avoiding or mitigating the risk of irreparable harm. A temporary suspension will also provide the court the opportunity to calendar civil and unlawful detainer actions and any requests for relief pursuant to Code of Civil Procedure § 1179, in accordance with the Court’s March 20, 2020 Second Amended Interim Order.

It is requested that this order specifically exempt from the proposed suspension "move-out", or other orders associated with restraining orders, domestic violence prevention orders, elder abuse prevention orders, or other orders as may be issued by the court. It is requested that the court, in its discretion, may also issue or order the enforcement of an order or writ of possession upon request of an aggrieved party when necessary to mitigate a substantial health and safety hazard, or the commission of active voluntary or permissive waste which would tend to cause significant harm to real property.

**VII.
APPLICATION**

The Sheriff of El Dorado County then does apply to the Presiding Judge of the El Dorado County Superior Court for an order temporarily suspending through and including April 16, 2020 or until further order of the court all writs of possession for real property issued to the Sheriff by the court.

Dated: 3/26/20



JOHN D'AGOSTINI,
El Dorado County Sheriff-Coroner