

Eviction Appeal

Frequently Asked Questions for Residential Landlords In Travis County, Texas

This brochure is for residential landlords. It answers *basic* questions about the eviction appeal process in Travis County, Texas, from the Justice of the Peace Court (JP Court) to the County Courts at Law.

This brochure is not a substitute for the help of a lawyer. Even if you decide to represent yourself, it's a good idea to talk to a lawyer first to make sure you understand your legal rights. Call the Lawyer Referral Service (512-472-8303) if you need help finding an attorney.

Who can appeal in an eviction case?

The landlord or the tenant can appeal a JP Court judgment in an eviction case¹ and receive a completely new trial in a County Court at Law (County Court).

Can I represent myself?

Yes. If you own the rental unit you may represent yourself. However, if a corporation owns the rental unit, the corporation must be represented by an attorney in County Court. Even if you own all the stock in the corporation you may not appear for the corporation in County Court.

Can my employee appear in court on my behalf?

Someone who is not a lawyer may not appear on your behalf in County Court. There are two exceptions:

- 1) a non-lawyer may appear on your behalf to present a motion for writ of possession because rent has not been deposited with the court as required by Texas Property Code 24.0054 and
- 2) a non-lawyer may appear on your behalf to present a motion to dismiss the appeal.

How do I appeal?

To appeal the judgment in an eviction case, a landlord must file an appeal bond (or cash bond) at the JP Court within 5 days of the day the judgment is signed. The JP Judge sets the amount of the bond. An appeal bond form is available at the JP Court Clerk's Office.

A landlord may also try to appeal by filing an *Affidavit of Inability to Pay Costs of Appeal or Appeal Bond* (also called a *Pauper's Affidavit*). However, absent extraordinary circumstances, it is unlikely a landlord will qualify financially as a pauper.

You have 5 days to notify the tenant of your appeal. Send a copy of the appeal bond to the tenant by personal delivery, fax, or certified mail return receipt requested. Bring proof that you gave notice with you to your appeal trial.

How does the tenant appeal?

To appeal an eviction, a tenant must file at the JP Court within 5 days of the day the judgment is signed **either**:

- an appeal bond (or cash bond) **or**
- an *Affidavit of Inability to Pay Cost of Appeal or File Appeal Bond* (also called a *Pauper's Affidavit*).

Can I contest the tenant's Pauper's Affidavit?

Yes. You have 5 days from the day the tenant files the *Pauper's Affidavit* to notify the JP Court Clerk of your contest. The JP Judge will hold a hearing within 5 days from the day you file your contest. The tenant has the burden to prove that he or she cannot afford to pay the costs of appeal, file an appeal bond, or pay the bond in cash.

If your contest is granted, the tenant has 5 days to post the appeal bond, pay the bond in cash or appeal the JP Court's decision to deny the *Pauper's Affidavit* to the County Courts at Law.

If your contest is denied or you don't file a contest, the *Pauper's Affidavit* is approved and the case is sent to the County Courts at Law for a new trial.

Note: If it's obvious the tenant cannot afford the bond, you may not want to waste your time and the court's time contesting the *Pauper's Affidavit*.

¹ An eviction case is also called a *forcible detainer* case.

Who gets possession of the rental unit during the appeal?

The tenant may remain in possession of the rental unit during the appeal if:

- the tenant filed an appeal bond or cash bond, or
- you're evicting the tenant for a reason other than nonpayment of rent, or
- the tenant pays rent to the court as required by Texas Property Code Section 24.0054 and described in the next answer.

Does the tenant have to pay rent during the appeal?

Yes. Unless the tenant filed an appeal or cash bond, the tenant must pay rent during the appeal.

If the tenant appealed by *Pauper's Affidavit* and you're evicting the tenant for nonpayment of rent, then the tenant must:

- 1) pay an initial deposit of 1 month's rent to the JP Court Clerk **within 5 days** of filing the *Pauper's Affidavit* and
- 2) pay rent as it comes due (within 5 days of its due date) to the County Clerk's Office.

If a portion of the rent is paid by a government agency, the JP Court will determine the amount to be paid by the tenant and the amount to be paid by the government agency. If you disagree with the JP Court's determination, you have 5 days to contest it.

Can I get possession of the rental unit if the tenant fails to pay rent to the court during the appeal?

Yes, if the tenant appealed by filing a *Pauper's Affidavit* and you're evicting the tenant for nonpayment of rent.

If the tenant doesn't make the initial deposit of rent to the JP Court Clerk within 5 days of filing the *Pauper's Affidavit* or fails to pay future rent within 5 days of its due date to the County Clerk's Office you can ask the County Court at Law for possession of the rental unit.

- 1) Fill out the *Landlord's Sworn Motion for Writ of Possession and Notice of Hearing* and sign it in front of a notary.
- 2) Call 512-854-9241 or 512-854-9249 for a hearing date.
- 3) File the *Motion* at the County Clerk's Office.
- 4) Send a copy of the *Motion* to the tenant by personal delivery, fax or certified mail return receipt requested. **The tenant must receive at least 3 days notice of the hearing.**

After the hearing, the County Court will issue a *Writ of Possession*, unless on or before the date of the hearing the tenant pays to the court registry the rent owed and your reasonable attorney's fees, if you have an attorney. However, the tenant will only be able to stop the *Writ of Possession* in this manner once.

Beginning January 1, 2012, if the tenant doesn't make the initial deposit of rent to the JP Court Clerk within 5 days of filing the *Pauper's Affidavit* you can ask the JP Court to immediately issue a *Writ of Possession* without giving notice to the tenant and without a hearing. File a *Landlord's Sworn Motion for Writ of Possession Based on Tenant's Failure to Pay Initial Deposit* with the JP Court clerk.

Note: If you're evicting the tenant for a reason other than nonpayment of rent, the tenant should continue to pay rent directly to you. If the tenant doesn't, you can file another eviction case based on nonpayment of rent.

What if a government agency doesn't pay its portion of the rent during the appeal?

If the JP Court found that a portion of the tenant's rent is paid by a government agency but the government agency does not pay, you may ask the County Court at Law to order the tenant to pay the full amount of rent into the court registry. You must be able to show that you did not cause the agency to stop paying its portion of the rent and that you are not able to take reasonable action to get the agency to start paying its portion of the rent.

How can I withdraw rent paid to the court?

You may ask the County Court at Law for an order allowing you to withdraw the rent paid into the JP Court and/or County Court registry:

- at the appeal trial, or
- after final determination of the case, or
- before final determination of the case for just cause.

If you ask at the appeal trial, make sure that order is included in your Final Judgment.

If you ask after final determination of the case, you must be able to show that a final judgment on the appeal has been signed by the court or the appeal has been dismissed. File the *Landlord's Sworn Motion for Release of Funds after Final Judgment or Dismissal of Appeal* at the County Clerk's Office.

Present your *Motion* and the *Order Releasing Funds* form to the Court at the Court's **Uncontested Docket**. Uncontested Docket is held weekdays between 8:30 and 9:00 a.m. and between 1:30 and 2:00 p.m.

If you ask before final determination of the case, you must be able to show **just cause**. “Just cause” means you have a good reason for needing to withdraw the rent right away. You must also set a hearing and notify the tenant.

- 1) Call **512-854-9241** or **512-854-9249** for a hearing date.
- 2) File the *Landlord’s Sworn Motion for Release of Funds Before Final Judgment or Dismissal of Appeal and Notice of Hearing* at the County Clerk’s Office.
- 3) Send a copy of your *Motion* to the tenant by personal delivery, fax or certified mail return receipt requested. The tenant must receive at least 3 days notice of the hearing.
- 4) Bring proof that you gave notice with you to the hearing.
- 5) Bring the *Order Releasing Funds* form to the hearing.

Remember, only you or your lawyer may appear in County Court to present a *Motion for Release of Funds*. A non-lawyer may not appear for you.

Who sets the appeal for trial?

The Court will not schedule the trial. Either you or the tenant may schedule the trial as soon as the case has been on file with the County Clerk’s Office for 8 days.

- 1) Call **512-854-9241** or **512-854-9249** for a trial date.
- 2) File the *Landlord’s Notice of Trial Setting* at the County Clerk’s Office.
- 3) Send a copy of the *Notice* to the tenant by personal delivery, fax or certified mail return receipt requested. The tenant must receive at least 3 days notice of the trial setting.
- 4) Bring proof that you gave notice with you to your trial.

What forms do I need?

Depending on your case, you may need one or more of the following forms. Or, you may need to hire an attorney to draft different or additional forms.

- *Landlord’s Sworn Motion for Writ of Possession & Notice of Hearing*
- *Landlord’s Sworn Motion for Writ of Possession Based on Tenant’s Failure to Pay Initial Deposit (Do not use until 1/1/2012)*
- *Landlord’s Sworn Motion for Release of Funds After Final Judgment or Dismissal of Appeal*
- *Landlord’s Sworn Motion for Release of Funds Before Final Judgment or Dismissal of Appeal and Notice of Hearing*
- *Order Releasing Funds*
- *Landlord’s Notice of Trial Setting*
- *Final Judgment*

Find these forms at www.TravisCountyLawLibrary.org, and at the Travis County Law Library at 314 West 11th Street, Austin.

Where are the County Courts at Law and the County Clerk’s Office?

County Courts at Law # 1 and # 2 are on the second floor of the Heman Marion Sweatt Civil Courthouse, 1000 Guadalupe Street, Austin.

The County Clerk’s Office is also on the second floor of the Heman Marion Sweatt Civil Courthouse in room 222.

Courtroom Do’s and Don’ts

Arrive Early Arrive at least 30 minutes early. If you arrive late, the judge may have already ruled on your case. Be sure to leave enough time to find and pay for parking. There is no free public parking near the courthouse.

Be Respectful You must be respectful to the judge and the tenant at all times. Address the judge as “Your Honor.”

Be Prepared If possible, ask an attorney to help you get ready for your trial.

Read the Law

Read Texas Property Code, Chapter 24 Forcible Entry and Detainer (Eviction) at www.statutes.legis.state.tx.us.

Read the Texas Rules of Civil Procedure, Part VII, Section 3 Forcible Entry and Detainer (Eviction) at : www.supreme.courts.state.tx.us/rules/trcphome.asp or in the Travis County Law Library at 314 West 11th Street, Austin.