

Eviction Appeal

Frequently Asked Questions for Travis County, Texas Residential Landlords

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 (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 from the JP Court Clerk. 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 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.

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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 County Court 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 paid an appeal bond or cash bond,
- or you're evicting the tenant for a reason other than nonpayment of rent,
- or you're evicting the tenant for nonpayment of rent and 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 bond 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 you're evicting for any other reason, 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.

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.

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.

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*, you can ask the JP Court to issue a *Writ of Possession* immediately, 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.

If the tenant fails to pay future rent within 5 days of its due date to the County Clerk, you can ask the County Court for possession of the rental unit. Fill out the *Landlord's Sworn Motion for Writ of Possession and Notice of Hearing* and sign it in front of a notary. Call 512-854-9241 or 512-854-9249 for a hearing date. File the *Motion* at the County Clerk's Office. 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.

The tenant can avoid a *Writ of Possession* if, on or before the date of the hearing, the tenant pays to the court registry the rent owed and any reasonable attorney's fees you have incurred. However, the tenant is only allowed to catch up in this manner once.

Otherwise, after the hearing, the County Court will issue a *Writ of Possession*.

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. Call 512-854-9241 or 512-854-9249 for a trial date. File the *Landlord's Notice of Trial Setting* at the County Clerk's Office. 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. Bring proof that you gave notice with you to your trial.

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.

What happens at trial?

The trial on appeal will be a completely new trial. **This means everything done in the Justice of the Peace court (“JP Court”) is set aside.** You must present again any papers, witnesses, or photographs you want considered. You may also present new witnesses and information.

Unlike in JP Court, the rules of evidence and civil procedure will be more strictly enforced in County Court. Like the JP Judge, the County Court judge will listen first to your side of the story and then to the tenant’s. The judge will then decide whether to grant a *Writ of Possession* and any unpaid rent, fees, or costs you request.

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* to the Court at its **Uncontested Docket**, held each weekday from 8:30–9:00 a.m. and 1:30–2:00 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. Call 512-854-9241 or 512-854-9249 for a hearing date. 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. 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. Bring proof that you gave notice with you to the hearing. 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.

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
- 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 the JP Court Clerk’s Office, at www.traviscountylib.org, and at the Travis County Law Library at 314 West 11th Street, Austin.

Read the Law

Read Texas Property Code, Chapter 24 at <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.24.htm>.

Read the Texas Rules of Civil Procedure, Rule 510 at <http://www.txcourts.gov/rules-forms/rules-standards.aspx>.

Or visit the Travis County Law Library at 314 West 11th Street, Austin.

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.

Wear Proper Clothes Dress like you’re going to a job interview. Shorts, flip-flops, and tank tops are **strictly banned** in the County Courts. In improper attire, you may not be allowed in the courtroom.

Be Respectful You must be respectful to the judge and the landlord or landlord’s agent at all times. Address the judge as “Your Honor.” Always stand when you speak to the judge, except while testifying as a witness.

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