

Appealing an Eviction

Suit to Evict: The landlord must deliver to you a *written* Notice to Vacate with a move-out date. If you don't move out by the date, the landlord must file an eviction case in Justice Court (the judge is called a Justice of the Peace). A constable will serve you with the lawsuit, and the first page will state the *date of the trial*.

No-show/Default: If you don't appear at the trial, the landlord wins by a default judgment, and *six days after the judgment* can ask the Justice Court (JC) for an order (Writ of Possession) to remove you. You are then given 24 hours' notice to vacate before the sheriff or constable can remove you and your belongings.

Stay Pending Appeal: If you lose the hearing or there is a default, you can appeal within five days and *remain in the property while the appeal is pending*. If part of your rent is paid with federal funds (public housing, subsidized housing, Section 8 rental voucher), make sure the JC's judgment states the amount paid by the government and the amount to be paid by you. If this isn't correct, you must file a written objection in JC *within 5 days* of the date of the judgment. This is important because you might have to deposit part of your rent while your appeal is pending and you want it to be what you actually owe.

Basics of Appealing an Eviction from JC: *Pay attention to deadlines!*

- Five days to appeal (filed in JC): You have only 5 days to appeal the JC's decision to the County Court (the next highest court). The 5 days include weekends and holidays. If the deadline falls on a day the JC is closed (or is not open until 5:00PM), you can file the appeal on the next day that the JC is open. If you miss the deadline, the judgment stands and the landlord can get an order (Writ of Possession) to have you and your belongings removed.
- Appeal (filed in JC): You can appeal with a bond or cash deposit OR an Affidavit of Inability to Pay.
 - Appeal Bond: A bond is a promise to pay the judgment if you lose the appeal. The amount of the bond is set by the JC, usually at 2-3 times your monthly rent. You can deposit cash or a security with the JC. A security must be signed (guaranteed) by you and one or more people (for example who have assets in Texas) who are approved by the JC. You will also have to pay a filing fee for the appeal once it arrives at the County Court.
 - Affidavit of Inability to Pay: If you can't afford the bond, you can file an Affidavit of Inability to Pay (also called a Sworn Statement of Inability to Pay). The JC should provide you a form Affidavit upon request. If you appeal with an Affidavit, you are not responsible for County Court filing fees. If the landlord disagrees with your Affidavit, you must prove in a JC hearing that you cannot afford the bond. If you disagree with the JC decision, you can appeal to County Court.
- Paying rent into Court Registry: If you appeal with an Affidavit of Inability to Pay, you must pay one month's rent (per the judgment) to the JC *within five days of filing your Affidavit*, and then you must pay rent every month to the county clerk until your appeal is decided. Pay within 5 days of the date it's due under the lease; if you are late, your landlord can get a Writ of Possession to have you removed.
- Paying rent: Unless you are paying rent into the Court Registry, you should continue to pay the rent to the landlord directly to prevent eviction for nonpayment. If the landlord refuses to accept your rent, you should put it aside and not touch it, because you will still owe it.
- Written answer: If you didn't file a written answer to the lawsuit in the JC, you must file one in the County Court within 8 days after the County Court receives your case. (Check with the Court frequently!) If you don't file a written answer the landlord may win by default. Your answer can be a simple hand-written letter asking for new trial and giving the reasons why you shouldn't be evicted.
- Filing fee: (County Court): If you did not appeal with an Affidavit of Inability to Pay, you must pay a filing fee to the County Court within 20 days after receiving notice of the fee. If you can't afford the filing fee, you can file an Affidavit of Inability to Pay Costs.
- Trial on Appeal: Your appeal means you will have a new trial in the County Court. The same evidence you used in JC court (papers, witnesses, photographs) must be presented again. The judge will listen first to the landlord's side and then to your side, then make a decision about whether to evict. You also have the right to ask questions of the landlord in court.
- If you lose the appeal: You should have 10 days (but some courts say 5) to move out or appeal to the court of appeals. The process is complicated; consult a lawyer immediately to discuss your next steps.

Find more help from the Texas Tenant Advisor, www.texastenant.org