

# Eviction Appeal

## *Frequently Asked Questions for Hill County, Texas Residential Landlords*

This brochure is for **residential landlords**. It answers *basic* questions about the eviction appeal process in Hill County, Texas, from the Justice of the Peace (JP) Court to the County Court. **This brochure is not a substitute for the help of a lawyer.** While you have the right to represent yourself you should consult with an attorney if you are unsure of your rights and/or policies, rules and procedures of an eviction appeal in Texas.

### *Who can appeal in an eviction case?*

The landlord or the tenant can appeal a JP Court judgment in an eviction case<sup>1</sup> and receive a completely new trial in a 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. However, 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. You must 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.

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<sup>1</sup> 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 District 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 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 District Clerk, you can ask the County Court for possession of the rental property. Call 254-582-4020 for a hearing date.

File your *Motion* at the District 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 District Clerk's Office for 8 days. Call 254-582-4020 for a trial date. File a *Notice of Trial Setting* at the District 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 is the County Court and the District Clerk's Office?***

The County Court is on the first floor of the Hill County Courthouse, 80 N. Waco St, Hillsboro, TX.

The District Clerk's Office is on the second floor of the Hill County Courthouse.

### ***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, expect 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 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.

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 254-582-4020 for a hearing date.

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

### **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>.

### **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.

**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. If you wear improper attire, you may not be allowed in the courtroom.

**Be Respectful** You must be respectful to the judge and the tenant or tenant’s attorney 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.