

# Appealing Your Eviction

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## **Information for Residential Tenants in Hill County, Texas**

If you are evicted, you may appeal and receive a new trial. This brochure tells you about the process for appealing an eviction<sup>1</sup> 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.

### **Should I appeal?**

Appealing an eviction can be expensive, and you must follow strict rules and deadlines. Sometimes it makes sense to appeal. Sometimes it makes more sense to use the money you would spend appealing to get into a new unit instead. An attorney can help you decide what's best for you.

### **What if I live in public housing?**

It is important to talk to an attorney if you live in public housing, privately owned HUD subsidized housing, Section 8 voucher housing, or low-income tax credit (LIHTC) housing as there may be additional defenses available to you.

Also, if you are evicted and part of your rent is paid by the government, the JP Judge should note in the judgment the amount paid by the government and the amount paid by you. If the Judge does not do this correctly, you have 5 days to ask the Judge, in writing, to correct the order.

### **What if I don't move or appeal?**

If you do not move or appeal your eviction within 5 days, your landlord can ask the JP Judge for a *Writ of Possession*.

A Writ of Possession allows the constable or sheriff to give you a 24-hour warning and then physically remove your family and your belongings from the rental unit.

### **How fast do I have to decide?**

You only have 5 days (counting Saturdays, Sundays and holidays), from the day the JP Judge signs the judgment for your eviction, to appeal. However, if the 5<sup>th</sup> day lands on a weekend or holiday, you can file your appeal on the next day the court is open.

### **What are the steps to appeal?**

#### **Step 1 – File Your Appeal.**

To appeal, you must file at the JP court within 5 days **either:**

- an *Appeal Bond* or
- a *Tenant's Affidavit of Inability to Pay Costs of Appeal or File Appeal Bond & Answer* (also called a *Pauper's Affidavit*)

***Appealing by Filing an Appeal Bond*** – An appeal bond is a promise to pay the landlord the amount of the bond if you lose your appeal. An appeal bond must be signed by you and two others who have enough assets to cover the appeal bond. The JP Judge sets the amount of the bond. You can also deposit cash (called a *cash bond*) with the JP court clerk in place of the appeal bond.

***Appealing by filing a Pauper's Affidavit*** – If you cannot afford the appeal bond, you can instead file a *Tenant's Affidavit of Inability to Pay Costs of Appeal or File Appeal Bond & Answer* (also called a *Pauper's Affidavit*). It will list your income, property, monthly expenses, debts, and dependents. It must show you are unable to pay the bond or give security for the bond.

Your landlord can contest your Pauper's Affidavit. If that happens, you must go to a separate hearing to testify about the information in your affidavit. Bring proof of your income, such as paystubs and/or documents to prove you receive public benefits. Bring bank statements to show how much money you have in the bank. The JP Judge will then either approve or deny your Pauper's Affidavit. If the JP Judge denies your Pauper's Affidavit, you have 5 days to post the appeal or cash bond or appeal the JP Judge's decision to the County Court.

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<sup>1</sup> An eviction case is also called a *forcible detainer* case.

**Copy to Landlord's Agent** – You must send a copy of your appeal bond or Pauper's Affidavit to the landlord's agent within 5 days. Send it by certified mail return receipt requested, fax, or personal delivery. Bring proof of having sent it with you to your trial.

**Step 2 – Pay Your Rent to the Court if You Were Evicted for Nonpayment of Rent and Appealed Using a Pauper's Affidavit.**

This rule applies if you:

- were evicted for not paying your rent **and**
- filed your appeal using a Pauper's Affidavit.

Under this special rule, if you want to stay in your rental unit during your appeal, you must:

- **pay 1 month's rent** to the JP Court Clerk **within 5 days** of filing your Pauper's Affidavit
- **AND ALSO make all future monthly rent payments** to the District Clerk within 5 days of the due date under your lease.

**Example:** Suppose your rent is \$500 due on the 1<sup>st</sup> of each month, and the JP Judge signs an order evicting you on the 20<sup>th</sup>. To appeal, you must pay \$500 to the JP Court Clerk by the 25<sup>th</sup>, and you must pay another \$500 to the County Clerk by the 5<sup>th</sup> of the next month.

**If you don't pay 1 month's rent** to the JP Court Clerk within 5 days of filing your Pauper's Affidavit, the JP Court may sign a Writ of Possession **without giving you notice and without holding a hearing.**

**If you don't make future rent payments** on time, the landlord may file a motion in County Court asking that you be removed. You will be notified of the hearing on the landlord's motion. The first time this happens, the Court may allow you to stay in your rental unit if you pay the rent you owe and the landlord's attorney's fees to the District Clerk on or before the date of the hearing. (The law only allows you to catch up in this way one time.) If you are not able to do this, the Court will sign a Writ of Possession and the constable or sheriff will remove you from the rental unit.

**Remember:** You do not pay rent to the court if you filed an appeal bond or cash bond or were evicted for a reason other than nonpayment of rent. If you were evicted for a reason other than nonpayment of rent, you should continue to pay your rent to the landlord or the landlord can file a new eviction case against you.

**Step 3 – County Court.**

Your appeal case is sent by the JP Court to the District Clerk's Office for filing with the County Court.

**Filing Fee** – If you appealed using a Pauper's Affidavit there is no additional filing fee. If you appealed using an appeal bond or cash bond you must pay a \$222 filing fee. You must pay this fee at the District Clerk's Office within 20 days of filing or file an Affidavit of Inability to Pay the Filing Fee. If you don't do this, your appeal will be dismissed.

**Written Answer** – You must file a written answer with the District Clerk within 8 days after the County Court receives your case. If you don't, your case may be dismissed.

**Scheduling Your Trial** – Your appeal can be scheduled for trial as soon as your case has been on file with the District Clerk's Office for 8 days. The Court will not schedule the trial. Either you or your landlord may schedule the trial by calling 254-582-4020. **You must give the opposing party at least 3 days' notice before the trial date.**

**Step 4 – The Trial**

Your appeal trial will take place in County Court. The court is located on the first floor of the Hill County Courthouse, 80 N. Waco St., Hillsboro, TX.

The trial of your appeal will be a completely new trial. **This means that 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 the County Court judge to consider. You may also present new witnesses and information.

Unlike the JP Court, which is designed to be more casual, expect the complicated rules of evidence and civil procedure will be more strictly enforced in the County Court. Like the JP Judge, the County Court judge will listen first to the landlord's side of the story and then to your side. The judge will then decide whether or not you will be evicted.

**Tip:** Before your trial, make a list of everything you want to tell the judge and the papers, witnesses, or photographs you want to present. If possible, review your list with an attorney.

## Frequently Asked Questions

***What happens to the money I deposit with the JP and District Clerk's Offices?*** The clerk's office keeps the money until the Court orders it released. Even if you win the appeal, absent an unusual special circumstance, the landlord will be entitled to the money deposited with the court.

***Will an attorney be appointed to represent me?***

No.

***What if I live in a manufactured home?*** If you own your mobile home and are just renting a lot, there are additional rules that apply. Talk to an attorney.

***What if I Lose My Appeal in County Court?***

If you lose your appeal, the County Court judge should give you 10 days to move. If you lose your appeal, you will also most likely have to pay your landlord's court costs and attorney's fees, as well as any rent that you owed before your appeal or that accrued during your appeal. If you intend to appeal the County Court judgment to an appellate court, you should see a lawyer immediately to discuss your next steps.

## 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.

***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 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.

