

Frequently Asked Questions by Residential Tenants in Appeals to County Courts at Law

The information that follows was written for Residential Tenants in appeals of eviction cases in the Johnson County Courts at Law. It answers **some basic** questions about the appeal of a residential eviction case from a Justice of the Peace (JP) Court to a County Court at Law. You will find information on this topic from many other sources. You will find information on this topic from many other sources.

THIS INFORMATION IS NOT A SUBSTITUTE FOR REPRESENTATION BY AN ATTORNEY.

It is recommended that you retain an attorney to represent you in the County Courts at Law. A self-represented (Pro Se) litigant is expected to be able to conduct an entire proceeding, including conducting a trial in accord with the Texas Rules of Civil Procedure and the Texas Rules of Evidence without assistance. A Pro Se Litigant in a non-jury trial needs to be able to make an opening statement, call and question witnesses, present and admit exhibits, cross-examine adverse witnesses, argue the case and provide a properly drafted judgment. If the case is before a jury, the Pro Se Litigant must additionally be able to select potential jurors.

You should be aware that Texas attorneys may use traditional or modern methods of advertising their services, including, but not limited to, internet, newspaper, periodical, television and radio. For assistance in finding an attorney you may use the Texas State Bar Information & Referral service at (800) 252-9690 (Toll Free), Monday - Friday, CST, 8:30 a.m. to 4:30 p.m. The call-in service is closed on legal holidays. To access a range of paid, free or reduced fee legal resources in your county, please visit www.texasbar.com/selfservice. You may also get a referral to an attorney anytime by visiting the Texas State Bar [online service](#). **Please note that this is an automated system and an attorney you may be referred to may not match your specific requirements.** You may also call the State Bar of Texas during business hours to speak with a staff member.

Who may benefit from reading this list of frequently asked questions?

This question and answer information is for Residential Tenants who have had a judgment rendered against them in a Justice of the Peace Court in Johnson County, Texas. It is designed to provide general answers to many common issues in the appeal of an eviction case from a Justice of the Peace (JP) Court to a County Court at Law. The questions and answers here are not case specific and may not apply to your case situation.

Who can appeal in an eviction case?

The property owner, landlord or the tenant can appeal a JP Court judgment in an eviction case (a.k.a. forcible eviction case) and receive a completely new trial (trial de novo) in a County Court at Law.

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

County Courts at Law # 1 and # 2 are on the fourth floor of the Guinn Justice Center, 204 South Buffalo Avenue, Cleburne, Texas 76033. The County Clerk's Office is also on the fourth floor of the Guinn Justice Center, 204 South Buffalo Avenue, Cleburne, Texas 76033.

Can I represent myself?

Yes, but you cannot represent another tenant even if you share the rental unit with that person. However, just because you **can** represent yourself doesn't mean you **should**. Eviction appeals can be complicated. An error on your part could cause you to lose the case. A Pro Se Litigant in a non-jury trial needs to be able to make an opening statement, call and question witnesses, present and admit exhibits, cross-examine adverse witnesses, argue the case and provide a properly drafted judgment. If the case is before a jury, the Pro Se Litigant must additionally be able to select and interview potential jurors. The tenant may be represented by an attorney in a County Court at Law even if he or she wasn't represented at the JP Court. Special rules (Texas Rules of Civil Procedure, Rule 500, et. seq.) apply to Justice court proceedings that DO NOT apply in County Courts at Law. The Texas Rules of Evidence do not apply to justice courts but the evidence rules do apply in County Courts at Law. One who knows the rules likely has an advantage in a contested proceeding. As well, a justice court judge may question a witness or party and may summon any person or party to appear as a witness.

What if I don't move or appeal?

Appeals are time-critical. If you do not move you only have 5 days (counting Saturdays, Sundays and holidays), from the day the JP Judge signs the judgment for your eviction to become final. BUT, if the **5th day** lands on a weekend or holiday, you can file your appeal on the next day the court is open.

If you remain in the rental after the judgment becomes final, the landlord can ask the JP Judge for a “Writ of Possession” after 5 days (counting Saturdays, Sundays and holidays) from the day the JP Judge signed the judgment for your eviction. If granted, a Writ of Possession allows the constable or sheriff to give you a 24- hour warning and then physically remove the tenant and other occupants from the rental unit along with their personal belongings.

What is a Writ of Possession?

It is a court Order to be executed by the Constable of the Precinct where the rental unit is located. Executing a writ of possession" is when a tenant and all their belongings and property are removed from the rental unit. Section 24.0061 of the Texas Property Code describes the procedure for issuing and executing a writ of possession. Rule 510.8 of the Texas Rule of Civil Procedure lays out the timelines for issuing and executing a writ of possession in an eviction suit.

What are the steps to appeal?

Choices-You have only five days to appeal the Justice Court’s decision to a County Court at Law (the next highest court). If possible, you should pay any fees when you file your appeal. There are three ways to appeal: by (1) bond, (2) cash deposit, or (3) a Statement of Inability to Pay Court Costs (Fee Waiver, also called a Pauper’s Affidavit).

1. Appeal by Bond

A bond is a promise to pay the judgment if you lose the appeal. The JP judge usually sets the amount at one month's rent, but this may vary. You can file a bond with the Justice Court. A bond must be signed (guaranteed) by you and one or more people who are approved by the Justice Court. For example, you may need someone who has assets in Texas to sign your bond. If the eviction is for nonpayment of rent and you file an appeal bond, you must then also pay one rental period’s rent into the Justice Court’s court registry within five days after filing the bond. You must pay the filing fees for the appeal within twenty days after the Justice Court sends it to County Court at Law. If you did not file a written Tenant’s Original Answer to the Landlord’s suit, you should do so as soon as possible but not later than eight (8) days after the JP court sends the appeal to a County Court at Law. To make sure you do not miss a deadline, it is best to file the Answer and pay the filing fees along with your bond or as soon after as possible.

2. Appeal by Cash Deposit

If you tell the JP judge you want to file an appeal by cash deposit, the JP judge will set the deposit amount. This deposit is usually equal to a month’s rent, but the judge can decide on a different amount. You must also file a Tenant’s Original Answer with the County Court at Law within eight days after the Justice Court sends the appeal to the County Court at Law. If you already filed an Answer in Justice Court, you do not need to file another in the County Court at Law. You must pay the filing fees for the appeal within twenty days after the Justice Court sends it to County Court at Law. To make sure you do not miss a deadline, it is best to file the Answer and pay the filing fees along with your deposit or as soon after as possible.

3. Appeal by Statement of Inability to Pay

If you can’t afford the bond or a cash deposit, you can file an Affidavit of Inability to Pay (also called a Fee Waiver, a Pauper’s Affidavit, or a Sworn Statement of Inability to Pay). The Justice Court can provide you a form Affidavit upon your timely request. If you appeal with a Statement of Inability to Pay, you are not responsible for County Court at Law filing fees. If the landlord disagrees with your Affidavit, you must prove in a Justice Court hearing that you cannot afford to pay the cash deposit or file the bond.

If the Justice Court denies your fee waiver, you can appeal that decision to County Court at Law. You then have five days to ask the County Court at Law for a hearing on the fee waiver. **DO NOT ASSUME THAT THE COURT WILL SET A HEARING** on the fee waiver (even if you think a Court representative tells you that it will set a hearing. Send a letter to the Court Coordinator for the County Court at Law where your case was assigned (No. 1 or No. 2). This letter should request a hearing on your fee waiver. You must send a copy of this letter to the Landlord. You are responsible for getting a timely hearing.

If the eviction is for nonpayment of rent and you file a fee waiver, you must pay one rental period’s rent to the Justice Court’s court clerk within five days after filing the fee waiver. You must then continue to pay rent into the registry as you normally would your landlord, usually each month. (After the Justice Court sends the case to a County Court at Law, you pay the rent into the County Court Clerk instead.

The tenant must also file an answer with the County Court at Law within eight days after the Justice Court sends the appeal to the County Court at Law. An “answer” is a defendant's formal written statement filed with the court in reply to a plaintiff's petition. If you already filed an appropriate answer in JP court, you may not need to file another in the County Court at Law; however, you may want to revise or correct your answer, this is an opportunity to do so. Failing to pay rent to the Clerk of the County Court at Law does not stop your appeal, but, if you don't pay, the landlord can get the court's permission to remove you without another hearing. If so, you may still fight the grounds for the eviction, but you cannot remain in the rental unit without continuing to pay rent.

Do I have to pay a Filing Fee to the County Clerk?

If you did **not** appeal with an Affidavit of Inability to Pay, you must pay a filing fee to the County Court Clerk 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. The landlord may contest your Affidavit.

Can the property owner contest the Tenant's Statement of Inability to Pay (Fee Waiver or Pauper's Affidavit)?

The property owner has 5 days from the day the tenant files the Tenant's Statement of Inability to Pay (Fee Waiver or Pauper's Affidavit) to notify the JP Court Clerk of the portions of the affidavit that are contested. The JP Judge will hold a hearing within 5 days from the day the contest is filed. You (the tenant) have the burden to prove that you cannot afford to pay the costs of appeal, file an appeal bond, or pay the bond in cash. If the 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 Statement of Inability to Pay (Pauper's Affidavit) to the County Courts at Law. If the contest is denied or if no contest is filed, the Tenant's Statement of Inability to Pay (Pauper's Affidavit) is approved, and the case is sent to County Court for a new trial.

How do I pay my rent while the case is pending? (This applies only to Nonpayment of Rent Evictions Only)

If you appeal by Affidavit of Inability to Pay (Pauper's Affidavit or fee waiver): You must pay one rental period's rent (as stated in the judgment) to the Justice Court Clerk within five days of filing your Affidavit. After that, you must pay rent every rental period (usually monthly) to the County Court Clerk until your appeal is decided. Rent payments are required within five days after rent is due under the lease. If you are late, your landlord can get a Writ of Possession to have you removed. If you appeal with a Statement of Inability to Pay on the 15th day of a month, you must pay one rental period's rent payment into the court registry by the 20th day (5 days after the filing) of that same month. If rent is normally due on the 1st of each month, you must also pay on the 1st in addition to the payment you made on the 20th. However, if you appealed on the 28th and rent is normally due on the 1st, making a single payment on the 1st will count as paying both your normal rent and paying within five days of the appeal.

If you appeal by bond: You must pay one rental period's rent (as stated in the judgment) to the Justice Court within five days of filing the bond. The law does not require you to make regular rent payments to the Clerk of the County Court at Law. You will, however, still owe the landlord regular rent for as long as you live on the property.

If you appeal by cash deposit: You do not have to make an initial rent payment to the Justice Court. As with an appeal by bond, the law does not require you to make regular rent payments to the Clerk of the County Court at Law. You will still owe the landlord regular rent for as long as you live on the property.

Special Note to Texas Rent Relief recipients: *If you are appealing an eviction after having received Texas Rent Relief funds, you may use those funds to pay rent into the court registry instead of to your landlord.*

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, the property owner or landlord may ask the County Court at Law to order the tenant to pay the full amount of rent into the court registry. A landlord has to show he, she or it did not cause the agency to stop paying its portion of the rent and an inability to take reasonable action to get the agency to start paying its portion of the rent.

How do I pay my rent while the case is pending? (This applies only to Evictions for Other Than Nonpayment of Rent such as lease violations)

If the eviction is for some reason other than nonpayment of rent, you should continue to pay the rent to the landlord directly to prevent eviction for nonpayment. If the landlord refuses to accept your rent, keep the funds available for future requirements.

Do I have to file a Written Answer to the Landlord’s Petition for Eviction?

If you didn’t file a written answer to the lawsuit in the Justice Court, you must file one in the County Court at Law within eight days after the County Court at Law receives your case. An “answer” is a defendant’s formal written statement filed with the court in reply to a plaintiff’s petition. The Clerk for the County Court at Law will send you notice by certified mail. If you don’t file a written answer, the landlord may win by default. The written answer may let the judge know why you believe should not be evicted and can direct the court’s attention to law that you believe supports your position. Your answer can be simple or complex. Answer forms are available on Texas Law Help. Make sure your answer is filed on time with the Johnson County Clerk. A true copy of the Answer you file with the clerk must be sent to the landlord at their address on record.

How do I try my case?

This is outside the scope of this basic brochure. Your appeal means you will have a new trial in the County Court. This may be a case before a judge or a jury. Each side has a right to a trial by jury. Trials are complex. If you are planning to represent yourself, you should thoroughly prepare. The County Court at Law is much more formal than JP Court and rules are strictly enforced.

What happens if I don’t hire an Attorney and lose the Appeal Trial?

This is also outside the scope of this basic brochure. If you are unsuccessful at the County Court at Law level representing yourself, you will have to provide and file certain documents (including, but not limited to, transcripts, notices and requests) within strictly enforced time constraints in order to perfect the appeal. The process is complicated. If you lose the appeal trial, you should consult a lawyer immediately to discuss your next step.

What are some Courtroom Rules?

You should plan to arrive 15-30 minutes early. If you arrive late, the judge may have already ruled on your case. Be sure to leave enough time to find parking. There is ample free public parking near the Guinn Justice Center.

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 at Law. If you show up in improper attire, you may not be allowed in the courtroom and your opponent might win.

Be Respectful

When you are in Court, you should be respectful to the judge and the opposing party at all times. Address the judge as “Your Honor.” Address the opposing party as “Sir” or “Ma’am.” You should always stand when you speak to the judge, except while testifying as a witness. You should endeavor to be prepared. If possible, ask an attorney to help you get ready for your trial.

Evidence

You should have at least three copies of each Exhibit you plan to introduce. The original for identification and retention in the clerk’s file; a copy for the opposing party and a copy for your use. All original exhibits should be Pre-Marked as appropriate. The Court Reporter of the Court at Law may provide stickers for marking your exhibits.

Neatness Counts

Your documents (exhibits, pleadings, requests) should be clean and organized. If you intend to introduce evidence in a digital format, you should make sure the evidence is in a format that can be displayed or processed by the digital equipment available in court.