

# Eviction Appeals

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Justice of the Peace, Pct. 3  
Wise County

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## What We Will Cover

- Appeal Basics
- Contests:
  - Appeal Bond
  - Statement of Inability
- Payment of Rent Pending Appeal of an Eviction Case
- What Happens if They:
  - Fail to Pay Their Filing Fees
  - Fail to Answer
- Discussion Scenarios

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## Appeal Basics

- A judgment has been entered by a Justice Court in an Eviction case!
- What happens if one of the parties wants to appeal?

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## Appeal Basics

- May either side appeal?
  - Yes!
- Who are the parties?
  - Appellant = person who lost and is appealing (usually the tenant)
  - Appellee = person who won (usually the landlord)

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# Appeal Basics

- What do they have to do to file an appeal?
  - They must either:
    - File an appeal bond;
    - Make a cash deposit;  
or
    - File a Statement of Inability to Afford Payment of Court Costs
  - This is filed with the Justice Court!

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## What is an Appeal Bond?

- An Appeal Bond is a promise to pay the judgment if the appellant loses the appeal.
  - The bond must be signed by the appellant and guaranteed by one or more sureties who have assets in Texas and are approved by the judge.
  - It is payable to the appellee and conditioned on the appellant prosecuting the appeal to effect and the payment of any judgment and all costs rendered against them on appeal.
  - The amount of the bond is set by the judge.

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What is a  
Statement of  
Inability?

- A party who is unable to afford to pay the filing and service fees may file a Statement of Inability to Afford Payment of Court Costs.
  - A form for a Statement of Inability is available on the TJCTC website.
  - This form must be made available for free to anyone without the person having to request the form.
    - Rule 502.3

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How Long Do They Have to  
Appeal?

- Five days after the judgment is signed.
- But if the fifth day is a Saturday, Sunday or legal holiday, they have until the next business day!
- And if the court closes before 5:00 p.m. they get one more day!

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## Must Now Pay Filing Fee to Appeal!

As of January 1, 2022, a party filing an appeal of an eviction case must pay a filing fee of \$54 to the justice court upon filing an appeal bond or cash deposit.

- Sections 133.151(a-1) and 135.103(a), Local Government Code

This filing fee is not required if the person appeals by filing a Statement of Inability to Afford Payment of Court Costs.

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## When is an Appeal “Perfected?”

- When an appeal bond, cash deposit or Statement of Inability is properly and timely filed with the Justice Court.

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Once an Appeal is  
Perfectured What Happens  
to the Justice Court  
Judgment?

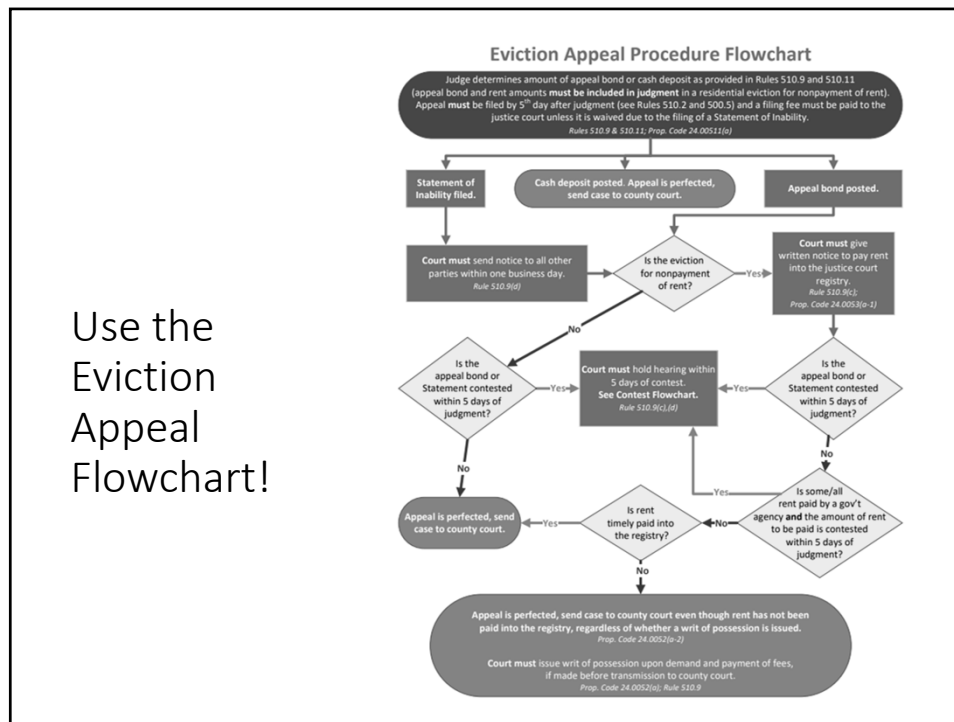
- The judgment of the justice court becomes “null and void.”
- This means it cannot be enforced.
  - Except when the tenant is required to pay rent into the registry of the court and fails to do so.
  - More on this later!

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Once an Appeal is  
Perfectured What Happens  
to the Case?

- The case is transmitted to the county court which holds a “trial de novo.”
  - A new trial from scratch as if the trial in justice court had never happened.
  - So both sides get to present their case all over again in county court.
- And the county judge makes a decision based on the evidence presented in county court.

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**Knowledge Check!**

- One way to appeal a case from justice court to county court is for the party to file:
  - A. A notice of appeal.
  - B. An appeal bond.
  - C. A motion for a new trial.

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Knowledge  
Check!

- In order to perfect an appeal in an eviction case, an appeal bond, cash deposit or Statement of Inability must be filed within \_\_\_\_ of the date the judgment is signed:
  - A. One week.
  - B. Five business days.
  - C. Five calendar days, but if the fifth day falls on a Saturday, Sunday or legal holiday, they have until the next business day, and if the court closes before 5:00 p.m., they get one additional day.

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Knowledge  
Check!

- If a party files an appeal bond to appeal an eviction case, they must pay another filing fee to the justice court.
  - A. True.
  - B. False.
  - C. Only if the county court requires them to.

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## Knowledge Check!

- When a county court hears a case that is appealed from a justice court, the county court:

- A. Only reverses the justice court if the justice court made a serious mistake.
- B. Hears the case "de novo," meaning all over again without regard to how the justice court decided the case.

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## Contests

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## What is a Contest of an Appeal?

- A contest may be filed over:
  - An appeal bond; or
  - A Statement of Inability
- The party that files the contest is claiming that the appeal bond or Statement of Inability is not valid and therefore the appeal has not been perfected and may not proceed.
- If a contest is filed, the justice court will rule on it first.

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## What is a Contest of an Appeal?

- If the justice court upholds the contest, then the appellant may appeal the decision on the contest to the county court.
- The county court then decides whether the appeal bond or Statement of Inability are valid.
  - If they are not, then the appeal must be perfected in some other way.

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When May an  
Appeal Bond be  
Contested?

- In a residential eviction suit based upon nonpayment of rent, if a party appeals by filing an appeal bond, the appellee may contest:
  - The amount of the bond;
  - The form of the bond; or
  - The financial ability of the surety to pay the bond.

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When May an  
Appeal Bond be  
Contested?

- A contest of an appeal bond is **not allowed** in an eviction case where the grounds for the eviction are not nonpayment of rent.
  - For example, the grounds for the eviction are that the tenant has a pet or the lease has terminated.

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### Who Has the Burden of Proof on the Contest?

- If a party contests the amount or form of the bond, they have the burden to prove the bond is insufficient.
- If a party contests the financial ability of the surety, then the burden is on the appellant to prove the surety has sufficient non-exempt assets to pay the bond.
  - A party may not contest an appeal bond issued by a corporate surety authorized by the Texas Department of Insurance.

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### How Does the Contest Get to the County Court?

- The justice court will rule on the contest initially.
- If the justice court upholds the contest, then the appellant may appeal that decision to the county court within **five** days.
- The appeal is filed with the justice court.

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## How Does the Contest Get to the County Court?

- The justice court must then transmit to the county court the contest of the appeal bond and all relevant documents.
- The county court must docket the appeal, set a hearing not more than **five** days later, notify the parties and the sureties of the date and time of the hearing and hear the contest de novo.

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## What Happens to the Appeal Once the County Court Decides the Contest?

- If the appeal bond is approved by the county court, the county court must transmit the transcript and the records to the justice court and the justice court must proceed as if the appeal bond was originally approved.
- If the county court disapproves the appeal bond, then the appellant may perfect an appeal by making a cash deposit or filing a Statement of Inability.

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## When May a Statement of Inability be Contested?

- If a party appeals by filing a Statement of Inability, the justice court must provide notice to all other parties by the **next business day**.
- In an eviction case the appellee may contest the Statement within **five days** after receiving the notice.

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## When May a Statement of Inability be Contested?

- A Statement of Inability may not be contested if a legal aid provider certificate (like TRLA) is filed with the Statement.
- If a Statement of Inability states that the person receives government entitlements based on indigence, then the only challenge that can be made is with respect to whether or not the person is actually receiving those entitlements.

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## Procedure on the Contest

- Basically the same as the contest procedure for an appeal bond.
- If the justice court upholds the contest, then the appellant may appeal that decision to the county court by filing a notice of appeal with the justice court within **five days** in an eviction case.

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## Procedure on the Contest

- The justice court must then transmit to the county court the contest of the Statement of Inability and all relevant documents.
- The county court must docket the appeal, set a hearing not more than five days later and hear the contest de novo.

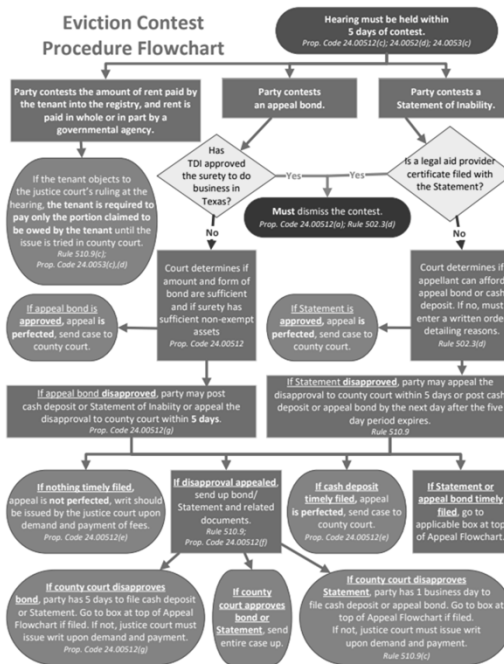
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What Happens to the Appeal Once the County Court Decides the Contest?

- If the Statement of Inability is approved by the county court, the county court must transmit the transcript and the records to the justice court and the justice court must proceed as if the Statement of Inability was originally approved.
- If the county court disapproves the Statement of Inability, then the appellant may perfect an appeal by filing an appeal bond or making a cash deposit.

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Use the Eviction Contest Procedure Flowchart!



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## Knowledge Check!

- True or False: If a party appeals by filing either an appeal bond or a cash deposit, the other side may contest the amount and ask the judge to require them to pay more.
  - A. False. An appellee may only contest the amount of an appeal bond, not a cash deposit.
  - B. True. An appellee may ask the judge to require the appellant to pay a higher amount either for an appeal bond or a cash deposit.

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## Knowledge Check!

- True or False: A Statement of Inability may always be contested by the other side.
  - A. True! An appellee always has the right to argue that the appellant can afford an appeal bond or a cash deposit.
  - B. False. An appellee may not contest a Statement of Inability if a legal aid provider certificate is filed with the Statement.

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Payment of  
Rent  
Pending  
Appeal of  
an Eviction  
Case

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When Does a Tenant Have  
to Pay Rent Pending Appeal?

- A tenant only has to pay rent into the registry of the court if:
  - The eviction is for nonpayment of rent; and
  - The tenant appeals by filing either:
    - An appeal bond; or
    - A Statement of Inability.

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## What is a Nonpayment of Rent Case?

- This means the reason for the eviction is because the tenant failed to pay their rent.
- Even if the landlord is not asking for back rent, if the reason the landlord is evicting the tenant is because the tenant failed to pay rent, then it is a nonpayment of rent case.

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## What is a Nonpayment of Rent Case?

- If the eviction is based on some ground other than nonpayment of rent, then the tenant does not have to pay their rent into the registry of the court.
  - For example, if the landlord is claiming the tenant breached the lease by having a pet, that is not a nonpayment of rent case.
- The tenant does not have to pay rent into the court registry after filing an appeal.

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## Notice to Pay Rent

- The justice court gives the tenant a notice telling them the amount of the initial deposit they have to pay into the justice court registry and the date by which they have to pay it.

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What  
Happens if  
They Don't  
Pay?

- If the tenant fails to timely pay the rent into the justice court registry, then upon request by the landlord and payment of the service fees, the justice court must issue a writ of possession immediately and without a hearing provided the case has not yet been sent to the county court.

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What  
Happens if  
They Don't  
Pay?

- But if the landlord does not request a writ of possession before the case is sent to the county court, then the landlord may request a writ of possession **from the county court.**

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## Does Failure to Pay Rent Mean the Appeal is Automatically Dismissed?

- No! Perfection of the appeal and payment of the rent into the registry of the court are two separate and distinct matters.
- Failing to timely pay rent into the registry of the court when required means that the landlord is entitled to a writ of possession immediately and without a hearing but this does not affect the perfection of the appeal.
  - It only means that the tenant does not get to live in the property rent free while the appeal is pending.

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Does Failure  
to Pay Rent  
Mean the  
Appeal is  
Automatically  
Dismissed?

- An appeal is perfected by the proper and timely filing of an appeal bond, a Statement of Inability, or by making a cash deposit.
  - Reminder- If they pay a cash deposit, they are not required to pay one month's rent into the registry.
- The case must still be sent to the county court as long as the appeal was properly perfected.

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Do They  
Have to Keep  
Paying Rent?

- Yes! But they only pay the initial deposit to the justice court.
- After the case goes to the county court, they have to pay rent to the county court.
- And the landlord may ask the county court to release the rent while the appeal is pending.

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Knowledge  
Check!

• A tenant may have to pay rent into the court registry:

- A. In any residential eviction case.
- B. Whenever the landlord asks for back rent.
- C. If the eviction is a nonpayment of rent case.

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Knowledge  
Check!

• If the tenant fails to pay rent into the registry of the justice court:

- A. The justice court still sends the case to the county court if the appeal was perfected.
- B. The tenant loses their right to appeal the case to the county court.

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## Knowledge Check!

- If the tenant fails to pay rent into the justice court registry and the case has already been sent to the county court:
  - A. The landlord has to ask the county court to “remand” the case back to the justice court.
  - B. The landlord can ask the county court to issue a writ of possession.

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## What Happens to the Appeal in County Court?

- Once the appeal has been perfected, the justice court judgment is null and void and may not be enforced (except for a nonpayment of rent case).
- Three possibilities:
  - Trial de Novo
  - Appeal is Dismissed
  - Default Judgment

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## Trial de Novo

- County court hears the case from scratch!
  - An eviction case is subject to trial at any time after the expiration of 8 days after the transcript is filed.

-- Rule 510.12

- Enters a judgment based on the law and evidence.
- Judgment may be enforced through a writ of execution, a writ of garnishment or a writ of possession.

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## Appeal is:

- Dismissal may occur because:
  - **Appeal was not perfected.**
    - For example, appellant was late in filing an appeal bond, cash deposit or Statement of Inability; or

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Appeal is:

- **Appellant fails to pay the filing fee in county court.**
  - Rule 506.1(i) says appellant must pay the costs on appeal to a county court in accordance with Rule 143a.
  - Rule 143a says if the appellant fails to pay the costs on appeal within 20 days after being notified to do so by the county clerk, the appeal "shall be deemed not perfected and the county clerk shall return all papers" to the justice court which shall proceed as though no appeal had been attempted.

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Appeal is

- So if an appellant fails to pay the county court filing fee, the appeal is treated as though it was not perfected.
- Once this occurs, the judgment of the justice court is no longer null and void and it may be enforced **by the justice court.**

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## Default Judgment

- In an eviction case if a tenant has not filed a written answer in justice court, then they must file one in county court within 8 days after the transcript is filed.
- If they fail to do so, then a default judgment may be entered by the county court.
- If this happens, the judgment of the justice court is still null and void but the landlord can enforce the judgment of the county court!

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## What Happens to the Appeal Bond?

- If the appellant loses the case again when it is tried in county court, then the appeal bond is available for the appellee to collect any judgment and costs (including attorney's fees) awarded by the county court.

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## What Happens to the Appeal Bond?

- If the appellant fails to pay the filing fees in the county court, and the appeal is dismissed, the appellant may request the county court to award “appeal bond proceeds” for any damages incurred (such as attorney’s fees) due to the appeal.

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## Discussion Scenario 1

- Thomas fails to pay November’s rent. His landlord, Louis, knows he doesn’t have any money so when he files the eviction suit he doesn’t ask for any back rent. He just asks for possession of the premises.
- Is this a nonpayment of rent case?
- What difference does it make for an appeal?

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## Discussion Scenario 2

- Theresa has a dog in violation of her lease. Her landlord, Louise, discovers the dog and gives her a notice to vacate on October 21<sup>st</sup>. Theresa is current on her rent at that time but does not pay November's rent on Nov. 1<sup>st</sup>. At trial on Nov. 15 Louise asks the court to award November's rent.
- Is this a nonpayment of rent case?

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## Discussion Scenario 3

- Tori comes to your court to file an appeal from an eviction case. The judgment for possession was signed on December 1<sup>st</sup> and it is now December 13<sup>th</sup>. What is the best way to proceed?
  - Tell Tori it's too late to appeal and she better start packing?
  - Accept the appeal but send a note with the file to the county court pointing out that it is late?

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## Discussion Scenario 4

- Terry files an appeal of a judgment for possession in a case for nonpayment of rent on Dec. 1<sup>st</sup>. You send him a notice telling him he has to pay one month's rent into the court registry by December 6<sup>th</sup> at 5:00 p.m. He comes to your court on December 8<sup>th</sup> and says his landlord, Lucas, gave him an extra week to pay the rent to the court. On December 10<sup>th</sup> Lucas comes in and asks for a writ of possession and pays the service fees.
  - Should you issue the writ of possession?
  - What do you do if you had already sent the case to the county court?

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## Discussion Scenario 5

- Trudy appeals a judgment for possession to county court by filing an appeal bond but fails to pay the filing fee in the county court. The county court dismisses the appeal and sends the case back to justice court. The landlord, Leonard, asks the justice court to issue a writ of possession.
  - Can your court do this?
  - Or does Leonard have to go back to county court for the writ of possession?

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## Discussion Scenario 6

- Tonya appeals a judgment for possession to county court by filing an appeal bond, pays the filing fees but fails to file an answer in the county court, which enters a default judgment against her. The county court then sends the case back to justice court. Leonard, the landlord asks the justice court to issue a writ of possession.
  - Can your court do this?
  - Or do you have to send the case back to the county court for enforcement there?

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## Questions?

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