

Eviction Appeals

Hon. Al Cercone, Justice of the Peace, Dallas County Pct. 3, Pl. 1

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Resources

- TRCP 143a, 510
- Evictions Deskbook, Chapter 4
- Property Code Chapter 24
- www.tjctc.org
 - Board Questions
 - Webinars
 - Updated Forms!
 - Self-Represented Litigants Info & Packets – www.tjctc.org/SRL
 - Eviction Appeal/Contest Flowchart - <https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

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Step 1 – Is This a Nonpayment of Rent Eviction?

- A critical question to ask yourself in every eviction case is “what are the grounds for eviction?”
- This is important, not just to decide if the plaintiff has proven its case, but if the eviction is based on nonpayment of rent, special rules and procedures apply and must be carefully followed.
- Throughout this presentation, procedures that apply **only** to nonpayment of rent evictions will be highlighted in *green italics*.

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DISCUSSION SCENARIO

- Mike has a mortgage that gets foreclosed upon. The bank purchases the house at the foreclosure sale and now seeks to evict Mike.
- Is this a nonpayment of rent eviction?

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DISCUSSION SCENARIO

- Billy hasn't paid October or November's rent. April gives him a 3-day notice to vacate on November 10th and files the suit on November 14th.
- Billy pays October and November's rent to April on November 17th and the case goes to trial on November 25th.
- Is this a nonpayment of rent eviction?

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DISCUSSION SCENARIO

- Daniel hasn't paid November's rent.
- His landlord, Bray, knows that Daniel doesn't have money, so when Bray files the eviction suit, he doesn't ask for any money damages, instead only asking for possession of the premises.
- Is this a nonpayment of rent eviction?

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DISCUSSION SCENARIO

- Becky has a pet in violation of her lease.
 - Charlotte, her landlord, gives Becky a notice to vacate on October 21st when she discovers the pet at the premises.
 - At the time, Becky is current on rent.
 - The eviction suit is filed on October 25th.
 - Becky doesn't pay November's rent on the 1st, and Charlotte asks the court to award November's rent at trial on November 13th.
- Is this a nonpayment of rent eviction?

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Step 1 – Is This a Nonpayment of Rent Eviction?

- Once you have determined that a case **is** a nonpayment of rent eviction, in nonpayment of rent evictions ***the judgment must contain two additional items:***
 1. A determination of how much the monthly rent is, and how much of that is paid by the tenant and how much, if any, by a governmental agency.
 - Prop Code Sec. 24.0053
 2. And, a determination of how much is the appeal bond.
 - Prop Code Sec. 24.00511.

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Step 2 – Determining the Appeal Bond

- In every eviction case, your court must determine the amount of the appeal bond.
 - It ***must be included in judgments for nonpayment of rent evictions but may*** be included in all eviction judgments, if it helps court efficiency.
 - The amount of the appeal bond is not set via fixed formula like it is in small claims or debt claim cases,
 - it instead should be based on the court's determination of the other party's damages during an appeal.
 - TRCP 510.9(b), 510.11

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Step 2 – Determining the Appeal Bond

- When considering these potential damages, the court is supposed to consider that, in nonpayment of rent evictions,
 - ***the tenant would have to pay one month's rent into the registry to remain in the premises.***
 - Prop. Code Sec. 24.00511(a)

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Step 2 – Determining the Appeal Bond

- So, for example, if you felt like the landlord may suffer two months' rent worth of damage,
- the appeal bond in a nonpayment of rent eviction should likely be one month's rent, since the tenant will be posting one month's rent into the registry.

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Step 3 – Is the Appeal Timely?

- The losing party has 5 days to appeal an eviction judgment.
 - You **do not** count the day of the judgment.
 - You **do** count weekends and holidays, **but** if the last day falls on a weekend or holiday, you must extend the appeal time until the next day that the court is open.
 - If the last day of the appeal time lands on a day that the court closes before 5:00 PM, the appeal time is extended until the next day that the court is open.

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DISCUSSION SCENARIO

- You render judgment in a case on Tuesday, November 14th. Your court closes before 5 PM on every day.
- When would the last day be that a losing party could appeal?
- What if the landlord comes in and requests a writ the day after the appeal time ends, you issue the writ, and the next day you receive an appeal in the mail postmarked on the due date?
- What if you haven't issued a writ, and receive an appeal in the mail 3 days after the due date, and the postmark is illegible?

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DISCUSSION SCENARIO

- Tony comes to court wanting to file an appeal from an eviction case, but it is past the time by which to file the appeal.
- Should the court tell Tony that he is past the time for filing and refuse the paperwork?
- Or, should the court accept the paperwork and then send a formal letter explaining that his appeal was not filed in a timely manner?

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Step 4 – Is the Appeal Perfected?

- There are 3 ways that a losing party can perfect their appeal:
 - Posting a cash deposit in the amount set by the court.
 - Posting an appeal bond (with sureties) in the amount set by the court.
 - Posting a Statement of Inability to Afford Payment of Appeal Bond.
 - The court **must** immediately notify the other party if a Statement of Inability is filed – Property Code Sec. 24.0052.

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Step 4 – Is the Appeal Perfected?

- Additionally, effective Jan. 1, 2022, a party must pay the standard civil filing fee (or submit a Statement of Inability to Pay) to the justice court when filing an appeal. This fee is \$54, composed of:
 - The \$33 Local Consolidated Civil Fee
 - The \$21 State Consolidated Civil Fee
- For more information, please see the Fines, Fees, & Costs Deskbook Third Edition, posted in late December 2021

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Step 5 – Is There a Contest?

- In **all** evictions, the opposing party can contest, or challenge, a Statement of Inability.
 - TRCP 510.9(c)(2)
- In ***nonpayment of rent residential evictions only***, the opposing party can ***contest certain aspects of the appeal bond.***
 - They **can** contest the sufficiency of the surety, the bond amount, or the form.
 - They **cannot** contest an appeal bond with a Texas Department of Insurance approved corporate surety.

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Step 5 – Is There a Contest?

- The other party has 5 days in which to contest the ***appeal bond*** (or *Statement of Inability*) – calculated as described earlier for appeal deadlines.
- They do this by filing written notice with the court. The court **shall** notify the other party ***and the surety*** of the contest.
- A hearing must be held no later than the 5th day after the contest is filed – ***this timeframe is not extended by closing before 5:00 PM.***
- Property Code Sec. 24.00512; TRCP 510.9.

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Step 5 – Contest of an **Appeal Bond**

- If the contest is about the amount or the form of the bond, the party ***filing the contest*** must prove the bond insufficient.
- If the contest is about the sufficiency of the surety, the party ***filing the bond*** must prove the surety has sufficient nonexempt assets to pay the bond.
- If the surety fails to appear, that is prima facie evidence that the bond should be disapproved.
- Property Code Sec. 24.00512.

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Step 5 – Contest of a **Statement of Inability**

- If the Statement of Inability is accompanied by a statement from a legal-aid provider who is providing free legal services because of the party's indigence, the Statement may not be contested.
- If the Statement of Inability says the party receives government assistance based on indigence, the Statement may only be contested as to the truth of the matter of whether they in fact receive the assistance.
- Otherwise, the filing party has the burden to prove they are unable to post the appeal bond.
- TRCP 502.3; 510.9

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Step 5 – Is There a Contest?

- At the hearing, the judge should either approve or deny the bond or Statement of Inability.
- The losing party at the hearing has 5 days after the hearing to appeal **the decision from the hearing** to the county court – this is separate from the appeal of the entire eviction case to county court!
- They only need to file a notice of appeal to do this, no other requirement.
- Property Code Sec. 24.00512; TRCP 510.9.

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Step 5 – Is There a Contest?

- If the judge approves the bond or Statement and there is no appeal of the decision,
- OR the contesting party appeals the decision and loses again at county court,
- the justice court should immediately send the eviction case up to county court.
- Property Code Sec. 24.00512; TRCP 510.9.

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Step 5 – Is There a Contest?

- If the judge disapproves the bond or Statement and there is no appeal of the decision
- OR the appealing party appeals the decision and loses again at county court, the appealing party would have one day to post a new method to perfect the appeal that complies with the statute.
- If an appeal bond was disapproved, they could post a cash deposit or Statement of Inability.
- If a Statement of Inability was disapproved, they could now post an appeal bond or cash deposit.
- Property Code Sec. 24.00512; TRCP 510.9.

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DISCUSSION SCENARIO

- Steve appeals a nonpayment of rent eviction by filing a Statement of Inability.
- Larry, his landlord, contests the Statement. Your court hears the contest on November 19th.
- Larry wins at the contest hearing, the judge decides that Steve can post an appeal bond. Steve does not appeal this decision.
- On November 22nd, Larry comes in and wants a writ of possession, because Steve didn't post his cash deposit within one day and there hasn't been an appeal.
- Is Larry on time or too soon?

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Step 6 – Payment of Rent into the Registry

- This step only applies to ALL **nonpayment of rent** evictions.
- If the tenant appeals with an appeal bond or Statement of Inability, the court **must** immediately notify them in writing that they must pay one month's rent into the justice court registry.
- Prop. Code 24.0053(a-1); TRCP 510.9(c)(5).

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Step 6 – Payment of Rent into the Registry

- The notice must tell the party when they have to pay the rent into the registry (within 5 days),
- as well as how much to pay, who to make it payable to, what time the court closes on the day that the rent payment is due, and most importantly,
- that failure to pay it may result in a writ of possession being issued without a hearing.
 - Form containing all necessary/required info at <https://www.tjctc.org/tjctc-resources/forms.html>
- Prop. Code 24.0053(a-1); TRCP 510.9(c)(5).

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Step 6 – Payment of Rent into the Registry

- If the party pays the rent into the registry, the court should immediately send the case to the county court.
- If the party fails to pay the rent into the registry, the landlord is entitled to get a writ of possession and have the tenant removed.
 - ***HOWEVER, the appeal is still sent up to the county court! Paying the rent is not necessary to perfect the appeal, it only impacts whether the tenant can live in the property while the appeal is ongoing.***

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DISCUSSION SCENARIO

- A tenant in a non-payment of rent eviction case appeals the judgment with a Statement of Inability. The court forgets to send a notice to the tenant informing them that they must pay rent into the registry to avoid a writ of possession being issued while the appeal is pending. Five days later, and before the case has been sent to the county court, the landlord comes in and asks for a writ of possession.
- What should the court do?

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Step 7 – Sending the Case to County Court

- Once the appeal is perfected, the court should send all papers in the case, and any money deposited, to the county court for a *trial de novo*.
 - **Trial de novo** means the county court hears it from scratch rather than considering if the justice court decided the case correctly.
- TRCP 510.10

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Step 7 – Sending the Case to County Court

- If the defendant didn't file a written answer in justice court, they must file one with the county court within 8 days of the case being filed,
 - or a default judgment may be rendered against them.
 - The county court **must** notify them of this requirement.
- If the defendant did file a written answer in justice court, the justice court must send the written answer to the county court, and it will serve as the answer in county court.
- TRCP 510.10(b), 510.12

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Step 7 – Sending the Case to County Court

- Once the case is sent to county court, it generally cannot come back to justice court unless the appeal wasn't perfected.
 - This also means that any writ of possession would need to be issued by the county court, since you no longer have a judgment you can enforce.
 - If an appeal is dismissed for any other reason than failing to perfect the appeal, the county court may not issue a writ of procedendo for you to enforce the original judgment.

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Step 7 – Sending the Case to County Court

- The case can only come back if the appeal was **not perfected**.
- Other than the issues, such as timeliness, discussed earlier, the only way the appeal can be “not perfected” is if the appealing party fails to pay filing fees or a Statement of Inability in the county court.

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Step 7 – Sending the Case to County Court

- The appealing party must be given a notice to pay filing fees or submit a Statement of Inability **by the county court**, and they have 20 days **from that notice** to do so.
 - TRCP 143a.
- Failure to do so is considered a failure to perfect the appeal, so the case is treated as though the appeal never happened.
- However, if the appeal in an eviction case was perfected by a Statement of Inability, the appealing party **does not** need to file a new Statement with the county court.
 - Prop Code Sec. 24.0052

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DISCUSSION SCENARIO

- A defendant appeals a nonpayment of rent eviction with an appeal bond and pays 1 month's rent into your registry.
- They then fail to pay filing fees or submit a Statement of Inability to the county court within 20 days of being notified to do so.
- The county court returns the case to your court due to the appeal not being perfected.

- What should happen to the rent in the registry?

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