



## DEALING WITH THE PAUPER'S APPEAL

1. Once judgment is granted in the Justice Court, the tenant has five (5) days in which to file an appeal.
2. Tenants who have been evicted for nonpayment of rent usually do not have the money to pay the appeal bond or they likely would have paid the rent and would not have been evicted in the first place.
3. However, even if the tenant does not have the money to pay the appeal bond, they can file a “pauper’s affidavit”.
4. A “pauper’s affidavit” asks the court to allow the tenant to appeal the case without them having to pay the appeal bond provided they give the detailed information about their financial situation that is listed in Property Code [Section 24.0052](#).
5. The pauper’s affidavit must be filed with the Justice Court within five (5) days after the date the judgment is signed.
6. Once the pauper’s affidavit has been filed, the Landlord has five (5) days within which to contest it. Property Code [Section 24.0052\(d\)](#).
7. If the Landlord does contest the pauper’s affidavit, the Justice Court has five (5) days within which to hold a hearing on it and make a ruling whether it accepts the pauper’s affidavit to perfect the appeal.
8. If the Justice Court does not accept the pauper’s affidavit, the tenant must pay the amount of the appeal bond designated by the Justice Court in order to perfect their appeal OR they can appeal the denial of their pauper’s affidavit to the County Court.

9. **Effective January 1, 2012**, if the tenant does not pay one month's rent into the registry of the Justice Court within five (5) days of the date the pauper's affidavit was filed, the Landlord should **request** the Justice Court issue a Writ of Possession. The Justice Court shall immediately issue the Writ without having a hearing provided the Justice Court has not yet forwarded the transcript and original papers to the County Court. Property Code **Section 24.0054 (a), (a-2)**.
- a. If the Justice Court has already forwarded the transcript and original papers to the County Court, a Motion must be filed with the County Court and a hearing must be held in order to get a Writ of Possession for the tenant's failure to pay the one month's rent into the registry of the Justice Court within five (5) days of the date the pauper's affidavit was filed. Property Code **Section 24.0054 (a-4)**.
10. Once the Writ of Possession is issued, it may not be executed (served on the tenant) before the sixth (6<sup>th</sup>) day after the date the writ is issued. Property Code **Section 24.0054 (d)**.

#### **COMMENTS:**

- Most of the time it is not worth the effort to contest the pauper's affidavit.
  - (1) It delays the eviction process (can easily add a week or two or more) and (2) if the apartments prevail before the justice of the peace, the tenant can appeal it and have it heard before the County Court judge. The longest delay of which we are aware was two months because the Justice Court denied the pauper's affidavit, then it agreed to have a re-hearing on the issue only to deny it again. The tenant appealed the denial to the County Court and the County Court denied it but also agreed to have a re-hearing on the issue only to deny it again.
  - Some judges are hostile to a landlord fighting the pauper's affidavit because they feel the case should be tried on the merits.
- Remember, not only does the tenant have to pay one month's rent into the registry of the court within five (5) days of the date the pauper's affidavit was filed, they must continue to pay rent each month until the appeal is over. If they do not continue to pay rent into the registry of the court, a Writ of Possession can be issued to get possession of the tenant's unit before the actual trial date.
- It is very important that you NOT take possession of the unit until the tenant either moves on their own free will or the tenant is moved out based on a Writ of Possession.

- Even if the tenant moves out of the unit or is moved out based on a Writ of Possession prior to the trial date of the eviction that was appealed to County Court, it is **important** to have the trial because the appealed eviction is not over until there has been a trial.