

# Trial De Novo: The Justice Court of Appeal

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## What is an eviction suit?

- An eviction suit is simply a speedy and inexpensive remedy to determine who is entitled to the possession of premises without resorting to any action on the title.
- An eviction permanently deprives the tenant of the premises.
- A justice court of the precinct in which real property is located has original jurisdiction in eviction suits.
- Two types of eviction suits:
  - Forcible entry and detainer
  - Forcible detainer

# What is a landlord/tenant relationship?

- A boyfriend/girlfriend or adult child living with parents?
- Likely be considered either a tenant at will or a tenant at sufferance who entered the premises by agreement and is subject to a forcible detainer action under Property Code § 24.002

# Tenant vs. Occupant

- **Tenant has due process rights**
- **Occupant does not**

# Eviction Trial Process in Justice Court

- **Three day notice**
- **Petition filed in precinct where property is located**
- **Constable serves citation**
- **Hearing in Justice Court**
  - 1. Nonpayment of Rent
  - 2. Lease Violations
  - 3. Post Foreclosure
- **If Judge rules in favor of Plaintiff, a judgment is entered:**
  - Possession
  - Back rent
  - Court costs, attorney's fees
  - Amount of appeal bond

# Why Appeal the Case?

- **Dismissed for lack of jurisdiction**
  - Must be in the precinct and county in which property is located.
- **Default judgement**
  - Service is different from a typical civil suit
- **Attempting to stay in the home longer**
  - Rules to address that issue

# Is the Appeal Perfected?

- **Within 5 days** of the Justice Court signed judgment, **must post:**
  - Surety Bond
  - Cash Deposit or
  - Statement of Inability to Afford Payment of Court Costs
- **TRCP 510.9 (a) & (f)**

# Notice of Appeal

- **Statement of Inability to Afford Payment of Court Costs (SIAPCC)**
  - The Justice Court must provide notice to all other parties by the next business day
- **Bond or Cash**
  - Appellant must serve written notice of the appeal on all other parties within 5 days
  - Via Rule 501.4 (Informal service)
- **TRCP 510.9 (d)**

# Methods to Appeal & Contests in County Court

SIAPCC & Surety Bond Posting

## Statement of Inability to Afford Court Costs

- Must be sworn to before a **notary** or made under **penalty of perjury**
- Must use Supreme Court form
- TRCP 510.9 (c) & 502.3 (a)&(b)

Contest: within  
5 days of notice

- Cannot contest if they have legal aid
- Party or the Court may contest
- If claiming government assistance, can only contest truthfulness of that assistance
- TRCP 510.9 (c)(1)&(2) & 502.3

## Contest: Hearing

- Justice Court Judge must hold a hearing
- Burden is on the plaintiff to prove inability to afford fees
- If Judge finds party can afford costs, must make written order of findings
- Party must pay fees in time specified in the order.
  - If fees are not payed in time the case is dismissed without prejudice
- TRCP 502.3 (d)

# Contest: Appeal

- Filed within 5 days of order
- Forward all relevant documents to County Court
- County court must hear within 5 days
- De novo = “brand new”
- TRCP 510.9 (c)(3)

# Contest: Appeal

- County court **must** hear within 5 days.
- TRCP 510.9 (c)(3)

## Contest: Outcome

- If county court **agrees** with inability – direct justice court to forward remainder of case and case is considered appealed
- If county court **disagrees** with inability – appellant must post bond or cash within 1 business day
- TRCP 510.9 (c)(3)&(4)

# Non-Payment of Rent Appeal: Surety

- **Why do we have this?**
  - Tenants evading statement of inability to afford payment of court costs
- **Does not apply to corporate surety**
- **Property Code, Sec. 24.00511 & 24.00512(a)**

## Non-Payment of Rent Appeal: Surety - Judgment

- In an eviction suit for non-payment of rent, the amount of the appeal bond **must be stated in the Justice Court's judgment**
- Appeal bonds in eviction suits for nonpayment of rent must include the surety's contact information including:
  - Address
  - Phone number
  - Email address (if any)
- Property Code, Sec. 24.00511

## Non-Payment of Rent Appeals: Surety - Contest

- When a judgment in an eviction suit for nonpayment of rent is appealed, the appellee may contest:
  - 1) the appeal bond amount
  - 2) the form of the appeal bond; or
  - 3) the financial ability of a surety to pay the appeal bond.
- Within 5 days of when the bond is filed
- The justice court notifies the other party and surety of the contest
- Property Code, Sec. 24.00512 (b)

## Non-Payment of Rent Appeals: Surety - Hearing

- A hearing shall be held “not later than the **fifth day** after the date the contest is filed”
- Amount of the bond or form of the bond:
  - Appellee has the burden of proof
- Financial ability of the surety to pay the bond:
  - Appellant has the burden of proof
- **Surety must appear at the hearing; failure to appear constitutes, “prima facie evidence that the bond should be disapproved.”**
- **Sec. 24.00512 (c) & (d), Property Code**

## Non-Payment of Rent Appeals: Surety - Outcome

- If the appeal bond is **approved** by the justice court
  - The appeal in the county court goes forward
- If the appeal bond is **disapproved**, must within 5 days:
  - Make a cash deposit
  - File a SIAPCC, or
  - Appeal to the county court
    - If not, judgment is final. Writ of possession may issue.
- Property Code Sec. 24.00512 (d) & (e)

# Non-Payment fo Rent Appeals: Surety - Appeal

- **If appealed to county court:**
  - All relevant documents go to county court;
  - County court notifies the parties and the surety of the hearing time and date
  - County court shall hold a hearing within 5 days;
  - The contest shall be de novo
- **Property Code Sec. 24.00512 (f)**

## Non-Payment of Rent Appeals: Surety - Appeal

- Failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal
- A writ of possession may not be issued before the county court issues a final decision on the appeal bond
- Property Code Sec. 24.00512 (f)

## Non-Payment of Rent Appeals: Surety – Appeal Outcome

- After the contest is heard in county court, the county clerk shall transmit the transcript and records of the case **back** to the justice court
- Property Code Sec. 24.00512 (g)

## Non-Payment of Rent Appeals: Surety – Appeal Outcome

- County court disapproves the appeal bond, the party has 5 days to:
  - Cash deposit or file a SIAPCC
- If not timely made or filed, the judgment of the justice court becomes final and a writ of possession may issue
- County court approves the appeal bond, shall transmit the transcript and other records of the case to the justice court, and the justice court shall proceed as if the appeal bond was originally approved
- Property Code Sec. 24.00512 (g)

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Payment of Rent During Appeal

# Generally

- If an appeal is based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment.
- This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.
- Property Code Sec. 24.0053

## Non-Payment of Rent Appeals: Notice

- The justice court must provide the defendant a written notice telling them to pay a deposit of rent into the court's registry
- Must be paid within 5 days
- TRCP 510.9 (5)(A) & Property Code Sec. 24.0053 (a-1) & (a-2)

## Non-Payment of Rent Appeals: Timely Pays

- If the defendant timely pays, they get to remain in the premises.
- Any subsequent rent due on appeal is paid to the county court registry.
- TRCP 510.9 (5)(B)(i)&(ii) & Property Code Sec. 24.0053

## Non-Payment of Rent Appeals: Fails to Pay

- Failure to pay can result in a writ of possession
- If the transcript **has not been transmitted** to the county clerk, the justice court must issue a writ of possession without hearing, if requested.
- It's a game of hot potato. If the transcript has not been sent to the county court, the justice court will issue a writ of possession.
- Typically, landlords benefit from getting the writ from the justice court, as it is less tedious.
- The justice court may forward the case once the deposit is made, but if it is not made the justice court must wait the **entire five days before issuing a writ of possession.**
- TRCP 510.9 (5)(B)(i)

If the transcript has been  
transmitted to the county clerk...

## Non-Payment of Rent Appeals: County Court

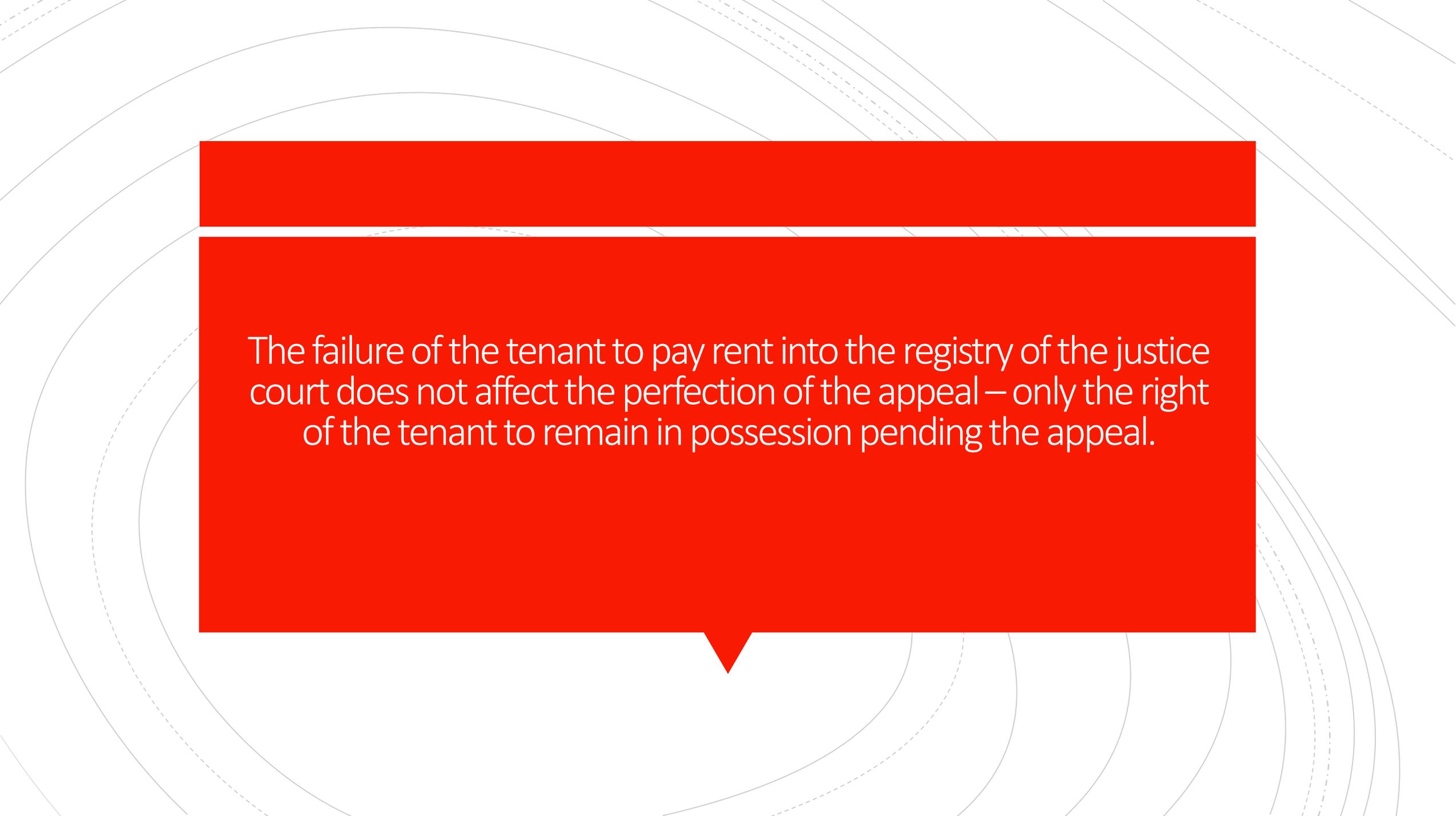
- If the defendant fails to pay rent, the plaintiff may file a sworn motion that the defendant is in default
- The plaintiff must notify the defendant of the motion and the hearing date
- If the defendant is in default, the court must issue a writ of possession.
  - As mentioned earlier, if this cause was in the justice court, a writ of possession would be issued without a hearing. Once it makes it to the county court level, there are more steps to take.
- TRCP 510.9(5)(B)(iv)&(v) & Property Code Sec. 24.0053(a-4)

# Non-Payment of Rent Appeals: County Court

- The plaintiff may withdraw any or all rent in the county court registry with a sworn motion and hearing, prior to final determination of the case:
  - Showing just cause;
  - Dismissal of the appeal; or
  - Order of the court after final hearing
    - Note: if a cash deposit is made in the justice court, this money will move with the case to the county court.
- TRCP 510.9(5)(B)(iv)&(v) & Property Code Sec. 24.0053(a-4)



The appeal is sent up after 5 days regardless of rent payment



The failure of the tenant to pay rent into the registry of the justice court does not affect the perfection of the appeal – only the right of the tenant to remain in possession pending the appeal.

Dismissal of the  
appeal – the  
appeal is not  
properly  
perfected

- If an appeal is not properly perfected but is sent to county court, **the proper procedure for the county court is to dismiss the appeal.**
- “A county court of law does not have jurisdiction over an appeal for which a timely appeal from a justice court’s judgment was not perfected.”
- “If the appeal bond is not timely filed, the county court is without jurisdiction to hear the appeal, and the appeal **must be dismissed for lack of jurisdiction.**”
- *Cavazos v. Hancock*, 686 S.W.2d 284, 287 (Tex. App.–Amarillo 1985, no writ). See also *Wetsel v. Forth Worth Brake, Clutch Equipment, Inc.*, 780 S.W.2d 952, 954 (Tex. App.–Fort Worth 1989, no writ); *In re A.J.’s Wrecker Service of Dallas*, 2002 WL 497021 at \*1 (Tex. App.–Dallas Apr. 3, 2002, no writ).

## Dismiss the case instead of Writ of Procedendo

- The problem with a county court issuing a writ of procedendo to a justice court is that if an appeal was properly perfected from the justice court to the county court, then there is no longer any judgment that may be executed or enforced. Trial de novo makes it as though the prior trial did not occur.
- "Perfection of an appeal from a justice court for trial de novo vacates and annuls the judgment of the justice court."
- *Mullins v. Coussons*, 745 S.W.2d 50 (Tex. App.–Houston [14th Dist.] 1987, no writ); *Poole v. Goode*, 442 S.W.2d 810, 812 (Tex. Civ. App.–Houston [14th Dist.] 1969, writ ref'd n.r.e.).

# Writ of Procedendo

Why do we care?

Liability.

A case must be sent back to the justice court in the correct manner through dismissal.

# What to Look for

Once it is a Trial De Novo

## What your court receives

- When an appeal has been perfected, the [justice court] must stay all further proceedings on the judgment and must immediately send to the clerk of the county court:
  - 1. a certified copy of all docket entries
  - 2. a certified copy of the bill of costs
  - 3. the original papers in the case with any money in the court registry, including rent paid into the registry
- TRCP 510.10(a)

## Docketing the case

- The county clerk must docket the case and immediately notify the parties of the date of receipt of the transcript and the docket number of the case.
- The notice must advise the defendant that it must **file a written answer in the county court within 8 days** if one was not filed in the justice court.
- Trial can be held anytime after 8 days from receiving the transcript.
- TRCP 510.10(b) & 510.12

## Default on appeal

- An answer filed by the defendant must be taken as an appearance.
- If the defendant made no answer in writing in the justice court and fails to file a written answer within 8 days after the transcript is filed in the county court, default judgment may be entered.
- TRCP 510.12

## Damages on appeal

- Parties will be permitted to plead, prove and recover damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal.
- Damages may include:
  - Loss of rentals during the appeal
  - Attorney fees in the justice and county courts
  - Not damages to the property (separate claim)
- TRCP 510.11

## Damages on appeal

- Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.
- TRCP 510.11

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Nonlawyer Representation,  
a change in law

## In the justice court

- The parties may represent themselves, or be represented by their authorized agents, who need not be attorneys.
- Property Code § 24.011

In an appeal...

- An owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, they may be represented by an employee, owner, officer, or partner of the entity, who need not be an attorney.
- Former law forced certain entities at the appeal level to have attorney representation, but this is no longer the case as of September 1, 2017.
- Property Code § 24.011



Thank you!