

# EVICCTIONS: TRICKY ISSUES

Webinar: January 10, 2019

WHAT HAPPENS WHEN...?

The landlord files an  
eviction suit before the  
time in the notice to  
vacate has run out?

**VACATE<sup>®</sup>**

## NOTICE TO VACATE

- Remember that the landlord may not file the eviction suit until the time allowed to the tenant in the notice to vacate has actually run out!
  - For example, the landlord may not hand a three-day notice to vacate to a tenant and file the eviction suit the same day “in case” the tenant fails to leave.
  - The landlord has to wait until the three days is up before they file suit.
- If the landlord “jumps the gun,” they are not entitled to a judgment for possession.

### WHAT HAPPENS WHEN...?

The landlord files an eviction suit without giving the tenant enough time in the notice to vacate?



## NOTICE TO VACATE

- If the notice to vacate did not give the tenant the right amount of time (for example, three days when they were really entitled to 90 days), then the court may not grant a judgment for possession to the landlord.
- In order to win the case the landlord has to prove that the notice to vacate was proper.
  - If they fail to prove this, they are not entitled to a judgment in their favor.
  - This is true even for a default judgment.

### WHAT HAPPENS WHEN...?

The landlord does not deliver the notice to vacate to the tenant the right way?



HOW MUST THE NOTICE  
TO VACATE BE SERVED?

- If the notice to vacate is not delivered to the tenant properly, then the landlord is not entitled to a judgment for possession.
- In general, the notice to vacate must be given **in person** or **by mail** to the premises (that is, the property where the tenant is living).

HOW MUST THE NOTICE  
TO VACATE BE SERVED?

- Delivery of the notice to vacate **in person** means:
  - Personally delivered to the tenant or any person residing at the premises who is at least 16 years old; or
  - Personally delivered to the premises by attaching the notice to the **INSIDE** of the main entry door.
- What if the Landlord slides the notice to vacate under the front door?
  - Or through a mail chute?
- That is not proper service of the notice to vacate!

HOW MUST THE NOTICE  
TO VACATE BE SERVED?

- Delivery of the notice to vacate **by mail** means:
  - By regular mail, or registered or certified mail, return receipt requested, to the premises.
  - The notice period (for example, three days) is calculated from the day on which the notice is **delivered**.
    - See Evictions Deskbook at pages 13 – 14 for more information.

HOW MUST THE NOTICE  
TO VACATE BE SERVED?

- The landlord may use an alternative method to serve the notice to vacate if:
  - The residence has no mailbox and has a keyless bolting device, alarm system or dangerous animal that prevents the landlord from entering the premises; or
  - The landlord reasonably believes that harm to a person would result from personal delivery.

## HOW MUST THE NOTICE TO VACATE BE SERVED?

- In that case:
  - The landlord must securely attach the notice to the outside of the main entry door in an envelope with the tenant's name, address and the words "IMPORTANT DOCUMENT" or similar language; and
  - By 5 p.m. the same day, put a copy of the notice in the mail to the tenant.
- Notice to vacate in this manner is considered delivered on the date the envelope is attached to the outside of the door and is deposited in the mail, **regardless of the date the notice is actually received.**

WHAT DO YOU DO WHEN .

..

the Notice To Vacate  
was not proper?



## WHEN THE NOTICE TO VACATE IS NOT PROPER . . .

- The court may not refuse to accept a filing due to issues related to the notice to vacate.
  - The court also may not advise the landlord on the notice to vacate.
  - And the court may not dismiss the case before trial due to an improper notice to vacate or a failure to serve the notice properly.
- Once the case gets to trial, if the landlord filed the case too soon, did not give a proper notice to vacate, or did not serve the notice to vacate properly, a judgment should be granted in favor of the defendant.

## WHAT HAPPENS WHEN...?

A tenant is renting a house and the house gets foreclosed on because the owner did not pay their mortgage?



## PROTECTING TENANTS AT FORECLOSURE ACT

- For example, suppose Bronson owns a house and rents it to Rebecca.
  - Bronson signed a mortgage when he bought the house but he fails to make his mortgage payments.
  - The bank forecloses on the house and sells it at a foreclosure sale to a new owner, Thea.
- Thea has to give Rebecca **a 90-day notice to vacate!**
- This is due to the Protecting Tenants at Foreclosure Act, which applies to any residential real property (like a house or an apartment).

## PROTECTING TENANTS AT FORECLOSURE ACT

- But Rebecca is only entitled to the 90-day notice if she is current with her rent and is a “bona fide” tenant. This means:
  - She is not the person who signed the mortgage or their child, spouse or parent;
  - Her lease of the house was an “arms-length transaction (a standard lease that two people who don’t know each and are not related would enter into); and
  - The rent is fair market rent for the property (if the house could be rented on craigslist for \$900/month, then the rent should be at least \$900).

## PROTECTING TENANTS AT FORECLOSURE ACT

- If Rebecca has a written lease with a fixed term (for example, until December 31, 2019), then she gets to stay in the house through the end of the lease (December 31, 2019), **unless** Thea is going to use the house as her primary residence.
  - For example, if Thea just bought the house at the foreclosure sale as an “investment” property to rent to someone else, and Rebecca has a written lease with a fixed term, Rebecca has a right to stay there until the end of that term.
- If Thea is going to use the house as her primary residence, or if Rebecca does not have a written lease, or the lease may be terminated at will by either party, then Rebecca gets the 90-day notice to vacate.

### WHAT HAPPENS WHEN...?

The owner of a house gets foreclosed on because they did not pay their mortgage?



## FORECLOSURE ON AN OWNER

- Sometimes the owner of a house fails to pay their mortgage and the bank forecloses on the mortgage and sells the house to a new owner at a foreclosure sale.
  - When this happens, the Protecting Tenants at Foreclosure Act does not apply because it only protects tenants of the owner, not the owner themselves.
- Once the new owner buys the house at the foreclosure sale, the old owner becomes a tenant at sufferance: they previously had a legal right to be there but no longer do.
- This means only a three-day notice to vacate is required.
  - See the Evictions Deskbook at pages 8 – 10.

### WHAT HAPPENS WHEN . . . ?

The Constable is not able to serve the citation by personally delivering it to the tenant or leaving it with someone over 16 at the residence?



## ALTERNATIVE SERVICE OF THE CITATION

- The Constable may request alternative service by delivering the citation to the **premises**.
- To do this the Constable has to file a sworn statement saying they tried to serve the citation at least twice at each address of the tenant listed in the petition and they have to state the time and place of these attempts.
- The petition has to list all the home and work addresses of the tenant that are known to the landlord and state that they don't know of any other addresses for the tenant in the county.

-- Rule 510.4(c)(1)

## ALTERNATIVE SERVICE OF THE CITATION

- The judge reviews the sworn statement and decides whether the citation may be served by alternative service.
- Once the judge authorizes service this way, the Constable must:
  - deliver the citation and petition to the premises by placing it through a door mail chute or slipping it under the front door; or if they can't do that, then they may attach the citation to the front door; **and**
  - mail a copy of the citation and petition to the tenant at the premises first class mail.

-- Rule 510.4(c)(1)

## ALTERNATIVE SERVICE OF THE CITATION

- The Constable still has to file a return of service with the court showing the date the citation was delivered and the date it was deposited in the mail.
- And the service of the citation still has to occur at least six days before the date set for trial.

### WHAT HAPPENS WHEN...?

You review the return of service and service was not done correctly?

- If the citation was not properly served, you cannot grant a default judgment if the tenant fails to appear.
  - You could postpone the trial to allow for proper service.
- If the tenant does show up you can go ahead with the trial because once the tenant answers or appears you don't need to worry about how the citation was served.
  - The service rules are there to make sure the tenant knows about the lawsuit.

## WHAT HAPPENS WHEN...?

The tenant does not show up for trial and the landlord has not filed an affidavit under the Servicemembers Civil Relief Act?



## SERVICEMEMBERS CIVIL RELIEF ACT

- If the tenant does not file an answer or appear at trial, before entering a default judgment, the court must require the landlord to file an affidavit:
  - Stating whether or not the tenant is in military service and showing necessary facts to support the affidavit; or
  - Stating that the defendant is unable to determine whether or not the defendant is in military service.
- Usually the landlord will attach a printout from a Department of Defense website to show whether or not the person is in military service.

## SERVICEMEMBERS CIVIL RELIEF ACT

- If the landlord fails to file an affidavit under the SCRA in an eviction case, the court **may not** grant a default judgment.
- If an affidavit is filed, there are three possibilities:
  - The tenant is **not** in military service: the court may enter a default judgment.
  - The court is **unable to determine** whether the tenant is in military service; the court may require the landlord to post a bond in an amount approved by the court to protect the tenant if it turns out that he is in military service.

## SERVICEMEMBERS CIVIL RELIEF ACT

- The defendant **is** in military service; the court may not enter a judgment until after the court appoints an attorney to represent the defendant.
  - On the request of the attorney or on the court's own motion, the court may be authorized, or even required in certain circumstances, to stay (put on hold) the case for at least 90 days.
- For details on the SCRA, see the Evictions Deskbook at pages 26 – 29 and 58 – 60.

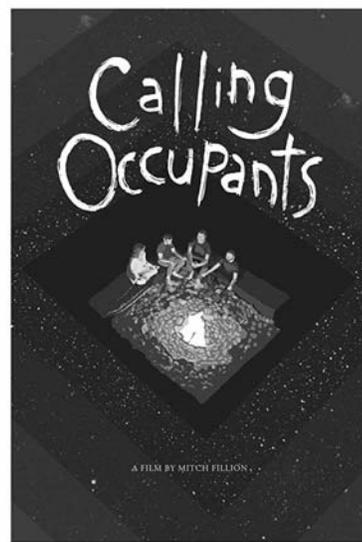
### WHAT HAPPENS WHEN...?

The tenant fails to answer or appear but the petition is silent on the notice to vacate or any reason for the eviction?

- The court may not grant a default judgment if the petition does not contain a description of when and how the notice to vacate was given and a description of the facts and the grounds for the eviction. Rule 510.3(a).
- Could the court allow the plaintiff to amend the petition to include this information?
- Yes, but the court could require the amended petition to be served on the tenant so that the tenant has notice of the allegations the plaintiff is relying on for the eviction.

### WHAT HAPPENS WHEN...?

The landlord files an eviction suit against the tenant “and all occupants”



## AND ALL OCCUPANTS

- An “occupant” is someone who is living at the residence but who is **not** obligated under a lease with the landlord.
  - For example, a temporary guest of the tenant or the tenant’s minor children.
- Since “occupants” are not on the lease, the landlord may not know who they are so he doesn’t have to name them.
  - He can evict the “occupants” of the tenant along with the tenant.
- The occupants’ right to be there is based solely on the tenant’s right to be there.

## AND ALL OCCUPANTS

- But what if one of the “occupants” is really a tenant who signed the lease?
  - For example, the wife is a tenant on the lease and the landlord just sues the husband “and all occupants.”
- The landlord cannot evict the wife who is a tenant just by suing her husband and “all occupants.”

## AND ALL OCCUPANTS

- If the eviction is based on a written residential lease, the plaintiff must list **all tenants obligated under the lease** whom the plaintiff seeks to evict.
- And a judgment or writ of possession may **NOT** be issued or executed against a tenant obligated under a lease who is **not** named in the petition and served with a citation.  
– *Rule 510.3(c)*.

### WHAT HAPPENS WHEN...?

The tenant owes rent?

- A landlord may include a claim for back rent (rent that is owed at the time the case is filed).
- But the court may not hear a claim for back rent for more than \$10,000 at the time the suit is filed.
- If the rent was less than \$10,000 when the suit was filed but due to the “mere passage of time” the tenant now owes more than \$10,000, the court does have jurisdiction to hear that case!

## WHAT HAPPENS WHEN...?

You need to tell the plaintiff what the trial date is?



## TRIAL NOTICE TO THE PLAINTIFF

- The Rules do not state how notice of a trial date is to be given to the plaintiff, but some suggestions are:
  - Give the plaintiff a copy of the citation with the trial date;
  - Have the plaintiff contact the court to find out the trial date;
  - Mail, email or fax notice of the trial date to the plaintiff; or
  - Give the plaintiff written notice of a tentative date upon filing the case.
    - For example, write the court date and time on the receipt.

WHAT HAPPENS WHEN...?

The plaintiff does not appear for trial?

- If the plaintiff does not appear for trial, the court may:
  - Continue the case to another date; or
  - Dismiss the case for want of prosecution.
    - The court may first give the plaintiff an opportunity to show why the case should not be dismissed.

WHAT HAPPENS WHEN...?

Someone appears at trial for the plaintiff or the defendant?



## WHO MAY REPRESENT A PARTY?

- In an eviction case:
    - An individual may represent themselves or be represented by an authorized agent (who does not have to be an attorney);
    - A corporation or other entity may be represented by an employee, owner, officer or partner of the entity or by a property manager or other authorized agent; and
    - Any party may be represented by an attorney.
- Rule 500.4

## WHO MAY REPRESENT A PARTY?

- What if someone appears in court and says they are the authorized agent for the landlord or tenant?
- They should either have a written statement from the party authorizing them to appear on their behalf, or the court could take the agent's sworn testimony prior to proceeding with the case.

WHAT HAPPENS WHEN...?

The tenant **appears for trial** and you see that service of the citation was less than six days ago?

- The tenant has a right to have the citation served at least six days before the trial.
- If you see that this did not happen, you should inform the tenant that they have this right and ask them if they wish to proceed or would like a postponement of the case (a “continuance”).
- If they want a postponement, reset the trial to a date at least six days after they were served with the citation.

WHAT HAPPENS WHEN...?

The tenant **does not appear for trial** and you see that service of the citation was less than six days ago?

- You cannot grant a default judgment in favor of the landlord.
- You should reset the trial date to a day that is at least six days after the citation was served on the tenant and notify the parties of the new trial date.

WHAT HAPPENS WHEN...?

The tenant files a counterclaim?



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## COUNTERCLAIMS

- A counterclaim is when a defendant (the party being sued) files their own claim against the plaintiff (the party who filed the suit).
- For example, suppose the tenant claims the landlord came into their apartment when they weren't there and took some jewelry.
- The tenant says they won't pay rent until the landlord returns the jewelry.

## COUNTERCLAIMS

- A tenant may not file a counterclaim in an eviction suit.
- The court should dismiss the counterclaim on its own; it does not need to wait for a motion to dismiss from the plaintiff.
- The tenant could file a separate small claims suit in justice court over the jewelry as long as it is not worth more than \$10,000.

WHAT HAPPENS WHEN...?

The tenant claims they have a right to be there because they own the property?



WHEN THE TENANT CLAIMS  
THEY ARE THE OWNER

- A claim for title is when the tenant has a **good faith** claim that they are the owner of the property.
  - For example, sometimes the tenant says they have a “contract for deed” and that the contract makes them the owner of the property after making so many payments.
- But a tenant just saying they own the property because someone “promised” to give it to them or they have an oral agreement is not enough.
  - An oral agreement to convey real property is not valid.
  - It has to be in writing.

WHEN THE TENANT CLAIMS  
THEY ARE THE OWNER

- A justice court may not decide a claim for title.
  - It is not within the court’s jurisdiction (meaning authority to hear and decide).
  - A justice court only decides the right to possession, not who holds title to the property.

WHEN THE TENANT CLAIMS  
THEY ARE THE OWNER

- If title to the property is at issue, the court has two choices:
  - “**Stay**” or “**abate**” the case while the parties get the title issue resolved in another court.
  - This means the court puts the case on hold and waits until another court decides who owns the property.
- Dismiss the case “without prejudice,” which means the plaintiff would be able to file the suit again after another court decides who owns the property.

WHAT HAPPENS WHEN...?

The tenant pays the rent  
after the eviction suit is  
filed and before trial?



TENANT PAYS THE RENT  
AFTER SUIT IS FILED

- The court might still need to decide whether the tenant breached the lease by not paying their rent on time.
- Even if all the rent has now been paid, the landlord might ask the court to find that there was a breach when the tenant failed to pay the rent when it was due and that he is entitled to evict the tenant due to this breach.
- And recover the costs of filing the suit (the filing and service fees).

TENANT PAYS THE RENT  
AFTER SUIT IS FILED

- This might depend on language in the lease:
  - For example, does the tenant get so many days to cure a failure to pay the rent on time? If so, there may not be a breach.
  - Is there a late fee and if the tenant failed to pay it does that count as a breach of the lease?
- If the tenant pays the rent after the suit is filed, it is also possible the landlord will move to dismiss their case. It is their call.

## WHAT HAPPENS WHEN...?

The landlord includes a claim for late fees, utility fees or other damages?



## LANDLORD SUES FOR LATE FEES, UTILITY FEES OR OTHER DAMAGES

- A landlord may not sue for late fees, utility fees or other damages (for example, damage to the property) in an eviction case.
  - They may only sue for back rent.
  - They have to file a separate small claims case to recover late fees, utility fees or other damages.

### WHAT HAPPENS WHEN...?

Another month's rent becomes due while the case is pending? Does the tenant have to pay for the whole month or should the rent be prorated?



*Friendly Reminder*  
**RENT IS DUE**  
**ON THE 1<sup>st</sup>** 😊

### WHEN ANOTHER MONTH'S RENT BECOMES DUE

- This depends on the terms of the lease and when rent is due.
- Most leases provide that the rent is due on the first of the month for the entire month so at that time the rent is due in full for the whole month and that is what the tenant owes.

## WHEN ANOTHER MONTH'S RENT BECOMES DUE

- However, the landlord has a duty to mitigate (meaning to keep his damages as low as possible) and if he is able to get a new tenant before the end of the month then he should not recover the full month's rent from the tenant as that would be a double recovery.
- For this reason some judges do prorate the award in an effort to be fair to the tenant.

WHAT HAPPENS WHEN...?

The tenant files for  
bankruptcy?



## BANKRUPTCY

- If the tenant files a bankruptcy petition **before** a judgment for possession is entered:
  - The eviction suit is automatically stayed (put on hold) and no further proceedings may be held until the landlord obtains an order from the bankruptcy court lifting the stay.

## BANKRUPTCY

- Recent bankruptcy court cases have held that a judgment for possession for bankruptcy purposes means a final, **non-appealable** judgment.
  - This means the bankruptcy court does not consider a judgment for possession to be **final** until the appeal period has expired.

## BANKRUPTCY

- So if a tenant files bankruptcy **after you sign a judgment for possession but before the appeal window closes**, the case is automatically stayed.
- The landlord has to ask the bankruptcy court to lift the stay.

## BANKRUPTCY

- If a tenant files bankruptcy **after the appeal window is closed**, then the case is not stayed and the landlord is entitled to a writ of possession as in any other case.

WHAT HAPPENS WHEN...?

The landlord is not a sympathetic person?



WHAT MAY THE COURT CONSIDER?

- When hearing an eviction case the court needs to look at whether the plaintiff is entitled to possession (for example, was there a breach of the lease) and not let emotions enter into the court's decision.
- For example, if the tenant claims they don't have to pay the rent because the landlord took their jewelry, even if you are convinced the landlord did take the tenant's jewelry, that does not excuse the tenant's obligation to pay rent.

## WHAT MAY THE COURT CONSIDER?

- Even if the landlord is not a sympathetic person and the tenant is, or an eviction suit is filed during the holidays, the court has to base its decision on whether the landlord has a right on the facts and under the law to recover possession of their real property.

## WHAT HAPPENS WHEN...?

The landlord files an immediate possession bond?



## WHAT IS AN IMMEDIATE POSSESSION BOND?

- An immediate possession bond is a bond (either cash or a promise to pay cash) that a landlord gives to the court in order to possibly get a writ of possession earlier than the standard timeframe.

## AMOUNT OF THE BOND

- If the landlord files for an immediate possession bond, the court first determines the amount of the bond. This amount should be what the amount of damages to the tenant would be if the suit should not have been filed.
- So if the case was wrongfully filed, then the tenant can **recover**, or get money from the bond, to pay for the costs or damages he incurred because of the suit.

## NOTICE OF THE BOND

- The court must notify the tenant that the landlord has filed a bond for immediate possession.
- The notice must be served on the tenant in the same way as an eviction citation.
- Usually a landlord who wants an immediate possession bond will file it at the same time as their petition. In that case, the notice would be served at the same time as the citation. TJCTC has an eviction citation form that also contains notice of the filing of an immediate possession bond.

-- Rule 510.5(a) and (b)

## EFFECT OF THE IMMEDIATE POSSESSION BOND – TENANT APPEARS

- If the tenant answers or appears for trial the immediate possession bond is off the table and the regular writ of possession timeframes apply.
- Even if the landlord wins a judgment for possession at trial, he will have to wait until the appeal time has run out before he can get a writ of possession.

EFFECT OF THE IMMEDIATE  
POSSESSION BOND – TENANT DOES NOT  
APPEAR

- **If the tenant did not answer or appear for trial**, the court may issue a writ of possession on request (and payment of the fees) immediately after the judgment is signed.
- But the writ of possession cannot be executed (meaning served on the tenant) until the **seventh day** after the tenant got notice of the immediate possession bond.
- This keeps a landlord from filing it the day of trial when they see the tenant isn't there, and immediately removing the tenant without notice.

EFFECT OF THE IMMEDIATE  
POSSESSION BOND – EXAMPLE I

- Suppose the tenant was served with the citation and **a notice of a possession bond on Monday, December 3, 2018**, and the trial was held on Tuesday, December 11, 2018.
- **If the tenant appears**, and the landlord gets a judgment for possession, the writ may not issue until the day after the appeal time has run out. (The writ could issue on Dec. 18, 2018 if the court closed at 5pm on Monday, Dec. 17 (the day the appeal is due), or Dec. 19 if the court closed before 5pm on Dec. 17 (which would make the appeal due Dec. 18).
- **If the tenant does not appear**, and the landlord gets a judgment for possession, the writ may issue **immediately and be executed immediately**, since the tenant had more than 7 days notice of the immediate possession bond.

EFFECT OF THE IMMEDIATE  
POSSESSION BOND – EXAMPLE 2

- Suppose the tenant was served with the citation on Monday, December 3, 2018, then served with **notice of the immediate possession bond on Thursday, December 6, 2018**, and the trial was held on Tuesday, December 11, 2018.
- **If the tenant appears**, and the landlord gets a judgment for possession, the writ may not issue until the day after the appeal time has run out. (See previous slide.)
- **If the tenant does not appear**, and the landlord gets a judgment for possession, the writ may issue **immediately BUT MAY NOT BE EXECUTED** until December 13, the 7<sup>th</sup> day after the tenant got notice of the possession bond.

WHAT HAPPENS WHEN...?

The tenant loses and asks the court to give them more time to move out?

- The court may not extend the tenant's "move out" date.
- This is between the tenant and the landlord.
- If and when the defendant has to move out depends on whether the defendant perfects an appeal and whether and when the plaintiff requests a writ of possession.
- For this reason the court should also not include a "move out" date on a judgment.

## WHAT HAPPENS WHEN...?

The tenant appeals an eviction suit for nonpayment of rent by filing an appeal bond or a Statement of Inability to Afford Payment of Court Costs?



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## PAYMENT OF RENT IN NONPAYMENT APPEALS

- If a tenant appeals an eviction suit for nonpayment of rent by filing a Statement of Inability to Afford Payment of Court Costs or by filing an appeal bond, then the court must tell the tenant in writing:
  - that they have to pay one month's rent into the justice court registry;
  - how they have to pay it (cash, cashier's check or money order); and
  - the date it has to be paid, which must be within 5 days of the date they filed the Statement of Inability or the appeal bond.

PAYMENT OF RENT IN  
NONPAYMENT APPEALS

- The court must also tell them that if they fail to pay the rent into the justice court registry by the required date the court may issue a writ of possession without a hearing.
- If a party files a Statement of Inability to Afford Payment of Court Costs, the court must also send a notice to all the other parties no later than **the next business day** telling them that a Statement was filed.
  - Rule 510.9(c)(5)(A)
  - Property Code § 24.0053(a-1)
- This form is available at [tjctc.org](http://tjctc.org).

PAYMENT OF RENT IN  
NONPAYMENT APPEALS

- If the tenant was given the notice but fails to pay the rent into the justice court registry by the date given in the notice, the landlord is entitled (upon request and payment of the applicable fee) **to a writ of possession, which the justice court must issue immediately and without a hearing.**

## PAYMENT OF RENT IN NONPAYMENT APPEALS

- The court must issue the writ of possession **even though the tenant has perfected an appeal.**
- So **the appeal is still sent to the county court** but the landlord is entitled to a writ of possession due to the tenant not paying their rent to the court.
- This means the tenant may still pursue their appeal but they do not get to remain in the premises while their appeal is pending.

### WHAT HAPPENS WHEN...?

The losing party appeals  
and the winning party  
files a contest?



## CONTEST OF THE APPEAL

- In a residential eviction suit for nonpayment of rent, when the losing party appeals by filing an **appeal bond**, the winning party may contest the amount or form of the appeal bond or the financial ability of the surety (the person who guarantees the bond) to pay the appeal bond.

## CONTEST OF THE APPEAL

- When the losing party appeals by filing a **Statement of Inability to Afford Payment of Court Costs**, the winning party may contest whether the party that filed the Statement is really unable to pay the court costs (for example, maybe they can afford an appeal bond).

## CONTEST OF THE APPEAL

- The court must have a hearing and decide whether the appeal bond or Statement of Inability to Afford Payment of Court Costs were properly filed.
- The procedure for these contests is explained in the Evictions Deskbook at pages 41 – 45.

### WHAT HAPPENS WHEN...?

The court issues a writ of possession and then receives an appeal in the mail postmarked on the final appeal date?



## THE MAILBOX RULE

- Under the general rules for civil cases, a document that is required to be filed by a certain date is considered to be timely filed if it is put in the U.S. mail on or before that date, and received by the court within 10 days of the due date.

– *Rule 500.5(b).*

## THE MAILBOX RULE

- But in an eviction case, if a document is filed by mail and not received by the court by the due date, then the court may take any action authorized by the rules, including issuing a writ of possession requiring the tenant to leave the property.

– *Rule 510.2.*

## THE MAILBOX RULE

- For example, if a tenant drops their appeal in the mail on the last day to appeal, and the court receives it within ten days, it is a timely appeal, but if the landlord comes in and asks for a writ of possession before the court receives the appeal, then the court must issue the writ of possession.
- Even though the writ of possession has issued and removed the tenant from the property, the appeal was timely filed, and so it should be sent up to the county court.

### WHAT HAPPENS WHEN...?

The tenant dies?

- This is a common question: the landlord wants to know what to do with the tenant's belongings?
- If they are asking for legal advice, they need to consult an attorney.
- The Property Code allows a landlord to remove and store property belonging to a tenant who has died but it requires notice to persons designated by the tenant (next of kin) and other measures.
- See the Evictions Deskbook at pages 103 – 104.

QUESTIONS?

- Tune into the Evictions Q & A Webinar on Thursday, January 24 from 2:00 – 3:00 p.m.