

HOW TO APPEAL IF YOU LOSE A DISPOSSESSORY (EVICTION) CASE IN MAGISTRATE COURT

This brochure was prepared by the Georgia Legal Services Program in January of 2007. This brochure gives you general information, not legal advice. You can get legal advice only from a lawyer. Deadlines are extremely important in most legal matters. *Please see a lawyer about specific questions.* For more information on the Georgia Legal Services Program you can go to www.glsp.org or call 1-800-498-9469 to find a Georgia Legal Services Office near you.

If You Lost Your Magistrate Court Trial

If you lost your dispossession trial in magistrate court, the judge will issue an order for you to be removed from the property (called a writ of possession). The judge may also hold that you owe your landlord money for rent and/or other charges. You have seven (7) days from the date of the judgment (usually the day of your hearing) to file your appeal. You can check with the court to find out when your appeal must be filed. If you do not file an appeal, your landlord can use the writ of possession and have you removed from his property no earlier than the eighth (8th) day following your trial. If the judge puts in his order that you owe your landlord money, your landlord may try to collect that money by garnishing your paycheck, back accounts or property. The landlord may also use a collection agency to try and collect the money from you.

You May Want to File an Appeal

Your appeal needs to be filed with the magistrate court. Your case will then be sent to the state or superior court. You will have to pay the court to file your appeal. The costs to file the appeal are called the court costs. If you want to continue living in the rental property while waiting for the hearing on your appeal, you will have to pay any rent the magistrate court held that you owe when you file your appeal. If you cannot pay the amount of rent the magistrate court found you owed, you can still file an appeal but you will have to move while you wait for the hearing on your appeal. If you want to continue living in the rental property while your appeal is pending, you will have to pay your monthly rent into court each month as it becomes due. If you fail to pay the rent into court each month, the court will allow the landlord to remove you from the property. Be aware that superior and state courts are more complicated than magistrate court and you may need the assistance of an attorney to be successful.

If you cannot afford to pay the rent the magistrate court found you owe, you can still appeal but will have to move out of the rental property. You need to think about whether you want to appeal. Once you move out of the rental property, it is unlikely that a court will order the landlord to allow you to move back in even if you win your appeal. If you cannot make the payments so that you can stay in the unit while the appeal is being decided, it makes sense to appeal only if you are seeking money damages from the landlord for his wrongful acts.

If you are served with a dispossessory warrant, you must bring any and all counterclaims against the landlord when you file your answer. Counterclaims are claims you have against the landlord for things he has done or failed to do such as his failure to repair the property, any damage he caused to you or your property including damage caused by his failure to repair, if he rented a condemned property to you, if he turned off your utilities (water, gas, or electricity), or if he violated the terms of your lease. If you put counterclaims in your answer but lost in magistrate court, those counterclaims can be appealed to state or superior court. To continue living in the rental property while the appeal is decided, you will have to pay any rent the court found you owe the landlord.

If You Appeal, You Will Be Asked to Pay Court Costs, the Amount of Rent the Court Found You Owe Your Landlord, and Monthly Rent as it Comes Due Each Month.

Court Costs

It costs to file an appeal. If you have a very low-income, you may be able to file an Affidavit of Poverty with the court instead of paying the court costs. You can ask the magistrate court clerk for an Affidavit of Poverty. You will need to complete and sign it before a notary. The magistrate court will decide if you can file an Affidavit of Poverty instead of paying the court costs. If the court approves your Affidavit of Poverty, you will not have to pay the court costs.

Amount of Rent Magistrate the Court Found You Owe

You have a right to appeal but you do not have a right to continue living in the rental property while your appeal is decided. If you want to continue living in the property until the appeal is decided, you will have to pay the amount the magistrate court found you owe for rent. This amount will be stated in the written judgment of the court. To continue to live in the property, you will need to pay this amount when you file your appeal. If you cannot afford to pay the amount of rent the magistrate court held that you owe, you can still appeal but will have to move out of the landlord's property. The landlord will be able to have you removed from his property on the eighth (8th) day following the judgment in your magistrate court trial. You should tell the court if your address changes so they can notify you of the date of the trial on your appeal.

Pay Monthly Rent as it Comes Due

If you appeal the judgment of the magistrate court and pay the amount the magistrate court held you owe, then you can stay in possession until the decision on your appeal but you must pay your monthly rent into court as it comes due. If you decide to appeal and remain in possession, you will need to be prepared to pay your monthly rent to the court. You will need to contact the court to get the details on how and when you will need to pay your rent.

Example: The magistrate court judge rules against you in the dispossessory action and finds that you owe your landlord \$500 in rent. You disagree and want to appeal. You will have to pay the cost of filing an appeal or have your Affidavit of Poverty approved by the court. If you want to continue living in the rental property while the appeal is decided, you will also need to pay the \$500 the magistrate court found you owed for rent. If you cannot pay the full amount of rent the magistrate court found you owed, you will not be permitted to remain in possession while the appeal is pending. To remain in possession while waiting for the hearing on your appeal, you will have to pay your rent into court as it comes due each month.

How to File An Appeal:

1. Get copy of the court's judgment from the magistrate court clerk.
2. Calculate the seventh (7) day from the date of the judgment.
3. Decide if you want to appeal.
4. File your appeal with the magistrate court within seven days.
5. Pay the court costs for the appeal or file an Affidavit of Poverty with the court.
6. Pay to the court the money the magistrate court found you owe for rent, if you want to remain in possession of the rental property.
7. Pay monthly rent into court while the appeal is decided.
8. Keep the court aware of any change in your address.
9. Prepare for the trial of your case.