

**HOW TO APPEAL A SUMMARY EVICTION FROM
JUSTICE COURT TO DISTRICT COURT
LANDLORD OR TENANT INSTRUCTIONS
(Forms # 31 through #36)**

INTRODUCTION

In Nevada, either party can appeal a summary eviction order. The following information explains how to appeal a summary eviction from Justice Court to the District Court.

WHAT IS INCLUDED IN THIS PACKET?

Included in this group of forms is the following:

- Form #31 Notice of Appeal
- Form #32 Motion to Set Bond and to Stay Eviction Pending Appeal
- Form #33 Notice of Posting and Acceptance of Supersedeas/Cost Bond on Appeal
- Form #34 Designation of Record and Statement of Points on Appeal and Notice of Intent to File Brief
- Form #35 Certificate of No Transcript
- Form #36 Statement of Proceedings

Note: If you use any of these forms, you must follow the same heading, party information, and Case No./Dept. No. as follows:

Heading

Fill in the name of the township and county of the Justice Court where the rental unit is located.

Parties

You must fill in the names, addresses and phone numbers of the Landlord/Plaintiff and Tenant/Defendant.

Case No. and Dept. No.

Use the identical Case Number and Department Number as was assigned by the court on the landlord's Order for Summary Eviction, Form #10.

Remember: Failure to file an appeal within 10 judicial days¹ of your eviction order may result in the dismissal of your appeal. Missing other deadlines may also result in the dismissal of your appeal. If you have questions, contact an attorney.

Filing an appeal is not simple or free of risks.

- 1. The court costs are substantial – filing fee, bond and record can cost several hundred dollars;**
- 2. The court may impose money penalties against anyone who files an appeal without legal merit – just disagreeing with the judge in Justice Court is not enough; and**
- 3. You have to take several complicated steps to pursue your appeal.**

There are three parts to the pleadings:

1. Pleadings to start the appeal and (for the tenant) stop the eviction order;
2. “Record” from the trial; and
3. “Appellate brief” explaining the issues.

The information and forms provided here will take you through the first two phases. However, as the appellate brief requires the most work, we provide only general information and no form. If you read through this information and think preparing an appellate brief will be too difficult, consult with an attorney.

STEP ONE: STARTING THE APPEAL

File the Civil Cover Sheet, which will be provided you by the court, and Notice of Appeal, Form #31, within 10 judicial days of entry of the eviction order.

Nevada law requires you to file your appeal within 10 judicial days of entry of the eviction order. You should file your appeal within 10 judicial days of the summary eviction hearing date (when the judge ordered your eviction in court) or within 10 judicial days of the date on the eviction order whichever is earlier.

¹ “Judicial Days” do not include date of service, weekends or legal holidays.

While the law may allow you 10 judicial days to file your appeal, if you have been ordered to vacate the rental unit, you must take extra steps before the end of the 24-hour eviction notice the constable/sheriff will give you in order to stay or stop the eviction.

To Stop the Eviction (Tenant), you must:

1. File the Civil Cover Sheet and Notice of the Appeal, Form #31;
2. Pay the filing fee or have the Order Regarding Waiver of Fees and Costs, Form #39,² from the Justice Court;
3. File a Motion to Set Bond and to Stay Eviction Pending Appeal, Form #32, if the judge has not already set the amount;
4. Pay for the bond and file a Notice of Posting and Acceptance of Supersedeas/Cost Bond on Appeal, Form #33. The cost is set by the court at \$250 or more;
5. **Deliver a copy of the Supersedeas Bond and the Notice of Appeal to the constable/sheriff to stop the eviction. If you do not do this, you will be evicted;** and
6. Give or mail copies of the Supersedeas Bond and Notice of Appeal to your landlord.

STEP TWO: THE RECORD FROM THE TRIAL

The first pleading, which must be filed in all appeals, is the Designation of Record and Statement of Points on Appeal and Notice of Intent to File Brief, Form #34. The portion designating the record simply sweeps all documents from the Justice Court proceedings into the appeal. The second section, stating points on appeal, requires you to list the reasons for the appeal. The third part notifies the court of your intention to file an appellate brief.

You must get a copy of the trial record and file it with the Justice Court within 10 days of the date you file the Notice of Appeal.

² See the instructions for Forms #37, #38 and #39 -- regarding the procedure to waive fees and costs.

There are two ways to do this:

1. If there was a court reporter recording your trial in Justice Court, order a copy of the transcript (there may be a cost to getting it) and file it with the Justice Court;
2. If there was no court reporter at your trial, file the Certificate of No Transcript, Form #35; and a Statement of Proceedings, Form #36, with the Justice Court. Note that you must serve your version to the Landlord for his/her objections, and then you must submit both to the Justice Court. See JCRCP 74.

STEP THREE: FILING THE APPELLATE BRIEF

The Justice Court Clerk should notify all parties when the record has been transmitted to the District Court.³ Call the court clerk periodically to see if your case has been given to the District Court. When the case has been given to the District Court, contact the clerk of the District Court that has your case and ask when your appellate brief must be filed with the District Court. If you are unable for any reason to find out a specific date to file your appellate brief, you must file it in the District Court within 30 days after your case has been given to the District Court. Check your local rules for your District Court regarding limitations on the length of your brief.

Note: The District Court can refuse to accept briefs and simply decide your appeal on the record submitted.

In writing your appellate brief:

1. Do not argue disputed facts; and
2. Argue only mistakes of law that make a difference.

The judge in your summary eviction hearing has the authority to decide factual issues. To argue any factual issue, the judge's decision must be "arbitrary and capricious" or without any support. This standard is very difficult to meet, and the District Court judge gives great weight to the factual decisions of the Justice Court judge.

³ JCRCP Rule 74B(b).

"Mistakes of law" that make a difference means that a judge violated a law (or court decision or rule) that changed the outcome of your hearing. As previously stated, NRS 40.253 requires a judge to dismiss a summary eviction if the tenant raises a legal defense. The basic mistake of summary eviction hearings occurs when the judge fails to recognize that the tenant has raised a legal defense.

For example, if the eviction is based upon Form #7, Five-Day Notice of Unlawful Detainer for Non-Payment of Rent, and the tenant claimed payment of rent as a defense, NRS 40.253 expressly recognizes this as a legal defense. If the judge declined to find it as a valid defense, the judge may have made a mistake of law. This mistake of law would have made a difference in the outcome of the case because if the judge had recognized the tenant's legal defense, the tenant would not have been evicted. On appeal, the tenant can argue that the judge made a mistake violating NRS 40.253, and that the eviction order should be reversed.

Finally, the other party has a right to file a reply brief. You can also file your own responsive brief but only to deal with new points raised in the other party's reply brief.

CERTIFICATE OF SERVICE

The appellate brief requires a "Certificate of Service." The purpose is to prove you notified the other party that you have filed or intend to file the document. The service of this document on the other party may occur before or after actual filing with the court. It is best to serve and file on the same day.

Note: As this form can be used by either the tenant or the landlord, be sure that you provide the correct landlord or tenant information on this document.

Provide the date and name of the document you delivered to the landlord (or tenant) or the landlord's (or tenant's) attorney.

Fill in the address of the landlord (or tenant) or landlord's (or tenant's) attorney. If the landlord (or tenant) is represented by an attorney, the Certificate of Service must

indicate that the document is being sent to the attorney and indicate the attorney's address. If the landlord (or tenant) is represented by an attorney, you should not send a copy to the landlord (or tenant).

Check the method by which the document was delivered.

The signature and printed name of the server are required.

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IN THE JUSTICE COURT OF _____ TOWNSHIP
IN AND FOR THE COUNTY OF _____, STATE OF NEVADA

Name: _____
Address: _____
Phone: _____
Landlord/Plaintiff

vs.

CASE NO: _____

Name: _____
Address: _____
Phone: _____
Tenant/Defendant

DEPT. NO: _____

NOTICE OF APPEAL

The Appellant, _____, in the above-entitled matter, appeals to the District Court, _____ County, Nevada, from the judgment entered on the ____ day of _____, 20____, in the above-named Court.

Submitted by,

Date

Signature of Party

Print Name of Party

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and JCRCP 5(b), I hereby certify that I am a non-party over the age of 18 years, and that on _____, 20____, I served a true and correct copy of the foregoing _____,

(Name of document that was served)

addressed to:

BY U.S. MAIL: I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at _____ (City and State), in the ordinary course of business.

BY FACSIMILE TO: _____ (FAX number).

BY PERSONAL SERVICE: I personally hand delivered the above-identified document to the address/offices of the person named above.

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IN THE JUSTICE COURT OF _____ TOWNSHIP
IN AND FOR THE COUNTY OF _____, STATE OF NEVADA

Name: _____
Address: _____
Phone: _____
Landlord/Plaintiff

vs.

CASE NO: _____

Name: _____
Address: _____
Phone: _____
Tenant/Defendant

DEPT. NO: _____

**NOTICE OF POSTING AND ACCEPTANCE OF
SUPERSEDEAS/COST BOND ON APPEAL**

WHEREAS, the above-entitled Court issued a Judgment dated
_____, 20___ ordering the eviction of Tenant from a non-
commercial premises with rent less than \$1,000.00, an appeal was filed on
_____, 20___ with appropriate fees or waivers,

NOW THEREFORE, Appellant _____
posts his Supersedeas/Cost Bond in the amount of \$ _____, pursuant to
NRS 40.385(1).

1 GREETINGS TO SHERIFF/CONSTABLE:

2 Pursuant to NRS 40.385(1), JCRCP 73A(a) referencing JCRCP 73,
3 Appellant may proceed and this Supersedeas/Cost Bond stays execution of the
4 appealed order of eviction unless otherwise ordered by the Court.

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8 DATED _____

JUSTICE OF THE PEACE

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IN THE JUSTICE COURT OF _____ TOWNSHIP
IN AND FOR THE COUNTY OF _____, STATE OF NEVADA

Name: _____
Address: _____
Phone: _____
Landlord/Plaintiff

vs.

CASE NO: _____

Name: _____
Address: _____
Phone: _____
Tenant/Defendant

DEPT. NO: _____

**DESIGNATION OF RECORD AND STATEMENT OF POINTS ON APPEAL
AND NOTICE OF INTENT TO FILE BRIEF**

DESIGNATION OF RECORD

Appellant _____, pursuant to
JCRCP 74, designates as the record on appeal all documents provided for in
JCRDP 74(f) and all documents otherwise contained in the Justice Court file.

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NOTICE OF INTENT TO FILE BRIEF

Appellant intends to file an opening brief pursuant to the requirements and time frames contained in JCRCP 75.

Submitted by,

Date

Signature of Party

Print Name of Party

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Pursuant to NRCP 5(b) and JCRCP 5(b), I hereby certify that I am a non-party over the age of 18 years, and that on _____, 20____, I served a true and correct copy of the foregoing

(Name of document that was served)

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IN THE JUSTICE COURT OF _____ TOWNSHIP
IN AND FOR THE COUNTY OF _____, STATE OF NEVADA

Name: _____
Address: _____
Phone: _____
Landlord/Plaintiff

vs. CASE NO: _____

Name: _____ DEPT. NO: _____
Address: _____
Phone: _____
Tenant/Defendant

STATEMENT OF PROCEEDINGS

Pursuant to JCRCP 74(c), Appellant _____

hereby submits a statement of the evidence or proceedings before the lower Court
as follows. (Briefly state what happened at your eviction hearing, particularly those
issues that relate to your appeal.)

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BY PERSONAL SERVICE: I personally hand delivered the above-identified document to the address/offices of the person named above.

Signature of Server

Print Name of Server