



MARICOPA COUNTY JUSTICE COURT

How to...

APPEAL A FORCIBLE DETAINER JUDGMENT

© Justice Court in Maricopa County
June 23, 2005
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FORM (#)



MARICOPA COUNTY JUSTICE COURT




Either party may appeal a judgment rendered in the justice court. If either party wishes to appeal a Forcible/Special Detainer judgment, they must file a **Notice of Appeal** with the court **WITHIN FIVE (5) calendar days** of the entry of judgment.

THE COURT CANNOT EXTEND THE TIME FOR APPEAL


If a judgment is issued for a **material and/or irreparable breach**, the Writ of Restitution will be carried out immediately (within 12-24 hours). To **STAY** enforcement of the Writ, a **NOTICE OF APPEAL and a SUPERSEDEAS BOND** (bond set by the court) must be filed **IMMEDIATELY** with the court, before the eviction process commences. The eviction can only be stayed with the filing of a supersedeas bond. **The court cannot waive a supersedeas bond.**

It is not required to post a supersedeas bond to file an appeal. The appeal will proceed with or without a supersedeas bond

Please STOP...

	If there has not yet been a judgment rendered.
	If the judgment was entered by default. You can not appeal from a default judgment. You must first file a Motion to Vacate Judgment. Obtain a packet for filing a Motion to Vacate.
	If the time to appeal has expired.

Please PROCEED...

	If you wish to appeal a judgment or ruling in your case..
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MARICOPA COUNTY JUSTICE COURT

FORMS Needed:

✓	Forcible/Special Detainer Appeals Packet
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INSTRUCTIONS:

1. Review the Notice of Right to Appeal form.
2. Complete the Notice of Appeal form and file it with the clerk within the time allowed (five days or sooner if you are trying to avoid eviction. Refer to the judgment. If an immediate eviction was ordered (12-24 hours), the Notice of Appeal and supersedeas bond should be filed before the Writ of Restitution (eviction order) is enforced.

At the same time the Notice of Appeal is filed:

3. Pay the fees required for a copy of the court record, certification and file transmittal.
4. Pay the required Cost Bond (\$250.00) *or* file the Affidavit of Inability to Post Bond.
5. Complete and file the Notice of Filing Cost Bond on Appeal.
6. Complete and file the Designation of Record on Appeal form.
7. Decide whether you will seek a stay of enforcement of the judgment by posting a supersedeas bond. There are two kinds of supersedeas bonds in a forcible detainer action – one stays enforcement of collection of the judgment award, the other stays enforcement of the judgment for possession. The court can tell you how much is required to be posted to effect a stay.
8. Follow the instructions in the Notice of Right to Appeal to follow through with the appeal process (paying rent to the court; obtaining a transcript; preparing a memorandum or replying to a memorandum; paying filing fees to Superior Court, etc.). Every step is critical to the appeal process. Failure to fully comply with all requirements will result in your appeal being abandoned and dismissed.

IT IS IMPORTANT THAT ALL PARTIES KEEP THE COURT APPRISED OF ANY CHANGE IN ADDRESS A NOTICE OF CHANGE OF ADDRESS form must be filed with the court when a party changes their address.

Maricopa County Justice Courts, State of Arizona

**CIVIL
FORCIBLE / SPECIAL DETAINER
APPEAL PACKET**

PLEASE READ CAREFULLY

The Notice of Right to Appeal outlines appeal process procedures and contains important bond information.

Appellant is the party filing the appeal

Appellee is the opposing party

Trial Court is the Justice of the Peace Court

Attached:

- **Notice of Right to Appeal - Civil**
- **Notice of Appeal**
- **Designation of Record on Appeal**
- **Notice of filing Cost Bond on Appeal**
- **Appellee's Objection to Sufficiency of Bond for Costs on Appeal**
- **Affidavit in Lieu of Bond**
- **Appellee's Objection to Appellant's Affidavit**
- **Sample Memoranda (Example of what is required in the Memorandum)**
- **Blank Memoranda**

NOTICE OF RIGHT TO APPEAL – CIVIL

A party may appeal a final order or a final judgment entered in any civil case (including forcible and special detainer actions; injunctions against harassment; orders of protection; and workplace harassment). This notice explains your rights and responsibilities to file an appeal from such an order or judgment. The appeal procedure is set forth in Superior Court Rules of Appellate Procedure, effective June 1, 2003, and in the Arizona Revised Statutes.

There are two separate stages to the appeal process. The first stage begins in the Justice Court; the second stage takes place in the Superior Court. You must complete ALL steps at both stages, or you risk having your appeal dismissed. This notice does not set forth all the rules that govern the appeal process. You may review the complete rules at the library as contained in the Superior Court Rules of Appellate Procedure and in the Arizona Revised Statutes. It is recommended that you keep a copy of all your documents during the appeal process.

SPECIAL NOTE re FORCIBLE / SPECIAL DETAINER appeals: There are some processes that differ, depending on the type of case being appealed. Please note the different timelines applicable to forcible and special detainer appeals and the two kinds of supersedeas bonds that may be posted. You may review the specific statutes applicable to forcible or special detainer appeals in the Arizona Revised Statutes, Title 12, Article 4 and in the Arizona Residential Landlord Tenant Act available from the Secretary of State or online at www.az.sos.gov.

SPECIAL NOTE re appeals of ORDERS OF PROTECTION and INJUNCTIONS AGAINST HARASSMENT and WORKPLACE HARASSMENT:

This court does not assess fees with the appeal process. However, Superior Court will charge a filing fee for appeal of workplace harassment. Also, you will be responsible for making arrangements for payment of preparation of the transcript of the record of proceedings.

Additionally, unless otherwise ordered by the court, the protective or injunctive order will stay in effect pending the appeal.

STAGE ONE – THE TRIAL COURT

The trial court is the justice court.

THE NOTICE OF APPEAL To appeal you must file a NOTICE OF APPEAL with the trial court within fourteen calendar days from the date of the judgment.

SPECIAL NOTE re FORCIBLE DETAINER APPEALS:

To appeal this type of case, you must file a NOTICE OF APPEAL with the trial court within **FIVE** calendar days from the date of the judgment.

SPECIAL NOTE re IMMEDIATE FORCIBLE DETAINER APPEALS:

A judgment resulting from an irreparable breach will be carried out immediately. Any appeal should be filed before enforcement of a Writ of Restitution (within 12 to 24 hours after the judgment is entered).

If you do not file a NOTICE OF APPEAL within the time allowed by law, you lose the right to appeal. The time to file cannot be extended. It is required that you designate the specific judgment or order you are appealing in the NOTICE OF APPEAL.

NOTICE OF RIGHT TO APPEAL – CIVIL

If you file an appeal you are the APPELLANT. The opposing party is the APPELLEE. The Justice Court is the trial court.

APPEAL FEES On or before the deadline to appeal, you must pay an appeal fee. The fee includes the cost of a copy of the taped proceedings; a certification of the appeal record; and the transmittal of the record on appeal to the Superior Court. The court will accept CASH, CHECK, CREDIT CARD or MONEY ORDER.

THE RECORD The justice court record is made by audiotape, CD or video. The court will contact you to pick up a copy of the audiotape, CD or video within 10 days after you have paid the required fees.

If the taped proceedings are more than 90 minutes in length, it will be necessary for you to pay a court reporter to prepare a transcript (a typed record) of the proceedings. You can find a listing for COURT REPORTERS in the yellow pages of the telephone book.

Within the deadline to appeal (5 days for forcible detainer and 14 days for all other civil), you must make arrangements with the court reporter or transcriber to pay any record or transcript preparation fees. The transcript must be filed with the trial court before, or at the same time, you file your memorandum (see FILING THE APPEAL MEMORANDUM).

DESIGNATE THE RECORD Within the time to appeal you must designate the record with the trial court by filing a formal list of the items you want included in the record on appeal.

THE COST BOND On or before the deadline to appeal you must pay a COST BOND. The bond is set at \$250.00. The purpose of this bond is to cover court costs incurred by the APPELLEE, in defending the appeal. If you cannot afford to pay the cost bond, you must complete an AFFIDAVIT OF INABILITY TO POST BOND. The opposing party has a right to object to such an affidavit and the court may hold a hearing to determine the validity of the affidavit.

SUPERSEDEAS BOND(S) The purpose of a supersedeas bond is to stay enforcement of the judgment. The two supersedeas bonds explained here have two separate purposes. One will stay collection actions on the amount of the judgment awarded, i.e. garnishment proceedings. The other will stay any eviction proceeding resulting from a forcible detainer judgment.

You may still exercise your right to appeal without posting a supersedeas bond. But you must post one or both supersedeas bonds to stay enforcement of the judgment.

TO STAY COLLECTION PROCEEDINGS The amount of the bond is the total amount of the judgment ordered by the court, including court costs, attorney fees, damages, etc. The purpose of this bond is to stay collection proceedings on the money judgment awarded, i.e. a Writ of Execution, where personal property may be taken and sold to satisfy the judgment, or garnishment proceedings. The stay becomes effective when the bond is posted.

SPECIAL NOTE re FORCIBLE DETAINER APPEALS:

TO STAY EVICTION Another supersedeas bond may be posted to stay eviction proceedings enforced by a WRIT OF RESTITUTION. The amount of the bond is the amount of rent due from the date of the judgment to the next periodic rental due date, plus court

NOTICE OF RIGHT TO APPEAL – CIVIL

costs and attorney fees ordered in the judgment.

To stay the eviction proceedings a supersedeas bond must be posted before the Writ of Restitution is enforced. The stay becomes effective when the bond is posted, but cannot be retroactive if the Writ has already been executed.

A judgment resulting from an irreparable breach will be carried out immediately. A supersedeas bond to stay the eviction must be filed before enforcement of the Writ of Restitution (within 12 to 24 hours after the judgment is entered) to have a stay effect on the eviction.

PAYMENT OF RENT In addition, all rent payments must be paid to the trial court on or before the rental due date, pending the appeal process.

If the rent is not timely received, the court may issue a WRIT OF RESTITUTION for execution of the judgment for possession and the eviction proceedings.

All bonds are paid to the trial court. The court will accept CASH, ATTORNEY TRUST CHECK, or CASHIER'S CHECK for payment of bonds.

THE WRITTEN APPEAL MEMORANDUM You will need the record for the next step – the APPELLANT'S MEMORANDUM. The appellant's memorandum is your written explanation of why the trial court ruling was legally wrong. Normally your memorandum should refer to specific portions of the record of the trial or hearing to point out where there was error by the court. That is why a written record (the transcript) must be prepared.

The memorandum should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length. In addition, you may also attach exhibits from your hearing to the memorandum.

FILING THE APPEAL MEMORANDUM (within 60 days) The transcript and the APPELLANT'S MEMORANDUM must be filed with the court within 60 calendar days of the deadline to file the NOTICE OF APPEAL.

Type or print the caption of the case and your case number at the top of your memorandum. Type or print the title, APPELLANT'S MEMORANDUM, below the caption so that court can identify it when it is filed. If you are not represented by an attorney you must file the original with the trial court and one additional copy of the memorandum for every party in the case. The other side will then have 30 days to file an Appellee's Memorandum in response.

WAIT FOR FURTHER INSTRUCTIONS Once the memorandum has been filed, you should wait for further instructions from the Superior Court as outlined in Stage Two. Remember that the trial court must have your current mailing address at all times to keep you informed. Even if you hire an attorney your address is still required for legal notifications.

CROSS-APPEALS The rules regarding cross-appeals are set forth in full detail in the Superior Court Rules of Appellate Procedure previously mentioned herein.

NOTICE OF RIGHT TO APPEAL – CIVIL

STAGE TWO – THE SUPERIOR COURT

PAYING THE SUPERIOR COURT FILING FEE If you have completed all of the first stage, your case moves to Superior Court. About 60 days after you file your memorandum, you will receive a notice from the Superior Court. This notice will instruct you to pay the Superior Court filing fee. You must pay this filing fee or your appeal may be dismissed and your case sent back to the trial court.

If you cannot afford to pay the filing fee, you must contact the Superior Court clerk for information about a possible waiver or extension to make payment later. For more information, you may contact Superior Court at (602) 506-3427.

SUPERIOR COURT ACTION ON THE APPEAL If you have completed all of these steps, you will receive a ruling from the Superior Court. The Superior Court has the right to affirm the trial court, overrule the trial court, modify some of the trial court's decision, or, if the record is not clear, order a new trial in the Superior Court.

If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any reason, the court may use any bond, deposit or payments made to satisfy your obligation under the original judgment. You may have to return to the trial court to receive further instructions.

DISPOSITION OF EXHIBITS UPON FINAL JUDGMENT After a judgment has become final and non-appealable, a person who files a request, under penalty of perjury, setting forth ownership of or lawful entitlement to the possession of an exhibit, may obtain an ex-parte order permitting its withdrawal. Ninety days after a judgment has become final and non-appealable, the court having possession thereof may dispose of all case related exhibits in its possession.

REMINDER: The appeal will not be sent to Superior Court until you have met all of the following requirements:

- File a timely NOTICE OF APPEAL.
- Pay the appeal fees.
- Pay the \$250.00 cost bond or filed an AFFIDAVIT OF INABILITY TO POST BOND.
- Make arrangements with any court reporter or transcriber to pay any record or transcript preparations fees (within 14 days from the final order or final judgment – if the record is longer than 90 minutes; or within 5 days from the final order or final judgment if a forcible detainer.)
- Prepare and file a transcript, if required.
- File the Memorandum.
- Pay the Superior Court filing fee (if applicable).

I also understand that I have a right to post a supersedeas bond(s) to stay enforcement of the judgment.

I hereby acknowledge receipt of a copy of this Notice.

Date: _____

Plaintiff / Defendant

Maricopa County Justice Courts, State of Arizona

CASE NUMBER: _____

 Plaintiff(s) Name / Address / Phone

 Defendant(s) Name / Address / Phone

NOTICE OF APPEAL **NOTICE OF CROSS APPEAL**
 (check one) CIVIL FORCIBLE DETAINER SPECIAL DETAINER OTHER CIVIL
 INJUNCTION PROHIBITING HARASSMENT ORDER OF PROTECTION WORKPLACE HARASSMENT

I am the Plaintiff Defendant herein and I am appealing or cross-appealing from the final order or final judgment in the above case, entered on: _____ (date of order or judgment being appealed)

I have read and understand the instructions set forth in the NOTICE OF RIGHT TO APPEAL, including:

- Payment of \$72.00 appeal fees to the court
- The posting of a cost bond in the amount of \$250.00
- The right to post a supersedeas bond to stay enforcement of the judgment
- The right to post a supersedeas bond to stay enforcement of possession (in a forcible detainer case)
- Payment for preparation of a transcript of the record, if necessary
- The required memorandum to be filed with the trial court
- Any applicable filing fees payable to the Superior Court

I further acknowledge and understand that failure to complete all stages in the appeal process may result in the dismissal of the appeal and reinstatement of the trial court judgment.

The following address may be used for all court notices. The court will be notified IN WRITING of any change of address.

Plaintiff's attorney is: _____ Street _____ City, State _____ Zip _____ (Daytime Phone) (____) _____	Defendant's attorney's is: _____ Street _____ City, State _____ Zip _____ (Daytime Phone) (____) _____
Other parties herein: Street _____ City, State _____ Zip _____ (Daytime Phone) (____) _____	Other parties herein: Street _____ City, State _____ Zip _____ (Daytime Phone) (____) _____

Date: _____

 Plaintiff / Defendant

(circle one)

I CERTIFY that I mailed a copy of this NOTICE OF APPEAL to all parties and counsel herein named.

Date: _____ By: _____
 Clerk

Date Stamp

Plaintiff(s)
Address _____

Defendant(s)
Address _____

ATTORNEY for Plaintiff
Address _____

ATTORNEY for Defendant
Address _____

DESIGNATION OF RECORD ON APPEAL (CIVIL)

The appellant herein is the Plaintiff the Defendant.

The record on appeal shall consist of originals or certified copies of the following items:

1. The NOTICE OF APPEAL
2. The docket of proceedings
3. Documentation or record of payment of bonds
4. The COMPLAINT, ANSWER, COUNTER or CROSS-CLAIMS, any amendments and all proofs of service
5. The JUDGMENT, ORDER or other ruling that is the subject of this appeal or cross-appeal

Unless otherwise designated, the record shall also include:

6. Written motions, responses and replies
7. Exhibits (admitted or not)
8. The record or transcript of the trial

*Check if you DO NOT
want to be included*

Initial

<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

Or, if it is requested that any of these items not be included in the record, so indicate by checking the box to the right of the record not to be included, if any, and initial.

Unless otherwise designated or requested by the Superior Court, the record on appeal shall not include: Notices of Appearance; discovery disclosures; motions; notices of defense; subpoenas; notices of motion hearings and trial settings; voir dire; jury instructions and general correspondence.

In addition to the items noted above, I request that the following documents also be included in the appeal record:

Date: _____

Appellant / Appellee

I CERTIFY that I mailed a copy of this DESIGNATION OF RECORD ON APPEAL to Plaintiff or to Plaintiff's attorney and to Defendant or to Defendant's attorney at the above address, and to Other parties herein:

Street _____
City, State _____ Zip _____

Street _____
City, State _____ Zip _____

Date: _____

By: _____ (Clerk)

CASE NUMBER: _____

Plaintiff(s)
Address

Defendant(s)
Address

ATTORNEY for Plaintiff
Address

ATTORNEY for Defendant
Address

NOTICE OF FILING COST BOND ON APPEAL (CIVIL)

The appellant herein is the Plaintiff the Defendant.

- The appellant in this matter has filed a bond for costs on appeal in the amount of \$250.00.
- Cash bond
- Security _____

Date: _____
Appellant

I CERTIFY that I mailed a copy of this NOTICE OF FILING COST BOND ON APPEAL to:

- Plaintiff or to Plaintiff's attorney at the above address.
- Defendant or to Defendant's attorney at the above address.

Date: _____ By: _____
Clerk

TO APPELLEE:

- You have 14 calendar days from the date of filing of this notice to object in writing to the sufficiency of the cost bond posted herein.***
- You have 5 calendar days (in a forcible / special detainer action) from the date of filing of this notice to object in writing to the sufficiency of the cost bond posted herein.***

The court will consider any objections made and will either sustain the objections or approve the bond. If no objections are made, the bond will be approved and all defects or insufficiencies are waived.

CASE NUMBER: _____

Plaintiff(s)

Address

Defendant(s)

Address

ATTORNEY for Plaintiff

Address

ATTORNEY for Defendant

Address

APPELLEE'S OBJECTION TO SUFFICIENCY OF BOND FOR COSTS ON APPEAL (CIVIL)

The appellee herein is the Plaintiff the Defendant.

I am the appellee in this action. I hereby object to the appellant's bond for costs on appeal for the following reasons (specify how the bond is erroneous, defective or insufficient):

Date: _____

Appellee

I CERTIFY that I mailed a copy of this APPELLEE'S OBJECTION TO SUFFICIENCY OF BOND FOR COSTS ON APPEAL to:

- Plaintiff or to Plaintiff's attorney at the above address.
- Defendant or to Defendant's attorney at the above address.

Date: _____

By: _____(Clerk)

CASE NUMBER: _____

Plaintiff(s)
Address

Defendant(s)
Address

ATTORNEY for Plaintiff
Address

ATTORNEY for Defendant
Address

AFFIDAVIT of INABILITY TO POST BOND FOR COSTS PENDING APPEAL (CIVIL)

The appellant herein is the Plaintiff the Defendant.

The undersigned appellant moves the trial court to waive, or in the alternative, reduce the cost bond in the above cause.

1. I make this affidavit pursuant to SCRAP Rule 6(b)(3).

Or, (*in a Forcible / Special detainer case*) I make this affidavit pursuant to ARS 12-1179B.

2. This request is made for the following reason(s):

I state under penalty of perjury that the foregoing is true and correct.

Date: _____
Appellant

I CERTIFY that I mailed a copy of this AFFIDAVIT OF INABILITY TO POST BOND FOR COSTS PENDING APPEAL to:

- Plaintiff or to Plaintiff's attorney at the above address.
- Defendant or to Defendant's attorney at the above address.

Date: _____ By: _____
Clerk

TO APPELLEE:

- CIVIL case: You have 14 calendar days from the date of filing of this affidavit to object in writing to the appellant's affidavit. If an objection is filed, the court will rule on the affidavit and any objections within 14 calendar days. The court will either approve the affidavit or sustain the objections.*
- FORCIBLE DETAINER case: You have 5 calendar days from the date of filing of this affidavit to object in writing to the appellant's affidavit. If an objection is filed, the court will hold a hearing on the affidavit and objections within 5 calendar days. The court will either approve the affidavit or sustain the objection.*

CASE NUMBER: _____

Plaintiff(s)

Address

Defendant(s)

Address

ATTORNEY for Plaintiff

Address

ATTORNEY for Defendant

Address

APPELLEE'S OBJECTION TO APPELLANT'S AFFIDAVIT

The appellee herein is the Plaintiff the Defendant.

I am the appellee in this action. I am objecting to the appellant's affidavit of inability to post bond for costs for the following reasons.

I state under penalty of perjury that the foregoing is true and correct.

Date: _____
Appellee

I CERTIFY that I mailed a copy of this APPELLEE'S OBJECTION TO APPELLANT'S AFFIDAVIT to:

- Plaintiff or to Plaintiff's attorney at the above address.
- Defendant or to Defendant's attorney at the above address.

Date: _____ By: _____
Clerk

NAME: _____
 ADDRESS: _____
 CITY & STATE: _____
 ZIP: _____
 PHONE: _____

IN THE _____ JUSTICE COURT
 OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

))	
)	
)	
Plaintiff)	JUSTICE COURT CASE # _____
vs.)	
)	LC CASE # _____
)	
)	
Defendant)	TITLE: APPELLANT MEMORANDA
)	

ORAL ARGUMENT REQUESTED

Sample MEMORANDUM (CIVIL)

Oral Argument Requested

1. Due within 60 calendar days of the deadline to file the Notice of Appeal
2. Not more than 15 pages in length
3. Typed double – spaced (except for quotations), or legibly printed
4. Single sided
5. On 8.5 x 11” white paper
6. If you are not represented by an attorney, you will need to file the original memorandum, along with one copy for each other party, with the court.

STATEMENT OF THE CASE

A short statement of the facts of the case. This should include a short review of the testimony and a brief summary of the facts as presented in the Justice Court.

STATEMENT OF LAW

Specific reference should be made to the portion of the recorded proceedings or transcript wherein you contend the trial court erred. A concise argument of the legal issues and any supporting legal authority (statute, rule, case precedent, etc.) relating to your position.

CONCLUSION

The conclusion should state exactly what the appellant is requesting the Superior Court Judge to do.

Respectfully submitted this date: _____

_____ Appellant

CERTIFICATE OF MAILING / DELIVERY

If you are not represented by an attorney you must file the original, and one additional copy of the memorandum with the trial court. The trial court will mail a copy of the memorandum to the opposing side.

If an attorney represents you, you will only need to file the original memorandum. Your attorney will be responsible for filing original with the trial court and for sending copies as necessary to the opposing side. The opposing side will then have 30 days to file an APPELLEE'S MEMORANDUM in response.

NAME: _____
ADDRESS: _____
CITY/STATE: _____
ZIP: _____
PHONE: _____

IN THE _____ JUSTICE COURT
OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

Plaintiff)
vs.) **JUSTICE COURT CASE #** _____
)
) LC CASE # _____
)

Defendant) **TITLE: APPELLANT MEMORANDA**
)

 ORAL ARGUMENT REQUESTED