

Appealing an Eviction

If your landlord takes you to court and gets an eviction order, you have the right to appeal. You should ALWAYS appeal if you disagree with the court's decision to evict you, and you should do it as soon as possible.

What happens when I appeal?

- ◆ If you have filed a Notice of Appeal, the sheriff can't enforce the eviction order unless the new judge agrees with the first judge, or you withdraw your appeal.
- ◆ You will need to keep paying rent while you are waiting for a new trial, or the landlord can ask for the eviction to move forward. If you can't afford rent before June 30, 2021, read our brochure on Evictions and COVID-19.

What if I don't think the judge made the wrong decision? Should I still appeal?

Landlord-tenant law is complicated. There are many reasons a judge should let you stay in your home, and you may not know about all of those reasons without getting legal advice. If you are not sure you have any defenses, file the appeal and get legal advice. If you only have a short time before the eviction date, focus on getting your appeal filed, even if you haven't been able to talk to an attorney. You can always withdraw your appeal, but if you start too late, you may not be able to stop the eviction from moving forward.

Tips for Appealing:

- ◆ The Notice of Appeal form is available at courts or online. It is simple, and you should file it as soon as possible. Don't wait until the last minute.
- ◆ You will need to fill out an application for free process if you cannot afford the filing fee of \$117. If you get benefits like SSI or food stamps, or if you do not earn much, bring documents showing this to prove you are eligible for free filing.

If you are being evicted or need legal help with your eviction appeal, call the statewide toll-free New

Mexico Legal Aid
intake line:

1-833-LGL-HELP

(1-833-545-4357)

or apply online:

www.newmexicolegalaid.org



Guide for Renters:

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*New Mexico Legal Aid's work
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LEGAL SERVICES CORPORATION

STAND UP FOR YOUR RIGHT TO APPEAL!

**You have an absolute right to
one appeal under the New
Mexico Constitution.**

A court may not:

- ◇ make you pay an appeal bond as a condition to filing an eviction appeal. If you don't pay an appeal bond, the landlord can keep trying to collect money from you, but you *are not required to pay just to file your appeal.* § 47-8-47 (B) NMSA.
- ◇ make you wait to file your appeal because there is no judge available to look at your application for free process. Preventing you from appealing on time because of your financial situation is a violation of your constitutional right to appeal.

If a court clerk tells you that you must pay money you can't afford or miss your appeal deadline, explain that it is an emergency. Explain that if you don't file before your eviction date, your family will lose your home. Show them this brochure. Call New Mexico Legal Aid's intake line and report that you have an emergency because you are being denied the right to appeal an eviction.

How to Appeal:

1. Get copies of the Judgment and Writ of Restitution from the court where you had your trial. They may also give you a Notice of Appeal form if you ask.
2. Go to your local district court. Bring with you any documents showing you are low income and the Notice of Appeal form (or ask the district court clerk to give you one). If possible, also bring a stamped-envelope with your landlord's address.
3. If you can't afford the district court filing fee, ask for an application for free process and fill it out. Show the clerk any documents you have showing you are low income.
4. Fill out the top of the Notice of Appeal form with the names, numbers and date on the court orders, sign, and staple the orders to the Notice of Appeal.
5. Ask the clerk to make 2 copies for you. If the clerk won't do this, get 2 copies made before filing.
6. Mail one copy to your landlord, and fill out the section of the Notice of Appeal saying the copy has been sent (the Certificate of Service). If you plan to send it later, you can leave this blank and fill it out after you send or hand it to your landlord.
7. Give the original and one copy to the clerk. Get back a stamped copy showing when you filed it.
8. If possible, show a copy to your local sheriff's office before your eviction date, so they know not to evict you. Keep a copy at home.
9. If your landlord says you owe rent, pay at least the amount that would be due from the date of the judgment to the end of the month. If you can't pay during the public health emergency, you may be able to give your landlord a CDC Declaration while your appeal is pending. Read our brochure on Evictions and Covid-19 for help on this.