



# Overview of the Eviction Appeal Process<sup>1</sup>

Below are the steps you must take to appeal an eviction judgment.

- 1 • Your landlord files an unlawful detainer (eviction) case against you and the case goes to trial. At trial, your landlord wins and the court orders that you have to move out. You disagree with the order and decide to appeal it.<sup>2</sup>
- 2 • You can see if FVAP can represent you in an eviction appeal for free by contacting us at [info@fvaplaw.org](mailto:info@fvaplaw.org) or (510) 380-6243.
- 3 • To stay in your unit you first must get a **stay of execution**.<sup>3</sup> A stay of execution, also called a stay of eviction, can let you stay in your unit for up to 40 days after the court orders you to move out (the eviction judgement).<sup>4</sup> To stay in your unit for the whole appeal, you need to file a stay pending appeal before your stay of execution ends. The stay pending appeal is explained in box 5 below.
- 4 • To appeal the eviction, you must file and serve a notice of appeal (form AP-102) before your deadline. “File” means give to the court. “Serve” means to have someone else give the notice of appeal to the other party. You can use FVAP’s tipsheets “Calculating Your Deadline to Appeal a California Limited Civil Unlawful Detainer Order” and “How to Fill Out Notice of Appeal Form (APP-102) For Limited Civil Cases” to help you calculate your deadline and fill out the form. Find these tipsheets by using the URLs in the footnote.<sup>5</sup>
- 5 • If you are still in the unit when you file your notice of appeal, you can ask the trial court for a **stay pending appeal**. A stay pending appeal is different than a stay of execution because (1) you can only file a stay pending appeal if you file a notice of appeal and (2) if granted, a stay pending appeal may let you stay in the unit while your appeal is pending.<sup>6</sup> If the trial court denies your stay pending appeal request, you can ask the superior court’s appellate division if you can stay in the unit during the appeal by filing an **extraordinary writ of supersedeas**.<sup>7</sup>
- 6 • You must file a notice designating record on appeal (form APP-103) within 10 days of filing your notice of appeal.<sup>8</sup> You can find the notice designating record on appeal by using the link in the URL.<sup>9</sup> This form tells the trial court how to give information about your trial court case to the appellate division. The information that goes to the appellate division becomes the official record of what happened at the trial court. The record is used by the appellate judges to understand what happened at the trial court.
- 7 • After the trial court files your record with the appellate division, you have 30 days to file an **appellant’s opening brief**. Your brief should explain how the trial court order was incorrect under the law. You can get at least one deadline extension for your brief.<sup>10</sup>
- 8 • After you file your opening brief, your landlord has 30 days to file a **respondent’s brief**. In their brief your landlord will likely explain why the trial court’s order was correct. They can get at least one deadline extension for their brief.<sup>11</sup>

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- 9 • If your landlord files a respondent's brief, you have 20 days to file a **reply brief**. Your brief should explain why the arguments in the landlord's brief are incorrect. You can get at least one deadline extension for your brief.<sup>12</sup>
- 10 • After all briefs are filed, the court will schedule an **oral argument**. At oral argument you and your landlord will each have 10 minutes to explain your arguments to the appellate division judges.<sup>13</sup> The judges may ask you questions.
- 11 • The appellate division judges make their **decision** and give you at least a brief statement explaining their decision.<sup>14</sup> The decision will likely state one of the following:
  1. Affirmed. This means the trial court order does not change.
  2. Reversed. This means the trial court order is no longer valid. The case returns to the trial court. Sometimes the appellate division tells the trial court how to decide the case at re-trial and sometimes you will have to have a new trial.
- With either outcome, the appellate division may order the winning party to pay the losing party's court costs and attorneys fees.

<sup>1</sup> This resource is about limited civil eviction appeals.

<sup>2</sup> Find a more detailed explanation of the appeals process in the court form [APP- 101](https://www.courts.ca.gov/documents/app101info.pdf) by clicking [here](https://www.courts.ca.gov/documents/app101info.pdf) or using the URL <https://www.courts.ca.gov/documents/app101info.pdf>

<sup>3</sup> Code Civ. Proc., §§ 715.010 & 715.020.

<sup>4</sup> *Id.* at § 918, subd. (b).

<sup>5</sup> URL for calculating your deadline tipsheet: <https://fvapl原因.org/wp-content/uploads/2022/02/Calculating-Your-Deadline-for-Appeal-in-a-Limited-Civil-UD-Case-FINAL-DRAFT-2.23.22.pdf> URL for tipsheet helping you fill out your Notice of Appeal <https://fvapl原因.org/wp-content/uploads/2022/02/NOA-tipsheet-for-limited-civil-draft.-FINAL-2.23.22..pdf>

<sup>6</sup> Code Civ. Proc., § 1176.

<sup>7</sup> *Id.* at §§ 85, 86 & 1176.

<sup>8</sup> California Rule of Court, rule 8.831.

<sup>9</sup> <https://www.courts.ca.gov/documents/app103.pdf>

<sup>10</sup> California Rule of Court, rule 8.882.

<sup>11</sup> California Rule of Court, rule 8.882.

<sup>12</sup> California Rule of Court, rule 8.882.

<sup>13</sup> California Rule of Court, rule 8.885.

<sup>14</sup> California Rule of Court, rule 8.887.