

- SUBJECT:** Procedures for appealing a residential eviction suit
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Giddings, Elkins, Bailey, Martinez, Solomons, Taylor, Vo, Zedler
- 0 nays
- 1 absent — Bohac
- WITNESSES:** For — David M. Cobos, Justices of the Peace and Constables Association of Texas
- Against — None
- DIGEST:** CSHB 62 would add sections to the Property Code involving appeals for a residential eviction suit. The bill would address a tenant’s appeal on a pauper’s affidavit, payment of rent during appeal of an eviction, and failure to pay rent during such an appeal.
- Tenant appeal on pauper’s affidavit.** The bill would specify that if a tenant in a residential eviction suit was unable to pay the costs of appeal or file a required bond, the tenant could appeal the judgment of the justice court by filing, not later than the fifth day after the judgment was signed, a sworn pauper’s affidavit before the clerk of the court or a notary public stating that the tenant was unable to pay the costs of appeal or file an appeal bond. The affidavit would have to contain detailed information about:
- the tenant’s identity;
 - the tenant’s assets, property, cash, funds in the bank, or income from any source;
 - the tenant’s debts and monthly expenses;
 - the income of the tenant’s spouse, if applicable and available; and
 - the number and age of the tenant’s dependents and where they lived.

The court would make available an affidavit form that a person could use to comply with these requirements and promptly would notify the landlord if a pauper's affidavit was filed by the tenant.

A landlord could contest a pauper's affidavit on or before the fifth day after the date it was filed. If the landlord contested the affidavit, the court would notify the parties and hold a hearing to determine whether the tenant was unable to pay the costs of appeal or file an appeal bond. The hearing would be held within five days after the date the landlord notified the court clerk to contest the affidavit. The tenant would have the burden to prove that he or she was unable to pay the costs of appeal or file an appeal bond.

If the court approved the pauper's affidavit, the tenant would not be required to pay the county court filing fee or file an additional affidavit in the county court.

Payment of rent during appeal of eviction. If the court entered judgment for the landlord in a residential eviction case based on nonpayment of rent, the court would determine the amount of rent to be paid each month during any pending appeal and would note that amount in the judgment. If a portion of the rent was payable by a government agency, the court would note in the judgment the portion to be paid by the government agency and the portion to be paid by the tenant. The bill would not require or prohibit payment of rent into the court registry or directly to the landlord during a pending appeal of an eviction case based on grounds other than nonpayment.

In an eviction case based on nonpayment of rent in which the tenant appealed by filing a pauper's affidavit, the tenant would pay the rent into the justice court or the county court registry, as applicable, pending the appeal. If a government agency was responsible for all or a portion of the rent under an agreement with the landlord, the tenant would pay only a portion of the rent determined by the court during the appeal process, subject to either party's right to contest that determination.

If an eviction case was based on nonpayment of rent and the tenant's rent had been paid wholly or partly by a government agency, either party could contest the portion of rent that the justice court determined would have to be paid by the tenant into the county court registry. A contest would have to be filed within five days after the date the judgment was signed. If a

contest was filed, the justice court would notify the parties within five days of the filing date and would hold a hearing to determine the amount owed by the tenant under the rental agreement and applicable laws. After hearing evidence, the court would determine the portion of the rent that the tenant would have to pay.

If the tenant objected to the court's ruling, the tenant would be required to pay during the appeal only the portion he or she claimed to owe until the issue was tried de novo in county court, along with the case on the merits. Pending such an appeal, either party could file a motion with the county court to reconsider the amount of rent that the tenant would have to pay into the court registry.

If either party filed a contest and the tenant filed a pauper's affidavit that was contested by the landlord, the justice court would hold a hearing on both contests at the same time.

Tenant's failure to pay rent during appeal. During an appeal of an eviction for nonpayment of rent, if a tenant failed to pay rent into the justice court or county court registry, the landlord could file with the county court a sworn motion that the tenant failed to pay rent as required. The landlord would notify the tenant of the motion and the hearing date.

If the county court found that the tenant had not complied with the payment requirements, the court would immediately issue a writ of possession unless, on or before the day of the hearing, the tenant paid into the court registry all rent not paid and the landlord's reasonable attorney's fees, if any, in filing the motion.

If the court found that a tenant had failed to pay the rent timely into the court registry on more than one occasion, the tenant would not be entitled to stay a writ by paying the rent and the landlord's attorney's fees, and the county court would issue immediately a writ of possession. Such a writ of possession could not be executed before the sixth day after the date the writ was issued.

During the appeal of an eviction case, if a government agency was responsible for payment of a portion of the rent and did not pay that portion to the landlord or into the justice court or county court registry, the landlord could file a motion with the county court requesting that the tenant be required to pay into the county court registry, as a condition of

possession, the full amount of each month's rent as it came due. After notice and hearing, the court would grant the motion if the landlord proved that:

- a portion of the rent was owed by a government agency;
- the portion of the rent owed by the government agency was unpaid;
- the landlord did not cause the agency to cease the payments;
- the landlord did not cause the agency to pay the wrong amount; and
- the landlord was not able to take reasonable action that would cause the agency to resume making payments of its portion of the total rent due.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 62 represents a consensus agreement among property owners, tenants' rights groups, and justice courts and constables attained over a four-year period. The bill would achieve clarity in residential eviction cases by removing notification requirements from adversarial parties and placing such duties with the courts and constables to assure due process.

The bill also would outline detailed procedures for the appeal of a residential eviction to eliminate confusion regarding pauper's affidavits. Current statutes and court rules do not adequately address procedures in the eviction appeals process if a tenant claims to be a pauper, which creates problems for both landlords and tenants. In addition, some tenants falsely have claimed to be paupers in order to slow down the eviction process, making it more costly for landlords. The bill would detail a list of required disclosures in a pauper's affidavit in order to provide sufficient information as to a tenant's lack of assets.

The bill would set clear standards for appeals of eviction, including establishing procedures for timely payment of rent during the appeals process and for a tenant's failure to pay rent during appeal. Justice courts would have an affirmative duty to note in the judgment the amount of rent due by the tenant pending appeal in all nonpayment of rent cases, which would help ensure that appeal bonds were set at a fair amount.

Any hearings on a landlord's contest of a pauper's affidavit and a tenant's contested portion to be paid by the tenant would be held simultaneously to

achieve judicial efficiency in order to avoid multiple hearings by the parties and delays.

Under the bill, if a landlord proved that the tenant failed to pay the required rent during appeal and if the landlord satisfied the burden of proof, the county court would be required to issue a writ of possession. The bill would shorten the current 10-day wait for execution of a writ of possession to a five-day period in nonpayment of rent cases.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute would require the justice court to notify the landlord of the filing of a pauper's affidavit. If the landlord timely contested the tenant's affidavit, the justice court would have to notify both parties of a hearing date and would hold a hearing within five days. The substitute also would require the justice court to note on the judgment the amount of rent that the tenant would have to tender into court at each pay period during appeal.

In a dispute over the amount of rent due by the tenant during appeal in which the government partly or wholly had paid the rent, the tenant's right to appeal the justice court's decision to the county court would be changed in the committee substitute to a hearing in justice court with the opportunity to put on evidence. If the court found that the tenant had failed to tender timely during appeal, the court would have to issue a writ of possession.

Under the substitute, if the tenant failed to tender rent timely, the tenant could avoid issuance of a writ if he or she paid the required rent into county court and paid any attorneys fees incurred by the landlord at the hearing. If a writ was issued by county court, it could not be executed by the justice court for five days in order to give the tenant time to either move or appeal to the court of appeals.

In 2001, a similar bill, HB 2202 by McClendon, was reported favorably by the Business and Industry Committee, but died in Calendars toward the end of the 77th legislative session.