

## **DOES A TENANT HAVE TO MAKE A SPECIAL REQUEST TO STAY IN THE PREMISES?**

No. The WV Code says that “the filing or granting of an appeal shall automatically stay further proceedings.” WV Code 55-5-12(a).

Magistrate Court Civil Procedure Rule 18A also says that “Upon timely filing of an appeal ..., execution of the judgment shall be stayed until the appeal or motion has been decided.”

These general rules apply in all landlord-tenant cases, unless “the period of the tenancy has otherwise expired.”

## **CAN A MAGISTRATE ORDER “NO APPEAL OF POSSESSION”?**

No. One West Virginia court has said that “the notation ‘no appeal of possession’ added by the magistrate to the Order ... is beyond the jurisdiction and authority of the magistrate, and is totally unsupported by the law. It is void on its face, and will not be enforced by this Court.”

Sines v. Hale, Civil No. 96-C-AP-155 (Circuit Court of Kanawha County, 1996).

# **APPEALING AN ORDER OF POSSESSION**

## **IN A LANDLORD-TENANT CASE FROM MAGISTRATE COURT**

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## WHAT IS AN “ORDER OF POSSESSION”?

This is the final order by the magistrate, deciding whether the tenant is entitled to remain in the property or not. The magistrate’s ruling “grants possession” to one side or the other, to the landlord who sued for eviction or to the tenant who asserts that he should not be evicted.

## CAN A TENANT APPEAL AN ORDER OF POSSESSION ISSUED BY A MAGISTRATE?

The short answer is Yes. Every issue in every magistrate court case can be appealed to the Circuit Court to be reviewed by a Circuit Judge. Forms to do this are in the Magistrate Court Clerk’s Office.

## CAN A TENANT STAY IN THE RENTAL PREMISES WHILE THE APPEAL IS PENDING?

Usually, yes, unless the lease is over for reasons that have nothing to do with the

grounds claimed in the lawsuit. The relevant sentence in the WV statute for “Wrongful Occupation” landlord-tenant cases says:

During the pendency of any such appeal no tenant shall be entitled to remain in possession of the leasehold if the period of the tenancy has ***otherwise expired***.

- WV Code 55-3A-3(g)

The important wording in the statute is “otherwise expired.” That means the tenant can remain in the unit UNLESS the rental agreement has expired for reasons ***other than*** the grounds the landlord claimed in the lawsuit.

If the only reasons the landlord wants the tenant out are the grounds set forth in the lawsuit, then the tenant has the right to remain in the premises during the appeal. The purpose of the appeal is to ask the Circuit Judge to determine who is right. That’s how the court system works.

As long as the period of the tenancy has NOT otherwise expired, the tenant is allowed to remain in possession.