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Appeals to the Appellate
Term – Civil Cases



This pamphlet explains how to appeal if you have lost your civil case in the Civil Court of New York City, a district court, a city court or a justice court in Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties, including housing court and small claims court. This pamphlet does not cover appeals from summary eviction cases heard in a justice or city court outside the City of New York. Those appeals go to the county court.

What is an appeal?

If you believe that the trial court (this pamphlet uses the term “trial court” to cover all the different courts mentioned above that handle civil cases) made an error in your case, you may appeal the court’s judgment or order to a higher court called “the Appellate Term.” The party requesting the appeal is called “the appellant” and the opposing party is called “the respondent.”

An appeal is not a new trial. No witnesses will be heard by, and no new evidence or facts will be presented to, the Appellate Term. Instead, the appeal is based on the “record” that was made before the trial court, which consists of all the proceedings and documents that were filed.

The Appellate Term will decide whether the trial court made any error that requires further action. The Appellate Term could order that a new trial be held, that the case be dismissed, or that the terms of the order or judgment be modified.

Motions for a stay

Keep in mind that the order or judgment that you are seeking to reverse or modify remains in effect while your appeal is being considered unless you obtain a “stay” from the trial court or the Appellate Term. A stay is a direction that the terms of the order or judgment should not go into effect until the appeal is decided. In order to get a stay, you must show the court why the appeal will be successful. Sometimes, such as when an appellant is ordered to pay money to the other party by the trial court, the Appellate Term will order that the appellant post money with the Appellate Term to make sure that if the appellant loses, the respondent will be able to collect the money he or she is owed.

Due mainly to the large number of landlord/tenant eviction appeals heard by the Appellate

Terms, the Appellate Terms in both Departments have developed a method for granting stays of lower court judgments and orders on very short notice. A motion can be brought by an order to show cause by which the moving party may obtain an immediate but temporary stay of the lower court's order or judgment pending determination by the Appellate Term of a motion for stay pending the hearing and determination of the appeal.

A party seeking such an immediate stay must prepare motion papers (i.e., an affidavit or affirmation, a copy of lower court's order, a copy of the notice of appeal, and a receipt for the fee paid in filing the notice of appeal) for a stay pending appeal and bring them to the clerk's office. After reviewing the papers, the clerk will stamp, on a sheet of paper, a blank brief form of order for a stay pending determination of the motion. The blank order is immediately submitted to a justice of the Appellate Term who will fill in the return date for the motion, and may sign the order granting an immediate interim stay. Since the court will set a short return date, the appellant is usually required to serve a copy of all papers on the respondent by the end of the same business day. The appellant then returns to the clerk and submits an affidavit of personal service.

Which Appellate Term will hear my case?

The Appellate Term for the First Judicial Department handles appeals from civil cases in Manhattan and the Bronx. The Appellate Term for the Second Department has two parts: the Appellate Term for the Second, Eleventh, and Thirteenth Judicial Districts hears appeals from Brooklyn, Queens, and Staten Island civil trial courts and the Appellate Term for the Ninth and Tenth Judicial Districts hears civil appeals from trial courts in Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties. Each Appellate Term has different rules of practice, so it is important to check with the particular court you are appealing to.

How does the appeal process begin?

All judgments can be appealed, but not all orders can be, and you should consult with a law-

yer or the clerk of the trial court or Appellate Term to find out if the order you want to appeal can be appealed.

In order to start the appeal process, the appellant must file a piece of paper called a “notice of appeal” in the trial court, pay any required filing fee, and send it to the opposing party. The notice of appeal is a document that informs the other party that you wish to have an order or judgment reviewed by the Appellate Term. The notice identifies all of the parties involved in the case and sets forth the nature of the appeal. Without this filing, which must be served on the opposing party, an appeal cannot be pursued.

Are there time limits for pursuing an appeal?

Exactly when you must file the notice of appeal depends on how you were served with the judgment or order. If you were served in person, you must file the notice of appeal within 30 days after you were served. If you were served by regular mail, you have 35 days from the date the order or judgment was mailed to you (not from the date you received it). If your case will be heard by the Appellate Term, Second Department, and you were served by overnight delivery, you have 31 days from the date it was sent. Except, if the case is a commercial case or was in small claims court, you have 30 days from the day you were actually served (however you got it) to file the notice of appeal.

If you do not file the notice of appeal on time, your appeal will be dismissed. But if you were represented by an attorney, and the attorney dies, is disabled, or is suspended from the practice of law before the time to file the notice of appeal runs out, you can file the notice of appeal within 60 days from the date of the death, disability or suspension.

How much will an appeal cost?

Pursuing an appeal can be costly. In addition to the filing fee, there may be other expenses such as attorney’s fees and the costs of transcribing, reproducing, and filing a record of the trial court proceedings. If you think you cannot afford these costs, you might be able to obtain poor person status. If this is granted, many of the costs and fees will be waived or paid by the government. To apply for

poor person status, you must sign a sworn statement that has complete information about your assets and income to show that you are unable to pay the necessary expenses and sufficient information to show the appeal has merit.

What happens after a notice of appeal is filed?

1. The transcript and record

Once you have filed your notice of appeal, the next step is to order the transcripts of the trial court proceedings, if there was a court reporter in the trial court. If not, the clerk of the trial court has the responsibility to prepare the “minutes,” defined as “a statement sufficiently descriptive of the testimony to make possible appellate review.” This is usually not necessary because most courts now have court reporters. The transcript is supplied to the trial court clerk for inclusion in the Clerk’s Return.

The clerk of the trial court is responsible for sending the Clerk’s Return to the Appellate Term. It includes the order or judgment appealed from, the opinion of the trial court if there was any, the pleadings and other relevant papers, the transcripts if there were any, and the exhibits if there were any. The Appellate Term, First Department requires the appellant to prepare a record (except if the appeal is from small claims court) to be included with the Clerk’s Return. Exactly what has to be in the record is listed in the rules of the Appellate Term, First Department. The Appellate Term, Second Department does not require a record but uses the papers sent to it by the trial court.

2. Appellant’s and respondent’s briefs

The appellant must file with the Appellate Term, and serve upon the respondent, a brief, which is a document that tells the story of the case and presents the arguments why the Appellate Term should decide in appellant’s favor. The brief should also tell the Appellate Term what you want it to do, such as reverse the judgment or modify the order. Researching and writing the appellate brief can take a lot of time and is often the most costly part of an appeal if you are hiring a lawyer to do it.

After the appellant files a brief with the court and serves it on the other party (“respondent”), the respondent has the opportunity to file a brief arguing that the appellant is wrong and the trial court’s

order or judgment should be affirmed. The appellant can then file a reply to what respondent said.

There are time limits for the filing and service of appellant's brief. In the First Department, appellant's brief must be filed and served on the respondent within 60 days after the trial court files the Clerk's Return. Appellant must file a Notice of Argument with the brief, noticing the appeal for a particular "term" of the court; there are 10 terms each spanning a month. The appeal is placed on the term whose first day is at least 53 days after the date the appeal is filed. The respondent's brief must be filed no later than 31 days before the first day of the term and appellant's reply brief must be filed no later than 24 days before the first day of the term.

In the Second Department, the appellant's brief must be filed and served within 90 days after the Clerk's Return has been delivered to the Appellate Term. The respondent's brief must be served and filed within 21 days after service of appellant's brief. The appellant then has seven days to file a reply to what respondent said.

These time limits may be extended by permission of the Appellate Term.

Each Appellate Term has rules about how long the briefs can be, how many copies must be filed and how many served, and what information must be included in a brief.

3. Oral argument

In the First Department, if either the appellant or the respondent asks, the Appellate Term will schedule the appeal for oral argument. In the Second Department, if a party's brief fails to request oral argument, the appeal may be deemed submitted without oral argument by the defaulting party.

Oral argument is an opportunity to stand before a panel of two or three Appellate Term judges and try to focus their attention on the strongest elements of the appeal. The parties can respond to questions from the judges, clear up any confusion that may be in the minds of a judge or alleviate a judge's concern.

How is an appeal decided?

Based on a review of the briefs and record and what was discussed at oral argument, the Appellate

Term issues a written “order and decision.” The order and decision will state whether the trial court committed any errors requiring correction and, if so, how the errors will be corrected. The Appellate Term may order additional proceedings before the trial court, or direct the trial court to modify the judgment or order from which the appeal was taken. If there are no errors that need to be corrected, the Appellate Term will affirm the judgment or order.

Are other remedies available beyond the appeal?

If the appellant or the respondent is dissatisfied with the Appellate Term’s decision and order, that party may be able to ask a higher court called the Appellate Division to review what the Appellate Term did. The party seeking relief in the Appellate Division may first make a motion to the Appellate Term or move directly in the Appellate Division. Any motion must be made within 30 days of service of the Appellate Term order on the party asking for leave to appeal to the Appellate Division. If the Appellate Term denies the motion, the party seeking further appeal may then make a motion directly to the Appellate Division for leave to appeal to that court. The motion must be made within 30 days of the date of the Appellate Term decision that denied the motion.

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As you can see, an appeal can be an effective way for correcting trial court errors but taking an appeal is a complex, time-consuming, and expensive process. This pamphlet is just a broad outline of what is involved and does not cover all the rules in each Appellate Term. If at all possible, you should consult with an attorney. You will also be able to get help from the Appellate Term Clerk’s Offices:

Appellate Term, First Department
60 Centre Street
New York, New York 10007
Tel: 646-386-3040

Appellate Term, Second Department
141 Livingston Street, 15th Floor
Brooklyn, New York 11201
Tel: 347-401-9580
www.nycourts.gov

The rules of the Court of Appeals, New York's highest court, and each of the Appellate Divisions are available online or in the respective clerk's offices. For more information, please visit <http://www.nycourts.gov/courts>.

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Committee on Courts of Appellate Jurisdiction.



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