



Retaliating Landlords

Claims and Defenses for Your Tenant Client

Poverty Law Section

First Friday CLE

October 5, 2007

Tenants' Councils



- Phone and/or email hotlines providing general information and counseling regarding tenants' rights and ways to resolve landlord-tenant problems
- Community education and outreach
- Mediation and other advocacy
- Danger?

Possible Outcomes



- Landlord fixes the problem
- Landlord forces the tenant to take them to court
- Retaliation

Traditional Landlord-Tenant Law



- Landlords had the right to terminate a tenancy for any reason following a procedurally proper termination.
- Landlords could use the termination power to coerce or punish a tenant for behavior unrelated to the tenant's compliance with the lease.

Sims v. Century Kiest Apts.



- Tenant has damages cause of action against landlord for landlord having filed eviction in retaliation for tenant's reporting of code violations to city officials.

Sims v. Century Kiest Apartments, 567 S.W.2d 526 (Tex. Civ. App. -- Dallas 1978, no writ).

§ 92.331. Protected Actions by Tenant

- in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute;
- gives a landlord a notice to repair or exercise a remedy under this chapter; or
- complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:
 - (A) claims a building or housing code violation or utility problem; and
 - (B) believes in good faith that the complaint is valid and that the violation or problem occurred.

§ 92.331. Retaliatory Acts by Landlord

- filing an eviction proceeding, except for the grounds stated by Section 92.332;
- depriving the tenant of the use of the premises, except for reasons authorized by law;
- decreasing services to the tenant;
- increasing the tenant's rent or terminating the tenant's lease; or
- engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

§ 92.332. Nonretaliation

- The landlord is not liable for retaliation if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 92.0563, for:
 - (1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or
 - (2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire multidwelling project.

Nonretaliation (cont.)



- An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:
 - (1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;
 - (2) the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;
 - (3) the tenant has materially breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts, except as provided by this section;

Nonretaliation (cont.)



- (4) the tenant holds over after giving notice of termination or intent to vacate;
- (5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action under Section 92.331 until after the landlord gives notice of termination; or
- (6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest or invitee of the tenant might:
 - (A) adversely affect the quiet enjoyment by other tenants or neighbors;
 - (B) materially affect the health or safety of the landlord, other tenants, or neighbors; or
 - (C) damage the property of the landlord, other tenants, or neighbors.

§ 92.333: Tenant Remedies



- Tenant may recover a civil penalty of one month's rent plus \$500, actual damages, court costs, and reasonable attorney's fees in an action for recovery of property damages, moving costs, actual expenses, civil penalties, or declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord.
- If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty reflects the fair market rent of the dwelling plus \$500.

§ 92.334: Invalid Complaints



- If government building or housing inspector or utility company representative visits the premises and determines in writing that a violation of a building or housing code does not exist or that a utility problem does not exist, there is a rebuttable presumption that the tenant acted in bad faith.
- If a tenant files or prosecutes a retaliation suit in bad faith, the landlord may recover possession of the dwelling unit and may recover from the tenant a civil penalty of one month's rent plus \$500, court costs, and reasonable attorney's fees.

Other Protections



- Manufactured Homes, Tex. Prop. Code Ch. 94, Subchapter F
- Fair Housing Act, 42 U.S.C.A. §3617 (West 2003); 24 C.F.R. §100.400 (2006).
- City Ordinances

Fair Housing Act (42 USCS §3617)

- It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 [42 USCS §§ 3603, 3604, 3605, or 3606] of this title.

§ 92.335. Eviction Suits



- In an eviction suit, retaliation by the landlord is a defense.
- Rent deduction lawfully made by the tenant is a defense for nonpayment of the rent.
- Other judicial actions may not be joined with an eviction suit or asserted as a defense or crossclaim in an eviction suit.

Forcible Detainer (and Entry?)

- Tex. Prop. Code, Chapter 24
- Though evictions are often referred to as Forcible Entry and Detainer (FED) actions, most would more accurately be called Forcible Detainer (FD) actions.
- FED requires unlawful entry - an element absent from most eviction cases.

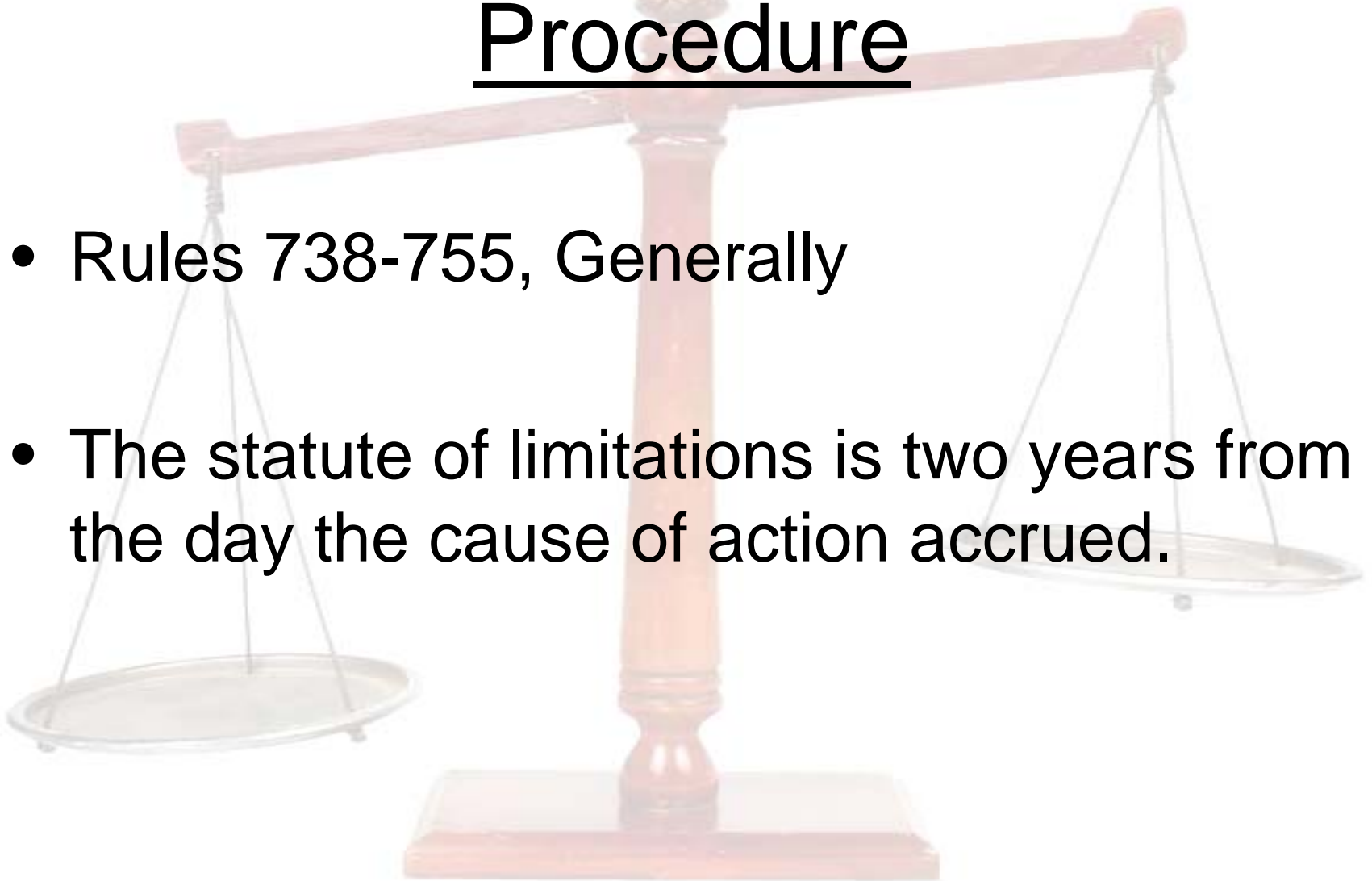
Jurisdiction



- FD actions begin in the Justice Court in the precinct in which the property is located.
- The County Court will hear the case on appeal.
- Unless a defense or counterclaim arises under federal law, FD actions are not removable to federal court.

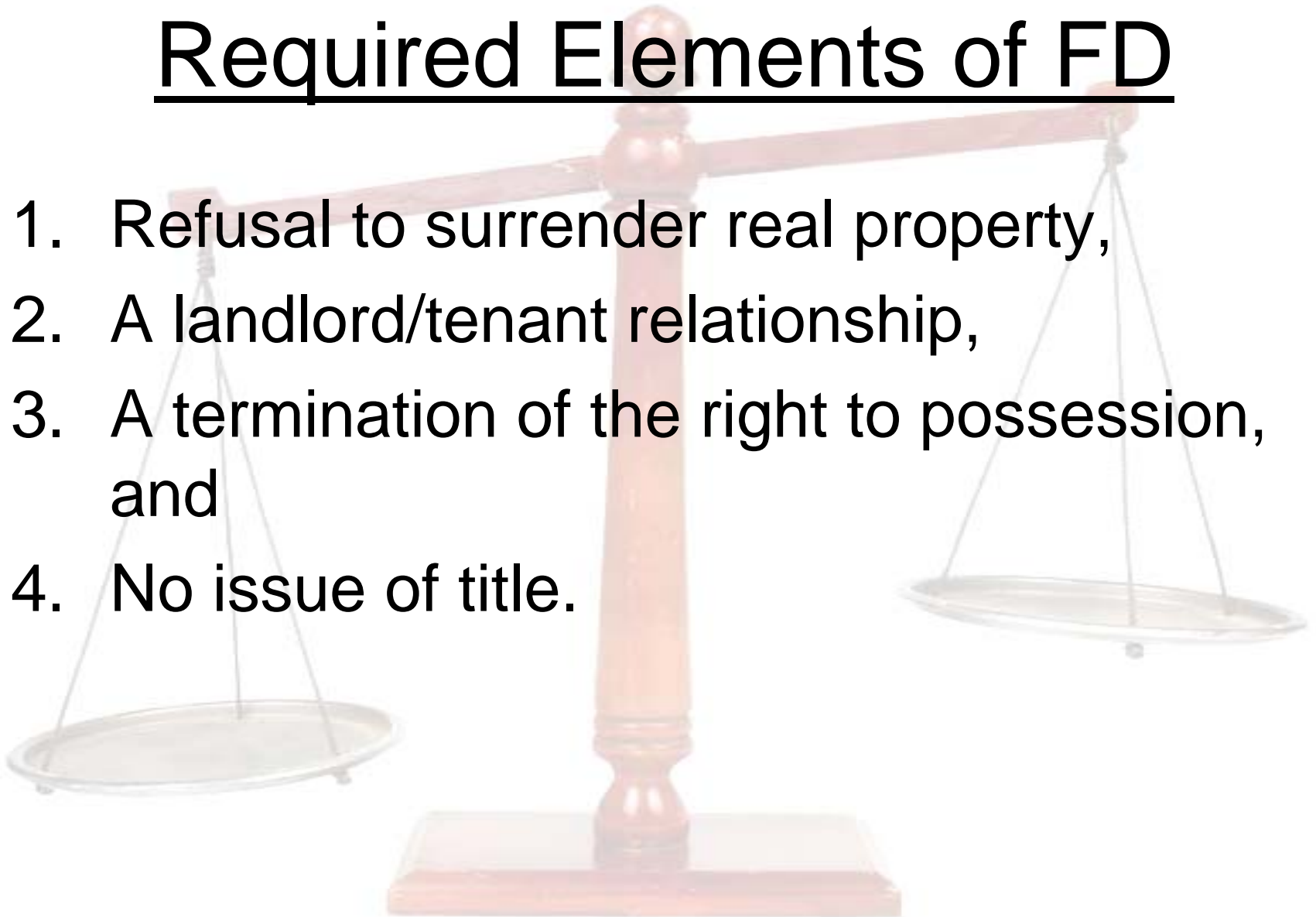
Applicable Rules of Texas Civil Procedure

- Rules 738-755, Generally
- The statute of limitations is two years from the day the cause of action accrued.

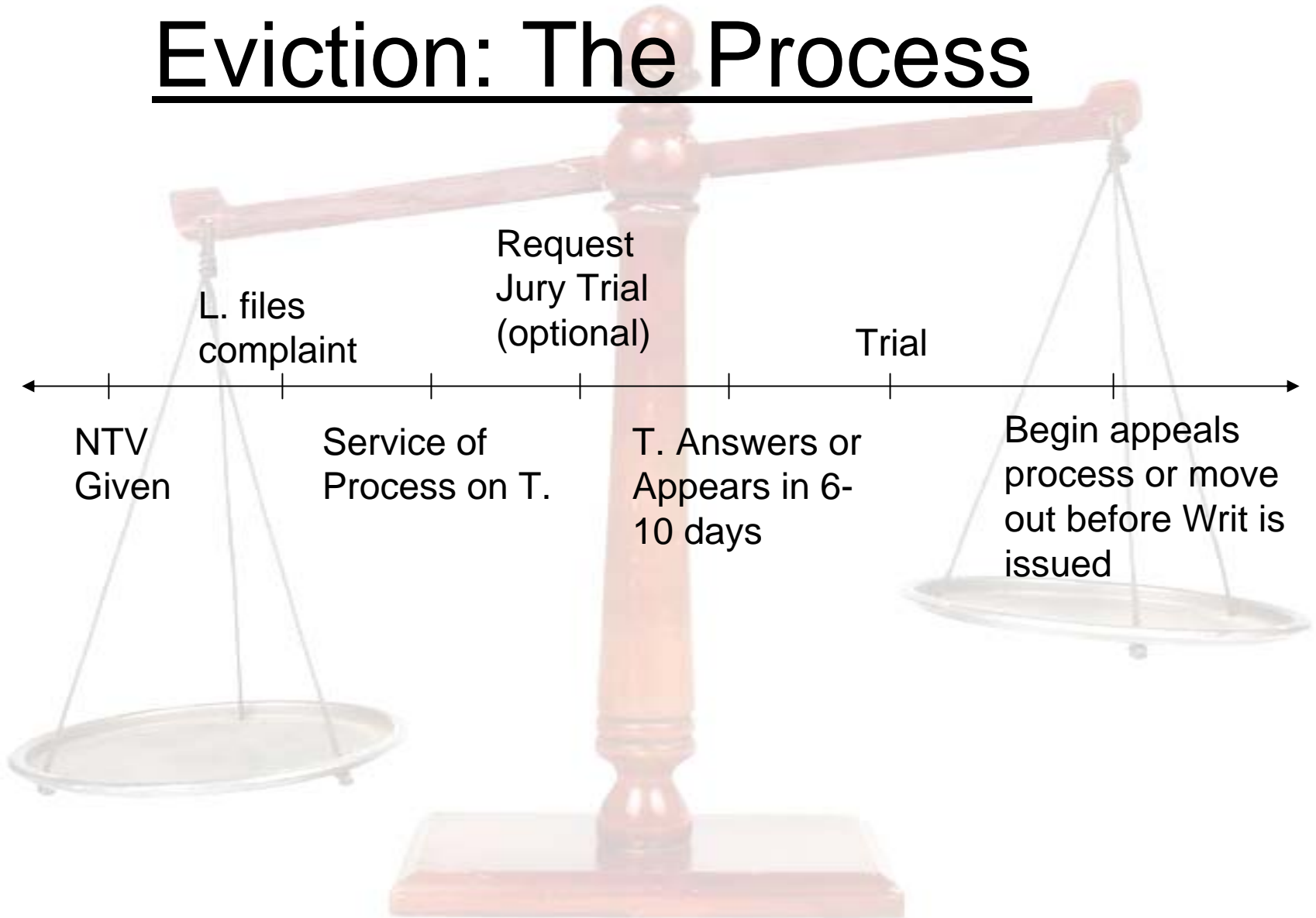


Required Elements of FD

1. Refusal to surrender real property,
2. A landlord/tenant relationship,
3. A termination of the right to possession,
and
4. No issue of title.



Eviction: The Process



Notice To Vacate (NTV)

The demand for Possession.

Requirements of NTV (§24.005)

1. Delivered at least 3 days before eviction is filed (unless lease provides another time period).
2. Delivered by mail or in person to anyone 16 yrs. of age or older who resides at the premises.
3. If the L. is prevented from entering the premises due to an alarm system, deadbolt, or dangerous animal, the NTV may be posted on the front door.

Jury Trial?



- A jury is best if the situation is sympathetic to other renters - someone in the jury likely rents his or her home.
- Must be requested within 5 days after the service of process (excluding weekends and legal holidays).
- There is no jury charge.

Counterclaims?

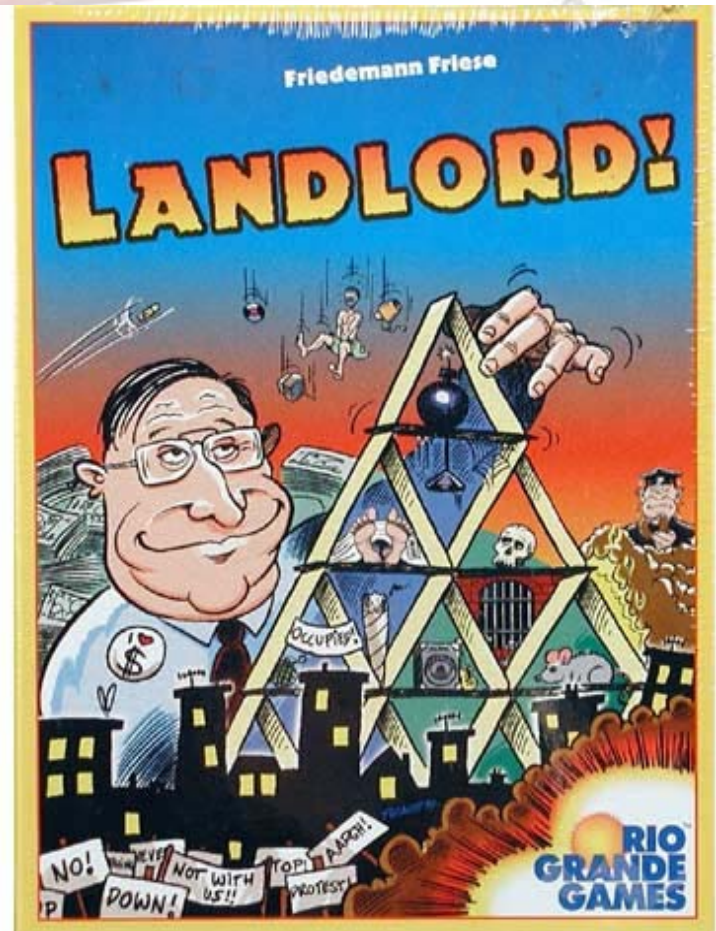


- If no objection is filed, a counterclaim may be heard, however - there is little support for counterclaims in case law.
- §92.335 states actions (under Chapter 92) may not be joined with an eviction suit and many courts have held this bars a tenant from making counterclaims.
- Most recently, the 1st District Court of Appeals held the county court lacked subject matter jurisdiction over counterclaims and thus eviction and tort claims could not be joined.

Hong Kong Development v. Nguyen, No. 01-04-00586-CV, WL 1633360 (Tex. App.-Houston [1st Dist.] Nov. 9, 2006, no pet.).

Trial in Justice Court

- No written answer required
- If the T. fails to appear, he or she receives a default judgment.
- A default judgment does not bar an appeal.



If the Tenant Loses...



There are Three Options:

1. Move out;
2. File an appeal within 5 days; or
3. Do nothing. This is the worst solution as the Writ of Possession will eventually force removal of the tenant and his or her possessions.

The Appeals Process, Cont...



Step One: Posting Bond

- Must be done within 5 days after the judgment is entered on the docket.
- Bond is set by the Justice Court - typically at double one month's rent.
- Three ways to post bond
 1. Surety bond
 2. Cash Bond
 3. Pauper's Affidavit (Affidavit of Inability or IFP)

The Appeals Process, Cont...

The Pauper's Affidavit

- Must contain the information outlined in §24.0052
- The landlord may challenge the affidavit within 5 days of receiving notice
- A hearing must be set within 5 days of the challenge.
- At the hearing, the tenant must prove his financial situation.
- The decision at the hearing may be appealed by either party to County Court.

The Appeals Process, Cont...

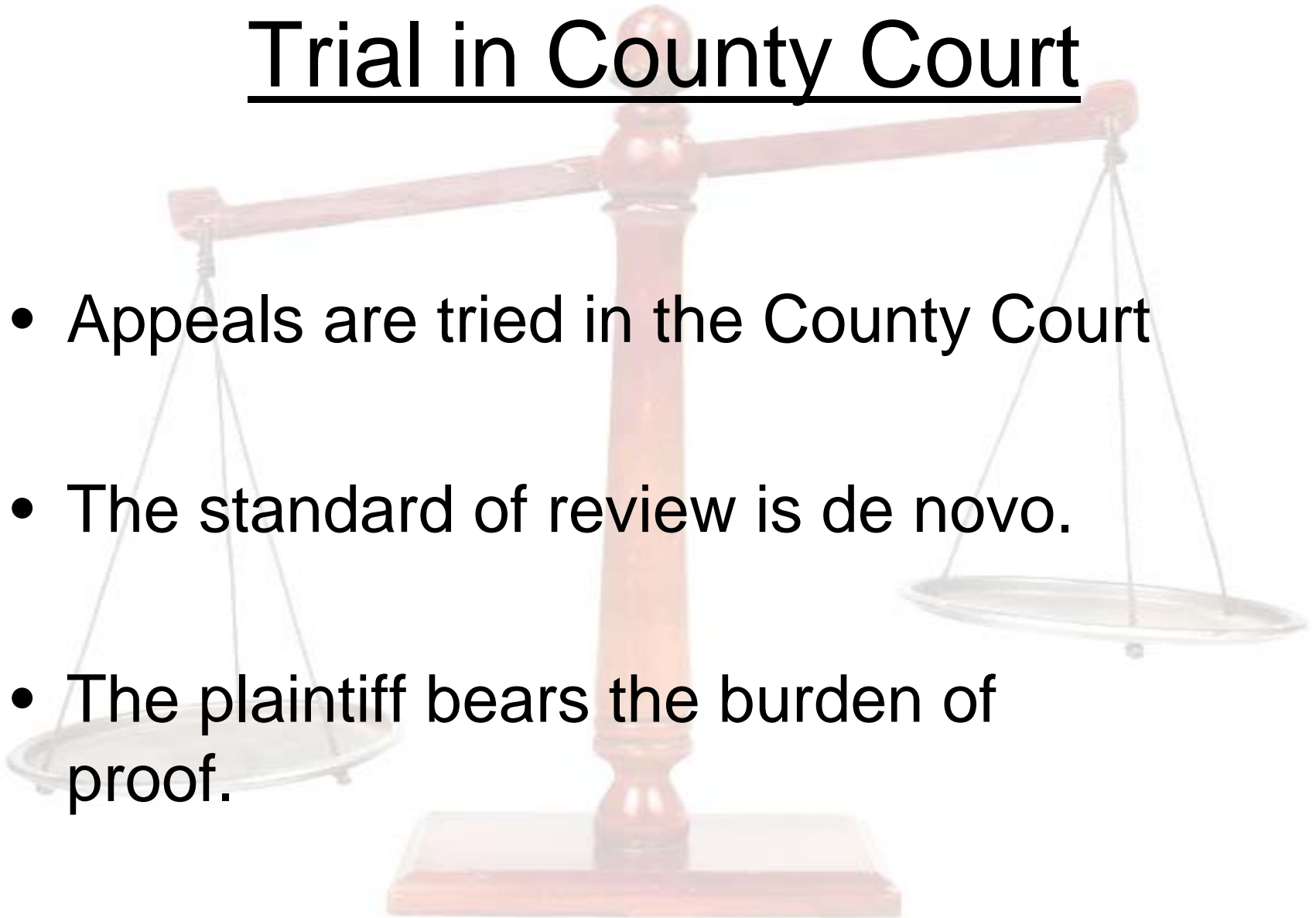


The Pauper's Affidavit, cont...

- If the tenant seeks to maintain possession:
- Within 5 days of filing the Affidavit, the tenant must deposit one month's rent with the court.
- The tenant must continue to pay each month's rent at least 5 days before it becomes due under the lease.
- If the tenant fails to pay rent, the Writ of Possession may be issued.

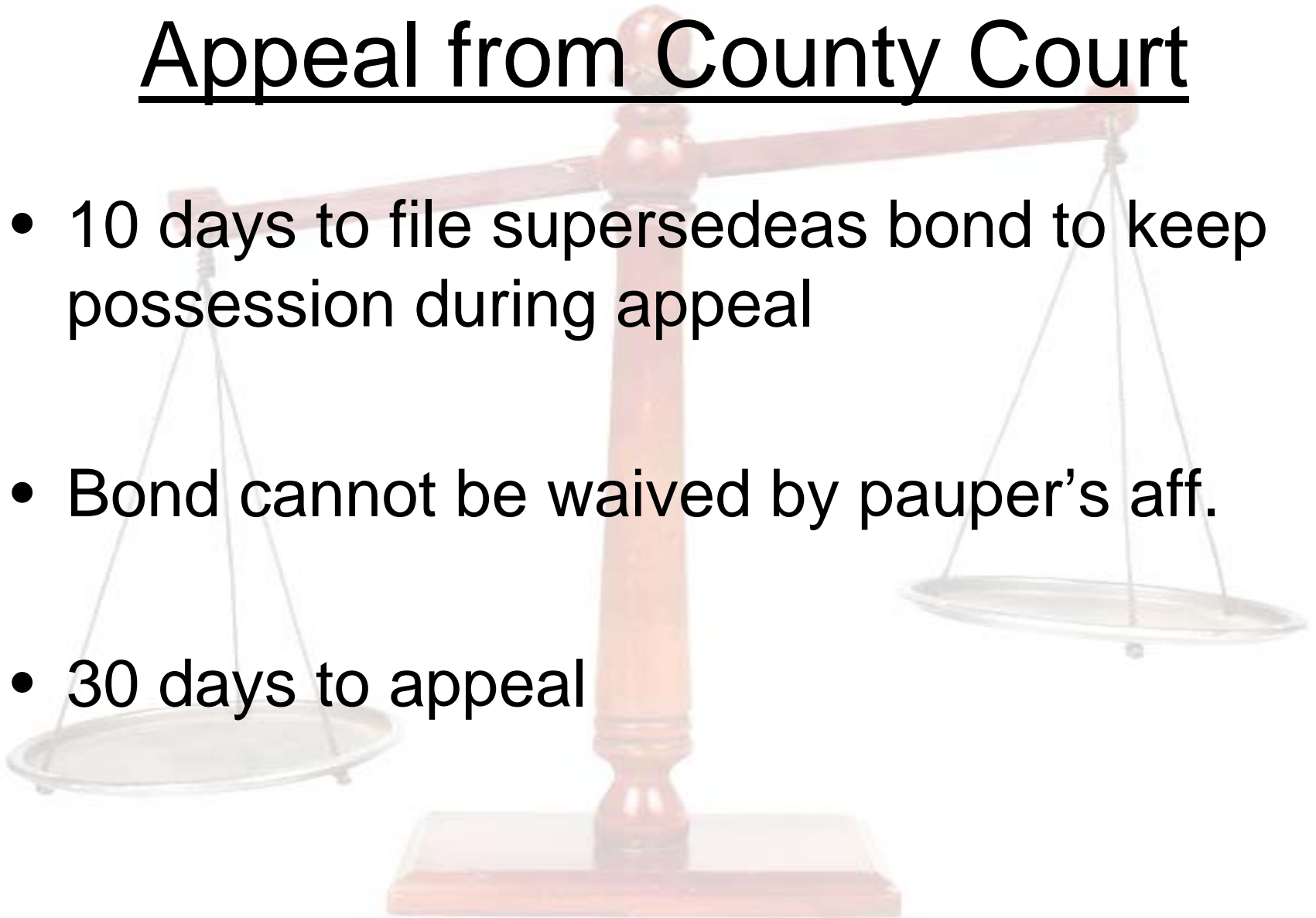
Trial in County Court

- Appeals are tried in the County Court
- The standard of review is de novo.
- The plaintiff bears the burden of proof.



Appeal from County Court

- 10 days to file supersedeas bond to keep possession during appeal
- Bond cannot be waived by pauper's aff.
- 30 days to appeal



Attorney's Fees



- Texas Property Code
- Tex. Civ. Prac. & Rem. Code, Chapter 38
- Attorney's fees pursuant to lease
- Attorney's fees for LSC-funded firms

For More Information:



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Tenants' Council of Houston

713-982-1985

www.houstontenants.org