

Rule 1008. Appeal as Supersedeas

A. Receipt by the magisterial district judge of the copy of the notice of appeal from the judgment shall operate as supersedeas, except as provided in subdivisions B and C of this rule.

B. When an appeal is from a judgment for the possession of real property, receipt by the magisterial district judge of the copy of the notice of appeal shall operate as a supersedeas only if the appellant at the time of filing the notice of appeal, deposits with the prothonotary a sum of money (or a bond, with surety approved by the prothonotary) equal to the lesser of three (3) months' rent or the rent actually in arrears on the date of the filing of the notice of appeal, based upon the magisterial district judge's order of judgment, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the proceedings upon appeal are pending in the court of common pleas, such additional deposits to be made within thirty (30) days following the date of the appeal, and each successive thirty (30) day period thereafter.

Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the appeal.

In the event the appellant fails to deposit the sums of money, or bond, required by this rule when such deposits are due, the prothonotary, upon praecipe filed by the appellee, shall terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by [via] first class mail to **[all parties, but if any party has an]**

attorneys of record, or, if a party is unrepresented, [named in the complaint form or other filings with the court, notice shall be given to the attorney instead of to the party. Notice to a party that does not have an attorney of record is sufficient if mailed] to the party's last known address of record.

When [re] the deposit of money or bond is made pursuant to the [R] rule at the time of filing the appeal, the prothonotary shall make upon the notice of appeal and its copies a notation that it will operate as a supersedeas when received by the magisterial district judge.

C. Indigent Tenants

(1) Residential tenants who seek to appeal from a magisterial district court judgment for possession and who do not have the ability to pay the lesser of three months' rent or the full amount of the magisterial district court judgment for rent shall file with the office of the prothonotary a tenant's affidavit, as set forth in subdivision (2).

(2) The tenant's affidavit shall be substantially in one of the following two forms:

[Caption]

TENANT'S SUPERSEDEAS AFFIDAVIT (NON-SECTION 8)

I, _____ (print name and address here), have filed a notice of appeal from a magisterial district court judgment awarding to my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the judgment for rent awarded by the magisterial district court. My total household income does

not exceed the income limits set forth in the supplemental instructions for obtaining a stay pending appeal and I have completed an in forma pauperis (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date

SIGNATURE OF TENANT

OR

[Caption]

SECTION 8 TENANT'S SUPERSEDEAS AFFIDAVIT

I, _____ (print name and address here), have filed a notice of appeal from a magisterial district court judgment awarding my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the actual rent in arrears. My total household income does not exceed the income limits set forth in the supplemental instructions for obtaining a stay pending appeal and I have completed an in forma pauperis (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is
\$ _____ . I hereby certify that I am a participant in the Section 8 program and I am
not subject to a final (i.e., non-appealable) decision of a court or government
agency which terminates my right to receive Section 8 assistance based on my
failure to comply with program rules.

I verify that the statements made in this affidavit are true and correct to the
best of my knowledge, information and belief. I understand that false statements
herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn
falsification to authorities.

Date SIGNATURE OF TENANT

(3)(a) If the rent has already been paid to the landlord in the month in which
the notice of appeal is filed, the tenant shall pay into an escrow account with the
prothonotary the monthly rent as it becomes due under the lease for the months
subsequent to the filing of the notice of appeal; or

(b) If the rent has not been paid at the time of filing the notice of appeal, the
tenant shall pay:

(i) at the time of filing the notice of appeal, a sum of money
equal to one third (1/3) of the monthly rent;

(ii) an additional deposit of two thirds (2/3) of the monthly rent
within twenty (20) days of filing the notice of appeal; and

(iii) additional deposits of one month's rent in full each thirty
(30) days after filing the notice of appeal. The amount of the monthly rent is the

sum of money found by the magisterial district judge to constitute the monthly rental for the leasehold premises pursuant to Rule 514A. However, when the tenant is a participant in the Section 8 program, the tenant shall pay the tenant share of the rent as set forth in the “Section 8 Tenant’s Supersedeas Affidavit” filed by the tenant.

(4) The prothonotary’s office of the Court of Common Pleas in which the appeal is taken shall provide residential tenants who have suffered a judgment for possession with a “Supplemental Instructions for Obtaining a Stay of Eviction” as it appears on the website of the Minor Court Rules Committee.

Note: The website of the Minor Court Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at www.aopc.org. The Supplemental Instructions include both instructions and income limits.

The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the Federal Department of Health and Human Services.

(5) When the requirements of paragraphs (2) and (3) have been met, the prothonotary shall issue a supersedeas.

(6) Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the appeal is pending to compensate the landlord for the tenant’s actual possession and use of the premises during the pendency of the appeal.

(7) If the tenant fails to make monthly rent payments to the prothonotary as described in paragraph (3), the supersedeas may be terminated by the

prothonotary upon praecipe by the landlord or other party to the action. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

(8) If the Court of Common Pleas determines, upon written motion or its own motion, that the averments within any of the tenant's affidavits do not establish that the tenant meets the terms and conditions of paragraph (1), supra, the Court may terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

[C.] D. If an appeal is stricken or voluntarily terminated, any supersedeas based on it shall terminate. The prothonotary shall pay the deposits of rental to the party who sought possession of the real property.

Note: Subdivision A provides for an automatic supersedeas in appeals from **[trespass and assumpsit] civil** actions upon receipt by the magisterial district judge of a copy of the notice of appeal. **[It did not seem worthwhile to require bond or other security for costs as a condition for supersedeas in trespass and assumpsit appeals.]**

Subdivision B, however, does require the deposit of money or approved bond as a condition for supersedeas when n[re] the appeal is from a judgment for the possession of real property. **[This provision substantially incorporates the purpose and intent of the Legislative provision contained in Act No. 1995-33, approved July 6, 1995. The 1996 amendment provides a uniform, Statewide procedure (except**

Philadelphia County; See: Philadelphia Municipal Court Rules of Civil Procedure), and establishes a mechanism for the application of a supersedeas or the termination thereof without the need for any local court rule or order.] A new subdivision (C) was created in 2008 to provide for appeals by indigent residential tenants who are unable to meet the bond requirements of subdivision (B).

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state: “Please terminate the supersedeas in the within action for failure of the appellant to pay monthly rental as required by Pa.R.C.P.M.D.J. No. 1008 **[for a period in excess of thirty (30) days] when it became due**” and will be signed by appellee. The prothonotary will then note upon the praecipe: “Upon confirmation of failure of the appellant to deposit the monthly rent **when it became due****[for more than thirty (30) days]**, the supersedeas is terminated,” and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the magisterial district judge who rendered the judgment, and a request for issuance of an order for possession under Pa.R.A.P.M.D.J. No. 515 may be made.

The deposit of rent required hereunder is intended to apply in all cases, irrespective of the reasons which caused the filing of the complaint before the magisterial district judge in the first instance. Disposition of the monthly rental deposits will be made by the court of common pleas following its de novo hearing of the matter on appeal.

The money judgment portion of a landlord and tenant judgment (see Pa.R.C.P.M.D.J. Nos. 514 and 521) would be governed by subdivision A.

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective in 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996[.];

April 15, 2008, effective May, 15 2008.

Rule 1013. Writ of Certiorari as Supersedeas.

A. Receipt of the writ of certiorari by the magisterial district judge to whom it was directed shall operate as a supersedeas, except as provided in subdivisions **B and C** of this rule.

B. When the writ of certiorari involves a judgment for the possession of real property, receipt of the writ by the magisterial district judge shall operate as a supersedeas only if the party obtaining the writ at the time of filing the writ, deposits with the prothonotary a sum of money (or a bond, with surety approved by the prothonotary) equal to the lesser of three (3) months' rent or the rent actually in arrears on the date of the filing of **[appeal] the praecipe for writ of certiorari ("praecipe")**, as determined by the magisterial district judge, and, thereafter, deposits cash or bond with the prothonotary in a sum equal to the monthly rent which becomes due during the period of time the proceedings upon writ are pending in the court of common pleas, such additional deposits to be made within thirty (30) days following the date of the filing of the **praecipe [writ]**, and each successive thirty (30) day period thereafter.

Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the writ is pending and while the ensuing proceeding is pending (in the event the writ is granted) to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the writ and during the pendency of the ensuing proceeding (in the event the writ is granted).

In the event that the party filing the **praecipe [writ]** fails to deposit the sums of money, or bond, required by this rule when such deposits are due, the prothonotary, upon praecipe filed by the party that did not file the **praecipe for writ of certiorari**, shall terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded **by [via]** first class mail to **[all parties, but if any party has an] attorneys of record, or, if a party is unrepresented [named in the complaint form or other filings with the court, notice shall be given to the attorney instead of to the party. Notice to a party who or which does not have an attorney of record is sufficient if mailed]** to the party's last known address of record.

Where the deposit of money or bond is made pursuant to this Rule at the time of the filing of the **praecipe [writ]**, the prothonotary shall make upon the writ and its copies a notation that the writ will operate as a supersedeas when received by the magisterial district judge.

C. **Indigent Tenants**

(1) Residential tenants who seek to file a praecipe involving a magisterial district court judgment for possession and who do not have the ability to pay the lesser of three months' rent or the full amount of the magisterial district court judgment for rent shall file with the office of the prothonotary a tenant's affidavit, as set forth in subdivision (2).

(2) The tenant's affidavit shall be substantially in one of the following two forms:

[Caption]

TENANT'S SUPERSEDEAS AFFIDAVIT (NON-SECTION 8)

I, _____ (print name and address here), have filed a praecipe for a writ of certiorari to review a magisterial district court judgment awarding to my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the judgment for rent awarded by the magisterial district court. My total household income does not exceed the income limits set forth in the instructions for obtaining a stay pending issuance of a writ of certiorari and I have completed an in forma pauperis (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date SIGNATURE OF TENANT

OR

[Caption]

SECTION 8 TENANT'S SUPERSEDEAS AFFIDAVIT

I, _____ (print name and address here), have filed a praecipe for a writ of certiorari to review a magisterial district court judgment awarding my landlord possession of real property that I occupy, and I do not have the financial ability to pay the lesser of three (3) times my monthly rent or the

actual rent in arrears. My total household income does not exceed the income limits set forth in the Instructions for obtaining a stay pending issuance of writ of certiorari and I have completed an in forma pauperis (IFP) affidavit to verify this. I have/have not (cross out the one that does not apply) paid the rent this month.

The total amount of monthly rent that I personally pay to the landlord is \$ _____ . I hereby certify that I am a participant in the Section 8 program and I am not subject to a final (i.e., non-appealable) decision of a court or government agency which terminates my right to receive Section 8 assistance based on my failure to comply with program rules.

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date SIGNATURE OF TENANT

(3)(a) If the rent has already been paid to the landlord in the month in which the praecipe is filed, the tenant shall pay into an escrow account with the prothonotary the monthly rent as it becomes due under the lease for the months subsequent to the filing of the praecipe; or

(b) If the rent has not been paid at the time of filing the praecipe, the tenant shall pay:

(i) at the time of filing the praecipe, a sum of money equal to one third (1/3) of the monthly rent;

(ii) an additional deposit of two thirds (2/3) of the monthly rent within twenty (20) days of filing the praecipe; and

(iii) additional deposits of one month's rent in full each thirty days after filing the praecipe. The amount of the monthly rent is the sum of money found by the magisterial district judge to constitute the monthly rental for the leasehold premises pursuant to Rule 514A. However, when the tenant is a participant in the Section 8 program, the tenant shall pay the tenant share of the rent as set forth in the "Section 8 Tenant's Supersedeas Affidavit" filed by the tenant.

(4) The prothonotary's office of the Court of Common Pleas in which the praecipe is filed shall provide residential tenants who have suffered a judgment for possession with a "Supplemental Instructions for Obtaining a Stay of Eviction" as it appears on the website of the Minor Court Rules Committee.

Note: The website of the Minor Court Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at www.aopc.org. The Supplemental Instructions include both instructions and income limits.

The income limits are stated in monthly amounts and are based upon the most recent poverty income guidelines issued by the Federal Department of Health and Human Services.

(5) When the requirements of paragraphs (2) and (3) have been met, the prothonotary shall issue a supersedeas.

(6) Upon application by the landlord, the court shall release appropriate sums from the escrow account on a continuing basis while the writ is pending

and while the ensuing proceeding is pending (in the event the writ is granted) to compensate the landlord for the tenant's actual possession and use of the premises during the pendency of the writ and during the pendency of the ensuing proceeding (in the event the writ is granted).

(7) If the tenant fails to make monthly rent payments to the prothonotary as described in paragraph (3), the supersedeas may be terminated by the prothonotary upon praecipe by the landlord or other party to the action. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

(8) If the Court of Common Pleas determines, upon written motion or its own motion, that the averments within any of the tenant's affidavits do not establish that the tenant meets the terms and conditions of paragraph (1), supra, the Court may terminate the supersedeas. Notice of the termination of the supersedeas shall be forwarded by first class mail to attorneys of record, or, if a party is unrepresented, to the party's last known address of record.

[C]D. If a writ of certiorari is stricken, dismissed or discontinued, any supersedeas based on it shall terminate. The prothonotary shall pay the deposits of rental to the party who sought possession of the real property.

Note: As in appeals (see Pa.R.C.P.M.D.J. No. 1008), certiorari operates as an automatic supersedeas in **[trespass and assumpsit matters]** civil actions when the writ is received by the magisterial district judge. If the writ involves a judgment for the possession of real property, however, it will operate as a supersedeas upon receipt by

the magisterial district judge only if money is paid or a bond is filed conditioned as stated in the rule. This Rule has been amended to require a payment equal to the lesser of three months' rent or the rent actually in arrears in order for the writ involving a judgment for the possession of real property to act as a supersedeas to ensure consistency between this Rule and Pa.R.C.P.M.D.J. No. 1008 (Appeal as Supersedeas). **A new subdivision (C) was created in 2008 to provide a praecipe for writ of certiorari process for indigent residential tenants who are unable to meet the bond requirements of subdivision (B).**

The request for termination of the supersedeas, upon the praecipe filed with the prothonotary, may simply state: "Please terminate the supersedeas in the within action for failure of the party filing the writ to pay monthly rental as required by Pa.R.C.P.M.D.J. No. 1013 **[for a period in excess of thirty (30) days] when it became due**" and will be signed by landlord. The prothonotary will then note upon the praecipe: "Upon confirmation of failure of the party filing the writ to deposit the monthly rent **[for more than thirty (30) days,] when it became due** the supersedeas is terminated," and the prothonotary will sign and clock the praecipe. A copy of the praecipe may thereupon be displayed to the magisterial district judge who rendered the judgment, and a request for issuance of an order for possession under Pa.R.C.P.M.D.J. No. 515 may be made.

The money judgment portion of a landlord and tenant judgment (see Pa.R.C.P.M.D.J. Nos. 514 and 521) would be governed by subdivision A of this rule.

Adopted June 1, 1971. Amended April 25, 1979, effective in 30 days; June 30, 1982, effective in 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996; Jan. 6, 2005, effective Jan. 29, 2005; **April 15, 2008, effective May 15, 2008.**

SUPPLEMENTAL INSTRUCTIONS FOR OBTAINING A STAY OF EVICTION

******IMPORTANT****PLEASE READ THESE INSTRUCTIONS CAREFULLY!**

This document contains important information about your case. Failure to comply with any instructions provided in these materials may cause you to be evicted before your appeal or writ is heard.

1. **FOR TENANTS — SUPERSEDEAS:** If you are a tenant and you filed the notice of appeal or praecipe for writ of certiorari, you must pay money into an escrow account to remain in the property until your appeal or writ is decided. This is called a “supersedeas.” The supersedeas will suspend the magisterial district court judgment and will prevent your eviction until your case is heard by a judge and a final decision is made on the appeal or writ. **IF YOU FAIL TO PAY YOUR MONTHLY RENT INTO ESCROW IN FULL AND ON TIME, YOU COULD BE EVICTED BEFORE YOUR APPEAL OR WRIT IS HEARD.**

Begin by looking at the income limits attached to these instructions.

If your income is below the income limits, complete a Tenant’s Affidavit, pursuant to Pa.R.C.P.M.D.J. No. 1008(C)(2) or 1013(C)(2). These affidavits are available on the website of the Administrative Office of Pennsylvania Courts (www.aopc.org). Then follow the instructions for low-income tenants below. There are several different options available; pick the option (A, B, or C) that best describes your situation.

If your income is higher than the income limits attached to these instructions, follow the instructions for D.

A. If you are a low-income tenant and there was a money judgment entered against you for non-payment of rent, and you HAVE NOT paid rent for the month in which the notice of appeal or praecipe for writ of certiorari is filed, you must:

1. File an in forma pauperis petition (a petition for low-income parties) pursuant to Pa.R.C.P. No. 240;
2. Pay one-third of your monthly rent into an escrow account with the prothonotary's office at the time the notice of appeal or praecipe for writ of certiorari ("praecipe") is filed;
3. Pay the remaining two-thirds (2/3) of your monthly rent into the escrow account within twenty (20) days of the date the notice of appeal or praecipe was filed; and
4. Pay your monthly rent on an ongoing basis into the escrow account in thirty (30) day intervals from the date the notice of appeal or praecipe was filed until the time of your trial.

B. If you are a low-income tenant, and there was a money judgment against you for non-payment of rent, and you HAVE paid rent for the month in which the notice of appeal or praecipe for writ of certiorari ("praecipe") is filed, you do not have to pay rent at the time you file your notice of appeal or praecipe. You must:

1. File an in forma pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;
2. Pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal or praecipe was filed until the time of trial. It is important to count the thirty (30) days exactly

because the date of your payment will change depending on the number of days in a given month.

C. If you are a low-income tenant, and no money judgment was entered against you for non-payment of rent, you do not have to pay rent at the time you file your notice of appeal or praecipe for writ of certiorari (“praecipe”). *This option is to be used if at the magisterial district court hearing, the judge determined that you owed “zero” or “nothing” in rent.* You must:

1. File an in forma pauperis petition (a petition for low-income parties), pursuant to Pa.R.C.P. No. 240;
2. Pay your monthly rent on an ongoing basis into an escrow account with the prothonotary in thirty (30) day intervals from the date the notice of appeal or praecipe was filed until the time of your trial. It is important to count the thirty (30) days exactly because the date of your payment will change depending on the number of days in a given month.

D. If your income is higher than the income limits on the attached chart, you must:

1. Pay the fee to file a notice of appeal or praecipe for writ of certiorari (“praecipe”);
2. Pay the lesser of three (3) months’ rent or the amount of rent awarded to the landlord in magisterial district court into an escrow account with the prothonotary’s office at the time the notice of appeal or praecipe is filed; and
3. Pay your monthly rent into the escrow account in thirty (30) day intervals from the date the notice of appeal or praecipe was filed until the time of trial. It is important to count the thirty (30) days exactly because the date on your payment will change depending on the number of days in a given month.

INCOME LIMITS

2008 HHS Poverty Income Guidelines Expressed in Monthly Amounts

Size of Family Unit	Poverty Guideline Monthly Amount
1	\$866.66
2	1,166.66
3	1,466.66
4	1,766.66
5	2,066.66
6	2,366.66
7	2,666.66
8	2,966.66
For each additional person, add	300.00