

## Rule 515. Request for Order for Possession

A. If the magisterial district judge has rendered a judgment arising out of a non-residential lease that the real property be delivered up to the plaintiff, the plaintiff may, after the 15th day following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return, and all other matters required by these rules.

B. (1) Except as otherwise provided in subparagraph **B(2)**, if the magisterial district judge has rendered a judgment arising out of a residential lease that the real property be delivered up to the plaintiff, the plaintiff may after the 10th day but within 120 days following the date of the entry of the judgment, file with the magisterial district judge a request for an order for possession. The request shall include a statement of the judgment amount, return, and all other matters required by these rules.

(2) In a case arising out of a residential lease, if before the plaintiff requests an order for possession,

(a) an appeal or writ of certiorari operates as a supersedeas; or

(b) proceedings in the matter are stayed pursuant to a bankruptcy proceeding; and

(c) the supersedeas or bankruptcy stay is subsequently stricken, dismissed, lifted, or otherwise terminated so as to allow the plaintiff to proceed to request an order for possession,

the plaintiff may request an order for possession only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated.

Official Note: The **[fifteen] 15** days in **[subdivision] paragraph** A of this rule, when added to the 16-day period provided for in Rule 519A, will give the defendant time to obtain a supersedeas within the appeal period. See Rules 1002, 1008, 1009, and 1013.

The 1995 amendment to section 513 of The Landlord and Tenant Act of 1951, 68 P. S. § 250.513, established a **[ten]10**-day appeal period from a judgment for possession of real estate arising out of a residential lease; therefore, the filing of the request for order for possession in subparagraph B(1) is not permitted until after the appeal period has expired. In cases arising out of a residential lease, the request for order for possession generally must be filed within 120 days of the date of the entry of the judgment.

Subparagraph B(2) provides that in a case arising out of a residential lease, if a supersedeas (resulting from an appeal or writ of certiorari) or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated, thus allowing the plaintiff to proceed with requesting an order for possession, the request may be filed only within 120 days of the date the supersedeas or bankruptcy stay is stricken, dismissed, lifted, or otherwise terminated. **See Rule 1008B, C(7)-(8), and Rule 1013B, C(7)-(8) and the notes thereto regarding termination of the supersedeas. After a court of common pleas enters judgment, the judgment of the magisterial district judge is extinguished and may no longer be executed upon in any magisterial district court. All further process must take place in the court of common pleas.**

The time limits in which the plaintiff must request an order for possession imposed in **[subdivision] paragraph B** apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. See Rule 516, Note, and Rule 521A.

At the time the plaintiff files the request for an order for possession, the magisterial district court should collect server fees for all actions through delivery of possession. Thereafter, if the order for possession is satisfied 48 hours or more prior to a scheduled delivery of possession, a portion of the server costs may be refundable. See Rules 516 through 520 and **[Section 2950(d) of the Judicial Code, 42 Pa.C.S. § 2950(d)] 44 Pa.C.S. § 7161(d)**.

Rule 516. Issuance and Reissuance of Order for Possession

A. Upon the timely filing of the request form, the magisterial district judge shall issue the order for possession and shall deliver it for service and execution to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. The order shall direct the officer executing it to deliver actual possession of the real property to the plaintiff. The magisterial district judge shall attach a copy of the request form to the order for possession.

B. (1) Except as otherwise provided in **[subdivision] paragraph C**, upon written request of the plaintiff the magisterial district judge shall reissue an order for possession for one additional 60-day period.

(2) If an order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding, and

(a) the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy stay is lifted; and

(c) the plaintiff wishes to proceed with the order for possession,

the plaintiff must file with the magisterial district judge a written request for reissuance of the order for possession in accordance with subparagraph **B(1)**.

C. In a case arising out of a residential lease a request for reissuance of an order for **[P]possession** may be filed only within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy **[P]proceeding**, only within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated or the bankruptcy stay is lifted.

D. A written request for reissuance of the order for possession filed after an appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or a bankruptcy stay is lifted, must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy stay.

Official Note: The order for possession deals only with delivery of possession of real property and not with a levy for money damages. A plaintiff who seeks execution of the money judgment part of the judgment must proceed under Rule 521A, using the forms and procedure there prescribed. The reason for making this distinction is that the printed notice requirements on the two forms, and the procedures involved in the two matters, differ widely.

**[Subdivision] Paragraph B** provides for reissuance of the order for possession for one additional 60-day period. However, pursuant to **[subdivision] paragraph C**, in cases arising out of a residential lease, the request for reissuance of the order for possession must be filed within 120 days of the date of the entry of the judgment or, in a case in which the order for possession is issued and subsequently superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy **[P]roceeding**, only within 120 days of the date the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated, or the bankruptcy stay is lifted. The additional 60-day period need not necessarily immediately follow the original 60-day period of issuance. The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order for possession form, "Reissuance of order for possession requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order for possession, "Reissued. Request for reissuance filed ..... (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order for possession, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order for possession.

**See Rule 1008B, C(7)-(8), and Rule 1013B, C(7)-(8) and the notes thereto regarding termination of the supersedeas. After a court of common pleas enters judgment, the judgment of the magisterial district judge is extinguished and may no longer be executed upon in any magisterial district court. All further process must take place in the court of common pleas.**

The time limits in which the plaintiff must request reissuance of an order for possession imposed in **[subdivision] paragraph C** apply only in cases arising out of residential leases and in no way affect the plaintiff's ability to execute on the money judgment. See Rule 521A.

## Rule 1007. Procedure on Appeal

- A. The proceeding on appeal shall be conducted de novo in accordance with the Rules of Civil Procedure that would be applicable if the action was initially commenced in the court of common pleas.
- B. Except as otherwise provided in **[subdivision] paragraph C**, the action upon appeal may not be limited with respect to amount in controversy, joinder of causes of action or parties, counter-claims, added or changed averments or otherwise because of the particulars of the action before the magisterial district judge.
- C. When an appeal is taken from a supplementary action filed pursuant to Rule 342, only those issues arising from the Rule 342 action are to be considered.

Official Note: As under earlier law, the proceeding on appeal is conducted de novo, but the former rule that the proceeding would be limited both as to jurisdiction and subject matter to the action before the magisterial district judge (*see Crowell Office Equipment v. Krug*, [213 Pa. Super. 261,] 247 A.2d 657 (Pa. Super. 1968)) has not been retained. Under **[subdivision] paragraph B**, the court of common pleas on appeal can exercise its full jurisdiction and all parties will be free to treat the case as though it had never been before the magisterial district judge, subject of course to the Rules of Civil Procedure. The only limitation on this is contained in **[subdivision] paragraph C**, which makes clear that an appeal from a supplementary action filed pursuant to Rule 342 is not intended to reopen other issues from the underlying action that were not properly preserved for appeal.

**See Rule 1008B, C(7)-(8), and Rule 1013B, C(7)-(8) and the notes thereto regarding termination of the supersedeas. After a court of common pleas enters judgment, the judgment of the magisterial district judge is extinguished and may no longer be executed upon in any magisterial district court. All further process must take place in the court of common pleas.**