

Kings County Supreme Court  
Help Center, Room 123  
360 Adams Street  
Brooklyn, New York 11201

## **HOW TO TAKE AN APPEAL**

If you are dissatisfied with the court's order or judgment in your case you may, under certain circumstances appeal to a higher court. This summary will **BRIEFLY** describe what is appealable, where an appeal is prosecuted and how the appellate process is initiated. It **WILL NOT** address the appeal process in detail. For specific information about the appeal process, you should familiarize yourself with **Articles 55 and 57 of the Civil Practice Law and Rules (CPLR) and the Rules of the Appellate Division, Second Department**. The Appellate Division, Second Department is located at 45 Monroe Place, Brooklyn, New York 11201 (718 875-1300). **ANYONE CONSIDERING AN APPEAL IS STRONGLY ENCOURAGED TO SEEK LEGAL COUNSEL.**

### **What is an Appeal?**

The appellate procedure provides an opportunity for a party who has been adversely affected by the order or judgment of one court to request review from a higher court. The appeal **IS NOT** a new trial. The higher court will review the same evidence that was before the trial court and will examine whether the trial Justice committed an error that requires reversal of the judgment or order. The appellate court will consider the following: the evidence presented to the trial court (record on appeal), the parties' written arguments (appellate briefs), and a short oral argument. The party seeking appellate review is called the **Appellant**. The parties against whom the appellant seeks reversal are referred to as **Respondents**.

### **The Appellate Court Structure**

The Appellate Division, Second Department is an intermediate appellate court which hears appeals from orders and judgments of the Supreme Court, Kings County and several other courts. The next level of appellate review is to the Court of Appeals, New York's highest court. The Court of Appeals will almost never hear appeals that are not first brought to the Appellate Division.

### **What Rulings are Appealable**

The general rule is that only a **Judgment or Order** can be appealed. An order grants or denies relief after a hearing or after it is requested in a motion made on notice. A Judgment grants or denies a relief after a trial.

An appeal must be taken **WITHIN THIRTY DAYS** after the parties receives a copy of the judgment or order appealed from and written notice of its entry. Thus, the time period during which an appeal must be started does not begin to run upon the signing of an order of judgment. Rather, the order or judgment **MUST** be entered or formally filed

in the Office of the County Clerk and recorded in its' records. The entry date is reflected by the date stamped by the County Clerk on the original order or judgment.

Orders are automatically entered. However, for a judgment to be entered, the prevailing party **MUST** appear before the Judgment Clerk in the County Clerk's Office, Room 189 and request entry with papers that are in the proper form. Ordinarily, it is the responsibility of the **Prevailing Party** to prepare the judgment.

Only an Aggrieved Party, one that has been harmed by an order or judgment may appeal. In general, an appeal may be taken as of right from a judgment or an order determining a motion made on notice which adversely affects substantial rights of a party (CPLR 5701). Certain orders, such as those made in **Article 78 Proceedings**, are **NOT** appealable as of right, but may be appealed by permission (CPLR 5701 section b, c). An Aggrieved Party **MUST** request permission to appeal by making a motion.

### **The Deadline for Taking an Appeal**

**If you decide to appeal, you MUST serve and file your notice of appeal within 30 days of the date you receive a copy of the judgment or order with notice of entry. Parties CANNOT agree and the Court CANNOT grant a motion to extend the time to file a notice of appeal. FAILURE TO TIMELY FILE THE NOTICE OF APPEAL WILL RESULTS IN DISMISSAL OF THE APPEAL.**

The Party who succeeds is normally the one who serves the copy of the order or judgment with notice of entry. However, the losing party may initiate service in which case the 30-day period commences from the time of service. The 30-day period applies to both appeals as of right and appeals by permission. The motion for permission to appeal **MUST** be made **within 30-days** period.

### **How to Take an Appeal (Forms and Fees)**

In order to commence an appeal as of right, the aggrieved party **MUST** serve and file a notice of appeal. See Exhibits A – C for a copy of the notice of appeal forms.

Copies of the notice of appeal **MUST** be served upon all of the other parties in the case. Service may be made by regular first - class U.S. mail or by personally delivering it to the attorney(s) for each of the other parties. If any of the other parties is Self-Represented, the notice of appeal must be served on him/her personally. Service **MUST** be made by someone who is over the age of 18 years old and **NOT** a party to the action. **THE APPELLANT CANNOT SERVE THE NOTICE OF APPEAL ON THE OTHER PARTIES IN THE CASE.**

An **ORIGINAL** and **TWO** properly collated copies of the **Notice of Appeal** (See Exhibit A), **Informational Statement** (See Exhibit B) and **Affidavit of Service** (See Exhibit C) **MUST** be filed in the County Clerk's Office, Room 189. See **Appendix A for Informational Statement Instruction** and **Appendix B for requirement for filing the**

**notice of appeal.** The fee for filing the notice of appeal is **\$65.00**. A poor person order received from the Supreme Court prior to commencement of the action will **NOT** automatically relieve the appellant of the obligation to pay the \$65.00 fee. Rather, the appellant **MUST** petition the court for an extension of his/her poor person status for the purpose of waiving this cost.

A poor person order relieving the appellant from the remainder of fees associated with the appeal **MUST** be obtained from the **Appellate Division**.

### **Cross – Appeals**

A party who has **NOT** initiated an appeal -may, upon receipt of a notice of appeal, take a cross-appeal. The party taking a cross-appeal **MUST** also be aggrieved or harmed in some respect by an error of the court. The cross-appealing party is also required to serve and file a notice of appeal (or make a motion for permission to appeal) **within 30 days** of service of the order or judgment with notice of entry or **within 10 days** of service of the adverse party's notice of appeal (or motion for leave to appeal) whichever is longer.

### **Effect of the Appeal on the Order or Judgment**

The effectiveness of the order or judgment is **NOT** necessarily put on hold ("stayed") because an appeal is being taken. If an appeal is to be taken by the State of New York or any of its subdivisions, the case will be automatically stayed (CPLR 5519(a)). Other litigants will also receive an automatic stay if they post a bond, money or other assets to satisfy the judgment in the event the appeal is unsuccessful. Upon motion, the court from or to which an appeal is taken may, in its discretion, stay all proceedings to enforce the judgment or order appealed from (CPLR 5519(c)).

### **Perfecting the Appeal**

The appellant **MUST** also take other steps to "Perfect the Appeal" which includes the filing of a brief and a record with the Appellate Division.

If the appeal is taken from a judgment or order arising out of a trial or hearing at which sworn testimony was taken in open court, the Appellant **MUST** order the transcript of those proceedings and provide it to the Appellate Division for review. The appealing party **MUST** serve the court reporter with a written request for the transcript and deposit the fee for the transcript. The length of the transcript will determine the amount of the fee. The Court Reporters are located at 360 Adams Street, Brooklyn New York 11201 Room 650 or via phone at 347 296-1382.

The Parties can agree to transcribe only a portion of the proceedings. The agreement should be in writing and should identify the portions of the transcript that are necessary. The transcripts can be very costly, and it may be in the interests of both sides to limit this expense.

Once the transcript has been prepared, the court reporter will deliver one original and one copy to the appealing party. The appealing party should then serve a copy of the transcript on the other parties. All parties should review the transcript by page and line for errors and create a list of suggested corrections. The parties should attempt to agree as to what corrections need to be made. If an agreement cannot be reached, the dispute will have to be resolved by the trial Justice. It is strongly recommended that the parties not impose that burden on the court (CPLR 5525).

In the event there is no transcript of the proceedings, the parties can submit a written statement in lieu of a transcript. The Appellant prepares the written statement and serves it on the other parties. If the parties cannot agree on any proposed objections or amendments to the written statement, the dispute will be settled by the trial Justice. The transcript or written statement in lieu of a transcript become part of the record on appeal (CPLR 5526). In addition to the record on appeal, the parties are required to set forth their legal arguments in briefs (CPLR 5528-5531). For additional information about the contents, form or filing of your brief or record on appeal, you should review Article 55 of the Civil Practice Law and Rules and contact the Clerk of the Appellate Division, Second Department located at 45 Monroe Place, Brooklyn, New York 11201 718 875-1300.

Rev. 3/2024

# EXHIBIT A

\_\_\_\_\_ Court of the State of New York  
County of \_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF APPEAL**

Index No.:

\_\_\_\_\_

**PLEASE TAKE NOTICE** that *(insert your name)* \_\_\_\_\_  
hereby appeals to the Appellate Division of the Supreme Court of the State of New York, Second  
Judicial Department, from a *(insert judgment, order, decree, etc.)* \_\_\_\_\_ of the  
\_\_\_\_\_ Court, \_\_\_\_\_ County, dated  
\_\_\_\_\_.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_\_\_

Yours, etc.,

\_\_\_\_\_  
*Signature*  
*(Print Name)* \_\_\_\_\_  
*(Address)* \_\_\_\_\_  
*(Telephone Number)* \_\_\_\_\_

To: *(Insert below the name and address of the clerk of the trial  
court and the names and addresses of all opponents)*

# **EXHIBIT B**

Supreme Court of the State of New York  
Appellate Division:                      Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

<b>Case Title:</b> Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance   Date Notice of Appeal Filed	
- against -		For Appellate Division	
<b>Case Type</b> <input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> Action Commenced under CPLR 214-g		<b>Filing Type</b> <input type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	
<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding		<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review	
<b>Nature of Suit:</b> Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts



Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Amended Decree</div> <div style="width: 50%;"><input type="checkbox"/> Determination</div> <div style="width: 50%;"><input type="checkbox"/> Order</div> <div style="width: 50%;"><input type="checkbox"/> Resettled Order</div> <div style="width: 50%;"><input type="checkbox"/> Amended Judgement</div> <div style="width: 50%;"><input type="checkbox"/> Finding</div> <div style="width: 50%;"><input type="checkbox"/> Order &amp; Judgment</div> <div style="width: 50%;"><input type="checkbox"/> Ruling</div> <div style="width: 50%;"><input type="checkbox"/> Amended Order</div> <div style="width: 50%;"><input type="checkbox"/> Interlocutory Decree</div> <div style="width: 50%;"><input type="checkbox"/> Partial Decree</div> <div style="width: 50%;"><input type="checkbox"/> Other (specify):</div> <div style="width: 50%;"><input type="checkbox"/> Decision</div> <div style="width: 50%;"><input type="checkbox"/> Interlocutory Judgment</div> <div style="width: 50%;"><input type="checkbox"/> Resettled Decree</div> <div style="width: 50%;"></div> <div style="width: 50%;"><input type="checkbox"/> Decree</div> <div style="width: 50%;"><input type="checkbox"/> Judgment</div> <div style="width: 50%;"><input type="checkbox"/> Resettled Judgment</div> <div style="width: 50%;"></div> </div>	
Court:	County:
Dated:	Entered:
Judge (name in full):	Index No.:
Stage: <input type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No    If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
<p>Are any appeals arising in the same action or proceeding currently pending in the court? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.</p> <p>Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:</p>   	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	
Date Filed:	
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court:	County:
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court:	County:
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p>          	

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party’s name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

# EXHIBIT C

**AFFIDAVIT OF SERVICE**  
*After Commencement of Litigation*

Index No. \_\_\_\_\_ / \_\_\_\_\_

\_\_\_\_\_ vs. \_\_\_\_\_

STATE OF NEW YORK, COUNTY OF KINGS ss:

\_\_\_\_\_ being sworn says, I am not a party to the action, am over 18  
years of age, and reside at \_\_\_\_\_

On \_\_\_\_\_, 20 \_\_\_\_\_, I served a true copy of the following papers, \_\_\_\_\_

which are attached to this affidavit, in the following manner:

**[CHECK ONE]**

☐ **PERSONAL SERVICE**

By personally delivering the papers to: \_\_\_\_\_  
[Person Served]  
at \_\_\_\_\_  
[Address]

The individual I served had the following: **[CHECK]**

☐ MALE      ☐ FEMALE      SKIN COLOR: \_\_\_\_\_      HAIR COLOR: \_\_\_\_\_  
☐ 21-34 yrs.    ☐ 35-50 yrs.    ☐ 51-61 yrs.    ☐ over 61 yrs.  
☐ 120-150 lbs. ☐ 151-181 lbs. ☐ Over 182 lbs. Approximate Height: \_\_\_\_\_  
Other Distinguishing Features: \_\_\_\_\_

☐ **MAIL**

By mailing the same in a sealed envelope with postage prepaid thereon, in a post office or official depository of the US.  
Postal Service within the State of New York addressed to the last known address of the addressee(s) as indicated below:

☐ **OVERNIGHT DELIVER SERVICE**

By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior  
to the latest time designated by the overnight delivery service for overnight delivery. The delivery service used was

\_\_\_\_\_  
Name and Address of Person(s) served:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sworn to before me on the

\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
**[SIGN BEFORE A NOTARY PUBLIC]**

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
**[PRINT YOUR NAME]**

# APPENDIX A

# **Supreme Court of the State of New York**

## **Appellate Division: Second Judicial Department**

### **INSTRUCTIONS FOR INFORMATIONAL STATEMENT – CIVIL**

1. Insert the title of the action or proceeding as it appears on the summons or petition initiating the case. You need only list the first named plaintiff or petitioner and defendant or respondent.
2. Check the appropriate box for case type (e.g., a negligence action or matrimonial action would be considered a “Civil Action”; for all family court matters, check “Special Proceeding Other”). Please be sure to check “Action Commenced under CPLR 214-g” (New York Child Victims Act) if the appeal arises in such an action.
3. Check the appropriate filing type (how you are bringing the matter to this Court – as an appeal, an original matter commenced in this Court, or a request for CPLR 5704 review).
4. Check the box or boxes which describe the nature of the underlying action.
5. If you are taking an appeal, check the box of the paper appealed from (e.g., “Order”) and insert the court and county from which the appeal is taken, the date of the paper, when it was entered (if known), the name of the Judge and the index or docket number of the action or proceeding.

For “Stage”, if the paper finally determined all issues, check “Final”. If made at a preliminary stage, check “Interlocutory”; if made following the final determination, check “Post-Final”.

Check whether there was a trial and if yes, whether it was a jury or non-jury trial.

6. If there are any unperfected appeals pending in this case, check yes, indicating whether the appeals will be perfected together, and insert the Appellate Division numbers.
7. If this is an original proceeding commenced in the Appellate Division, omit items (5) and (6). Check the manner in which you are commencing the proceeding, the date the papers were filed and the statute under which you are proceeding (e.g., CPLR Article 78).
8. If this is a proceeding transferred to this Court pursuant to CPLR 7804(g), omit items (5) - (7), state the court and county where the proceeding was commenced, the Judge who issued the transfer order and the date of the order.
9. If this is a request for CPLR 5704 review, omit items (5) – (8) and insert the court and county where the ex parte order was issued, the name of the Judge who issued the order and the date of the order.

10. Describe what this case is about and list the issues you wish to raise.
11. List the names of all parties in the underlying matter in the column designated “Party Name”, utilizing one line for each party. In the column marked “Original Status”, choose the status of the party in the original court (e.g., Plaintiff or Petitioner; Defendant or Respondent). In the column captioned “Appellate Division Status”, choose the status of each party in this court (e.g., Appellant or Respondent). If the party has no status on this appeal, choose “None”.
12. List the names of the attorneys or law firms representing the parties listed in item 11 and indicate whom they represent by inserting the appropriate number on the bottom line of each section. If a party represented himself or herself, list that person’s name, address, telephone number and email address and check the box marked Pro Se.



# **APPENDIX B**

**Kings County Clerk's Office  
360 Adams Street, Room 189  
Brooklyn, NY 11201**

**Requirements for Filing Appeal**

(Pursuant to the Rules of the Appellate Division, Second Department)

**Each appeal filed must consist of the below listed documents in the following order:**

1. Notice of Appeal
2. Informational Statement - Civil
3. Copy of Order of Judgment – Original Signed order or Judgment **MUST** be entered in the Kings County Clerk's Office
4. Original Affidavit of Service – of this packet on all parties

**Three** completed sets, properly collated **MUST** be presented to be accepted for filing. If a **fourth** copy is provided, it will be stamped received for your records.