

EVICTON PETITION COVER PAGE

- Justice Courts are NOT allowed to give legal advice.
- It is highly recommended that you consult an attorney.
- Refer to the Texas Property Code
 - Chapter 24 for Notices
 - Chapter 92 Residential Evictions (includes RV Parks)
 - Chapter 94 for mobile home park evictions

****If proper procedure is not followed and your case is dismissed, you will NOT be eligible for a refund.****

ADDRESS MUST BE POSTED AT RESIDENCE.



EVICITION INSTRUCTIONS (Please read carefully)

To file an eviction, you will need to do the following:

- 1) Fill out an **Eviction – Petition Case Application**.
- 2) Fill out a **Serviceman’s Civil Relief Act affidavit** (MUST BE INCLUDED IN EVERY CASE).
- 3) Fill out a **Justice Court Civil Case Information Sheet** (Not required).
- 4.) Bring the sheet and the petition to our office along with a cashier’s check, cash, money order or credit card to pay the filing fee of **\$46.00** plus **\$125.00** for serving fee. If more than one person is named in the lease, you should serve a separate citation on each person NAMED IN THE LEASE \$125.00 for each additional person.
- 5) Fill out last known address required for default judgements.

You are strongly encouraged to read the new rules of civil procedure. There are numerous changes to the eviction laws, such as Bond for Immediate Possession and other provisions.

- **The timeline for the hearing date is slightly different (Rule 510.4 {10})**
- **The rules for Bond of Possession have changed (Rule 510.5)**
- **Writ of Possession EXPIRES after 60 days (Rule 510.8 {d} {1})**
- **Appeal rules have been modified under Rule 510.9**

1) **Evictions must be filed in the proper Justice of the Peace Court.** A map is available at the County Clerk Office, and maps are in each Justice of the Peace office. Cashier’s Checks, Money Order or Credit Cards are accepted. **Your property must be properly marked with the physical address** assigned by the 911 emergency address system or the appraisal district. If your property is not clearly marked, the Constable will return the eviction citation un-served and you will have to start over. Location number can be posted by numbers on the building proper or by numbers located on a sign posted in front of the property.

2) By law you must give a **NOTICE TO VACATE** before you can file an **EVICITION SUIT**. The landlord must give the tenant at least 3 days written notice to vacate before filing this eviction, unless the lease signed by both parties states otherwise. The **NOTICE TO VACATE** must be in writing and comply with Section 24.005 of the Texas Property Code, which is found at <http://www.statutes.legis.state.tx.us/Search.aspx>. A defective **NOTICE TO VACATE** can result in **DISMISSAL** of your Eviction.

3) **COURT COST** for filing an eviction on one tenant is **\$171.00**. Section 510.2 of the NEW Texas Rules of Civil Procedure states “The plaintiff must name as defendants **all** tenants obligated under the lease residing at the premises. You can **ONLY** get a judgment against the defendant served. If you wish to have a judgment against two parties, then you **MUST** pay for service and have both parties served. This is an additional **\$125.00** per person.

4) **ATTORNEY’S FEES:** To be eligible to recover attorney’s fees in an eviction suit, a Notice to Vacate must be served by a process server, personally with a witness, or by return receipt requested certified mail ten days prior to the date the suit is filed.

5) **WHO MAY FILE:** The owner or the owner's agent may file any type of forcible detainer suit, and he may represent the owner in the hearing. EFFECTIVE September 1, 2013, every Justice Court civil filing will require a JUSTICE COURT CIVIL INFORMATION (this is now optional).

6) **JOINING A SUIT FOR RENT:** A suit for rent may be joined with the eviction suit, if the amount due is within the jurisdiction of this court. (\$10,000.00). Any damages, late charges, utilities, or other charges may not be included in this action; HOWEVER, The owner or the owner's attorney may file suit for these amount in a separate action filed in Small Claims Court.

7. **PROCEDURES AFTER FILING:** At the time the suit is filed, a hearing date will be set up to 21 days from the filing date. A citation will be issued to the Constable's or Sheriff's office to be served on the tenant giving them the date and time of the hearing.

8. **THE HEARING:** You are required to appear personally for the hearing. Proper representation is essential (as per item # 5 above). At the court hearing, both sides will have the right to present their side of the case, including witnesses, receipts, canceled checks, photographs, and all other evidence. You will need to bring with you all evidence pertaining to the case. The burden of proof lies with you as plaintiff. You must show the Court good and sufficient evidence proving your right to regain possession of the property. You must still prove your case, even if the defendant fails to appear.

9. **JUDGMENT:** At the hearing, a judgment will be rendered for either the plaintiff or the defendant. A judgment for the plaintiff may be for all or part of the initial claim. If you are awarded a judgment for possession of the premises and/or any back rent owed, there is a 5 day appeal period in which the defendant may appeal the decision to the County Court at Law. If the Defendant has not appealed the case at the end of the appeal period, Judgment becomes final.

Upon final judgment you may then file for A Writ of Possession if the defendant has still not vacated the premises. **A writ of possession has a court fee of \$130.00.** This is a writ that authorizes the Constable to supervise while the Plaintiff removes the property from the premises.

Once the appeal period has passed, you may file an Abstract of Judgment in the County Clerk Office if you have a judgment for money. This is a document that we prepare in this office, then you file it in the County Clerk office. This puts on record at the County Clerk's office that you have a judgment against the defendant. The abstract is good for a 10 year period. Abstract of Judgment has a court fee of \$5.00.

MOBILE HOME CASES: If you are seeking an eviction based on *late rent payments* for a MOBILE HOME LOT (tenant owns mobile home, you lease them the lot), you are required by law to give the Tenant a ten-day NOTICE TO CURE before you can file an eviction (Sec. 94.206, Texas Property Code). Without the NOTICE TO CURE, your case will be dismissed. If they do not cure the problem after the ten-day notice, you then give them a three day NOTICE TO VACATE. Texas Law contains specific rules regarding mobile homes. See Manufactured Home Tenancies.

Below is the section on Evictions.

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RULE 510.1. APPLICATION

Rule 510 applies to a suit to recover possession of real property under Chapter 24 of the Texas Property Code. You can find Chapter 24 of the Property Code by clicking <http://www.statutes.legis.state.tx.us/Search.aspx> and writing CHAPTER 24 in the search box.

RULE 510.2. COMPUTATION OF TIME FOR EVICTION CASES

Rule 500.5 applies to the computation of time in eviction case. But if a document is filed by mail and not received by the court by the due date, the court may take any action authorized by these rules, including issuing a Writ of Possession requiring a tenant to leave the property.

RULE 510.3. PETITION

(a) *Contents.* In addition to the requirements of Rule 502.2, a petition in an eviction case must be sworn to by the plaintiff and must contain:

- (1) A description, including the address, if any, of the premises that the plaintiff seeks possession of;
- (2) A description of the facts and the grounds for eviction;
- (3) A description of when and how notice to vacate was delivered;
- (4) The total amount of rent due and unpaid at the time the filing; and
- (5) A statement that attorney fees are being sought, if applicable.

(b) *Where Filed.* The petition must be filed in the precinct where the premise is located. If it is filed elsewhere; the judge must dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

(c) *Defendants Named.* If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.

(d) *Claim for Rent.* A claim for rent within the justice court's jurisdiction may be asserted in an eviction case.

(e) *Only Issue.* The court must adjudicate the right to actual possession and not title. Counterclaims and the joinder of suits against third parties are not permitted in eviction cases. A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.

RULE 510.4. ISSUANCE, SERVICE, AND RETURN OF CITATION

(a) Issuance of Citation; Contents. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

- (1) Be styled "The State of Texas";
- (2) Be signed by the clerk under Seal of the Court or by the Judge;

- (3) Contain the name, location, and address of the court;
- (4) State the date of filing of the petition;
- (5) State the date of issuance of the citation;
- (6) State the file number and names of parties;
- (7) State the plaintiff's cause of action and relief sought;
- (8) Be directed to the defendant;
- (9) State the name and address of attorney for plaintiff, or if the plaintiff does not have an attorney, the address of plaintiff;
- (10) State the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed;
- (11) Notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition;
- (12) Inform the defendant that, upon timely request and payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by a jury;
- (13) Contain all warnings required by Chapter 24 of the Texas Property Code; and
- (14) Include the following statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

(b) Service and Return of Citation.

- (1) Who May Serve? Unless otherwise authorized by written court order, citation must be served by a sheriff or constable.
- (2) Method of Service. The constable, sheriff, or other person authorized by written court order receiving the citation must execute it by delivering a copy with a copy of the petition attached to the defendant, or by leaving a copy with a copy of the petition attached with some person, other than the plaintiff, over the age of 16 years, at the defendant's usual place of residence, at least 6 days before the day set for trial.
- (3) Return of Service. At least one day before the day set for trial, the constable, sheriff, or other person authorized by written court order must complete and file return of service in accordance with Rule 501.3 with the court that issued the citation.

(c) Alternative Service by Delivery to the Premises.

- (1) When Allowed. The citation may be served by delivery to the premises if:
 - (A) The constable, sheriff, or other person authorized by written court order is unsuccessful in serving the citation under (2);
 - (B) The petition lists all home and work addresses of the defendant that are known to the plaintiff and states that the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located; and
 - (C) The constable, sheriff, or other person authorized files a sworn statement that it has made diligent efforts to serve such citation on at least two occasions at all addresses of the defendant in the county where the premises are located, stating the times and places of attempted service.
- (2) Authorization. The judge must promptly consider a sworn statement filed under (1) (C) and determine whether citation may be served by delivery to the premises. The plaintiff is not required to make a request or motion for alternative service.
- (3) Method. If the judge authorizes service by delivery to the premises, the constable, sheriff, or other person authorized by written court order must, at least 6 days before the day set for trial:
 - (A) Deliver a copy of the citation with a copy of the petition attached to the premises by placing it through a door mail chute or slipping it under the front door; if neither method is possible, the officer may securely affix the citation to the front door or main entry to the premises; and
 - (B) Deposit in the mail a copy of the citation with a copy of the petition attached, addressed to defendant at the premises and sent by first class mail.
- (4) Notation on Return. The constable, sheriff, or other person authorized by written court order must note on the return of service the date the citation was delivered and the date it was deposited in the mail.

RULE 510.5. REQUEST FOR IMMEDIATE POSSESSION

(a) *Immediate Possession Bond*. The plaintiff may, at the time of filing the petition or at any time prior to final judgment, file a possession bond to be approved by the judge in the probable amount of costs of suit and damages that may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages that are adjudged against plaintiff.

(b) Notice to Defendant. The court must notify a defendant that the plaintiff has filed a possession bond. The notice must be served in the same manner as service of citation and must inform the defendant that if the defendant does not file an answer or appear for trial, and judgment for possession is granted by default, an officer will place the plaintiff in possession of the property on or after the 7th day after the date defendant is served with the notice.

(c) Time for Issuance and Execution of Writ. If judgment for possession is rendered by default and a possession bond has been filed, approved, and served under this rule, a writ of possession must issue immediately. The writ must not be executed before the 7th day after the date defendant is served with notice under (b).

(d) Effect of Appearance. If the defendant files an answer or appears at trial, no writ of possession may issue before the 6th day after the date a judgment for possession is signed.

RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT

(a) Trial Date and Answer. The defendant must appear for trial on the day set for trial in the citation. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.

(b) Default Judgment. If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, the allegations of the complaint must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly.

(c) Notice of Default. When a default judgment is signed, the clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises.

RULE 510.7. TRIAL

(a) Trial. An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 510.4 has been obtained.

(b) Jury Trial Demanded. Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a sworn statement of inability to pay the jury fee. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.

(c) Limit on Postponement. Trial in an eviction suit must not be postponed for more than 7 days unless both parties agree in writing.

RULE 510.8. JUDGMENT; WRIT; NO NEW TRIAL

(a) Judgment Upon Jury Verdict. Where a jury has returned a verdict, the judge may render judgment on the verdict or, if the verdict is contrary to the law or the evidence, judgment notwithstanding the verdict.

(b) Judgment for Plaintiff. If the judgment or verdict is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent as of the date of entry of judgment, if any, and attorney fees if recoverable by law.

(c) Judgment for Defendant. If the judgment or verdict is in favor of the defendant, the judge must render judgment for defendant against the plaintiff for costs and attorney fees if recoverable by law.

(d) Writ. If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of Possession upon demand of the plaintiff and payment of any required fees.

(1) Time to Issue. Except as provided by Rule 510.5, no Writ of Possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later. A Writ of Possession may not issue more than 60 days after a judgment for possession is signed. For good cause, the court may extend the deadline for issuance to 90 days after a judgment for possession is signed.

(2) Time to Execute. A Writ of Possession may not be executed after the 90th day after a Judgment for possession is signed.

(3) Effect of Appeal. A Writ of Possession must not issue if an appeal is perfected and, if applicable, rent is paid into the registry, as required by these rules.

(e) *No Motion for New Trial*. No motion for new trial may be filed.

RULE 510.9. APPEAL

(a) *How Taken; Time*. A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay with the Justice Court within 5 days after the judgment is signed.

(b) Amount of Security. The Justice Court judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.11. The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal.

(c) *Sworn Statement of Inability to Pay*.

(1) Filing; contest. An appellant who cannot furnish a bond or pay a cash deposit in the amount required may instead file a sworn statement of inability to pay. The statement must meet the requirements of Rule 502.3(b).

(2) Contest. The statement may be contested as provided in Rule 502.3(d) within 5 days after the opposing party receives notice that the statement was filed.

(3) Appeal If Contest Sustained. If the contest is sustained, the appellant may appeal that decision by filing notice with the Justice Court within 5 days of that court's written order. The Justice Court must then forward all related documents to the County Court for resolution. The County Court must set the matter for hearing within 5 days and hear the contest de novo, as if there had been no previous hearing, and, if the appeal is granted, must direct the justice court to transmit to the Clerk of the County Court the transcript, records, and papers of the case, as provided in these rules.

(4) If no appeal or if appeal overruled. If the appellant does not appeal the ruling sustaining the contest, or if the county court denies the appeal, the appellant may, within one business day, post an appeal bond or make a cash deposit in compliance with this rule.

(5) Payment of Rent in Nonpayment of Rent Appeals.

(A) Notice. If a defendant appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay, the Justice Court must provide to the defendant a written notice at the time the statement is filed that contains the following information in bold or conspicuous type:

(i) The amount of the initial deposit of rent, equal to one rental period's rent under the term of the rental agreement, that the defendant must pay into the justice court registry;

(ii) Whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(iii) The calendar date by which the initial deposit must be paid into the Justice Court Registry, which must be within 5 days of the date the sworn statement of inability to pay is filed; and

(iv) A statement that failure to pay the required amount into the justice court registry by the required date may result in the court issuing Writ of Possession without hearing.

(B) Defendant May Remain in Possession. A defendant who appeals an eviction for nonpayment of rent by filing a sworn statement of inability to pay is entitled to stay in possession of the premises during the pendency of the appeal by complying with the following procedure:

(i) Within 5 days of the date that the defendant files a sworn statement of Inability to Pay, it must pay into the Justice Court Registry the amount set forth in the notice provided at the time the defendant filed the statement. If the defendant was provided with notice and fails to pay the designated amount into the Justice Court Registry within 5 days and the transcript has not been transmitted to the County Clerk, the plaintiff is entitled, upon request and payment of the applicable fee, to a Writ of Possession, which the Justice Court must issue immediately and without hearing.

(ii) During the appeal process as rent becomes due under the rental agreement, the defendant must pay the designated amount into the County Court registry within 5 days of the rental due date under the terms of the rental agreement.

(iii) If a government agency is responsible for all or a portion of the rent, the defendant must pay only that portion of the rent determined by the Justice Court to be paid during appeal. Either party may contest the portion of the rent that the Justice Court determines must be paid into the County Court Registry by filing a contest within 5 days after the judgment is signed. If a contest is filed, the Justice Court must notify the parties and hold a hearing on the contest within 5 days. If the defendant objects to the Justice Court's ruling at the hearing, the defendant required to pay only the portion claimed to be owed by the defendant until the issue is tried in County Court.

(iv) If the defendant fails to pay the designated amount into the Court Registry within the time limits prescribed by these rules the plaintiff may file sworn motion that the defendant is in default in County Court. The plaintiff must notify the defendant of the motion and the hearing date. Upon a showing that the defendant is in default, the court must issue a Writ of Possession.

(v) The plaintiff may withdraw any or all rent in the County Court Registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or Order of the Court after final hearing.

(vi) All hearings and motions under this subparagraph are entitled to precedence in the County Court.

(d) *Notice to Other Parties Required.* If a Statement of Inability to Pay is filed, the court must provide notice to all other parties that the statement was filed no later than the next business day. Within 5 days of filing a bond or making a cash deposit, an appellant must serve written notice of the appeal on all other parties using a method approved under Rule 501.4.

(e) *No Default on Appeal Without Compliance With Rule.* No judgment may be taken by default against the adverse party in the court to which the case has been appealed without first showing substantial compliance with this rule.

(f) *Appeal Perfected.* An appeal is perfected when a bond, cash deposit, or statement of Inability to Pay is filed in accordance with this rule.

RULE 510.10. RECORD ON APPEAL; DOCKETING; TRIAL DE NOVO

(a) *Preparation and Transmission of Record.* Unless otherwise provided by law or these rules, when an appeal has been perfected, the judge must stay all further proceedings on the judgment and must

immediately send to the Clerk of the County Court a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case together with any money in the Court Registry, including sums tendered pursuant to Rule 510.9(c) (5) (B).

(b) *Docketing; Notice.* The County Clerk must docket the case and must immediately notify the parties of the date of receipt of the transcript and the docket number of the case. The notice must advise the defendant that it must file a written answer in the County Court within 8 days if one was not filed in the justice court.

(c) *Trial De Novo.* The case must be tried De Novo in the County Court. A trial De Novo is a new trial in which the entire case is presented as if there had been no previous trial. The trial, as well as any hearings and motions, is entitled to precedence in the County Court.

RULE 510.11. DAMAGES ON APPEAL

On the trial of the case in the County Court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the Justice and County Courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the County Court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond in cases where the adverse party has executed an appeal bond.

RULE 510.12. JUDGMENT BY DEFAULT ON APPEAL

An eviction case appealed to County Court will be subject to trial at any time after the expiration of 8 days after the date the transcript is filed in the County Court. If the defendant has filed a written answer in the Justice Court, it must be taken to constitute his appearance and answer in the County Court and may be amended as in other cases. If the defendant made no answer in writing in the Justice Court and fails to file a written answer within 8 days after the transcript is filed in the County Court, the allegations of the complaint may be taken as admitted and judgment by default may be entered accordingly.

RULE 510.13. WRIT OF POSSESSION ON APPEAL

The Writ of Possession, or Execution, or both, will be issued by the Clerk of the County Court according to the judgment rendered, and the same will be executed by the Sheriff or Constable, as in other cases. The judgment of the County Court may not be stayed unless within 10 days from the judgment the appellant files a supersedeas bond in an amount set by the County Court pursuant to Section 24.007 of the Texas Property Code.

The entire set of the NEW Rules of Court for Justice of the Peace Courts in additional to Local Rules and Procedures are posted on our website:

<http://www.aransascountytx.gov>

These rules ALSO apply to procedural issues for EVICTION CASES, and you should be familiar with them.

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CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. 2
	§	
_____	§	
DEFENDANT	§	ARANSAS COUNTY, TEXAS

PETITION: EVICTION CASE

COMPLAINT: Plaintiff hereby sues the following Defendant(s) _____
_____ for eviction of Plaintiff's premises (including
storerooms and parking areas) located in the above precinct. The address of the property is:

_____	_____	_____	_____	_____
Street Address	Unit No. (If any)	City	State	Zip

GROUND FOR EVICTION: Plaintiff alleges the following grounds for eviction:

- Unpaid rent.** Defendant(s) failed to pay rent for the following time period(s):
_____. The amount of rent claimed as of the date of
filing is: \$_____. Plaintiff reserves the right to orally amend the amount
at trial to include rent due from the date of filing through the date of trial.
- Other lease violations.** Defendant(s) breached the terms of the lease (other than
by failing to pay rent) as follows: _____
- Holdover.** Defendant(s) are unlawfully holding over by failing to vacate at the end
of the rental term or renewal of extension period, which was the _____ day of
_____, 20_____.

NOTICE TO VACATE: Plaintiff has given Defendant(s) a written notice to vacate (according to
Chapter 24.005 of the Texas Property Code) and demand for possession. Such notice was
delivered on the _____ day of _____, 20____ by this method: _____

SUIT FOR RENT: Plaintiff does or does not include a suit for unpaid rent.

ATTORNEY'S FEES: Plaintiff will be or will not be seeking applicable attorney's fees. The
attorney's name, address, phone and fax numbers are: _____

JUDGE DIANE DUPNIK
JUSTICE OF THE PEACE PCT 1
JP1@ARANSASCOUNTY.ORG
ARANSASCOUNTYTX.GOV/JP1



2840 HWY 35, ROOM 125
ROCKPORT, TX 78382
PHONE (361)790-0130
FAX (361)790-5402

IMMEDIATE POSSESSION BOND: If Plaintiff has filed a bond for immediate possession, Plaintiff requests that: (1) the Court set the amount of the bond; (2) the Court approve the bond; and (3) proper notices, as required by the Texas Rules of Civil Procedure, are given to Defendant(s).

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, or by delivery to a person over the age of 16 years at Defendant's usual place of residence. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other home or work addresses where Defendant(s) may be served are: _____

Plaintiff knows of no other home or work addresses of Defendant(s) in this county.

RELIEF: Plaintiff requests that Defendant(s) is served with the citation and that Plaintiff is awarded a judgment against Defendant(s) for: possession of the premises, including removal of Defendant(s) and Defendant's possessions from the premises, unpaid rent, if set forth above, attorney's fees, court costs, and interest on the above sums at the rate stated in the lease, or if not so stated, at the statutory rate for judgments.

I hereby request a jury trial. The fee is \$22 and must be paid at least 3 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: _____

Plaintiff's Printed Name

Signature of Plaintiff or Agent or Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff or Agent or Attorney

City

State

Zip

Phone & Fax of Plaintiff or Agent or Attorney

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____

CLERK OF THE JUSTICE COURT OR NOTARY

Certificate of Last Known Address

The undersigned certifies that the last known mailing address of the Defendant against whom judgment is taken in this proceeding:

Defendant's Name: _____

Defendant's Address: _____

Plaintiff

Attorney of Record for Plaintiff

Address

This document is required to be filed when a judgment is taken by default so that the Court may notify the defendant of the entry of the default judgment.

The Service Members Civil Relief Act, 50 U.S.C. App 507 Et Seq, Passed December 19, 2003, requires the plaintiff in any civil proceeding in which the defendant does not make an appearance to file with the court an affidavit (A) stating whether or not the defendant is in the military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in the military service, stating that the plaintiff is unable to determine whether or not the defendant is in the military service.

PENALTY FOR MAKING OR USING A FALSE AFFIDAVIT: A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

Costs for an attorney ad litem may be assessed against the plaintiff as costs of court unless otherwise ordered by the court.

Self-Help Legal Information Packet: Filing an Eviction Case



Self-Help Legal Information Packets are provided for the benefit of justice courts and individuals seeking access to justice through the court system. They do not constitute legal advice, and the court is not responsible for the accuracy of the information contained in the packet.

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What is an Eviction Case?

An eviction case is filed whenever a person or company is trying to recover possession of real property (like land, a house, or an apartment building) from someone else. Usually, it is a landlord filing against a tenant. The person or company filing the case is called the **plaintiff** and the person or company they file against is called the **defendant**.

Do I Need to File an Eviction Case?

The clerk or judge cannot give you advice on whether or not to file an eviction case and cannot have a conversation with you about the facts of your situation.

If you are trying to end the legal right for a person or company to occupy property that belongs to you, you will need to file an eviction case.

You need to file an eviction case if:

- 1) You are trying to remove someone who was renting your property as their residence;
- 2) You are trying to remove someone who was renting your property for a business or other purpose; or
- 3) You allowed another person to use your property as their residence, even without a written lease or rent involved.

In order to win an eviction case, you will need to show:

- 1) The tenant **breached their lease** (this means they didn't pay their rent or did something they were not allowed to do under the contract, such as have unauthorized pets);

- 2) The tenant's lease has run out and they haven't left (this could include a month-to-month tenancy that you properly terminated);
- 3) The person was a **tenant at will** (meaning there was no set time when the lease would be over) **and** there was no rent due under the agreement, you gave a proper notice to vacate, and the person didn't leave; or
- 4) The person entered and remains in the property without your permission (**squatter**).

You do **not** need to file an eviction case if:

- 1) You are excluding someone from your property who was not renting the property or using it as their residence (such as an overnight visitor);
- 2) The person has already permanently vacated the property. If they have vacated but still owe you back rent, you can file a Small Claims Case to recover the back rent (see the information packet on How to File a Small Claims Case for details).

What Do I Do Before Filing an Eviction Case?

Step 1: Breach of Lease or Notice of Termination of Lease

If the defendant has a written lease agreement or pays you rent, you cannot just evict them from the property for no reason. If they have a lease with a set end date, they are entitled to stay in the property until that date, unless they don't pay their rent or violate some other term of the lease.

A **termination notice** is required if either:

- 1) the tenant has a written lease that they did not breach, and that lease does not have a set end date; or

- 2) they do not have a written lease, but there is an agreement that they pay you rent.

The termination notice is a written notice telling them the day that their lease now ends. This notice must be at least one rental payment period. Most agreements without set end dates are “month-to-month” agreements, so you would need to give at least one month’s notice. For example, you could give a termination notice on January 27th informing the tenant that the lease is terminated effective February 28th.

If they breached the lease, or there is no written lease and no agreement to pay rent, then no termination notice is needed, and you can proceed to Step 2: Notice to Vacate.

Step 2: Notice to Vacate

You **must always** deliver a **notice to vacate** to the defendant before filing an eviction case. This is a written demand for the defendant to leave the property within a set period of time. This period of time is **3 days**, unless you agreed in a contract to a different period of time (or the property was purchased at a tax sale or you are trying to remove the tenant of a person who was foreclosed upon).

The notice to vacate may be delivered to the defendant by:

- 1) Handing it to them personally,
- 2) Mailing it to the premises, addressed to the defendant, or
- 3) Posting it on the **inside** of their front door.

If you cannot post it on the inside of the front door due to a dangerous animal or deadbolt-type device, or because you fear personal harm will come to you or any other person, you may post it on the outside of the front door, in an envelope that has the

tenant's name, address, and the words "IMPORTANT DOCUMENT" on it. If you post it on the outside of the front door, you must also mail it to the tenant the same day.

You cannot file the eviction case until the time period in the notice to vacate runs out and the tenant fails to vacate the property. The time period begins on the day the notice is delivered to the tenant.

You **must** give a notice to vacate, even if you already gave a termination notice setting a lease end date. In the example above, you gave a termination notice on January 27th telling the tenant the lease will end on February 28th. If the tenant is still there on March 1st, you would be required now to give them a notice to vacate and allow the time period in that notice to run out before filing an eviction case.

If the person is a squatter, you can give them an oral notice to vacate the property immediately. If they fail to leave, you can file an eviction at that time.

Where Do I File an Eviction Case?

Eviction cases **must** be filed in the in the justice court in the precinct and county where the property is located. If you file the case in any other precinct, the court must dismiss your case, and you do not get a refund of the filing fees.

The court may be able to help you determine the proper precinct to file in. Other resources you may use include precinct maps or the elections office. It is ultimately **your responsibility** to file your case in the proper location!

How Do I File an Eviction Case?

The first step in filing a case is to file a **petition**, which is a form that says who you are suing, why you are suing them, how much you are suing them for, and provides contact information. An eviction petition must contain information about what the reason is for eviction (nonpayment of rent, they stayed past the end of their lease, etc.), where the property is located, and how and when you delivered the notice to vacate. If the tenant owes you rent, you need to put that (and how much they owe you) in the petition. The court will likely have a petition form that you can use.

IMPORTANT - If the tenant owes you money **other than back rent** (like late fees, unpaid utility bills, or property damage), you cannot recover that in an eviction case! Do not put these amounts in your petition. Only back rent, your costs to file the case, and attorney's fees (if you have a written lease authorizing attorney's fees) may be awarded. If the tenant owes you other money, you can file a small claims case to try to recover that money. See the information packet on Filing a Small Claims Case for details.

The petition must name each and every tenant that you are trying to evict. A tenant is anyone listed on a written lease or any person who is responsible for paying rent to you.

An eviction petition must be **sworn**, meaning you sign it in front of a notary or the clerk or judge, and are swearing under oath that everything in it is true to the best of your knowledge.

When you file the petition, you will have to pay a **filing fee**. Also, the petition and **citation** (the notice from the court to the defendant that they have been sued) must be **served on** (delivered to) the defendant. You will need to pay an additional **service fee** for each tenant for the constable or sheriff serving

the paperwork. You are **not allowed** to deliver the paperwork yourself!

If you win your case, you will be awarded the fees that you had to pay, in addition to the other money you are entitled to recover.

What if I Can't Afford to File a Case?

Courts **must not** deny you access to justice simply because you cannot afford filing fees or service fees. If you are unable to pay those fees, fill out a **Statement of Inability to Afford Payment of Court Costs** form - the court **must** provide this form for you.

You must swear to the information that you provide on this form and can face legal consequences if you do not fill it out to the best of your ability. Fill out the form completely and truthfully!

Do I Need a Lawyer to File a Case?

While you are allowed to have a lawyer in an eviction case, the rules and procedures are designed to be simple and straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted or represented in court by a family member or other person, such as a property manager.

The court is required to make the Rules of Civil Procedure available to you at no cost. Rule 510 specifically applies to Eviction Cases and Rules 500-507 are the rules that generally apply to justice court.

The court is **not** allowed to give you advice on whether you should file a case, who you should file a case against, or what steps you should take to win your case or collect your judgment.

Questions the court **can** answer for you are questions like “What do I need to do to have a jury trial?” or “How many days do I have to file an appeal?”

Questions the court **cannot** answer for you are questions like “Is it a good idea to get a jury for this case?” or “Am I going to win?”

If, after reviewing these materials and the rules, you still are not sure what to do, it may be best to consult an attorney.

What Happens After I File an Eviction Case?

The court will generate the **citation**, which tells the defendant that they are being sued. The citation then must be served on the defendant. You can either pay the service fee for the constable or sheriff to serve the citation or submit a Statement of Inability showing you cannot afford the fee.

Once the defendant is served with the citation, the court will set your case for trial, which must be at least **6 days** after the defendant was served.

How Do I Send Paperwork to the Defendant?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the defendant as well as to the court. You can send those papers to the defendant by:

- 1) delivering it to them in person,
- 2) mailing it to them using certified or registered mail,

- 3) using a delivery service such as FedEx or UPS,
- 4) faxing it to them, or
- 5) sending it by email if the defendant provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the defendant.

What if We Reach an Agreement?

If the case goes to trial, usually there will be a “winner” and a “loser.” resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. If you reach a new agreement with the defendant allowing them to remain in the property, you will need to file a **nonsuit**, which is a request for your case to be dismissed. If the defendant then breaches that new agreement, you will have to start over from the beginning with a new notice to vacate and a new case.

Can I Have a Jury Trial?

Yes. Either side in an eviction case may request a jury trial. You must make a request in writing to the court at least 3 days before the date set for trial and pay a jury fee of \$22.

If no one requests a jury, the trial will be heard by only the judge, which is called a bench trial.

What if I Need More Time for Trial?

If you need more time for trial or have a conflict with the date that the trial is scheduled, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement. In eviction cases, the case can't be postponed for more than 7 days unless both sides agree in writing.

Do not just decide not to show up on your trial date! That likely will result in your case being dismissed.

What Happens at the Trial?

Be sure to bring all of your witnesses and documents with you on your trial date! If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Next, you will be able to give an opening statement if you wish, where you explain to the judge and jury what the case is about.

After that, you will call any witnesses you have and ask them questions so they can **testify**, or tell their story, to the judge or jury. The defendant will also be able to ask your witnesses questions. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Next, the defendant can present any evidence and call any witnesses that they may have. You get to ask questions of any witnesses they call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case, but must remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

What if the Defendant Doesn't Appear?

If the defendant doesn't appear at trial, the information in your sworn petition will be taken as the truth. If you provided enough information in your petition, you will be awarded a default judgment. If you did not, you may need to provide information to the court about things such as how and when you delivered the notice to vacate before the court can award you a judgment.

To get a default judgment, you will also need to provide the last known address of the defendant to the court in writing, as well as an affidavit stating whether or not the defendant is on active duty in the U.S. military (or that you do not know if they are), and how you know that they are or not, or why you do not know if they are.

You can verify military service at <https://scra.dmdc.osd.mil/>.

What Happens if I Lose My Eviction Case?

If the judgment is in favor of the defendant, they will be able to remain in possession of the property. If you wish, you can file an **appeal**, which is a request for the county court to hear the eviction case over again. You can file an appeal within 5 days of the judgment. The 5 days include weekends and holidays. If the

fifth day is a weekend, holiday, or day the court closes before 5 P.M., you have until the next business day to file your appeal.

To appeal, you will have to file either:

- 1) An **appeal bond** (promise from another person, called a **surety**, to pay the bond amount to the defendant if you don't pursue the appeal) in an amount set by the court;
- 2) A cash deposit in an amount set by the court, which may be awarded to the defendant if you don't pursue the appeal; or
- 3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must send notice of the appeal to the defendant within five days of filing it with the court.

Once your appeal is filed with the county court, you will be required to pay the filing fee or file a Statement of Inability to Afford Payment of Court Costs with the county court.

What Happens if I Win My Eviction Case?

If the judgment is in your favor, the defendant has a right to file an appeal as described above.

If you get a judgment in an eviction case based on the defendant not paying rent, and the defendant appeals with an appeal bond or a Statement of Inability, the defendant will be ordered to pay one month's rent to the court. You can then receive that money, which covers the defendant's rent for the first month of the appeal process. This ensures that someone evicted for not paying rent isn't able to stay in the property for free during an appeal. If they do not pay the rent to the court, or if they do not file an

appeal but do not leave the property, you can get a writ of possession, which is an order for the defendant to be removed from the property.

You will have to pay a fee for issuance of the writ, and a fee to the constable for executing the writ. If a writ is issued, a 24-hour notice will be posted on the door, and if the property isn't vacated in that 24-hour period, the constable will come out and supervise the removal of the defendant's property.

If you were awarded money in the judgment, such as for back rent or attorney's fees, see the "What Happens if I Win My Small Claims Case?" section of the information packet on Filing a Small Claims Case for information on enforcing money judgments.

Resources

Texas Lawyer Referral Service - (800) 252-9690

To check military status - <https://scra.dmdc.osd.mil/>

Texas Justice Court Training Center information for self-represented litigants - www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site: www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance: www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases - www.texaslawhelp.org