

EVICCTIONS

ATTENTION:

NEITHER THE COURT NOR ITS PERSONNEL CAN GIVE A LEGAL ADVICE

The information contained in this packet is not offered as legal advice. The information is not exhaustive. There may be other remedies and procedures not contained in this packet. You should seek professional, license, legal counsel for advice.

WHERE CAN I LOOK UP THE LAWS OF TEXAS?

The Texas Statutes are available on-line at: <http://www.statutes.legis.state.tx.us>. Most laws about eviction and landlord-tenant matters are contained in the Texas Property Code (Chapter 24, Forcible Entry and Detainer; Chapter 91, Provisions generally applicable to Landlords and Tenants; Chapter 94, Manufactured Home Tenancies) as well as the Texas Rules of Court.

WHY DO I HAVE TO FILE FOR EVICTION?—IT'S MY PROPERTY!

Private property rights are serious matters for both property owners and those who have rights of occupancy granted to them by property owners in exchange for rent, or by other agreement. The rights to private property, the right to privacy and the right to be secure in one's own home are issues for Constitutional dimension, and also involve issues of contract law. These cases are ordinarily quite simple because there is only one issue – who has the right to actual possession of the premises – but can become quite complicated by the terms of a contract (or the lack of a clear agreement).

WHO CAN FILE FOR EVICTION?

Suits for eviction are usually filed by a property owner, a property manager (on behalf of the property owner), or a licensed attorney representing the property owner.

DO I HAVE TO FILE AN EVICTION TO EVICT MY KIDS/ROOMMATE/BOYFRIEND/GIRLFRIEND?

The need for eviction presumes a landlord-tenant relationship (Contained in Texas Property Code, Chapter 92); or involves property owned by one person that is used as a dwelling by another person. There are many different types of arrangements that do not necessarily include payment of cash rentals, and they may be considered "tenancies at will or by sufferance" of the property owner.

It is not necessary to evict a houseguest or other temporary visitor, or someone who is trespassing on private property, such as someone who was invited in and has merely overstayed their welcome.

If you are unsure if you should use a suit for eviction to remove someone from property you own, a short consultation with a lawyer—often for less than \$100—would be money well spent. If you wrongfully or illegally evict someone, you could become liable for damage to their property, their attorney's fees, their living expenses, and possibly additional penalties imposed as sanctions for wrongful eviction.

DO I HAVE TO HIRE A SAWYER TO FILE AN EVICTION?

An individual may be self-represented; be represented by an authorize agent; or be represented by and attorney. A corporation or other entity may be represented by an employee, owner, officer or partner of the entity who is not an attorney; be represented by a property manager or other authorized agent; or be represented by an attorney. The Court, for good cause, may allow an individual representing him or herself to be assisted in Court by a family member or other individual who is NOT being compensated.

WHAT DO I HAVE TO DO BEFORE FILING THE EVICTION?

A demand for possession of the premises "NOTICE TO VACATE" must be provided according to the times prescribed by the Property Code or the lease. See "Notice to Vacate" information in Chapters 24, 91 and 94 of the Property Code.

IF THE PROPERTY IS A MOBILE HOME

Section 94.002 of the Property Code provides:

APPLICABILITY:

- (a) This chapter applies only to the relationship between a landlord who leases property in a manufactured home community and a tenant leasing property in the manufactured home community for the purpose of situating a manufactured home or a recreational vehicle on the property.
- (b) This chapter does not apply to the relationship between:
 - (1) A landlord who owns a manufactured home and a tenant who leases the manufactured home from the landlord;
 - (2) A landlord who leases property in a manufactured home community and a tenant leasing property in the manufactured home community for the placement of personal property to be used for human habitation, excluding a manufactured home or a recreational vehicle; or
 - (3) A landlord and an employee or an agent of the landlord.

In addition to the laws referred to in "Where can I look up the laws of Texas?" above, Chapter 94 of the Texas Property Code governs some evictions in "mobile home communities". A mobile home community is defined as: "Manufactured home community" means "a parcel of land on which four or more lots are offered for lease for installing and occupying manufactured homes." 94.001(4), Property Code. Chapter 94 should be read in its entirety.

WHERE DO I FILE FOR EVICTION?

The Justice Court in the precinct in which the real property is located has jurisdiction in eviction suits.

HOW MUCH WILL IT COST TO FILE?

The initial filing fee is \$41.00 plus the cost of service of the citation of the Defendant. Only the Constable is authorized to serve citations in these matters (private process services are prohibited), and the charge for service is \$125.00 per named Defendant. See Rule 510.3©, Plaintiff must name as defendants all tenants obligated under the lease residing at the premises who plaintiff seeks to evict.

WILL I HAVE A TRIAL?

A trial will be scheduled 10-21 days from the date the Petition was filed. At that time, a landlord, property manager, property owner or licensed counsel, must make a personal appearance in Court, along with the Defendant. If the Defendant fails to show for the court appearance, the Judge may hold a hearing and issue a Default Judgment. If the Plaintiff fails to show for the court appearance, the Judge may dismiss the case.

WHAT DOES THE JUDGE NEED TO KNOW?

The ONLY ISSUE in an eviction suit is the right to ACTUAL POSSESSION of the premises. A suit for back rent may be joined to a suit for possession. *If there is no judgment of possession, there can be no recovery for back rent* and the landlord must seek back rent and other amounts through a separate lawsuit or other avenues.

The landlord or property owner must prove:

- Their ownership of the property
- The basic terms of any written or oral agreement,
- How the agreement was breached,
- That PROPER notice to vacate was provided to the tenant before suit was filed;
- The amount of any delinquent rent owed
 - Past due amounts only, NO late fees or other charges included
 - Pro-rated through the date of the judgment (not to the end of the month)
- That the tenant is no in the armed forces on active duty (See SCRA below)

In contested matters, the Landlord/Plaintiff must prove their case with a "preponderance of the evidence" – "greater weight" of the evidence in order to prevail when the Tenant/Defendant disputes the landlord's right to regain possession of the premise occupied by the Tenant.

SERVICE MEMBER'S CIVIL RELIEF ACT (SCRA)

If the Defendant fails to appear in Court, the Plaintiff will NOT be able to receive a "Default Judgment" unless the Plaintiff first files with the Court a Service members' Civil Relief Act Affidavit stating, under

oath, that the Defendant is not in the military service on active duty status. A false statement in this affidavit is a violation of Federal Law.

THE TENANT IS DELINQUENT IN BACK RENT EXCEEDING \$10,000

Any justice suit is a civil suit for money damages, possession of real property, and enforcement of liens on personal property. The amount of controversy must total \$10,000 or less, excluding statutory interest and court costs, but including attorney's fees, if any. Justice Courts have exclusive jurisdiction in suits for eviction. If the amount of back rent exceeds \$10,000, a judgment for possession of the premises can be awarded, but the claim for back rent must be brought in a Court of competent jurisdiction.

WRIT OF POSSESSION

IF you are awarded a judgment for possession of the premises and *IF* the Defendant does not make a Motion to Set Aside a Default Judgment OR Appeal the case within 5 days from the date the judgment is signed, your remedy to gain possession of the premises is a WRIT O POSSESSION.

On the 6th day after judgment for possession is awarded you, as Plaintiff, may request a Writ of Possession. A Writ of Possession allows the Constable to oversee the move-out of the Defendant(s) from the leased premises, and sees that no breach of peace is violated. The fee for filing a Writ of Possession \$130.00. The Court's filing fee is \$5.00 and the Constable's service fee is \$125.00. You may call the Constable for your precinct, for the procedures on executing the Writ (254) 733-4226.

I LOST THE CASE—CAN I APPEAL?

Either party can appeal the case within five (5) days after the judgment is signed, by:

- Filing an appeal bond, approved by the Justice Court
- In an amount set by the Justice Court that includes
The damage judgment, plus
Loss of rentals during the pendency of the appeal, plus
Reasonable attorney's fees (if represented by a lawyer), plus
Court Costs

If the appealing party is unable to pay costs of appeal or file a bond, he must prove such inability within five days after the signing of the judgment by filing a sworn statement of inability to pay in accordance with Rule 502.3(b).

- The Court will provide notice to the opposing party within one working day by regular mail
- If the sworn statement of inability to pay is not contested by the opposing party within five days after notice and filing of the affidavit, the Pauper's Affidavit will be approved.
- If the opposing party contests the Affidavit, a hearing will be held within five days, and the appealing party will have to prove his ability to pay costs of appeal with additional evidence.
- Within five days of the filing of the Pauper's Affidavit, a Tenant/Appellant must pay one month's rent in to the registry of the Justice Court under the terms of the rental agreement.
- During the appeal process, as rent becomes due, the Tenant shall pay rent in to the County Court registry within five days of the due date under the terms of the rental agreement.
- If the Tenant fails to pay rent into the registry, the landlord may file a sworn notice of default in County Court.
- Landlord may withdraw any or all of the 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.
- For questions about additional filing fee(s) or court dates, you will need to contact the County Clerk's office at (254) 883-1406.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

<p>1. Contact information for person completing case information sheet:</p> <p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</p>	<p>2. Names of parties in case:</p> <p>Plaintiff(s): _____</p> <p>_____</p> <p>Defendant(s): _____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p>
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3. Indicate case type, or identify the most important issue in the case (select only 1):

<p><input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>
<p><input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>

PETITION: EVICTION CASE

CASE NO. (court use only) _____

With suit for Rent

COURT DATE: _____

In the Justice Court, Precinct _____, _____ County, Texas

PLAINTIFF _____
(Landlord/Property Name)

Rental Subsidy (if any) \$ _____
 Tenant's Portion \$ _____
 TOTAL MONTHLY RENT \$ _____

VS.
 DEFENDANT(S): _____

COMPLAINT: Plaintiff (Landlord) hereby complains of the defendant(s) named above for eviction of plaintiff's premises (including storerooms and parking areas) located in the above precinct. Address of the property is:

Street Address	Unit No. (if any)	City	State	Zip
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1. **SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

2. **UNPAID RENT AS GROUNDS FOR EVICTION:** Defendant(s) failed to pay rent for the following time period(s): _____
TOTAL DELINQUENT RENT AS OF 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.

3. **OTHER GROUNDS FOR EVICTION/LEASE VIOLATIONS:** Lease Violations (if other than non-paid rent – list lease violations)

4. **HOLDOVER AS GROUNDS FOR EVICTION:** Defendant(s) are unlawfully holding over since they failed to vacate at the end of the rental term or renewal of extension period, which was the _____ day of _____, 20____.

5. **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 _____ and delivered by this method:

6. **ATTORNEY'S FEES:** Plaintiff will be or will NOT be seeking applicable attorney's fees. Attorney's name, address, and phone & fax numbers are: _____

7. **BOND FOR POSSESSION:** If Plaintiff has filed a bond for possession, plaintiff requests (1) that the amount of plaintiff's bond and defendant's counter bond be set, (2) that plaintiff's bond be approved by the Court, and (3) that proper notices as required by the Texas Justice Court Rules are given to Defendant(s).

REQUEST FOR JUDGMENT: Plaintiff prays that defendant(s) be served with citation and that plaintiff have judgment against defendant(s) for: possession of premises, including removal of defendants and defendants' 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 rental contract, or if not so stated, at the statutory rate for judgments under Civil Statutes Article 5069-1.05.

I give my consent for the answer and any other motions or pleadings to be sent to my email address which is:

 Petitioner's Printed Name

 Signature of Plaintiff (Landlord/Property Owner) or Agent

DEFENDANT(S) INFORMATION (if known):

 Address of Plaintiff (Landlord/Property Owner) or Agent

DATE OF BIRTH: _____

 City State Zip

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

 Phone & Fax No. of Plaintiff (Landlord/Property Owner) or agent

DEFENDANT'S PHONE NUMBER: _____

Sworn to and subscribed before me this _____ day of _____, 20____.

DOCKET NO. _____

CASE NO. _____

AFFIDAVIT
50 USC Sec. 520

Plaintiff being duly sworn on oath deposes and says that defendant(s) is (are)
(CHECK ONE)

- not in the military
- not on active duty in the military and/or
- not in a foreign country on military service
- on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- has waived his/her rights under the Servicemembers Civil Act of 2003
- military status is unknown at this time

PLAINTIFF

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

Notary Public in and for
State of Texas

Notary's Name (printed)
My Commission Expires: _____