

INSTRUCTIONS FOR FILING AN EVICTION SUIT IN  
JUSTICE COURT

NOTICE TO VACATE:

By statute, under Texas Property Code Chapter 24 & Chapter 91 the landlord must give the tenant written notice of the eviction suit before filing a suit for an Eviction (Forcible Detainer). Where written notices are required in the following Causes of action, except for attorney's fees and costs of suit, the notice may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises by affixing the notice to the inside of the main entry door. Notice may also be by regular or certified mail, return receipt requested, to the premises in question.

If your cause of action (the reason you are filing) is:

DEFAULT OF AN ORAL OR WRITTEN LEASE, i.e., Non-payment of Rent :

3 day written notice is required - can be as short as 1 day if that shorter period is provided for in a written lease. **SOME NOTICE IS REQUIRED.** See Texas Property Code 24.005

PERIODIC TENANCIES (Month to Month, Week to Week, etc.) WHERE THE LANDLORD DESIRES POSSESSION. (This would also be in a case where the tenant was holding over after the expiration of the primary term of the lease):

A written notice is required-it can be shortened or lengthened by written lease or agreement. **PERIODIC TENANCIES MAY REQUIRE A NOTICE TO TERMINATE THE LEASE OR AGREEMENT.**

TENANT OR AT WILL TENANT AT SUFFERANCE:

3 days written notice is required - can be shortened or lengthened by written lease or agreement. **SOME NOTICE IS REQUIRED.**

TENANT AFTER TAX FORECLOSURE SALE OR TRUSTEE'S FORECLOSURE SALE:

If a tenant timely pays rent and is not otherwise in default, under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 90 days written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent if during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is rescheduled during the month, pays the rent for that month to the foreclosing lien holder or the purchaser that requests payment.

FORCIBLE ENTRY AND DETAINER SUITS (Where a person enters the property without legal authority or by force and refuses to surrender possession on demand):

Oral or written notice to vacate immediately or by a specified deadline must be given.

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OCCUPANT IS A TENANT OF A PERSON WHO ACQUIRED POSSESSION  
BY FORCIBLE ENTRY:

3 days written notice to vacate.

ATTORNEY'S FEES AND COSTS OF SUIT:

10 days notice by registered or certified mail, return receipt requested. The notice period can be shortened or waived by a written lease. If the lease provides for attorney's fees, the notice provision in the lease controls. If the lease is silent as to attorney's fees, a 10-day notice is required. If the landlord provides the tenant notice for attorney's fees or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover attorney's fees from the landlord. A prevailing party is entitled to recover all costs of court.

VENUE:

Cases of Forcible Detainer and Forcible Entry and Detainer must be filed in the precinct of the county where all or part of the leased premises are located.

COSTS:

The fees for filing on one defendant (i.e., John Doe and all occupants) are \$ 31.00 - Justice of the Peace filing fee and \$ 75.00 - Constable's service fee.) An additional \$ 75.00 service fee is needed for each additional defendant named in your suit.

CITATION:

A citation (notice to the defendant) is prepared by our office and sent with a copy of your petition to the Constable's office for service on the defendant. When the citation is prepared, it is given to the Constable to serve. There will be a hearing within 10 days from the date of service at the court where you filed the case. Rule 739, Texas Rules of Civil Procedure. BE SURE TO CALL THE CLERK TO ASCERTAIN THE HEARING DATE TWO - THREE (2-3) DAYS AFTER FILING THE CASE. It is the responsibility of the Plaintiff to stay in touch with the Court to determine your hearing date. FAILURE TO DO SO MAY RESULT IN YOUR CASE BEING DISMISSED FOR WANT OF PROSECUTION.

COURT:

At the time of the hearing to determine possession of the leased premises, you should bring any rent receipts, rent ledgers, lease, etc., you may have to support your case. Witnesses should also be brought to this hearing.

TRIAL BY JURY:

You may request a trial by jury upon payment of a \$5.00 jury fee no later than 5 days after the citation is served upon the defendant.

WHO MAY REPRESENT THE PLAINTIFF:

- 1) Non-payment of rent or the tenant is holding over after the rental period, the owner, agent (manager) or an attorney may represent the plaintiff.
- 2) ANY OTHER REASON, for example, Defaults on Executory Contracts, Mortgage Foreclosures, Forcible Entry and Detainer Suits (tenant enters by force or without legal authority), Defaults on Lease (dog on premises, too many people living

on the premises, public indecency convictions, etc.) The owner of the premises, an agent (manager) or an attorney for the owner may appear for the plaintiff and secure a default judgment.

#### JUDGMENT:

IF the landlord prevails, the court will enter judgment for the landlord for possession of the premises, and will award a writ of possession. The writ cannot be issued until the expiration of 5 days from the time of judgment is signed. Rule 748, Texas Rules of Civil Procedure.

#### WRIT OF POSSESSION:

On the 6th day after a 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) out of the leased premises, and see that no breach of peace is violated. The fee for filing a Writ of Possession is \$130.00 (\$5.00 - Justice of the Peace filing fee and \$125.00 - Constable's service fee). You may call the Constable's office for his procedures on executing a Writ of Possession.

#### APPEALS:

Either party may appeal a final judgment to the Aransas County Court at Law. An appeal is initiated by filing an Appeal Bond with the Justice of the Peace Court, within 5 days after the judgment is signed. The Justice of the Peace sets the amount of the bond, and may take into consideration loss of rentals during the time of the appeal. Rule 749, Texas Rules of Civil Procedure.

##### 1) Tenant Affidavit of Inability to Pay Costs of Appeal

If a tenant in a residential eviction suit is not able to pay the costs of appeal or to file an appeal bond, the tenant may appeal the judgment by filing with the Justice Court, a Tenant Affidavit of Inability to Pay Costs Form sworn before the Clerk of the Justice of the Peace Court or a notary public. The Tenant Affidavit of Inability to Pay Costs must be filed not later than the 5<sup>th</sup> day after the date the judgment is signed.

#### ADDITIONAL INFORMATION:

At the time you file your Forcible Detainer suit, you may also file for the back rent in the maximum amount of \$10,000.00. Rule 738, Texas Rules of Civil Procedure.

If you have any additional questions concerning the filing process or procedures please call the appropriate Justice Court listed in this web site or contact your attorney.