

FILING AN EVICTION LAWSUIT

VENUE:

Suit for possession of property, precinct in which all or part of the property is located. Suit for rent in which all or part of the property is located.

REQUISITES:

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or hold over beyond the end of the rental term or renewal period at least **THREE DAYS WRITTEN NOTICE TO VACATE THE PREMISES** before the landlord files a Forcible Detainer Suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If you have a written lease see attached statute 24.006.

To recover attorney's fees in a Forcible Entry and Detainer Suit, the written demand to vacate the premises must state that if the tenant does not vacate before the **11th DAY** after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. This notice must be sent certified mail, return receipt requested.

Notice to vacate may be by personal delivery to the tenant or any person residing at the premises who is sixteen (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 by mail may be registered or certified mail, return receipt requested, to the premises in question.

JURISDICTION:

In a forcible entry and detainer suit, the Court may render judgment for possession of the property in question. The landlord may receive judgment for back rent if the amount in controversy is not more than \$10,000.00.

FILING SUIT:

The responsibility for filling out your petition rests with you, the Plaintiff. Court Clerks will assist you if you have procedural questions. List each adult tenant on the lease or in a verbal agreement. State tenant's full address including apartment number. List any known work address or other address where tenant may be located for service.

Paragraph #3 of the attached petition describes three separate causes of action. The first blank under paragraph #3 being for NON-PAYMENT of RENT. The second blank being for BREACH of LEASE by the tenant.

If neither is chosen, then the last paragraph will cover the cause of action known as OWNER WANTS POSSESSION. Generally, this will require a THIRTY (30) DAY WRITTEN NOTICE TO VACATE.

When filing, the landlord should bring the following:

- A. A copy of the lease (if you have one);**
- B. A copy of the notice to vacate;**
- C. Eighty two (\$82.00) dollars for filing and service on one person.**

Generally, all parties named in the lease should be sued and served with citation in the eviction proceeding. Any judgment granted will run only against those who are specifically named and served.

CITATION:

The Constable will serve each tenant with citation based on the information you give to the Court. The tenant will be informed in the citation the DATE and TIME of the hearing and a DEFAULT JUDGMENT may be rendered against him if he does not appear at the time designated.

REPRESENTATION:

The owner's agent may file any type of eviction suit and may represent the owner at any default judgment hearing. If the case is contested, an agent may represent either party if the case involves non-payment of rent or holding over.

HEARING:

Always arrive at least ten (10) minutes prior to trial and check in the clerk and identify yourself by name along with the names of any witnesses that you want sworn to give testimony.

BE SURE TO HAVE A COPY OF YOUR LEASE, NOTICE TO VACATE, AND PAYMENT RECORDS or any records pertaining to the case.

IF THE DEFENDANT DOES NOT APPEAR AT HEARING:

- A. The plaintiff will present their case to the Judge;**
- B. If Judge rules in plaintiff's favor, a DEFAULT judgment will be granted.**

IF THE DEFENDANT APPEARS AT HEARING:

- A. Judge will hear both sides;**
- B. Judge will render a decision;**
- C. If Judge rules in Plaintiffs favor, defendant will have five (5) days to appeal judgment to County Court or vacate property.**

IF THE DEFENDANT DOES NOT MOVE WITHIN FIVE (5) DAYS AFTER JUDGMENT OR DOES NOT APPEAL TO COUNTY COURT:

- A. A Writ of Possession and Restitution may be filed.**
- B. Cost of Writ is two hundred ten (\$210.00).**
- C. Writ of Possession shall order the officer executing the writ to instruct the tenant to remove or allow the landlord, the landlord's agent, or persons acting under the officer's supervision to remove all personal property claimed to be owned by the landlord and place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, or street and NOT while it is raining, sleeting or snowing.**

After you are sworn, present your evidence in sequence from beginning to end;

- a. Date lease or rental agreement began and if agreement is still valid on a month to month basis.
- b. Terms of lease including rent per month and date rent is due.
- c. Amount of pure, lived up, unpaid, back rent owed up to the Court date and how it was computed. Late charges, penalties, etc. cannot be pleaded for in eviction suit.
- d. Prove that tenant is in violation of lease and why he is in violation.
- e. Date that proper written notice to vacate was given to the tenant.
- f. In summary, state specifically what you are pleading for:

Example: I am pleading for possession of property and back rent in the amount of \$ _____, plus court cost.

NOTE: NEVER ACCEPT FUTURE RENT AFTER THE SUIT IS FILED. IF YOU ACCEPT BACK RENT AFTER THE SUIT IS FILED, BE SURE TENANT IS TOLD THAT YOU ARE PROCEEDING WITH THE EVICTION SUIT.

Forcible may be dismissed **ONLY** in open court or by written request. We encourage you as agent or landlord to use the **MOTION TO DISMISS** included in this packet.

If you have additional **PROCEDURAL** questions, please contact this office at (409) 770-5820.

NO LEGAL QUESTIONS WILL BE ANSWERED BY THIS OFFICE.

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO:

**DARRELL A. APFFEL
JUSTICE OF THE PEACE
2516 TEXAS AVE.
TEXAS CITY**

EXCEPTIONS TO GENERAL VENUE IN JUSTICE COURT

General Rule (15.082)

County and precinct where one or more of the defendants reside.

Forcible (15.084)

Precinct where all or part of the premises is located. (No exceptions)

Suit for Rent (15.091)

Precinct in which all or part of the property is located.

Suit on a Tort (15.093)

Precinct in which the injury was inflicted.

Suit on a Contract (15.092)

- (a) Suit on a written contract that promises performance may be brought in the precinct where the work was to be performed;
- (b) Suit on an oral or written contract for labor actually performed may be brought in the precinct where the labor was actually performed;
- (c) Suit on a contract for goods, services or loans for personal, family or household use may be brought where the defendant resides.

Suit to Recover Personal Property

Precinct in which the property is located

(15.090)

Suit Against Corporation or Association

Precinct where

(15.094)

- (a) all or part of the cause of action arose,
- (b) the corporation has an agency or representative, or
- (c) the principal office is located.

Insurance Companies (15.096)

Precinct in which all or part of the insured property is located in the case of a property claim. Precinct where the injured person resided when the injury or death occurred.

EVICTON LAWSUIT - PLAINTIFF'S ORIGINAL PETITION

JUSTICE COURT PRECINCT #5

GALVESTON COUNTY, TEXAS

CAUSE #: _____

TO THE HONORABLE JUDGE OF THE COURT:

PLAINTIFF: _____ **PHONE #:** _____
ADDRESS: _____ **ZIP:** _____
AGENT OR ATTORNEY: _____

VS

DEFENDANT (S): _____
RESIDENCE ADDRESS: _____
WORK ADDRESS: _____
**ANY OTHER ADDRESS KNOWN TO YOU AT THE TIME OF FILING THIS
PETITION MUST BE LISTED:** _____

1. This law suit is to evict: _____, a tenant
who leases the property located at _____.
**THE PROPERTY IS WITHIN THE JUSTICE COURT PRECINCT #5, GALVESTON
COUNTY.**

The OWNIER/LANDLORD is: _____.

2. The tenant rented this property on or about _____, _____ **and still
holds the property. The lease is (check one) ORAL () WRJITEN ().**
3. The rent is \$ _____ **per month and is due on the** _____ **day of each month.**
**4. Plaintiff entered into an agreement with the Defendant for occupancy of lease premises.
Defendant has violated the terms of the agreement by:**

_____ **A. Failing to pay rent for the period beginning** _____ **day of** _____
20 _____, **and running through the present;**

_____ **B. Breeching the terms and conditions of the agreement by:** _____

_____ **C. In the event that neither of the above causes are checked, possession of the leased
premises is sought by the Plaintiff under the cause of action that the owner wants
possession. Plaintiff has given a timely notice to vacate as prerequisite to filing of
this lawsuit. Despite this written demand for return of the leased premises, thirty
(30) days, Defendant has failed and refused to comply with said demand and is
willfully withholding possession of the leased premises at the present time.**

5. Written notice to vacate and demand for possession was given on _____,
20 _____ **in the following manner: () certified mail () deliver in person.**

EVICTON LAWSUIT - PLAINTIFF'S ORIGINAL PETITION

THE COURT IS ASKED TO EVICT THE TENANT AND ORDER THE TENANT TO:

- () Pay rent owed in the amount of \$ _____, plus all rents accruing through the date of judgment.**
- () Pay Court Cost.**
- () Pay reasonable attorney's fees of \$ _____ .**

PLAINTIFF

AGENT/ATTORNEY

SAID PLAINTIFF (or his agent/attorney), BEING DULY SWORN TO ME, THE UNDERSIGNED AUTHORITY, UPON OATH SAYS THAT THE FACTS AS STATED IN THE ABOVE INSTRUMENT ARE, WITHIN THE KNOWLEDGE OF SAID AFFLANT, TRUE AND CORRECT.

SWORN AND SUB SCRIBED BEFORE ME, THIS _____ DAY OF _____

NOTARY PUBLIC/CLERK OF COURT

IN THE JUSTICE COURT
PRECINCT #5
GALVESTON COUNTY, TEXAS

PLAINTIFF CAUSE# _____

vs

DEFENDANT

PLAINTIFF'S MOTION TO DISMISS

COMES NOW THE PLAINTIFF in the above styled and numbered cause and files this MOTION TO DISMISS the above styled case WITHOUT PREJUDICE, in accordance with RULE 162 of the Texas Rules of Civil Procedure, and cites the following reason(s):

FILED THIS THE _____ DAY OF _____, 20_____

PLAINTIFF

ORDER OF DISMISSAL

Be it therefore ORDERED, ADJUDGED AND DECREED that the PLAINTIFF'S MOTION BE GRANTED. The above styled cause is DISMISSED WITHOUT PREJUDICE.

SIGNED AND ENTERED THIS _____ DAY OF _____ 20_____

PRESIDING JUDGE/CLERK OF COURT