

FILING AN EVICTION SUIT IN JUSTICE COURT

VENUE:

A Justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

NOTICE TO VACATE:

By Statute, the landlord must give the tenant WRITTEN notice of the eviction before filing suit. The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who are 16 years of age or older or by personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. The notice period is calculated from the day on which the notice is delivered.

If before the notice to vacate is given as required above the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate a demand that the tenant pay the delinquent rent OR vacate the premises by the date and time stated in the notice.

CAUSES OF ACTION: (the reason you are filing an eviction suit)

- 1.) Default of an oral or written lease - nonpayment of rent - 3 day written notice to vacate is required, unless a shorter or longer period is provided for in a written lease or agreement.
- 2.) Periodic tenancy - holding over beyond the end of the rental term or renewal period - 3 day written notice to vacate is required, unless a shorter or longer period is provided for in a written lease or agreement (Periodic tenancy may require certain termination requirements).
- 3.) Tenant at will or by sufferance - 3 day written notice to vacate is required, unless a shorter or longer period is provided for in a written lease or agreement.
Tenant at will - one who holds possession of premises by permission of the owner or landlord but without a fixed term.
Tenant by sufferance - one who, after rightfully being in possession of leased premises, continues to hold premises after their right has terminated.
- 4.) Forcible entry and detainer - where a person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.
Requires written notice to vacate immediately or by a specified deadline.

FILING THE SUIT:

The responsibility for completing your written sworn complaint rests with you. The court clerk will assist you if you have any procedural questions.

In eviction suits, the only issue to be decided is the right to actual possession of the premises and not the merits of title. A suit for rent may be joined with an action of eviction if the suit for rent is within the jurisdiction of the justice court.

COSTS:

The filing fee is \$41.00 In addition, there is a fee for servicing the citation to the defendant(s) which is \$75.00 per defendant. This must be made payable by cash, cashier's check or money order to: DARRELL G LONGINO JUSTICE OF THE PEACE.

CITATION:

A citation is sent to the sheriff or constable for service of the defendant(s). A hearing date will be given to you by the court clerk at the time you file the suit. It is your responsibility to call the court clerk to verify the defendant has been served prior to your court date.

REPRESENTATION:

In eviction suits for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

REPRESENTATION OF A CORPORATION OR OTHER ENTITY:

A corporation or other entity may

- 1.) Be represented by an employee, owner, officer, or partner of the entity who is not an attorney.
- 2.) Be represented by a property manager or other authorized agent in an eviction case; or
- 3.) Be represented by an attorney.

ATTORNEY'S FEES:

With some exceptions, to be eligible to recover attorney's fees in an eviction suit, a landlord must give tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises 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. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the suit is filed. If the landlord provides the tenant written 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. The prevailing party is entitled to recover all costs of court.

PLEASE NOTE

THE JUSTICE OF THE PEACE OR COURT CLERK CAN ONLY ASSIST YOU WITH PROCEDURAL INFORMATION. THEY CANNOT GIVE YOU LEGAL ADVICE AND THEY CANNOT HEAR YOUR EVIDENCE BEFORE YOUR COURT HEARING.

TRIAL BY JUDGE OR JURY:

At the time of your hearing to determine the possession of the leased property, you need to bring all information/evidence to support your suit. If you have any witnesses, you should bring them. The trial of your case may be heard by the Judge of the court sitting alone, or upon the request of either party, by a six person

jury. Any party shall have the right of trial by jury by making a request to the court on or before five days from the date the defendant is served with citation, and by paying a jury fee of \$22.00. In a trial jury, the jury decides the facts of the case and will deliver the verdict. When the Judge hears the case alone, the Judge will make determination in the case and announce the decision.

For good cause shown, supported by the affidavit of either party, the trial may be postponed not exceeding six days.

AFTER JUDGMENT:

If you are awarded a judgment for possession of the premises and there is no appeal bond or other action filed, your remedy to gain possession of the premises is a writ of possession. If you are awarded a judgment for back rent, you may obtain an abstract judgment on the eleventh day after judgment is rendered.

WRIT OF POSSESSION:

A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered.

A writ of possession allows the sheriff or constable to oversee the move out of the defendant(s) from the leased premises and see that there is no breach of the peace.

The fee for a writ of possession is \$5.00 and the service fee for the sheriff or constable to execute this writ is \$75.00

APPEAL:

Either party may appeal from a final judgment to the county court by filing with the justice within five days after the judgment is signed, a bond to be approved by the justice and payable to the adverse party, conditioned that they will prosecute the appeal with effect, and pay all costs and damages which may be adjudged against them. The justice will set the amount of the bond. Within five days following the filing of such bond, the party appealing shall give notice of the filing of such bond to the adverse party.

The information contained in this handout is intended to provide all parties with a brief overview of the general procedures in an eviction suit. For more detailed information or legal advice on how to proceed in your suit, please contact a licensed attorney.

PLAINTIFF MUST HAVE ON COURT DAY

1. PROOF OF OWNERSHIP AND RIGHT OF POSSESSION TO PROPERTY IN QUESTION.
2. PROOF OF WRITTEN NOTICE TO VACATE AND HOW DELIVERED TO TENANT.
3. COPY OF WRITTEN CONTRACT, IF ONE EXISTS.
4. RECEIPT BOOK SHOWING RECORD OF RENTAL PAYMENTS MADE BY TENANT.

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.

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

PETITION: EVICTION CASE

CASE NO. (court use only) _____

☐ With suit for Rent

COURT DATE: _____

In the Justice Court, Precinct 1, Polk County, Texas

PLAINTIFF _____

(Landlord/Property Name)

Rental Subsidy (if any) \$ _____

VS. _____

Tenant's Portion \$ _____

DEFENDANT(S): _____

TOTAL MONTHLY RENT \$ _____

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: _____

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

City _____ State _____ Zip _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

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

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

No. _____

In the Justice Court of
Polk County, Texas
Precinct One

V. _____

§
§
§

STATE OF TEXAS
COUNTY OF POLK

MILITARY AFFIDAVIT

Before me, the undersigned notary or clerk of the justice court, on this day personally appeared the undersigned affiant whose identity is known to me, After I administered an oath to such affiant, he or she upon oath and under penalty of perjury stated the following:

My name is _____ and I am either the plaintiff in this case or the agent for the plaintiff, and have authorization to submit the affidavit. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

- ☐ 1. The Defendant is not currently in military service.
- ☐ 2. The Defendant is on active duty in the U.S. Military.
- ☐ 3. The Defendant has been deployed by the U.S. military to a foreign country.
- ☐ 4. Plaintiff is unable to determine whether or not the defendant is in military service.
- ☐ 5. The Defendant has signed, while on active duty, a separate written waiver of a written lease containing a waiver of his or her rights under the U.S. Service Members Civil Relief Act of 2003.

Signature of Affiant

SWORN TO and SUBSCRIBED before me on the _____ day of _____, 20____.

(SEAL)

Court Clerk or Notary Public for the State of Texas

JUSTICE COURT, Pct One
101 West Mill Street, Ste. 152
Livingston, Texas 77351
TEL: 936.327.6841
FAX: 936.327.6884