

INSTRUCTIONS FOR FILING AN EVICTION

Doing an eviction in Texas can be broken down into 4 steps:

Giving the Tenant a notice to vacate

Filing an original petition to start a lawsuit against the tenant

Going to court for your hearing

Filing a Writ of Possession to order the Constable to remove the tenant

Notice to vacate

Delivering the notice of vacate

The notice must be delivered in accordance with Texas law to be valid. There are a couple different ways you can deliver it:

Personal Delivery

You may hand deliver the notice to the tenant or to any person residing at the premises who is 16 years of age or older. You may also personally deliver the notice to the property by affixing it to the inside of the main entry door (in case nobody is home). If the property has no mailbox, and there is no way for the landlord to enter the property (deadbolt, dangerous animal, etc.) then the landlord may affix the notice to the outside of the main entry door.

Mail

The law also allows you to mail the notice to the tenant by regular mail, registered mail, or certified mail with a return receipt. However, some judges will not accept regular mail as a form of service, so it is highly recommended you send the notice by certified mail.

Time periods

If you have a lease with the tenant, check your lease to see how many days notice you must give a tenant in the notice to vacate. The standard is **3 days**, and if you do not have a lease with the tenant then it is **3 days**. The clock starts ticking for them to vacate when the notice is actually delivered (not when it is mailed.) you must wait out your notice period (**usually the 3 days**) before you file your lawsuit.

Make copies!

Make 2 copies of the notice to vacate before you deliver it. You will need one for the court if you have to file a lawsuit and you need one for your records. If you personally deliver the notice, it is a good idea to write on your copies what time you delivered it, and to whom you delivered it to.

After your notice period is up and the tenant is still occupying your property, you need to go to court for help. The way you do this is by filing a lawsuit against the tenant called a "Forcible entry and Detainer" lawsuit.

You start the lawsuit by filing 2 forms

Original Petition

The original petition is what starts the lawsuit. Depending on the County, it is also called a complaint. Original complaint, complaint for Eviction, Forcible Entry and Detainer, and other similar variations. Most Justice of the Peace court have an original petition that you can use available in their office.

Military Affidavit

This is more formerly called an "affidavit of Military Status of Defendant." The purpose of this form is to protect the rights of members of our military. You simply check whether or not your tenant is in the military. This form is filed along with the original petition.

Where to file

You must file your lawsuit in a Justice of the Peace Court in the precinct that your property is located in. Most counties in Texas are broken down geographically into precincts. **It is your job to find out what precinct your property is located in.**

Filing Fees

The fees for filing on each Defendant is **\$141.00** (additional person on lease **\$100.00** service fee) the cost for a jury trial is **\$22.00**

Get your court date

When you file the original petition and Military affidavit, the court clerk will send in the mail the time and date for your eviction hearing. You will show up to court on that date to prove your case to the Judge.

Meanwhile, what is the court doing?

The court clerk is going to prepare a "citation "that tells your tenant they are being sued for possession of the property and when the court date is. The County Constable or Sheriff will then serve the citation and the original petition to your tenant. Your tenant must have at least 6 days between being served the citation and the court date.

Going to Court

So now the tenant has gotten your notice to vacate, has been served a citation and original petition by the constable and still has not vacated it is now time to go to court.

Here is what to bring to court

- A copy of your notice to vacate
- Your lease with the tenant
- Any witnesses you need to prove something in court
- Any other evidence (warning letters, rent receipts, ledgers, etc.)

If your tenant does not show up the Judge will award you a "Default Judgment." This means you win automatically because the tenant did not show up to defend themselves. If your tenant shows up and defends the case, then the Judge will render a decision either in favor of you or the tenant after you have both presented your sides. If the Judge rules in your favor, then you will get a Judgment that says you are entitled to possession.

Now that you have won the initial suit, your tenant has **5 days** to leave or to file an appeal in the County Court. For your tenant to file an appeal, they will have to post **2X** the judgment amount or a surety bond,

or submit a "Pauper's affidavit" alleging they cannot afford to post a bond. If your tenant files this appeal, you will have to argue the case again in the County Court level.

Writ of Possession

So you have won your lawsuits, the **5 day** appeal period has passed, and your tenant is still there. On the **6th day** from when you won your lawsuit, you may file a "Writ of Possession." This form is available from the court where your lawsuit was, and will cost **\$200.00** to file.

Locking out a tenant

Texas law provides a way to lock out a tenant that is delinquent in paying rent. However, this is really one of a scare tactic because the landlord has to let the tenant back into the property immediately upon the tenant's request even if the tenant does not tender the delinquent rent. There are strict rules on locking out a tenant so make sure you do this with good counsel. Here are the steps:

3 days before the locks are changed post a notice on the inside of the main entry door that say (A) the earliest date that the landlord proposes to change the door locks; (B) the amount of rent the tenant must pay to prevent changing of the door locks; and (C) the name and street address of the individual to whom, or the location of the on-site management office at which, the delinquent rent may be paid during the landlord's normal business hours.

Change the lock and at the same time place a notice on the front door that says (1) on-site location where the tenant may go **24 hours** a day to obtain the new key or a telephone that is answered **24 hours** a day that the tenant may call to have a key **delivered within two hours after calling the number;** (2) the fact that the landlord must provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent; and (3) the amount of rent and other charges for which the tenant is delinquent.

A landlord may not change the locks on the door of a tenant's dwelling on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or on which any on-site management office is not open, for the tenant to tender the delinquent rent.

A landlord who intentionally prevents a tenant's dwelling must provide the tenant with a key to the changed lock on the dwelling without regard to whether the tenant pays the delinquent rent.

If a landlord arrives at the dwelling in a timely manner in response to tenant's telephone call to the number contained in the posted note and the tenant is not present to receive the key to the changed lock, the landlord shall leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the tenant may go to obtain the key during the landlord's normal office hours.

If a landlord violates these provisions, the tenant may: (1) either recover possession of the premises or terminate the lease; and (2) recover from the landlord a civil penalty of one month's rent plus \$500.00 actual damages, court costs, and reasonable attorney's fees in an action to recover property damages, actual expenses, a civil penalties, less any delinquent rent or other sums for which the tenant is liable to the landlord.

For more information on the Texas eviction process, see Chapters 24 and 92 of the Texas Property Code by going online and search **Texas Property Code**

THESE FORMS ARE PROVIDE TO YOU AS A COURTESY BY OUR OFFICE
THIS COURT CAN NOT ANSWER ANY LEGAL QUESTIONS
OFFICE PERSONNEL IS NOT ALLOW IN ASSISTING YOU TO FILL OUT
PAPERWORK

PRECINCT 1
BURLESON COUNTY, TEXAS

JUDGE JAMES N. BALDWIN
P.O. BOX 136 / 6399 FM 111
DEANVILLE TEXAS
979-535-4761 FAX 979-535-7344

PETITION: EVICTION CASE

CASE NO. _____ With suit for Rent
In the Justice Court, Precinct 1 Burleson County, Texas

PLAINTIFF _____
VS.
DEFENDANT(S): _____

Rental Subsidy (if any) \$ _____
Tenant's Portion \$ _____
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. _____ City State and Zip _____

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 ISS _____ .
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 GROUNDS FOR EVICTION / LEASE VIOLATIONS: Lease violations (if other than non-paid rent-list lease violation) _____

3. **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____

4. **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____ and delivered by this method: _____

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

6. **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 requires 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 defendant's possessions from the premises, unpaid rent if set forth above, attorney's fee, court cost and interest on the above sums at the rate stated in the rental contract, or if not s stated, at the statutory rate for judgments under Civil Statutes Article 5069-1.05,

Petitioner's Printed Name

Signature of Plaintiff or agent

DEFENDANT(S) INFORMATION (if know)

Address of Plaintiff or agent

Date of Birth _____

City, State, and Zip

Last 3 number of Driver License _____

Last 3 numbers of Social Security _____

Defendant's Phone Number _____

Phone or fax of Plaintiff

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

CLERK OF THE COURT

AFFIDAVIT (SECTION 201, (b))

Plaintiff being duly sworn on oath deposes and says that Defendant(s)

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

PLAINTIFF

Subscribed and sworn to before me on this the _____ day of _____, 20____

Notary Public and/or Court Clerk

PENTALTY FOR MAKING OR USING FALSE AFFIDAVIT- A PERSON WHO MAKES OR USES AN AFFIDAVIT KNOWING IT TO BE FALSE, SHALL BE FINED AS PROVEDDED IN TITLE 18 UNITED STATES CODE, OR IMPRISONED FOR NOT MORE THAN ONE YEAR , OR BOTH

JUSTICE COURT CIVIL CASE INFORMATION SHEET

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>2. Names of parties in case:</p> |
| <p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</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> |

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> |