

EVICTIION CASES

INSTRUCTIONS AND INFORMATION REGARDING FILING SUIT (PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION)

EVICTIION: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. It may or may not include a suit for rent.

WHERE TO FILE: An eviction suit must be filed in the county and precinct in which the rental property is located; otherwise, the Judge must dismiss the case.

NOTICE TO VACATE: The Notice to Vacate must be in writing and must be considered a demand for possession of the property. The notice must be signed by the landlord or his agent and must include the date and time of delivery. The notice may be hand delivered to the tenant at the address of the property demanded, or it may be mailed to the tenant's address.

TIME REQUIREMENTS: Unless there is a written agreement between the parties regulating the notice requirements, the landlord must give the tenant at least three (3) days' Notice to Vacate. Section 24.005 of the Texas Property Code sets out the notice requirements for eviction suits.

FILING AN EVICTIION SUIT: If the tenant does not vacate the property by the date given in the notice, you may then file an eviction suit. You will need to bring the following information to the Judge's office:

1. Date the Notice to Vacate was given and how it was given
2. One hundred sixteen dollars (\$116.00) fee for filing and service on one person. Additional service is \$70.00 per person.

OTHER DOCUMENTS: At the time of filing, a Case Information Sheet and a Military Affidavit for each Defendant must be filed.

WHO TO SUE: If the eviction is based on a written residential lease, the Plaintiff **must** name as Defendants **all** tenants obligated under the lease residing at the premises whom Plaintiff seeks to evict.

WHO MAY FILE: The owner, his authorized agent, or his attorney may file the eviction suit.

JOINING A SUIT FOR RENT: A suit for rent may be joined with the eviction suit if the amount due is within the jurisdiction of the Justice Court (\$10,000.00). A statement that attorney fees are being sought, if applicable, must be included. Any damages or other charges may not be included in this action; however, a Small Claims case may be filed in Justice Court to cover the other charges.

PROCEDURES AFTER FILING: At the time the suit is filed a hearing date will be set ten (10) to twenty-one (21) days after filing date. A citation will be issued to each tenant who is named in the suit informing him of the date and time of hearing. The citation (or citations) will go to the Fannin County Constable's office to be served.

THE HEARING: Either party may represent himself at the hearing or be represented by his authorized agent or attorney. Proper representation is essential. You will need to bring with you all the evidence pertaining to the case. The burden of proof lies with you as Plaintiff. You must show the Court good and sufficient evidence proving your right to regain possession of the property. **You must still prove your case even if the Defendant fails to appear for hearing.** Upon timely request and payment of a jury fee the matter will be heard by a jury.

JUDGMENT: At the hearing a judgment will be rendered for either the Plaintiff or for the Defendant. A judgment for the Plaintiff may be for all or part of the initial claim. If you are awarded a judgment for possession and/or for back rent owed, there is a five-day appeal period in which the Plaintiff or the Defendant may appeal the decision of the Court. If the Defendant has not appealed the case or moved from the premises at the expiration of the appeal period, you may then file a Writ of Possession. **No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition and served with citation.**

WRIT OF POSSESSION: You must pay **\$150.00** filing/service fee to the Judge's office. A Writ of Possession will be issued to the Constable's office. This instrument directs the Constable to take possession of the property and return it to you. Your telephone number will be given to them, and you will be contacted. If the Defendant(s) is still in the property, the Constable will meet you there at a designated time. It will be your responsibility to remove the Defendant's possessions and place them outside. Any questions concerning this writ should be directed to the Constable's office.

Laws governing eviction procedures can be found in **Section 24 of the TEXAS PROPERTY CODE** and **Part V of the TEXAS RULES OF CIVIL PROCEDURE.**

If you have any further questions, please feel free to contact our office. **REMEMBER - THE JUDGE CANNOT DISCUSS THIS CASE WITH YOU PRIOR TO THE HEARING;** however, the Clerk will be happy to assist you with clarifying procedures. **SHE CANNOT GIVE YOU LEGAL ADVICE.**

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:
<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 (<i>select only 1</i>):		
<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>	

CASE NO. _____ (court use only)

_____ With suit for Rent

PLAINTIFF _____
(Landlord/Property Name)

VS.

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

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 property is:

Street Address Unit No. (if any) City State 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 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 _____, 20____ and delivered by this means: _____.

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 notice 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' 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 506901.05.

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

Plaintiff's Printed Name

Signature of Plaintiff (Landlord/Property Owner) or Agent

Defendant's Information (if known):
DEFENDANT(S) INFORMATION (IF KNOWN):
DATE OF BIRTH: _____

Address of Plaintiff (Landlord/Property Owner) or Agent

Last 3 digits of drivers license: _____
Last 3 numbers of Social Security: _____
Defendant's Phone Number: _____

Phone & Fax Number of Plaintiff (Landlord/Property Owner) Agent

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

CLERK OF THE JUSTICE COURT OR NOTARY _____

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

CAUSE NUMBER: _____

_____, PLAINTIFF
VS.
_____, DEFENDANT

IN THE JUSTICE
COURT PRECINCT 1
FANNIN COUNTY, TEXAS

My name is (please print) _____.

I am (check one) ___ the plaintiff or ___ an authorized agent of the plaintiff in the case described above. I am capable of making this affidavit. I have been duly sworn on oath and the facts in this affidavit are within my personal knowledge and are true and correct.

NOTE: You can search military status by using the following website: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>
[check or fill in as applicable]

___ 1. No defendant in this case is on active duty in the U.S. military (Army, Navy, Air Force, Marines or Coast Guard).
The facts on which I base my conclusion are as follows: _____.

___ 2. Defendant [insert name(s)] _____ is on active duty in the U.S. military.

___ 3. Defendant [insert name(s)] _____ has been deployed by the U.S. military to a foreign country.

___ 4. Plaintiff and the undersigned (if the undersigned is acting agent of plaintiff) are not able to determine whether any defendant is in the U.S. military – except for any defendant named in 2 above.

___ 5. Plaintiff and the undersigned (if the undersigned is acting agent of plaintiff) are not able to determine whether any defendant is in the U.S. military has been deployed to a foreign country – except for any defendant named In 3 above.

___ 6. Defendant [insert name(s)] _____ has signed, while on active duty, a separate written waiver if his or her rights under the U.S.Servicemembers Civil Relief Act of 2003.

Affiant (Plaintiff)

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

CLERK OF THE COURT
Justice Court, Precinct 1
Fannin County, Texas

NOTARY PUBLIC
IN AND FOR THE
STATE OF TEXAS