

EVICTION CASES

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

EVICTION: 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 EVICTION 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 twenty nine dollars (\$129.00) fee for filing and service on one person. Additional service is \$75.00 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 (\$20,000.00). 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.**

CAUSE NO. _____

_____ § IN THE JUSTICE COURT
 PLAINTIFF §
 §
 v. § PRECINCT _____
 §
 _____ §
 DEFENDANT § _____ COUNTY, TEXAS

PETITION: EVICTION CASE

COMPLAINT: Plaintiff hereby sues the following Defendant(s) *(include name, DOB, and DL number, if known)* _____

_____ for eviction from Plaintiff's premises (including storerooms and parking areas) located in the above precinct. The address of the property is:

Street Address	Unit No. (if any)	City	State	Zip
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GROUND FOR EVICTION: Plaintiff alleges the following grounds for eviction:

- Unpaid rent.** Defendant(s) failed to pay rent for the following time period(s): _____ . The amount of rent claimed as of the 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.
- Other lease violations.** Defendant(s) breached the terms of the lease (other than by failing to pay rent) as follows: _____
- Holdover.** Defendant(s) are unlawfully holding over by failing to vacate at the end of the rental term, which was on _____, 20____.

NOTICE TO VACATE: Plaintiff has given Defendant(s) a written notice to vacate *(according to Property Code § 24.005)* and demand for possession. Such notice was delivered on the _____, 20____ by this method: _____

SUIT FOR RENT: Plaintiff does or does not include a suit for unpaid rent.

ATTORNEY'S FEES: Plaintiff will be or will not be seeking applicable attorney's fees. The attorney's name, address, phone and fax numbers are:

IMMEDIATE POSSESSION BOND: If Plaintiff has filed a bond for immediate possession, Plaintiff requests that: (1) the court set the amount of the bond; (2) the court approve the bond; and (3) proper notices, as required by the Texas Rules of Civil Procedure, are given to Defendant(s).

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, or by delivery to a person over the age of 16 years at Defendant's usual place of residence. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other home or work addresses where Defendant(s) may be served are:

Plaintiff knows of no other home or work addresses of Defendant(s) in this county.

RELIEF: Plaintiff requests that Defendant(s) is served with the citation and that Plaintiff is awarded a judgment against Defendant(s) for: possession of the premises, including removal of Defendant(s) and Defendant's 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 lease, or if not so stated, at the statutory rate for judgments.

I hereby request a jury trial. The fee is \$22 and must be paid at least 3 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: _____.

Plaintiff's Printed Name

Signature of Plaintiff or Agent or Attorney

Defendant's Information (if known): Name: _____

Date of birth: _____

Last three digits of Driver License: _____ Last three digits of Soc. Sec. No.: _____

SERVICE BY EMAIL: *(Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive, open, and view large attachments, and it is important that you check this email account every day. Even if you receive some documents by email, you will still receive some documents about the case by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.)*

Yes, I would like to receive documents related to this case by email at this email address:

_____.

No, I do not want to receive any documents by email.

REMOTE PARTICIPATION:

Hearing by Phone Call: *(When a hearing happens by phone call, you will be able to talk to and hear the judge, Plaintiff, or any witnesses, but you will not be able to see them. Copies of any evidence to be used must be exchanged by the parties and sent to the judge before the hearing.)*

- Yes, I am able to have any hearings in this case, except a jury trial, by phone call with the judge and Plaintiff and understand that I must have a phone to use on the date and time of the hearing.
- No, I am not able to have hearings by phone call.

Hearing by Video Conference: *(When a hearing happens by video conference, you can hear, see, and talk to the judge, Plaintiff, and any witnesses. You will be able to see any evidence presented during the hearing. You will need to have a computer, a smartphone, or tablet that has a camera feature. You will also need access to the internet to be able to have a video conference.)*

- Yes, I am able to have any hearings in this case, except a jury trial, by video conference. I understand that I am responsible for having the equipment and internet access needed to participate in a video conference on the date and time of the hearing.
- No, I am not able to have hearings by video conference.

NOTE: Your responses in this section do not guarantee that hearings will be held remotely, but rather they help the court know how you are able to participate.

Respectfully submitted,

Signature of Plaintiff

Signature of Attorney, if any

Printed Name: _____

Printed Name: _____

Address: _____

Address: _____

Email: _____

Email: _____

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

State Bar No.: _____

SWORN TO AND SUBSCRIBED before me on _____, 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 2
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 of 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 2
Fannin County, Texas

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IN AND FOR THE
STATE OF TEXAS



May 21, 2015

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Servicemembers' Civil Relief Act (SCRA) Certificates

To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act of 2003 (formerly known as Soldiers' and Sailors' Civil Relief Act of 1940) you can use the public website: <https://www.dmdc.osd.mil/epo/scra/scraHome.do>. This website will provide you with the current active military status of an individual. There is no charge for this certificate.

You can also receive certificates from the Individual Services by sending your correspondence to the appropriate military office listed below. If other than current status needs to be verified, then you need to send your request direct to the Services listed below. The charge for each SCRA certificate (as of February 21, 2002) is \$5.20. Checks should be made payable to "Treasurer of the United States".

ARMY:

Amy World Wide Locator Service
Enlisted Records and Evaluation Center
8899 East 58th Street
Indianapolis, IN 46249-5031
NOTE: All requests must be in writing.

NAVY:

Bureau of Naval Personnel
PERS-312E
8720 Integrity Drive
Millington, TN 38055-3120
(801)874-3388

AIR FORCE:

Air Force Personnel Center
AFPC/DPDXIDL
660 C Street West, Suite 50
Randolph Air Force Base, TX 78160-4762
Locator Service:
<http://www.afpc.randolph.af.mil/library/airforcelocator.asp>
(210) 885-2880
DSN: 885-2880.

MARINE CORPS:

Commandant of The Marine Corps
Headquarters, U.S. Marine Corps (MMSB10)
2008 Elliott Road, Suite 201
Quantico, VA 22134-5030
Locator Service: (703)784-3941-3944

QUESTIONS

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