



## JUDGE CHRIS INGRAM

Justice of the Peace, Pct. 1

## JUDGE CHARLES BREWER

Justice of the Peace, Pct. 2

## JUDGE ROD OUSLEY

Justice of the Peace, Pct. 3

## JUDGE MARK AMES

Justice of the Peace, Pct. 4

## JUDGE MELISSA MINTON

Justice of the Peace, Pct. 5

## JUDGE CATHIE BROWN

Justice of the Peace, Pct. 6

### Eviction Cases

"The information contained herein is not exhaustive and is not intended to be legal advice."

### Justice Court Civil Cases

#### **"I Just Want to Talk to the Judge....."**

*The Code of Judicial Conduct prohibits the Judge from engaging in communication concerning the merits of a pending case or one that may be filed in the future.*

*Most people understand this when they consider how they would feel about the judge discussing their case with the other party without their knowledge or consent.*

#### **"But Your Clerk Said... .."**

*The Code also prohibits a Judge or Court Staff from giving legal advice.*

#### **"Do I need a Lawyer?"**

*Legal representation is not required. Legal representation may be desired to safeguard your rights and interests.*

# Eviction Cases

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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any.

## Notice to Vacate

**PLEASE READ TEXAS PROPERTY CODE SEC. 24.005 to determine which Notice to Vacate is REQUIRED before filing your case.**

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give at least three days' written notice to vacate the premises before the landlord files an eviction, unless the parties have contracted for a shorter or longer period of time in a written lease or agreement.

**Texas Property Code Sec. 24.0005 (f-3)** The notice to vacate must be delivered by using at least one of the following methods:

- (1) mail, including first class mail, registered mail, certified mail, or a delivery service;
- (2) delivery to the inside of the premises, in a conspicuous place;
- (3) hand delivery to any tenant of the premises who is 16 years of age or older; or
- (4) if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.

**(f-4) Subsection (f-3)** does not apply if the tenant actually receives the notice.

## Filing Petition with the Court

Eviction suits must be filed in the precinct and county where the property is located. Rule 510.3(b). Filing fee for an eviction case is \$54. On filing the petition, the plaintiff must pay the appropriate service fee of \$100 for each defendant.

If the eviction is based on a written residential lease, the plaintiff must name as defendant(s) all tenants obligated under the lease residing at the premises whom the plaintiff seeks to evict. Rule 510.3 (c)

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. Rule 510.3 (c)

Upon filing, the court will immediately issue a citation and give to the Constable for service. Trial must be held 10-21 days from the date the petition is filed. Rule 510.4(a)(10)

Trial can't be held less than 4 days after service. Rule 510.7 (a)

## At Trial

The plaintiff is responsible for proving his or her right to possession of the premises and, if a claim for unpaid rent has been made, the amount of unpaid rent. Proof may include a copy of the lease, a copy of the notice to vacate, and payment records.

The amount of pure rent due through the date of trial will need to be calculated (*no utilities or late charges are allowed in claims for unpaid rent.*)

Rule 510.3 (d)

## Judgment

This court must adjudicate the right to actual possession and not title. Rule 510.3 (e)

## Writ of Possession

A writ of possession may issue on the 6<sup>th</sup> day after judgment provided an appeal is not properly filed. A writ may not issue more than 60 days after a judgment is signed unless good cause is shown. A writ may not be executed after the 90<sup>th</sup> day after a judgment for possession is signed. Rule 510.8 (d) (1)(2)(3). The filing fee to file a writ of possession is a \$200 service fee

## Appeal

A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay. This must be done within 5 days after judgment is signed. The Judge will set the amount of bond or cash deposit. The bond/cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal. Rule 510.9 (a) (b). The fee for filing an appeal is \$54.

An appellant who can't furnish a bond or pay a cash deposit in the amount required may instead file a **Sworn Statement of Inability to Pay (SSIP)**. Rule 510.9(c) (1)

The statement may be contested within 5 days after the opposing party receives notice the statement was filed. Rule 510.9 (2)

The Court must provide to the defendant a written notice at the time the SSIP is filed, stating that rent is required to be posted into the justice court registry, the method by which deposit is required, the day the deposit is required which must be within 5 days of the date the SSIP is filed and a statement that failure to pay the required amount may result in the court issuing a writ of possession without a hearing. Rule 510.9 (5) (A) (i) (ii) (iii)(iv)

## Demand for Jury



Demand for Jury can be made by either party, must be made at least 3 days before trial and requires a jury fee of \$22 or by filing a sworn statement of inability to pay the jury fee. Rule 510.7(b)

No motion for new trial may be filed in an eviction case. Rule 510.8 (e)

No counterclaims are permitted in an eviction case. Rule 510.3(e)

# PETITION FOR EVICTION CASE

COURT USE ONLY

CAUSE NO. \_\_\_\_\_ (court use only)

PLAINTIFF(S) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

☐ Yes, I would like to receive documents related to this case by email.

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

Agent or Attorney Filing Case for Plaintiff \_\_\_\_\_

VS.

DEFENDANT(S) \_\_\_\_\_

Home Address \_\_\_\_\_

\_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

Date of Birth \_\_\_\_\_ Last 3 #'s of DL & SSN (if known) \_\_\_\_\_

COURT DATE

TIME: \_\_\_\_\_

I acknowledge the court date and understand if the Plaintiff fails to appear the case may be Dismissed for Want of Prosecution.

X \_\_\_\_\_ (initial)

IN THE JUSTICE COURT

PRECINCT \_\_\_\_

HARDIN COUNTY, TEXAS

**COMPLAINT:** Plaintiff hereby sues the above Defendant(s) for eviction from Plaintiff's premises (including storerooms and parking areas) located within the boundaries of the above PRECINCT, in HARDIN COUNTY. The address of the property is:

☐ SAME AS ABOVE

☐ As follows: \_\_\_\_\_  
Street Address Unit No. (if any) City State Zip

**GROUND(S) 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: \$ \_\_\_\_\_. Defendant ☐ has or ☐ has not been late/delinquent in paying rent before the month in which notice was given. 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 or periodic tenancy, which ended on \_\_\_\_\_, 20\_\_\_\_.

☐ **Squatter.** Defendant(s) never had a right to possess the property and are unlawfully occupying the premises after a demand to surrender possession given on \_\_\_\_\_, 20\_\_\_\_. Plaintiff ☐ has or ☐ has not attached a Motion for Summary Disposition under Rule 510.10.

☐ **Expiration of Tenancy at Will or by Sufferance.** Defendant(s) had no lease agreement and have failed to vacate the premises after being given a termination notice, if applicable, and a demand to surrender possession given on \_\_\_\_\_, 20\_\_\_\_.

**PRE-SUIT NOTICE:** Plaintiff has given Defendant(s) a ☐ notice to vacate ☐ notice to pay or vacate (according to Property Code § 24.005(f-3) or (f-4)) and demand for possession. Such notice was delivered on \_\_\_\_\_, 20\_\_\_\_ by this method: \_\_\_\_\_

**RENT AMOUNT:** The rent is \$ \_\_\_\_\_ per month and is due the \_\_\_\_\_ day of each month.

Portion of Rent subsidized by government is ☐ \$0.00 ☐ \$ \_\_\_\_\_.

**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: \_\_\_\_\_

**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. Home or work addresses other than the premises where Defendant(s) may be served are: \_\_\_\_\_

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

**MANUFACTURED HOME COMMUNITY:** ☐ The agreement was for rental of land on which a manufactured home has been placed by the Defendant(s), and Plaintiff has complied with all notice and time requirements in Section 94.203 Texas Property Code. The names and addresses of all owners and lienholders on the manufactured home that were disclosed to Plaintiff by Defendant(s) are as follows:

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**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 if applicable, 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 DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.**

\_\_\_\_\_  
Signature of Plaintiff

\_\_\_\_\_  
Signature of Agent or Attorney (if any)

Said Plaintiff (or agent or attorney), being duly sworn by me, the undersigned authority, upon oath says that the facts as stated in the above instrument are, within the knowledge of said Affiant, true and correct.

**SWORN TO AND SUBSCRIBED** before me on \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE JUSTICE COURT OR NOTARY

CAUSE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

Vs.

\_\_\_\_\_  
DEFENDANT

§  
§  
§  
§  
§  
§  
§  
§  
§

JUSTICE OF THE PEACE

PRECINCT \_\_\_\_\_,

HARDIN COUNTY, TEXAS

### PLAINTIFF'S CERTIFICATE OF LAST KNOWN ADDRESS

Pursuant to TRCP 503.1 Plaintiff is certifying to the court the last known address of the Defendant is as follows:

\_\_\_\_\_  
Street

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
PLAINTIFF

Cause No. \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
Plaintiff(s)	§	
	§	
Vs.	§	PRECINCT _____
	§	
_____		HARDIN COUNTY, TEXAS
Defendant(s)		

**AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)**

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 (fine and/or up to one year in jail), stated the following:

My name is \_\_\_\_\_ I am *[check one]* ☐ the plaintiff or ☐ an authorized agent of the plaintiff in the case described at the top right of this page. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

*[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 \_\_\_\_\_ has been deployed by the U.S. military to a foreign country.
4. Plaintiff and the undersigned (if the undersigned is acting as an agent of plaintiff) are not able to determine whether any defendant is with the U.S. military—except for any defendant named in paragraph 2 above.
5. Plaintiff and the undersigned (if the undersigned is acting as an agent of plaintiff) are not able to determine whether any defendant who is in the U.S. military has been deployed to a foreign country—except for any defendant named in paragraph 3 above.
6. Defendant \_\_\_\_\_ has signed, while on active duty, a separate, limited written waiver or a written lease containing a limited 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 by on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
☐ CLERK OF THE JUSTICE COURT  
☐ NOTARY PUBLIC

## **NOTICE TO VACATE - PLEASE READ**

**Sec. 24.005. NOTICE REQUIRED BEFORE FILING CERTAIN EVICTION SUITS.** (a) If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds 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. In a forcible detainer suit against a tenant whose right of possession is terminated based solely on nonpayment of rent and who was not late or delinquent in paying rent to the landlord before the month in which the notice is given, written notice under this section shall be given in the form of a notice to pay rent or vacate. In a forcible detainer suit against a tenant whose right of possession is terminated based on nonpayment of rent and who was late or delinquent in paying rent to the landlord before the month in which the notice is given, written notice under this section may be given in the form of either a notice to pay rent or vacate or a notice to vacate. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

(b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days' written notice to vacate 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 a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

(c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days' written notice to vacate before the landlord files a forcible detainer suit.

(c-1) If a federal law or rule requires a landlord to give notice to a tenant before the landlord requires the tenant to vacate the premises:

(1) a landlord that satisfies the notice requirements of this section is not required to delay the filing of an eviction suit based on the federal requirement;

(2) the federal requirement is not a basis for a court to delay or abate the conduct of the eviction suit; and

(3) a writ of possession may not be served on the tenant until the period between the delivery of the notice under this section and the service of the writ equals or exceeds the period prescribed by the federal requirement.

(d) In all situations in which the entry by the occupant was a forcible entry under Section 24.001, the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files a forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline.

(e) If the lease or applicable state or federal law or rule requires a landlord to give a tenant an opportunity to respond to a notice of proposed eviction before filing an eviction suit:

(1) the notice period in a notice to pay rent or vacate or notice to vacate under Subsection (a) may, at the landlord's discretion, run concurrently with the period provided for the tenant to respond to the notice of proposed eviction; and

(2) the notice to pay rent or vacate or notice to vacate may include the required opportunity to respond to the notice of proposed eviction.

(f-3) A notice required by this section must be delivered using at least one of the following methods:

(1) mail, including first class mail, registered mail, certified mail, or a delivery service;

(2) delivery to the inside of the premises, in a conspicuous place;

(3) hand delivery to any tenant of the premises who is 16 years of age or older; or

(4) if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.

(f-4) Subsection (f-3) does not apply if the tenant actually receives the notice.