

# Justice of the Peace Precinct #1

## FORCIBLE DETAINER (EVICTIONS)

### THIS OFFICE CANNOT GIVE LEGAL ADVICE.

This information is to assist you in procedure only. It is not intended for legal advice or to take the place of an attorney.

**Plaintiff=person filing suit**

**Defendant=person being sued**

An eviction suit is special. This suit can only be filed in Justice Court. The plaintiff, by attorney or authorized agent, may appear in person to file a claim, or may file a sworn statement of the claim by mail.

#### ***VENUE:***

The civil information sheet and original petition for an eviction suit **must** be filed in the county and precinct in which the property is located.

#### ***JURISDICTION:***

Jurisdiction (an issue over which Court has authority) in an eviction suit is for possession of the property in question, delinquent rent, and attorney fees not to exceed \$20,000.00. Court costs may be added to that amount.

#### ***BEFORE FILING SUIT:***

Before filing an eviction suit the landlord must first provide the tenant(s) with a **written** "notice to vacate" demanding the tenant(s) leave the property immediately or by a specified deadline. The notice shall be delivered in person or by registered or certified mail, return receipt requested. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older, or by affixing the notice to the inside of the main entry door. The landlord will need to keep a copy of the "notice to vacate" to file with the original petition for eviction.

**Time Requirements:** Unless there is a written agreement between the parties regulating the notice requirements, the landlord must give the tenant at least 3 days notice to vacate before filing suit in most cases, such as lease violation, non payment of rent or tenant at will or sufferance.

#### ***REPRESENTATION:***

A person owning a property as an individual may represent himself in court. A person managing a property on behalf of an owner may represent the owner's interests in court **only in evictions** involving non-payment of rent or holding over after the expiration of the lease term. In suits for eviction where the breach of the lease is something other than non-payment of rent or holding over after the expiration of the lease, the owner must represent him/herself, or hire an attorney to represent the owner.

#### ***FILING SUIT:***

After the time requirements for "notice to vacate" has expired the proper individual can file the suit in the county and precinct where the rental property is located. The costs for an eviction is \$46.00 for filing the suit and \$100.00 service fee per defendant.

#### ***CITATION:***

Once the civil information sheet and original petition has been filed stating the facts and circumstances of the suit, a citation will be served to the defendant, either by the Constable or Sheriff, notifying the defendant a suit has been filed. The citation will reveal the court date and time the defendant will need to appear. Attached to the citation will be a copy of the plaintiff's original petition.

#### ***HEARING:***

At the court hearing, both sides will have the right to present their side of the case, including witnesses, receipts, cancelled checks, photographs, and all other evidence. It is the plaintiff's and or defendant's responsibility to furnish copies of such evidence to the court. The burden of proof lies with the landlord as the plaintiff. He must show the court good and sufficient evidence proving his right to regain possession of the property, even if the defendant does not show for the hearing.

#### ***JUDGMENT:***

A Judgment will be rendered for either the plaintiff or the defendant at the hearing. A judgment for the plaintiff may be for all or part of the initial claim. If the plaintiff is awarded a judgment for possession of the premises and any back rent owed, there is a 5-day appeal period in which the defendant may appeal the decision of the court. The judgment becomes final if the defendant has not appealed the case at the end of the appeal period. Upon final judgment, the landlord's remedy to gain possession of the premises is a Writ of Possession.

#### ***DEFAULT JUDGMENT:***

If the defendant in the suit fails to appear in court, the plaintiff still needs to prove the case to the Judge. The plaintiff will state the facts of the case and submit copies of any written evidence to support the case. After all evidence is accepted the Judge can render a default judgment in favor of the plaintiff. The clerk of the court will mail copies of the default judgment to both parties.

#### ***REMEDIES AFTER JUDGMENT:***

**Possession of Property**-On the 6th day after a judgment for possession is awarded, the landlord may request a Writ of Possession. A Writ of Possession allows the Constable or Sheriff to oversee the move-out of the defendant from the premises and see that no breach of peace occurs. The service fee for the Writ of Possession is \$100.00 payable at the time of request.

#### ***REMEDIES TO COLLECT JUDGMENT:***

**The Court does not collect the Judgment.**

##### **Abstract of Judgment**

An Abstract of Judgment places a lien on any real property the losing party may own. The winning party may obtain an "Abstract of Judgment" five (5) days after the date of judgment. The fee for obtaining an Abstract of Judgment is \$5.00 and paid to the court. The Abstract of Judgment is issued by the clerk of the court. The winning party files the Abstract of Judgment in the County Clerk's Office in the county or counties in which the losing party resides or does business. If the losing party attempts to sell or buy any real property within ten (10) years from the date of judgment, the lien should prevent the losing party from buying or selling any real property until the judgment is satisfied.

##### **Writ of Execution**

A Writ of Execution authorizes the Sheriff or Constable to seize non-exempt property from the losing party. If the property is seized, an auction is held and the proceeds from the sale are credited toward the plaintiff's judgment. A Writ of Execution may be obtained 30 days from the date of judgment and is issued by the clerk of the court. The service fee to execute the Writ of Execution is \$100.00 payable at the time of issuance.

#### ***RELEASE OF JUDGMENT***

Should the losing party pay the amount owed it is the responsibility of the winning party to provide the losing party a Release of Judgment. The Release of Judgment should be filed with the County Clerk where the Abstract of Judgment was filed. Filing the Release of Judgment is the responsibility of the losing party.

#### ***STATUTES***

The statutes governing Justice Court Eviction suits include, but are not limited to, the Texas Rules of Civil Procedure, Rule 510.

**Please be advised that the law prohibits a judge from communicating with you prior to trial about your pending case or a case that you may file.**