

Justice of the Peace #1 - Eviction Suit

The Texas Judicial System has three levels of trial court – district, county, and justice or municipal and two appellate courts. The justice of the peace falls into the justice court. This court has the most uniform court in the state.

Each county is required to have a justice of the peace, and generally there is one for each precinct. The precincts are based on population. These precincts can be changed through redistricting by the commissioners court.

The justice court has jurisdiction over civil, small claims, and eviction suits up to \$10,000 exclusive of interest. Because the justice court is not a court of record, any appeal to county court is trial de novo, or a new trial.

INSTRUCTIONS FOR FILING AN EVICTION SUIT

NOTICE TO VACATE:

By statute, the landlord must give the tenant written notice of the eviction suit **before** filing an Eviction. The notice may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises by affixing the notice to the inside of the main entry door. Notice by mail may be by regular, registered, or certified mail, return receipt requested, to the premises. If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prohibits entry to dwelling, the notice to vacate may be securely affixed on the outside of the main entry door. If before the notice to vacate is given, the landlord has given written notice or reminder that rent is due and unpaid, the notice may include a demand that the tenant pay the delinquent rent or vacate by the date and time stated in the notice.

If your reason for filing is:

- 1) **Defaults of an Oral or written lease**, i.e., Non-payment of rent, Dog on Premises, etc.: 3 day written notice is required – can be as short as 1 day if that shorter period is provided for in a written lease. Some notice is required
- 2) **Periodic tenancies** (month to month, week to week, etc.) Where landlord desires possession. (This would also be in a case where the tenant was holding over after the expiration of the primary term of the lease): 3 days written notice is required – can be shortened or lengthened by written lease or agreement. Some notice is required. Periodic tenancies may require a notice to terminate the lease or agreement.
- 3) **Tenant at will or tenant at sufferance**: 3 days written notice is required – can be shortened or lengthened by written lease or agreement. Some notice is required.

4) **Forcible entry and detainer;** (where a person enters the property without legal authority or by force and refuses to surrender possession on demand): Oral or written notice to vacate immediately or by a specified deadline.

5) **Occupant is a tenant of a person who acquired possession by forcible entry:** 3 days written notice to vacate.

6) **Attorney's fees and costs of suit:** 10 days' notice by registered or certified mail, return receipt requested. The notice period can be shortened or waived by written lease. If the lease provides for attorney's fees, the notice provision in the lease controls. If the lease is silent as to attorney's fees, a 10 day notice is required. If the landlord provides the tenant notice for attorney's fees, or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover attorney's fees from the landlord. A prevailing party is entitled to recover all costs of court.

VENUE:

Eviction suits must be filed in the precinct of the county where all or part of the leased premises are located

COSTS: Effective September 1, 2017 **\$131.00**

An additional \$85.00 Sheriff's Service Fee is needed for each additional defendant named in your suit.

CTATION:

A citation (notice to the defendant) is prepared by our office and sent with a copy of your petition to the Constable's Office for service on the defendant. The Constable will be diligent to make personal contact with the defendant and should personal contact not be able to be made, the Constable will request from the Court alternative service.

HEARINGS:

There will be a hearing scheduled no sooner than the 10th day no later than the 21st day from the filing of suit by the Court where you filed the case. Be sure to call the Court Clerk to ascertain the hearing date within 3 days of filing your case. It is the responsibility of the plaintiff to stay in touch with the Court to determine your hearing date. Failure to do so may result in your case being dismissed for want of prosecution.

COURT APPEARANCE:

At the time of the hearing, bring any receipts, rent ledgers, lease(s) or any witnesses you may have to support your case.

TRIAL BY JURY:

You may request a trial by jury upon payment of a \$22.00 jury fee no later than 5 days after the citation is served upon the defendant.

WHO MAY REPRESENT THE PLAINTIFF?

1) For non-payment of rent or the tenant is holding over after the rental period, the owner, agent (manager) or an attorney may represent the plaintiff.

2) Any other reason, (i.e., Defaults on Executory Contracts, Mortgage Foreclosures, Forcible Entry and Detainer actions: where tenant enters by force or without legal authority, defaults on lease provisions) only the owner of the premises or an attorney for the owner may represent the Plaintiff in a trial by the Judge or Jury.

APPEAL:

Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered by filing with the Justice Court the documents required by Statute(s) within five (5) days after the judgment is signed.

WRIT OF POSSESSION:

On the 6th day after a judgment for possession is awarded, you, as Plaintiff, may request a Writ of Possession. The Writ of Possession may not be issued no later than 60 days after a judgment. A Writ of Possession allows the Constable to oversee the move-out of the defendant(s) out of the leased premises, and see that no breach of peace is violated. Fee: \$80.00 (\$5.00 Clerks Fee and \$75.00 Service Fee maximum 1 hour.)

ADDITIONAL INFORMATION:

At the time you file your Eviction suit, you may also file for back rent in the maximum amount of \$10,000.00.

THIS COURT DOES NOT COLLECT THE MONEY JUDGMENT FOR YOU, NOR CAN WE FORCE AN INDIGENT TO PAY THE JUDGMENT. If you receive a judgment against the defendant, this court can issue various instruments to assist you in collection of the judgment. You may request an Abstract of Judgment, and Writ of Execution.

THESE INSTRUCTIONS ARE A BROAD INTERPRETATION OF THE LAWS THAT APPLY TO THE COURT. ANY LEGAL QUESTIONS OR LEGAL INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH OF THE MATTER OR THE ADVICE OF YOUR ATTORNEY.

For additional help, contact: **Civil Clerk Phone: 830-372-4223 Fax: 830-372-3830**