

GENERAL PROCEDURES FOR FILING AN EVICTION

Eviction cases must be filed in the Justice Court in the precinct and county in which the real property is located. By statute, the landlord must give the tenant written notice of the eviction suit **before** filing a suit for Eviction. The number of days given in the notice to vacate vary depending on the written lease or agreement. Texas Property Code, Sec. 24.005 sets out the notice requirements for eviction suits.

You are required to bring a copy of the Notice to Vacate and should also bring a copy of the lease and any documentation that will assist you in proving your case. A suit for rent may be filed with the eviction suit if the amount due is within the jurisdiction of the Justice Court. Charges for items other than rent, such as late fees or damage to the property, cannot be joined with the suit for eviction.

The fee for filing a Complaint for Eviction is dependant on the number of Defendants named in the Complaint. A Defendant is defined as anyone who has signed the lease, contract, or agreement as an occupant. The filing and service fee for **one** Defendant is \$116.00. Please see list of JP Filing fees for all other fees.

At the time of filing, the Court Clerk will issue a receipt. The receipt will include the case number and the court date. Please refer to your case number when communicating with the court regarding your case. The Court will then issue a citation to the Defendant(s) commanding him/her to appear before the Justice of the Peace on the assigned court date. A copy of the petition will be attached to the citation and both the citation and the attached petition will be served upon the Defendant by the Constable's office.

At that court proceeding, some rules of courtroom decorum apply. The parties should not appear in shorts. Comments should be directed to the Judge, not the opposing party. Do not argue with the Judge or the opposing party. Do not present the case leaning over the Judge's bench. Be organized and prepare your testimony and arguments before trial. At the conclusion of the evidence, the Judge will either rule from the bench and give both parties a copy of the judgment, or take the case under advisement, in which case, the parties will be notified by a clerk when the judgment is signed.

There is no motion for new trial in an Eviction proceeding. Either party (tenant or landlord) has five (5) days to appeal the court's decision. If judgment is rendered against the tenant, the tenant has five days from the date of the judgment to move from the premises or appeal the case to county court. If the tenant does not move out or appeal the case at the end of the five day period, the landlord may request a Writ of Possession on the sixth day. The Writ of Possession costs \$165.00 and allows the Constable to oversee the move-out of the Defendant(s) out of the leased premises, and see that no breach of the peace is violated. Questions involving the execution of the writ should be directed to the Constable of Precinct 5 at 361-767-5204.

Often the Plaintiff will find it difficult to collect their judgment on past rent due. Please see our Post Judgment remedies to find out how to collect the judgment.

As a matter of law, the Clerks of the Court and the Justice of the Peace are prohibited from giving legal advice or discussing any material fact of the lawsuit with a litigant. If you have any further questions, please seek the advice of an attorney.

NOTICE TO VACATE

Dear _____, (tenant)

Today is the _____ day of _____, 20_____.

You have:

not paid all of the rent due

or you have breached the terms of our agreement by _____.

I demand possession of my property. This is a notice to vacate the premises by _____

or I will file an Eviction suit with a Justice of the Peace Court.

Very Respectfully,

TEXAS PROPERTY CODE
SECTION 24.005 (f), (g)

(f) The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be personal delivery to the tenant or any person residing at the premises and affixing the notice to the inside of the main entry door. Notice by mail may be regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice to vacate on the inside of the main entry door, the landlord may securely affix the notice on the outside of the main entry door.

(g) The notice period is calculated from the day on which the notice is delivered.