

EVICCTIONS

ATTENTION:

09/17

NEITHER THE COURT NOR ITS PERSONNEL CAN GIVE LEGAL ADVICE.

The information contained in this packet is not offered as legal advice. The information is not exhaustive. There may be other remedies and procedures not contained in this packet. You should seek professional, licensed, legal counsel for advice.

WHERE CAN I LOOK UP THE LAWS OF TEXAS?

The Texas Statutes are available on-line at: <http://www.statutes.legis.state.tx.us>. Most laws about eviction and landlord-tenant matters are contained in the Texas Property Code (Chapter 24, Forcible Entry and Detainer; Chapter 91, Provisions generally applicable to Landlords and Tenants; Chapter 94, Manufactured Home Tenancies) as well as the Texas Rules of Court. You may also visit the Hays County Law Library located at 712 South Stagecoach Trail, Suite 2026, San Marcos, Texas 78666 during the hours of Monday, Tuesday, Wednesday and Friday 8:00 AM to 12:00 PM or Thursday 1:00 PM to 4:00 PM.

WHY DO I HAVE TO FILE FOR EVICTION? – IT’S MY PROPERTY!

Private property rights are serious matters for both property owners and those who have rights of occupancy granted to them by property owners in exchange for rent, or by other agreement. The rights to private property, the right to privacy and the right to be secure in one’s own home are issues for Constitutional dimension, and also involve issues of contract law. These cases are ordinarily quite simple because there is only one issue - who has the right to actual possession of the premises - but can become quite complicated by the terms of a contract (or the lack of a clear agreement).

WHO CAN FILE FOR EVICTION?

Suits for eviction are usually filed by a property owner, a property manager (on behalf of the property owner), or a licensed attorney representing the property owner.

If you are unsure if you should use a suit for eviction to remove someone from property you own, a short consultation with a lawyer—often for less than \$100—would be money well-spent. If you wrongfully or illegally evict someone, you could become liable for damage to their property, their attorney’s fees, their living expenses, and possibly additional penalties imposed as sanctions for wrongful eviction.

DO I HAVE TO HIRE A LAWYER TO FILE AN EVICTION?

An individual may be self-represented; be represented by an authorize agent; or be represented by and attorney. A corporation or other entity may be represented by an employee, owner, officer or partner of the entity who is not an attorney; be represented by a property manager or other authorized agent; or be represented by an attorney. The Court, for good cause, may allow an individual representing him or herself to be assisted in Court by a family member or other individual who is NOT being compensated.

WHAT DO I HAVE TO DO BEFORE FILING THE EVICTION?

A demand for possession of the premises “NOTICE TO VACATE” must be provided according to the times prescribed by the Property Code or the lease. See “Notice to Vacate” information in Chapters 24, 91 and 94 of the Property Code.

IF THE PROPERTY IS A MOBILE HOME

Section 94.002 of the Property Code provides:

APPLICABILITY:

- (a) This chapter applies only to the relationship between a landlord who leases property in a manufactured home community and a tenant leasing property in the manufactured home community for the purpose of situating a manufactured home or a recreational vehicle on the property.
- (b) This chapter does not apply to the relationship between:
 - (1) a landlord who owns a manufactured home and a tenant who leases the manufactured home from the landlord;

- (2) a landlord who leases property in a manufactured home community and a tenant leasing property in the manufactured home community for the placement of personal property to be used for human habitation, excluding a manufactured home or a recreational vehicle; or
- (3) a landlord and an employee or an agent of the landlord.

In addition to the laws referred to in “Where can I look up the laws of Texas?” above, Chapter 94 of the Texas Property Code governs some evictions in “mobile home communities”. A mobile home community is defined as: “Manufactured home community” means “a parcel of land on which four or more lots are offered for lease for installing and occupying manufactured homes.” 94.001(4), Property Code. Chapter 94 should be read in its entirety.

WHERE DO I FILE FOR EVICTION?

The Justice Court in the precinct in which the real property is located has jurisdiction in eviction suits.

HOW MUCH WILL IT COST TO FILE?

The initial filing fee is \$61.00 plus the cost of service of the citation of the Defendant. Only the Constable is authorized to serve citations in these matters (private process services are prohibited), and the charge for service is \$75.00 per named Defendant. See Rule 510.3 (c), Plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict.

WILL I HAVE A TRIAL?

A trial will be scheduled 10-21 days from the date the Petition was filed. At that time, a landlord, property manager, property owner or licensed counsel, must make a personal appearance in Court, along with the Defendant. If the Defendant fails to show for the court appearance, the Judge may hold a hearing and issue a Default Judgment. If the Plaintiff fails to show for the court appearance, the Judge may dismiss the case.

WHAT DOES THE JUDGE NEED TO KNOW?

The ONLY ISSUE in an eviction suit is the right to ACTUAL POSSESSION of the premises. A suit for back rent may be joined to a suit for possession. *If there is no judgment of possession, there can be no recovery for back rent* and the landlord must seek back rent and other amounts through a separate lawsuit or other avenues.

The landlord or property owner must prove:

- Their ownership of the property
- The basic terms of any written or oral agreement,
- How the agreement was breached,
- That PROPER notice to vacate was provided to the tenant before suit was filed;
- The amount of any delinquent rent owed
 - Past due amounts only, NO late fees or other charges included
 - Pro-rated through the date of the judgment (not to the end of the month)
- That the tenant is not in the armed forces on active duty (See SCRA below)

In contested matters, the landlord/Plaintiff must prove their case with a “preponderance of the evidence” - the “greater weight” of the evidence in order to prevail when the Tenant/Defendant disputes the landlord’s right to regain possession of the premise occupied by the Tenant.

SERVICE MEMBER’S CIVIL RELIEF ACT (SCRA)

If the Defendant fails to appear in Court, the Plaintiff will NOT be able to receive a “Default Judgment” unless the Plaintiff first files with the Court a Service members’ Civil Relief Act Affidavit stating, under oath, that the Defendant is not in the military service on active duty status. A false statement in this affidavit is a violation of Federal Law.

THE TENANT IS DELINQUENT IN BACK RENT EXCEEDING \$10,000

Any justice suit is a civil suit for money damages, possession of real property, and enforcement of liens on personal property. The amount of controversy must total \$10,000 or less, excluding statutory interest and court costs, but including attorney’s fees, if any. Justice Courts have exclusive jurisdiction in suits for eviction. If the amount of back rent exceeds \$10,000, a judgment for possession of the premises can be awarded, but the claim for back rent must be brought in a Court of competent jurisdiction.

WRIT OF POSSESSION

IF you are awarded a judgment for possession of the premises and *IF* the Defendant does not make a Motion to Set Aside a Default Judgment OR Appeal the case within 5 days from the date the judgment is signed, your remedy to gain possession of the premises is a WRIT OF POSSESSION.

On the 6th day after judgment for possession is awarded you, as Plaintiff, may request a Writ of Possession. A Writ of Possession allows the Constable to oversee the move-out of the Defendant(s) from the leased premises, and sees that no breach of peace is violated. The fee for filing a Writ of Possession is \$255.00. The Court's filing fee is \$5.00 and the Constable's service fee is \$250.00. You may call the appropriate Constable for your precinct, for the procedures on executing the Writ.

Precinct 1	512-393-7730	Precinct 4	512-858-7605
Precinct 2	512-878-6690	Precinct 5	512-295-3030
Precinct 3	512-847-5532		

I LOST THE CASE—CAN I APPEAL?

Either party can appeal the case within five (5) days after the judgment is signed, by:

- Filing an appeal bond, approved by the Justice Court
- In an amount set by the Justice Court that includes
 - The damage judgment, plus
 - Loss of rentals during the pendency of the appeal, plus
 - Reasonable attorney's fees (if represented by a lawyer), plus
 - Court Costs

If the appealing party is unable to pay costs of appeal or file a bond, he must prove such inability within five days after the signing of the judgment by filing a sworn statement of inability to pay in accordance with Rule 502.3(b).

- The Court Clerk will provide notice to the opposing party within one working day by regular mail
- If the sworn statement of inability to pay is not contested by the opposing party within five days after notice and filing of the affidavit, the Pauper's Affidavit will be approved.
- If the opposing party contests the Affidavit, a hearing will be held within five days, and the appealing party will have to prove his ability to pay costs of appeal with additional evidence.
- Within five days of the filing of the Pauper's Affidavit, a Tenant/Appellant must pay one month's rent into the registry of the Justice Court under the terms of the rental agreement.
- During the appeal process, as rent becomes due, the Tenant shall pay rent into the County Court registry within five days of the due date under the terms of the rental agreement.
- If the Tenant fails to pay rent into the registry, the landlord may file a sworn notice of default in County Court.
- Landlord may withdraw any or all of the rent in the County Court registry upon sworn motion and hearing, prior to final determination of the case, showing just cause; dismissal of the appeal; or order of the court after final hearing.
- For questions about additional filing fee(s) or court dates, you will need to contact the County Clerk's office at (512) 393-7338.