

Eviction in Texas:

. Doing an Eviction in Texas can be broken down into 4 steps:

- . Giving the Tenant a Notice to Vacate
- . Filing an Original Petition to start a lawsuit against the Tenant
- . Going to Court for your Hearing
- . Filing a Writ of Possession to order the Constable to remove the Tenant

Texas also provides a way to lock out a Tenant who is delinquent in paying rent. This process is discussed at the end of this section.

Notice to Vacate

Delivering the Notice to Vacate

The Notice must be delivered in accordance with Texas law to be valid. There are a couple different ways you can deliver it:

. **Personal Delivery**

You may hand deliver the notice to the tenant or to any person residing at the premises who is 16 years of age or older. You may also personally deliver the Notice to the property by affixing it to the inside of the main entry door (in case nobody is home). If the property has no mailbox, and there is no way for the landlord to enter the property (deadbolt, dangerous animal, etc.), then the Landlord may affix the Notice to the outside of the main entry door.

. **Mail**

The law also allows you to mail the Notice to the tenant by regular mail, registered mail, or certified mail with a return receipt. However, some judges will not accept regular mail as a form of service, so it is highly recommended you send the notice by certified mail.

Time Periods

If you have a lease with a Tenant, check your lease to see how many days notice you must give a Tenant in the Notice to Vacate. The standard is **3** days, and if you do not have a lease with the Tenant, then it is 3 days. The clock starts ticking for them to vacate when the Notice is actually delivered (not when it is mailed). You **MUST** wait out your notice period (usually the 3 days) before you file your lawsuit.

Make Copies!

Make 2 copies of the Notice to Vacate before you deliver it. You will need one for the Court if you have to file a lawsuit (next section), and you need one for your records. If you personally deliver the Notice, it is a good idea to write on your copies what time of day you delivered it, and to whom you delivered it to.

The Original Petition

After your Notice period is up and the Tenant is still occupying your property, you need to go to Court for help. The way you do this is by filing a lawsuit against the Tenant called a "Forcible Entry and Detainer" lawsuit. This sounds tricky, but is actually quite simple.

You start the lawsuit by filing 2 forms:

. Original Petition

The Original Petition is what starts the lawsuit. Depending on the County, it is also called a Complaint, Original Complaint, Complaint for Eviction, Forcible Entry and Detainer, and other similar variations. Most Justice of the Peace Courts have an Original Petition that you can use available in their lobby, but you are almost always welcome to use your own as long as it complies with Texas Law.

. Military Affidavit

This is more formerly called an "Affidavit of Military Status of Defendant." The purpose of this form is to protect the rights of members of our military while they are off protecting us. You simply check whether or not you think your Tenant is in the military. This form is filed along with the Original Petition.

Where to File

You must file your lawsuit in a Justice of the Peace Court in the Precinct that your property is located in. Most counties in Texas are broken down geographically into Precincts. It is your job to find out what precinct your property is located in. There are a few ways to do this. You can go to your County's website and see if they have a Precinct map. You can also call any Justice of the Peace Court in your County, give them your property's address, and they will simply tell you. It is a good idea to call your Precinct before you go there to file so you can find out what hours they are open and what the filing fees are.

Filing Fees

Filing Fees are different for every Court, but they will generally be under **\$131.00**, and that includes filing the case, having the Clerk prepare a Citation to be given to the tenant, and having the constable or sheriff serve (deliver) the Citation to the tenant.

Notarize the Forms

This is easy. You must get the Original Petition and Military Affidavit notarized before they are filed. The Court Clerk can do this for you when you go in to file the case. They may charge a small fee to do this.

Get your Court Date

When you file the Original Petition and Military Affidavit, the Court Clerk will give you a time and date for your eviction hearing (your court date). You will show up to Court on that date to prove your case to the judge.

Meanwhile, what is the Court Doing?

The Court Clerk is going to prepare a "Citation" that tells your Tenant they are being sued for possession of the property and when the court date is. The county constable or sheriff will then serve (deliver) the Citation and the Original Petition to your Tenant. Your Tenant must have at least 6 days between being served the Citation and the court date.

Going to Court

So now the Tenant has gotten your Notice to Vacate, has been served a Citation and Original Petition by the constable, and still has not vacated. It is now time to go to court.

Here is what to bring to court:

- . A copy of your Notice to Vacate
- . Your Lease with the Tenant
- . Any witnesses you need to prove something (a lease violation perhaps)
- . Any other evidence (warning letters, rent receipts, ledgers, etc)

When you show up for your court date, politely ask a clerk or bailiff where you should go for eviction hearings. They will usually direct you into a waiting room or directly into the courtroom. Always dress professionally and use your best manners when entering the courtroom. Do not, and I mean DO NOT allow your cell phone to ring in the courtroom. Some judges will confiscate it for 1 week, while others will fine you **\$500.00** on the spot.

The judge will give instructions to the courtroom, and will sometime "swear in" the entire room at once. When your case is called, you will go up in front of the judge. The judge will take control of the conversation, ask you questions, and tell you what to do.

If your Tenant does not show up, the judge will award you a "Default Judgment." This means you win automatically because the Tenant did not show up to defend themselves. If your Tenant shows up and defends the case, then the judge will render a decision either in favor of you or the Tenant after you have both presented your sides. If the judge rules in your favor, then you will get a Judgment that says you are entitled to possession.

Now that you have won the initial suit, your Tenant has **5** days to leave or to file an appeal in the County Court. For your Tenant to file an appeal, they will have to post **2X** the judgment amount or a surety bond, or submit a "Pauper's Affidavit" alleging they cannot afford to post a bond. If your Tenant files this appeal, you will have to argue the case again at the County Court level.

Writ of Possession

So you have won your lawsuit, the **5** day appeal period has passed, and your Tenant is still there. On the 6th day from when you won your lawsuit, you may file a "Writ of Possession." This form is available from the court where your lawsuit was, and will generally cost around \$200.00 to file.

The Writ of Possession orders the Constable to oversee the physical removal of your Tenant and your Tenant's property. The Constable will post a **24 hour Notice** to Vacate on the property, and after that will show up and physically remove the Tenants if necessary. Talk to the Constable beforehand to see if you will need to bring people to move the Tenant's belongings onto the curb.

Advanced Eviction in Texas: Faster ways to Evict

Bond for Immediate Possession

If you prevail in Court, doing an eviction by filing a Bond for Immediate Possession could shorten the eviction process down to 10 days. But if the Tenant requests a trial or appeals the case, the time will be just as long as a regular eviction case. This procedure includes giving a notice to the Tenant and posting a bond with the Court for surety or cash. If you lose your case,

you will lose all or part of your bond. If you wish to file an eviction this way, contact the Justice of the Peace Court for your precinct and inquire as to procedure and forms.

Locking out a Tenant

Texas law provides a way to lock out a Tenant that is delinquent in paying rent. However, this is really more of a scare tactic, because the landlord has to let the Tenant back into the property immediately upon the Tenant's request even if the Tenant does not tender the delinquent rent. There are strict rules on locking out a tenant so make sure you do this with good counsel. Here are the steps:

- . **3 days before locks are changed**, post a notice on the inside of the main entry door that says (A) the earliest date that the landlord proposes to change the door locks; (B) the amount of rent the tenant must pay to prevent changing of the door locks; and (C) the name and street address of the individual to whom, or the location of the on-site management office at which, the delinquent rent may be paid during the landlord's normal business hours.
- . **Change the Lock**, and at the same time place a notice on the front door that says (1) an on-site location where the tenant may go 24 hours a day to obtain the new key or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number; (2) the fact that the landlord must provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent; and (3) the amount of rent and other charges for which the tenant is delinquent.

A landlord may not change the locks on the door of a tenant's dwelling on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or on which any on-site management office is not open, for the tenant to tender the delinquent rent.

A landlord who intentionally prevents a tenant from entering the tenant's dwelling must provide the tenant with a key to the changed lock on the dwelling without regard to whether the tenant pays the delinquent rent.

If a landlord arrives at the dwelling in a timely manner in response to a tenant's telephone call to the number contained in the posted notice and the tenant is not present to receive the key to the changed lock, the landlord shall leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the tenant may go to obtain the key during the landlord's normal office hours.

If a landlord violates these provisions, the tenant may: (1) either recover possession of the premises or terminate the lease; and (2) recover from the landlord a civil penalty of one month's rent plus \$500, actual damages, court costs, and reasonable attorney's fees in an action to recover property damages, actual expenses, or civil penalties, less any delinquent rent or other sums for which the tenant is liable to the landlord.

For more information on the Texas eviction process, see Chapters 24 and 92 of the Texas Property Code by go online search **Texas Property Code**

These forms are provide to you as a courtesy of our office

*** This court will not answer any legal question ***

**Office personnel is not allow in assisting you to fill out paper work **

NOTICE TO QUIT AND TO VACATE

STATE OF TEXAS §

COUNTY OF FRIO §

Date _____

TO _____, and all other occupants:

In accordance with the Texas Property Code Art. 24.005, you are hereby notified and required and deliver up peaceful possession of the premises you now hold owned by me, said premises are situated and described as follows:

Reason: Termination

___ Failure to pay rent. Amount due \$ _____

___ Property has been sold

___ Breaking lease agreement

___ Other _____

Should you and all authorized by you, fail to comply with my request to vacate the said premises _____

within _____ days then I shall proceed against you as the law directs. Forcible Detainer to follow.

Very Respectfully,

Landlord or Agent Signature

This notice was executed at the above address on _____ day of _____, 20__
at _____ am/pm

___ delivery in person to Tenant

___ leaving a true copy with a person over the age of 16 at the address listed above

___ posting a true and correct copy on the premises list above

Sign this _____ day of _____, 20_____

Justice Court Civil Case Information Sheet (9/1/13)

Cause Number (for Clerk use ONLY) _____ - _____ **A**

STYLED _____

v.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleadings or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:	2. Names of parties in case:
<p>_____ Name</p> <p>_____ Address</p> <p>_____ Apt/Suite</p> <p>_____ City</p> <p>_____ State</p> <p>_____ Zip</p> <p>_____ Email</p> <p>_____ Telephone</p> <p>_____ Fax</p> <p>_____ State Bar No.</p> <p>_____ Signature</p>	<p>Plaintiff(s):</p> <p>_____</p> <p>_____</p> <p>Defendant(s):</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list ALL parties]</p>
3. Indicate case type, or identify the most important issue in the case (select only 1):	
<p><input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Eviction: 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 \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>
<p><input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>

Case No.

EV _____

In the Justice Court

Precinct 3, Place 1

County of Frio

State of Texas

Plaintiff(s)/Landlord(s) (Actual Landlord)

v.

List all Defendant(s)/Tenant(s) for which eviction is sought

§
§
§
§
§
§
§

PETITION for EVICTION

(For all addresses, you MUST include number, street, apartment number, city, state, & zip code.)

Plaintiff, being duly sworn on oath, files this written complaint against the above named Defendant(s) to evict Defendant(s) from Plaintiff's **premises**, which is located in Justice of the Peace Precinct 3 of Frio County and which is **described as**:

Plaintiff requests service of citation by personal service at the previously described premises or by alternate service, if necessary.

Any work or **other known addresses** for the Defendant(s) known to Plaintiff are as follows:

Phone: _____ FAX: _____

Phone: _____ FAX: _____

Plaintiff and Defendant(s) have established a **landlord tenant** relationship by: *(check one)* a written lease or agreement, an oral agreement, occupancy after foreclosure sale, occupancy after contract for deed default, *(other)* _____

Grounds for eviction are: *(check)* non-payment of rent, holding over, non-rent default by *(describe default)* _____

Written **notice to vacate** for the grounds stated above was delivered to Defendant(s) at the above described premises on the _____ day of _____, 20____, *(check)* in person to the tenant(s). in person to an occupant at least sixteen years of age. by mail. by affixing to the **inside** of the main entry door.

(other) _____

Thereafter Defendant(s) failed to surrender possession of the above described premises by the date specified in the **notice to vacate** delivered on _____ by _____ thereby committing a **forcible detainer**.

Plaintiff requests judgment for Plaintiff(s) against Defendant(s) for possession of the above described premises, for writ of possession, plus \$ _____ rent due and unpaid through today, plus accruing rent at the **daily rate** of \$ _____ per day until the date of judgment, plus reasonable attorney fees in the amount of \$ _____, plus all costs of court, plus post-judgment interest at the highest legal rate.

Defendant/Tenant Information:

D.O.B. ____/____/_____
SEX _____
RACE _____

X _____
Landlord, Landlord's authorized Agent, or Landlord's Attorney
(if Attorney) Bar Card Number _____

Address _____

Phone (____) _____ FAX (____) _____

SWORN to and SUSCRIBED before me this _____ day of _____, 20_____.

(Seal)

(Notary or Clerk of Court)

PETITION: EVICTION CASE

CASE NO. (court use only) _____

With suit for Rent

COURT DATE: _____

In the Justice Court, Precinct _____, _____ County, Texas

PLAINTIFF _____
(Landlord/Property Name)

Rental Subsidy (if any) \$ _____

VS. _____
DEFENDANT(S): _____

Tenant's Portion \$ _____

TOTAL MONTHLY RENT \$ _____

COMPLAINT: Plaintiff (Landlord) hereby complains of the defendant(s) named above for eviction of plaintiff's premises (including storerooms and parking areas) located in the above precinct. Address of the property is:

Street Address Unit No. (if any) City State Zip

1. **SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

2. **UNPAID RENT AS GROUNDS FOR EVICTION:** Defendant(s) failed to pay rent for the following time period(s): _____
TOTAL DELINQUENT RENT AS OF DATE OF FILING IS: \$ _____
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.

3. **OTHER GROUNDS FOR EVICTION/LEASE VIOLATIONS:** Lease Violations (if other than non-paid rent – list lease violations)

4. **HOLDOVER AS GROUNDS FOR EVICTION:** Defendant(s) are unlawfully holding over since they failed to vacate at the end of the rental term or renewal of extension period, which was the _____ day of _____, 20____.

5. **NOTICE TO VACATE:** Plaintiff has given defendant(s) a written notice to vacate (according to Chapter 24.005 of the Texas Property Code) and demand for possession. Such notice was delivered on the _____ day of _____ and delivered by this method:

6. **ATTORNEY'S FEES:** Plaintiff will be or will NOT be seeking applicable attorney's fees. Attorney's name, address, and phone & fax numbers are: _____

7. **BOND FOR POSSESSION:** If Plaintiff has filed a bond for possession, plaintiff requests (1) that the amount of plaintiff's bond and defendant's counter bond be set, (2) that plaintiff's bond be approved by the Court, and (3) that proper notices as required by the Texas Justice Court Rules are given to Defendant(s).

REQUEST FOR JUDGMENT: Plaintiff prays that defendant(s) be served with citation and that plaintiff have judgment against defendant(s) for: possession of premises, including removal of defendants and defendants' possessions from the premises, unpaid rent IF set forth above, attorney's fees, court costs, and interest on the above sums at the rate stated in the rental contract, or if not so stated, at the statutory rate for judgments under Civil Statutes Article 5069-1.05.

I give my consent for the answer and any other motions or pleadings to be sent to my email address which is:

Petitioner's Printed Name

Signature of Plaintiff (Landlord/Property Owner) or Agent

DEFENDANT(S) INFORMATION (if known):

DATE OF BIRTH: _____

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

Address of Plaintiff (Landlord/Property Owner) or Agent

City State Zip

Phone & Fax No. of Plaintiff (Landlord/Property Owner) or agent

Sworn to and subscribed before me this _____ day of _____, 20____.

Case No. _____

§
§
§
§
§
§
§

Actual Landlord/Plaintiff

v.

Tenant(s)/Defendant(s)

In the Justice Court

Precinct 3, Place 1

County of Frio, Texas

REQUEST FOR WRIT OF POSSESSION

DATE OF JUDGMENT: ____/____/20____

PREMISES DESCRIBED AS AND LOCATED AT _____

Address

Apt. #

Zip

DATE REQUESTED: ____/____/20____

FEE \$158.00

X _____

*Landlord, Landlord's authorized Agent, or
Landlord's Attorney (if Attorney) Bar Card Number* _____

Address _____

Phone (____) _____ FAX (____) _____

File pulled and VERIFIED by _____, *clerk*

Fee Collected: \$ _____ *[] Cash [] Check*

DATE PAID ____/____/20____

RECEIPT NUMBER # _____

DATE ISSUED ____/____/20____

Writ issued by: _____, *clerk*

