

EVICTION INSTRUCTIONS (PLEASE READ CAREFULLY)

You are strongly encouraged to read the new Rules of Civil Procedure. There are numerous changes to the eviction laws, such as Bond for Immediate Possession and other provisions.

- The timeline for the hearing date is slightly different (Rule 510.4 (10))
- The rules for Bond of Possession have changed (Rule 510.5)
- Writ of Possession EXPIRES after 60 days (used to be indefinite) (Rule 510.8 (d)(1))
- Appeal rules have been modified under Rule 510.9

- 1. Evictions must be filed in the proper Justice of the Peace Court.** Checks or Money Orders are accepted. Cash must be for the exact amount only. Your property must be properly marked with the physical address assigned by the 911 emergency address system or the Appraisal District. If your property is not clearly marked, the Constable may return the eviction citation unserved, and you will have to start over. Location number can be posted by numbers on the building property or by numbers located on a sign posted in front of the property.

Chapter 24 of the Texas Property Code requires that an eviction suit MUST be filed in the county and precinct where the property is located. If an eviction suit is not filed in the appropriate precinct, the case will be dismissed. You will not be entitled to a refund of filing fees and/or service fees.

- 2. By law, you must give a NOTICE TO VACATE before you can file an EVICTION SUIT.** The landlord must give the tenant at least 3 days written notice to vacate before filing this eviction, unless the lease signed by both parties states otherwise. The NOTICE TO VACATE must be in writing and comply with Section 24.005 of the Texas Property Code, which is found at <http://www.statutes.legis.state.tx.us/Search.aspx>. A defective NOTICE TO VACATE can result in DISMISSAL of your Eviction.
- 3. MOBILE HOME CASES:** If you are seeking an eviction based on *late rent payments* for a MOBILE HOME LOT (tenant owns mobile home, you lease then them lot), you are required by law to give the Tenant a ten-day NOTICE TO CURE before you can file an eviction (SEC. 94.206, Texas Property Code). Without the NOTICE TO CURE, your case will be dismissed. If they do not cure the problem after the ten-day notice, you then give them a three day NOTICE TO VACATE. Texas Law contains specific rules regarding Mobile Homes. You can locate these laws on the Texas Property Code website, <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.94.htm>.
- 4. Court cost** for filing an eviction on one tenant is **\$146.00**. Section 510.2 of the NEW Texas Rules of Civil Procedure states "The plaintiff must name as defendants all tenants obligated under the lease residing at the premises. You can ONLY get a judgment against the defendant served. If you wish to have a judgment against two parties, then you MUST pay for service and have both parties served. This is an additional **\$100.00 per defendant**."
- 5. ATTORNEY'S FEES:** to be eligible to recover attorney's fees in an eviction suite, a notice to vacate must be served by a process server, personally with a witness, or by return receipt requested certified mail ten days prior to the date the suit is filed.

6. **WHO MAY FILE:** The owner of the owner's agent may file any type of forcible detainer suit, and he may represent the owner in the hearing.
7. **JOINING A SUIT FOR RENT:** A suit for rent may be joined with the eviction suit, if the amount due is within the jurisdiction of this court. (\$10,000.00). Any damages, late charges, utilities, or other charges may not be included in this action; HOWEVER, The owner or the owner's attorney may file suit for these amounts in a separate action filed in either Justice Civil or Small Claims Court.
8. **PROCEDURES AFTER FILING:** At the time the suit is filed, a hearing date will be set at least 10 days out but no more than 21 days from the filing date. A citation will be issued to the Constable's Office to be served on the tenant giving them the date and time of the hearing.
9. **THE HEARING:** You are required to appear personally for the hearing. Proper representation is essential (as per item #5 above). 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. You will need to bring all evidence with you to Court. The burden of proof lies with you as plaintiff. You must show the Court good and sufficient evidence proving your right to regain possession of the property. You must still prove your case even if the defendant fails to appear.
10. **JUDGMENT:** At the hearing, a judgment will be rendered for either the plaintiff or the defendant. A judgment for the plaintiff may be for all or part of the initial claim. If you are awarded a judgment for possession of the premises and/or any back rent owed there is a 6 day appeal period in which the defendant may appeal the decision to the County Court. If the Defendant has not appealed the case at the end of the appeal period, judgment becomes final.

Upon final judgment, you may then file for a Writ of Possession if the defendant has still not vacated the premises. A writ of possession has a court fee of **\$130.00**. This is a writ that authorizes the Constable to supervise while the Plaintiff removes the property from the premises. You may wish to contact the Constable at 979-361-4477 for more information on writs of possession.

Every Eviction Suit must include these documents:

- Sworn Complaint for Eviction
- Notice to Vacate
- Lease
- Service Members Civil Relief Affidavit
- Certificate of Last Known Address
- Civil Process Additional Information Sheet

THIS OFFICE MAY NOT GIVE ANY LEGAL ADVICE

CAUSE NO. _____

Plaintiff § IN THE JUSTICE COURT
VS. § PRECINCT ____ PLACE ____

Defendant(s) § BRAZOS COUNTY, TEXAS

SWORN COMPLAINT FOR EVICTION WITH SUIT FOR 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** **Zip**

SERVICE OF CITATION: Service is requested on Defendant(s) by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other service of papers address/addresses (if knows) are:

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.
Rental Subsidy (if any) \$_____, Tenant's Portion \$_____, TOTAL MONTHLY RENT \$_____, Daily rent \$_____.

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

2. **HOLDOVER AS GROUNDS FOR EVICTION:** Defendant(s) are unlawfully holding over since failing to vacate at the end of the rental term or renewal of extension period, which was the _____ day of _____, 20_____.
3. **NOTICE TO VACATE:** Plaintiff has given Defendant(s) written notice to vacate (Chapter 24.005 Texas Property Code) and Demand for Possession. Such notice was delivered on the _____ day of _____ delivered by this method:

4. **ATTORNEY'S FEES:** Plaintiff will be or will NOT be seeking applicable attorney's fees. Attorney's name, address, phone & fax numbers are: _____
5. **BOND FOR POSSESSION:** If Plaintiff will file a bond for possession, Plaintiff requests (1) 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 Defendant(s) 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 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):

Address of Plaintiff (Landlord/Property Owner) or Agent

DATE OF BIRTH: _____

City State Zip

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

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

DEFENDANT'S PHONE NUMBER: _____

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

Cause No. _____

In the Justice Court, Precinct Two, County of Brazos, Texas

vs.

Plaintiff(s)

Defendant(s)

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

Before me the undersigned notary or clerk of the justice court, on this day personally appeared the undersigned affiant whose identity is known to me. After I administered an oath to such affiant, he or she upon oath and under penalty of perjury (fine and/or up to one year in jail), stated the following:

My name is *(please print)* _____

I am *(check one)* the plaintiff or an authorized agent of the plaintiff in the case described at the top of this page.

I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

(check or fill in as applicable)

1. No defendant in this case is on active duty in the U.S. military (Army, Navy, Air Force, Marines, or Coast Guard). The facts on which I base my conclusion are as follows:

2. Defendant *[insert name(s)]* _____ is on active duty in the U.S. military.
3. Defendant *[insert name(s)]* _____ has been deployed by the U.S. military to a foreign country.
4. Plaintiff and the undersigned (if the undersigned is acting agent of plaintiff) are not able to determine whether any defendant is with the U.S. military-except for any defendant named in paragraph 2 above.
5. Plaintiff and the undersigned (if the undersigned is acting as an agent of plaintiff) are not able to determine whether any defendant who is in the U.S. military has been deployed to a foreign country-except for any defendant named in paragraph 3 above.
6. Defendant *[insert name(s)]* _____ has signed, while on active duty, a separate written waiver or a written lease containing a waiver of his or her rights under the U.S. Servicemembers Civil Relief Act of 2003.

Signature of affiant

SWORN TO and SUBSCRIBED before me by _____ on the _____ day of _____, 20_____.

(check one)

Notary Public for the State of Texas or
Clerk of the Justice Court

Cause _____

Plaintiff

Vs

Defendant

In the Justice Court

Precinct Two

Brazos County, Texas

Certificate of Last Known Mailing Address

The undersigned, _____, does hereby certify that the last known address of Defendant, _____, is as follows:

Signature

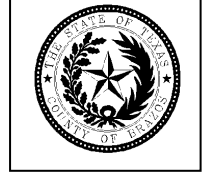
Sworn to and subscribed before me on the ____ day of _____, 20____.

Notary Public



Donald Lampo

Brazos County Constable Pct. 2



Civil Process Additional Information

Cause #

In order to expedite service and for the safety of our Deputies, we ask that you answer the following questions to the best of your ability.

1. Have you witnessed any "abnormal" behavior?
2. Have you known, or known of, the Respondent being violent with anyone?
3. Have you been verbally or physically assaulted by the Respondent?
4. Known of an occasion where the Respondent has, or brandishes a weapon of any kind? (Please note if the weapon was a firearm, knife, or club or some other weapon.)
5. Does respondent have any dogs known to be aggressive?
6. Are you aware of any mental or emotional issues that the Respondent may have?
7. Are you aware of any police related calls regarding the Respondent?
8. Are there any other issues you think might be important for the Deputies to know?