

**Judge Sissy Hernandez**  
**Justice of The Peace-El Paso County Pct.Two**  
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## **EVICION'S**

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 these packets. You should seek professional, licensed, legal counsel for advice.

**The Court and its staff cannot tell you what you should do about your problem. The Code of Judicial Conduct prohibits a Judge or court employee from practicing Law” (giving legal advice). The Code further prohibits the Justice of the Peace from engaging in communications concerning the merits of a pending judicial proceeding, or the merits of an impending claim or dispute. The Court and staff can, however, communicate concerning**

- ***Uncontested* administrative matters**
- ***Uncontested* procedural matters**
- **Magistrate duties and functions**

## **FREQUENTLY ASKED QUESTIONS**

### **WHERE CAN I LOOK UP THE LAWS OF TEXAS?**

The Texas Statutes are available on-line at: <http://tlo2.tlc.state.tx.us/statutes/statutes.html>. Most laws about eviction and landlord-tenant matters are contained in the Texas Property Code (Chapters 24, 91 and 94 as well as the Texas Rules of Court.

### **WHY DO I HAVE TO FILE FOR EVICTION? — IT'S MY PROPERTY! HOW CAN THEY EVICT ME? — 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 of Constitutional dimension, and also involve issues of contract law. These cases are ordinarily quite simple because there is only one issue—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.

### **DO I HAVE TO FILE AN EVICTION TO EVICT MY KIDS/ROOMMATE/BOYFRIEND/GIRLFRIEND?**

The need for eviction presumes a landlord-tenant relationship; or involves property owned by one person that is used as a dwelling by another person. There are many different types of arrangements that do not necessarily include payment of cash rentals, and they may be considered “tenancies at will or by sufferance” of the property owner. It is not necessary to evict a houseguest or other temporary visitor, or someone who is trespassing on private property (such as someone who was invited in and has merely overstayed their welcome). 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?**

A person owning a property as an individual may represent himself in court. A person managing a property on behalf of an owner may represent the owner's interests in court ONLY in evictions involving non-payment of rent or holding over after the expiration of the lease term. In suits for eviction where the breach of the lease is something OTHER than non-payment of rent or holding over after the expiration of the lease, the owner must represent him/herself, or hire an attorney to represent the owner. If the owner is a corporation, and the breach of the lease is for something OTHER than non-payment of rent or holding over, the corporation must be represented by an attorney in Justice Court.

### **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 this packet, and Chapters 24, 91 and 94 of the Property Code.

### **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 landlords 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 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?**

A justice court in the precinct in which the real property is located has jurisdiction in eviction suits.

### **HOW MUCH WILL IT COST?**

The initial filing fee effective January 1, 2008 is \$27.00 plus the cost of service of the citation on the Defendant. Only the constable is authorized to serve citations in these matters (private process services are prohibited), and the charge for service is \$100.00 per named Defendant.

If a Writ of Possession is necessary to force the tenant to vacate the premises after a judgment is rendered, there is an additional court cost and service fee effective January 1, 2008 is \$190.00. There may be other expenses if you hire a lawyer to represent you in court, or if there are storage charges for the tenant's property.

### **HOW LONG WILL IT TAKE TO COME TO COURT?**

Ordinarily, proper notice must be given in writing at least three days prior to filing the eviction. NOTE: Some leases require a longer or allow a shorter period of time, and certain tenancies have different notice requirements under Section 24.005 of the Property Code: Once suit is filed, the citation will be issued by the Court clerk and delivered to the Constable. NOTE: While citations are usually issued and served promptly, weekends, holidays, may delay issuance and service somewhat. Once the Defendant is served, the Defendant has **five days to answer the lawsuit**. The hearing or trial will be held **6-10 days** after service of process. NOTE: Continuances for periods up to 10 days are permitted, and trial settings are also affected by weekends, holidays. **Once a judgment** is rendered, either party has **five days to file an appeal** to the County Court at Law. If the case is appealed, the schedule of the County Court will take over.

### 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).*

Most *uncontested* suits for eviction (called “default”) are quite short—5 minutes or less— and a tool is available to help organize your presentation. The landlord or property owner must prove:

- ✓ The basic terms of any written or oral agreement,
- ✓ How the agreement was breached,
- ✓ That **PROPER** notice was provided to the tenant before suit was filed;
- ✓ That the tenant refused to vacate according to the notice given; and
- ✓ The amount of any delinquent rent owed
- ✓ Late fees (only if stated in agreement) 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 premises occupied by the tenant.

### SERVICE MEMBERS' CIVIL RELIEF ACT (SCRA)

If the Defendant does not file an answer to the lawsuit, or does not 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! If a Plaintiff does not have personal knowledge of the Defendant's military status, the Department of Defense maintains a secure website where the Plaintiff can obtain a status record. This website requires registration of name and address, fax and telephone numbers, email address and mother's maiden name, in order to use the website. The form can be downloaded from the court's website, or requested from the address below:

#### Notice!

#### Service members' Civil Relief Act (SCRA) Certificates

To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, [click this link](#), this website will provide you with the current active military status of an individual. There is no charge for this certificate.

Department of Defense  
Manpower Data Center (DMDC)  
Military Verification Service  
1600 Wilson Boulevard, Suite 400  
Arlington, VA 22209-2593  
Telephone 703-696-5790  
FAX: 703-696-4156

Email Helpdesk: [sscra.helpdesk@osd.pentagon.mil](mailto:sscra.helpdesk@osd.pentagon.mil)

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

Any **Justice Court 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, interest excluded. Justice Courts have exclusive jurisdiction of 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 (usually, a District Court).

### I'M A TENANT WHO'S BEEN SERVED A CITATION—WHAT DO I DO NOW?

Read the face of the citation for special instructions. Usually, once the Citation has been served the Defendant **must file a written answer to the suit on or before the fifth day following the date of service of the citation.** Your court date may appear on the front of the citation. If not, you should call the court to find out when the case is set for hearing. At the hearing you will have an opportunity to testify or present evidence as necessary to respond to the evidence presented by the property's owner or agent on behalf of the property owner. The judge will decide who has the right to possess the premises you occupy. If the judgment is for the property owner you will have 5 days only to move. If the judgment is for the tenant, the tenant can remain in the property unless another legal issue arises concerning the right to possession.

### I LOST THE CASE—CAN I APPEAL?

Either party can appeal the case to the Court **within five days after the judgment is entered**, by:

- ✓ Filing an appeal bond, approved by the Judge
- ✓ In an amount set by the Court that includes
- ✓ The damage judgment +
- ✓ Loss of rentals during the pendency of the appeal +
- ✓ Reasonable attorney's fees (if represented by a lawyer) +
- ✓ 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 filling an affidavit.

- ✓ The court clerk will provide notice to the opposing party within one working day by regular mail
- ✓ If the Pauper's Affidavit 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 inability to pay costs on 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 at law 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 under circumstances specified by the Texas Rules of Civil Procedure Rule 749(b).

## Notices to Vacate

| TYPE OF TENANCY  | WRITTEN NOTICE TIME                                 | EXCEPTIONS & CONDITIONS   | STATUTE         |
|--|---|---|-----------------|
| Written lease or oral agreement; default or holding                          | At least 3 days before filing suit                  | Contracts for longer or shorter periods of time                       | 24.005 (a)      |
| At will or by sufferance   | At least 3 days before filling suit                 | Contracts for longer or shorter periods of time                       | 24.005(b)       |
| Property purchased at foreclosure & tenant is current                        | At least 30 days before filing suit                 | Special conditions apply—refer to Property Code                       | 24.005(b)       |
| Tenant forcibly entered the property without permission and refuses to leave | At least 3 days before filing suit                  | Notice may be oral or written and may be to vacate immediately        | 24.005(c) & (d) |
| A lease or law allowing a time for the tenant to respond                     | The amount of time called for in the law or lease   | Tenant must have time to respond to the notice according to the lease | 24.005(e)       |
| Certain month-to-month tenancies   | Varies according to circumstances—see Property Code | See Property Code   | 91.001          |

## Contents of Notice

See Section 24 of the Property Code for details

| NOTICE IN PERSON  | NOTICE BY MAIL  | EXCEPTIONS & CONDITIONS  |
|---|---|--|
| Personal delivery to the tenant   |   | If there is no mailbox*, or there is an alarm system, keyless bolting device or dangerous animal, notice may be securely affixed to the outside of the main entry door** |
| Personal delivery to anyone aged 16 or over <i>residing</i> at the property | May be by regular mail, registered mail or certified mail-return receipt<br><i>Requested to the premises in question*</i> | Notice is calculated from the date the notice is delivered.  |
| Personal delivery by affixing it to the inside of the main entry door **    |   | Notice to vacate is a "demand for possession"  |
|   |   | Notice may also contain a demand to pay delinquent rent by a date certain, or else vacate by a date certain  |

**PROPER DRESS IS REQUIRED IN COURT!**

All requirements pertain to both adult and juvenile males and females unless otherwise noted. Failure to comply may result in the resetting of the case to a later date, or in the extreme, contempt of court:

- Shoes are required.
- No sleeveless shirts
- No shorts (women are permitted to wear dress shorts with hosiery)
- No exposed midriffs
- No clothing displaying offensive words or pictures (the Court retains the exclusive right to define "offensive" on an individual basis.
- No hats
- Cleanliness. (If necessary, washrooms are available in the building)
- Officers of the court are held to the higher standards generally recognized in Texas Courts.

**INFANTS AND SMALL CHILDREN**

Infants and small children should be left with a sitter or at home in the care of a competent adult. There are no childcare facilities in the courthouse. Loud or crying children should be taken out of the courtroom.

**Basic Information Necessary for Non-Payment of Rent Evictions**

1. Identify yourself as the **owner** or the **property manager** of
2. Name of Property or Property address
3. Which is located in JP Precinct Two in El Paso County
4. The Defendant, as tenant, entered into a lease agreement with \_\_\_\_\_ (owner or property management company) on \_\_\_\_\_ (lease start date) which lease is still in its original term **OR** which lease has been extended on a month-to-month basis
5. The term of the lease is for \_\_\_\_\_ months at \$\_\_\_\_\_ per month which is due on the \_\_\_\_\_ and late on the \_\_\_\_\_
6. Past months' rental (no late fees) \$\_\_\_\_\_
7. Plus, This month's rent divided by 30 x number of days through court date \$\_\_\_\_\_
8. Totals pro-rated rent due \$\_\_\_\_\_
9. The amount of **back rent, pro-rated** through today's date, is \$\_\_\_\_\_.
10. The Defendant is in violation of the lease paragraph(s) \_\_\_\_\_. The lease states that the tenant loses the right to possess the premises if any terms of the lease contract are breached.
11. Proper written **Notice to Vacate** was hand delivered and/or posted to the inside/outside of the door and/or mailed to the Defendant on \_\_\_\_\_.
12. Plaintiff has provided an affidavit that the Defendant is not in the military service, or if he/she is the military service, is not on active duty. **OR**
  - a) Plaintiff has been unable to determine whether or not Defendant is in the military service on active duty; **OR**
  - b) Defendant is in the military service on active duty.

**(Note: This testimony is only required if Defendant is not present in court. If Defendant is not present, there can be no award of possession of the premises without this sworn information)**

13. Plaintiff is requesting possession of the property plus back rent in the amount of \$\_\_\_\_\_ **OR**
  - a) Plaintiff is requesting **possession only** of the property, and is not seeking an award for any of the back rent that might be due.

**THIS IS NOT A SCRIPT! IT IS A TOOL TO ASSIST A NON-LAWYER IN MAKING AN ORDERLY PRESENTATION**