

Information about Eviction Cases

The **Rules of Judicial Ethics prohibits this office from giving legal advice or hearing your case without the presence of the defendant or plaintiff.** If you need legal counseling, we highly recommend any licensed Texas attorney. Your first meeting with the attorney is usually (but not always) free because the lawyer is trying to determine if they can be of service to you. In a civil suit any **CORPORATION MUST BE REPRESENTED BY AN ATTORNEY.** REMEMBER, IT IS YOUR JOB TO PRESENT ANY EVIDENCE (RECEIPTS, JOURNALS, RECORDS, POLICE REPORTS, WITNESSES, ETC) TO PROVE YOUR CASE. IF YOU FAIL TO PROVE YOUR CASE IT CAN BE DISMISSED. If you have any **LEGAL QUESTIONS**, contact **LEGAL AID AT (915)-585-5100.**

An Eviction Case is a lawsuit brought to recover possession of real property, usually 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, including attorney fees, if any, but excluding statutory interest and costs. The Texas Property Code, Chapters 24, 91, 92, 93, and 94, govern the relationship between landlord and tenant, tenancies, and eviction proceedings. Eviction Cases are governed by Rules 500 – 507, and Rules 510.1 0 510.13, Texas Rules of Practice in Justice Courts. Eviction Cases must be filed in the Justice Court in the Justice of the Peace Precinct in the county in which the real property is located. See Section 24.004, Texas Property Code.

Notice To Vacate Prior to Filing Eviction Suit

Default or Holdover. If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three (3) days' written notice to vacate the premises before the landlord files an eviction, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files an eviction on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001 of the Texas Property Code.

Tenant at Sufferance. If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three (3) days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

Tax Foreclosure. If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth (5th) day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure. See Section 24.005, Texas Property Code.

Protecting Tenants at Foreclosure Act. The Protecting Tenants at Foreclosure Act of 2009 (the "Act") went into effect May 20, 2009, and expires December 31, 2014. The tenant protection provisions apply in the case of any foreclosure on a "federally related mortgage loan" or on any dwelling or residential real property. Under the Act, "any immediate successor in interest in the property assumes such interest subject to providing to a bona fide tenant a notice to vacate at least 90 days before the effective date of such notice. Tenants under a bona fide lease or tenancy are permitted to stay in the residence until the end of their leases, with two exceptions: (1) When the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence or, (2) When there is no lease or the lease is terminable at will under state law. 12 U.S.C. § 5220.

Delivery of Notice to Vacate

The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by 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. The notice period is calculated from the day on which the notice is delivered. If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice. Section 24.005, Texas Property Code.

Notice for Terminating Certain Tenancies

Unless the landlord and tenant have otherwise agreed in a written instrument, or there has been a breach of contract, Section 91.001 of the Texas Property Code provides that a monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other. If the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later of the day given in the notice for termination, or one month after the day on which the notice is given. If the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later of the day given in the notice for termination, or the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period. If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

Right to Possession

The only issue in an eviction case is the right to actual possession of the premises. No counterclaims or joinder of suits against third parties are allowed in an eviction case, but may be brought in a separate suit in a court of proper jurisdiction. **Rule 510.3**

Recovery of Attorney's Fees and Costs

To recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed. If the landlord gives this notice, or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant. If the landlord gives this notice, or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection. The prevailing party is entitled to recover all costs of court. See Section 24.006, Texas Property Code.

Representation

An individual may represent himself or herself in Justice Court, or may be represented by an attorney. In an Eviction Case, an individual may be represented by an authorized agent. **Rule 500.4.** In an Eviction Case, a corporation or other entity may be represented by an attorney, or by an employee, owner, officer, or partner who is not an attorney, and may be represented by a property manager or other authorized agent in an Eviction Case. **Rule 500.4.** In an Eviction Case in Justice Court based on nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any Eviction Case in Justice Court, an authorized agent requesting or obtaining a default judgment need not be an attorney. See Section 24.011, Texas Property Code.

Computation of Time for Eviction Cases

While the timely filing of a document by depositing the document in the United States mail on or before the date it is due is allowed in an Eviction Case, parties to the Eviction Case are warned that if a document filed by mail is not received by the Court by the due date, the Court may take any action authorized by the Rules, including issuing a writ of possession requiring a tenant to leave the property. **Rule 510.2.**

Petition

A petition seeking an eviction must be filed in the Justice of the Peace Precinct in which the premises are located. To begin an eviction action, the plaintiff, usually the landlord, must file a petition in writing. You can obtain a petition from the JP Court or you can prepare your own form stating the following:

- (1) the name of the plaintiff;
- (2) the name, address, telephone number, and fax number, if any, of the plaintiff's attorney, if applicable, or the address, telephone number, and fax number, if any, of the plaintiff;
- (3) the name, address, and telephone number, if known, of the defendant; and
- (4) if the plaintiff consents to email service of the answer and any other motions or pleadings, a statement consenting to email service and email contact information.

In addition, the petition must contain the following information:

- (1) a description, including the address, if any, of the premises that the plaintiff seeks possession of;
- (2) a description of the facts and the grounds for eviction;
- (3) a description of when and how notice to vacate was delivered;
- (4) the total amount of rent due and unpaid at the time of filing, if any; and
- (5) a statement that attorney fees are being sought, if applicable.

The complaint should list all home and work addresses of each tenant and state that the landlord knows of no other home or work addresses of the tenant in the county where the premises are located.

Each tenant who has signed a lease must be joined in the eviction proceeding.

Filing Fees

The Justice of the Peace must collect fees for the filing of a petition in the Justice Court. Section 118.121, Texas Local Government Code governs the filing fee, and additional fees for basic civil legal services to indigents (Section 51.941, Texas Government Code) are applicable. The costs and fees can be obtained from the court clerk. The Commissioners Court of El Paso County sets the fee to be charged for services of the El Paso County Sheriff and Constables. See Section 118.131, Texas Local Government Code.

Issuance of Citation

When the case has been filed and the filing fee and the service fee have been paid, the clerk will issue a citation and deliver the citation as directed by the plaintiff. If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises. **Rule 510.3.** The plaintiff is responsible for obtaining service of the citation. A copy of the petition is attached to the citation. The citation is directed to the defendant and informs the defendant of the filing of the petition. The citation notifies that the defendant must appear for trial at the Justice Court on the date specified in the citation, which must not be less than 10 days nor more than 21 days after the petition is filed, and warns that the defendant's failure to appear in person for trial may result in a default judgment. The citation also informs the defendant of the right to a jury trial on request and payment of the jury fee in the amount of \$22.00 no later than 3 days before the date set for trial. The citation includes the following notice to the defendant, printed in English and Spanish in conspicuous bold print:

SUIT TO EVICT

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ) OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE;

DEMANDA PARA DESALOJAR ESTA DEMANDA PARA DESALOJAR INVOLUCRA PLAZOS INMEDIATOS. UN INQUILINO QUE ESTA EN SERVICIO MILITAR ACTIVO PUEDE TENER DERECHOS ESPECIALES O SOCORRO EN RELACION CON ESTE TRAJE POR LA LEY FEDERAL, INCLUIDOS LOS MIEMBROS DEL SERVICIO CIVIL RELIEF ACTUAR (50 U.S.C. APP. SECCION 501 Y SS.) O LA LEY DEL ESTADO, INCLUIDA LA SECCION 92.017, TEXAS CODIGO DE LA PROPIEDAD. LLAME AL COLEGIO DE ABOGADOS DE TEXAS (STATE BAR OF TEXAS), LLAMADA GRATUITA AL 1-877-9TEXBAR SI USTED NECESITA AYUDA PARA LOCALIZAR A UN ABOGADO. SI NO ESTÁ A SU ALCANCE CONTRATAR A UN ABOGADO, USTED PUDIERA SER ELEGIBLE PARA ASESORIA LEGAL GRATUITA O DE BAJO COSTO.

Service of Citation

The citation in an Eviction Case must be served by a sheriff or constable, unless otherwise authorized by written order of the Court. Citations may be served by personal delivery to the defendant, or by leaving a copy of the citation with the petition attached with a person over the age of 16 years at the defendant's usual place of residence. Service must be made at least 6 days before the day set for trial. The Return must be filed at least one day before trial. If attempts to serve the defendant are unsuccessful, and the petition lists all home and work addresses of the defendant that are known to the plaintiff, and the sheriff or constable files a sworn statement that diligent efforts were made to serve the citation on at least two occasions including locations and times, at all addresses of the defendant in the county, the Court may allow service by delivery to the premises. Delivery of the citation to the premises must be completed at least 6 days before the trial date, by placing the citation with a copy of the petition attached through a door mail chute, slipping it under the front door, or if not possible, by securely affixing the citation to the front door or main entry to the premises. **Rule 510.4.**

Trial

Once served, the defendant may file a written answer, but whether or not an answer is filed, the defendant is required to appear for trial on the date specified in the citation. If the defendant fails to enter an appearance or file an answer before the case is called for trial, and proof of service has been properly filed, judgment by default may be rendered. The clerk will immediately mail written notice of the default judgment to the defendant at the address of the premises. **Rule 501.6.** Either the plaintiff or the defendant has the right to a trial by jury by making a written demand for a jury trial no later than 3 days before the trial date, and by paying a jury fee of \$22.00. **Rule 510.7.**

Postponement of Trial

The trial in an eviction case cannot be postponed for more than 7 days total unless the plaintiff and defendant agree in writing to the postponement. **Rule 510.7.**

Judgment

If the plaintiff prevails, the court will enter judgment for the plaintiff for possession of the premises, and on request of the plaintiff and payment of required fees, will award a writ of possession. The writ of possession cannot issue before the 6th day after the date the judgment for possession is signed. If the tenant prevails, the court will give judgment for the tenant against the landlord for costs. **Rule 510.8.**

Writ of Possession

A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. "Premises" includes the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally. If a judgment is entered for the landlord in a residential eviction case based on non-payment of rent, the Court will determine the amount of rent to be paid each rental pay period during the pendency of any appeal and the amount will be noted in the judgment. If a portion of the rent is payable by a government agency, the court will determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. See Section 24.0053, Texas Property Code. The writ of possession shall order the officer executing the writ to:

1. post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and
2. when the writ of possession is executed:
 - (A) deliver possession of the premises to the landlord;
 - (B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;
 - (C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and
 - (D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing.

The writ of possession authorizes the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ. The officer may not require the landlord to store the property. The writ of possession must contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence. A sheriff or constable may use reasonable force in executing a writ under this section. See Section 24.0061, Texas Property Code. A writ of possession cannot be issued more than 60 days after a judgment for possession is signed, and a writ of possession cannot be executed after the 90th day after a judgment for possession is signed. **Rule 510.8.**

Appeal

There is no motion for new trial in an eviction proceeding. **Rule 510.8.**

If the Justice Court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the Justice Court shall determine the amount of rent to be paid each rental pay period during the pendency of the appeal and note that amount in the judgment. During the appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the registry of the Justice Court or the County Civil Courts at Law as the rent becomes due under the rental agreement, the landlord may file a sworn motion with the County Civil Courts at Law stating that the tenant failed to pay rent as required. After hearing, if the County Civil Courts at Law find that the tenant has not paid the delinquent rent together with the landlord's

attorney fees, if any, the County Civil Courts at Law will issue a writ of possession to be executed after the expiration of 5 days. See Section 24.0054, Texas Property Code. Either party may appeal from a final judgment in an Eviction Case within 5 days after the judgment is signed by filing a bond, making a cash deposit, or filing with the Justice Court a Sworn Statement of Inability to Pay. The Court will set the amount of the bond or cash deposit based on damages, if any, for withholding or defending possession of the premises during the appeal, loss of rentals during the appeal, and attorney fees, if any. **Rule 510.11.** The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of the appeal to effect and the payment of any judgment and all costs rendered against the appellee on appeal. A party filing a bond or making a cash deposit must serve written notice of the appeal on all other parties within 5 days of filing the bond or making the cash deposit. A Sworn Statement of Inability to Pay may be contested within 5 days after the opposing party receives notice that the Sworn Statement of Inability to Pay was filed. If the contest is sustained, within 5 days of the date of the Justice Court's order sustaining the contest, the appellant may appeal the Justice Court's decision to the County Civil courts at Law by filing notice of the appeal of the contest with the Justice Court. The County Civil Courts at Law must set the contest for a hearing within 5 days. If the County Civil Courts at Law sustains the contest, within 1 business day, the appellant must file with the Justice Court either an appeal bond or make a cash deposit. **Rule 510.9.**

Payment of Rent in Nonpayment of Rent Appeals

If a defendant appeals an eviction for nonpayment of rent by filing a Sworn Statement of Inability to Pay, the Justice Court will give the tenant a written notice at the time the Sworn Statement of Inability to Pay is filed that notifies the tenant (1) of the amount of the initial deposit of rent that the tenant must pay into the registry of the Justice Court; (2) whether the initial deposit of rent must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order must be made payable; (3) the calendar date within 5 days of the date the Sworn Statement of Inability to Pay is filed, and if applicable, the time, by which the initial deposit must be paid; and (4) a statement that failure to pay the required amount into the Justice Court registry by the date and time specified may result in the issuance of a writ of possession without hearing. The defendant appealing by Sworn Statement of Inability to Pay may remain in possession of the premises during the pendency of the appeal by (1) making the initial deposit of rent into the Justice Court registry within 5 days of the date the defendant files the Sworn Statement of Inability to Pay, and (2) paying the rent within 5 days of the rental due date under the rental agreement into the registry of the County Civil Courts at Law. **Rule 510.8** See also Section 24.0053 and Section 24.0054, Texas Property Code.

Right to Request Appointment of Attorney in County Civil Courts at Law after Approval of Pauper's Affidavit

A tenant appealing an Eviction Case by filing a Sworn Statement of Inability to Pay has the right to request the appointment of an attorney in the proceedings in the County Civil Courts at Law if the tenant was in possession of the residence at the time the eviction was filed. This right is exercised after the Sworn Statement of Inability to Pay has been approved and the appeal perfected by making a written application to the County Court at Law in which the appeal is filed. An appointed attorney's representation is in the trial *de novo* in County Civil Court at Law. The County Civil Court at Law may terminate the representation for cause. See Section 25.0020, Texas Government Code.

Trial *de novo* in the County Civil Courts at Law

An Eviction Case appealed to the County Civil Courts at Law will be tried at any time after the expiration of 8 days after the transcript is filed. If the defendant did not file a written answer in the Justice Court, the defendant must file a written answer in the County Civil Courts at Law within 8 days after the transcript is filed in the County Civil Courts at Law. Failure to file a written answer in the County Civil Courts at Law will result in the entry of a judgment by default. **Rule 510.12.**

Writ of Possession Appeal

At the conclusion of the appeal, a writ of possession, or execution, or both, will be issued by the County Clerk and will be executed by the Sheriff or Constable. A judgment of the County Civil Courts at Law cannot be stayed unless within 10 days from the date of judgment, the party further appealing the judgment of the County Civil Courts at Law files a supersedeas bond. **Rule 510.13.** See also Section 24.007, Texas Property Code