

EVICTIONS

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Eviction Process

There are basically five steps in the Eviction process:

- 1) The notice to vacate
- 2) Filing the Suit
- 3) Going to Court
- 4) Writ of Possession
- 5) Set out of Property

Notice To Vacate

Ordinarily, a demand for possession of the premises ("notice to vacate") must be given in writing at least three days prior to filing the eviction. A thirty day notice is required only when the landlord is ending a month-to-month tenancy or when giving notice that he will not renew an existing lease (and is not claiming that the tenant breached the lease). Some leases require a longer or allow a shorter period of time, and certain tenancies have different notice requirements under the Texas Property Code.

Filing the Suit

An eviction is a special suit filed in the Justice Court Precinct in which part or all of the property is located.

In the event that a tenant does not vacate the premises by the specified date, the plaintiff or landlord may then initiate a judicial action against the tenant by filing a Sworn Complaint for an Eviction. The landlord, his/her attorney, or a non-lawyer agent may sign and file the Complaint for an Eviction and represent the owner at the court hearing.

An eviction suit in the Justice Court is for the possession of a premise and any delinquent rent not to exceed \$10,000 (prorated to the date of judgment, not the end of the month). Attorney fees, court costs and interest may be added to that amount. The landlord should reserve the right to include any additional rents that may become due during the pendency of the suit. No damages can be awarded including, for example: late fees, bad check fees, reletting fees, or damages. A separate suit must be filed

Going to Court

After a Sworn Complaint for an Eviction has been filed, the court will then issue a citation to the defendant(s) commanding him/her to appear before the Justice of the Peace on the assigned court date. A copy of the original complaint will be attached to the citation and both will be served upon the defendant by the Constable's Office. The citation

commands the tenant to appear before the Justice of the Peace on the assigned court date.

Should the plaintiff/landlord fail to appear at the hearing, their case may be dismissed or there may be a judgment for the defendant.

Either party may request a jury trial and pay the appropriate fee within five days of the date of service of the citation. Both the plaintiff and the defendant will be required to appear for a pre-trial hearing to examine the issues to be brought before a jury. If the Judge determines there are sufficient issues involved, the case will be set for jury trial at a later date. If there are not sufficient issues to be brought before a jury then the Judge may render a judgment at that time.

At the time of the hearing, the plaintiff/landlord should, at a minimum have in their possession the following items or information:

- a. The lease,
- b. A copy of the notice to vacate (including proof of service);
- c. Any additional evidence which may have a direct bearing on the case,
- d. Evidence of the total rent due within the jurisdictional \$10,000.

After the hearing, either party has five (5) **calendar days** to appeal the judgment by filing an Appeal Bond with the Justice Court. It is strongly suggested that an attorney be consulted before filing an appeal.

Writ of Possession

If, within five calendar days from the date of judgment, no appeal has been filed and the defendant still has not vacated the premises, the plaintiff may obtain from the Justice Court a **Writ of Possession** for an additional fee.

A Writ of Possession is executed by the Constable's Office and requires the Landlord's name, address and phone number. The Constable does not represent the plaintiff or the defendant, only the Justice Court. The Constable's Office will schedule the date and time the Writ will be executed. This could take a minimum of 3 days or up to several weeks.

All personal property shall be removed from the rental unit, other than personal property claimed to be owned by the landlord, and placed outside the premises at a nearby location, but not on a public or private sidewalk, passageway, or street and not while it's raining, sleet or snowing. The physical removal of all property will be made by the defendant or plaintiff or their designated personnel and at the discretion and direction of the Constable's Office. Pursuant to CPRC 7.003, the Constable's Office is not liable for damages resulting from the execution of the writ.

Collection of Judgment

Frequently the plaintiff will find it difficult to collect their judgment on past rent due. Thirty (30) days after a judgment is signed, a **Writ of Execution** may be obtained through the court. A new home or work address of the defendant is required. The Constable serves the writ on the defendant and makes oral demand for payment of the judgment. If the Constable receives no payment, and there is no non-exempt property to levy on, the writ is returned unsuccessful to the court. **THERE IS NO GUARANTEE THAT PAYMENT WILL BE RECEIVED.**

Another alternative to collection of a judgment for past rent is an **Abstract of Judgment**. An Abstract may be obtained if no appeal has been filed within five days after the date the judgment is rendered. The court will prepare the abstract which the plaintiff must then file with the County Court. The Abstract of Judgment places a lien against any non-exempt, real property of the defendant for a period of ten years. When requesting an Abstract of judgment you should provide the court, whenever possible, with the following information pertaining to the defendant:

- Date of Birth
- Texas Driver's License
- Present Address

Writ of Possession 150.00
Writ of Execution 150.00
(Set outs more than 2 hrs, additional \$50 per deputy, per hr. Plus any Court Fees/Charges)

EVICTION PROCEDURES

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