

# Eviction Cases

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.

## Notice to Vacate

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give at least three days' written notice to vacate the premises before the landlord files an eviction, unless the parties have contracted for a shorter or longer period of time in a written lease or agreement.

The notice to vacate shall be given in person, by mail, or by affixing the notice to the inside of the main entry door and must be unconditional. Notice by mail may be by regular mail, 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, the landlord may securely affix the notice on the outside of the main entry door. Texas Property Code Sec. 24.005

## Filing Petition with the Court

Eviction suits must be filed in the precinct and county where the property is located. Rule 510.3(b)

If the eviction is based on a written residential lease, the plaintiff must name as defendant(s) all tenants obligated under the lease residing at the premises whom the plaintiff seeks to evict. Rule 510.3 (c)

No judgment or writ of possession may issue or be executed against a tenant obligated under a lease and residing at the premises who is not named in the petition. Rule 510.3 (c)

Upon filing, the court will immediately issue a citation and give to the Constable for service. Trial must be held 10-21 days from the date the petition is filed. Rule 510.4(a)(10)

Trial can't be held less than 6 days after service. Rule 510.7 (a)

## At Trial

The plaintiff is responsible for proving his or her right to possession of the premises and, if a claim for unpaid rent has been made, the amount of unpaid rent. Proof may include a copy of the lease, a copy of the notice to vacate, and payment records.

The amount of pure rent due through the date of trial will need to be calculated (*no utilities or late charges are allowed in claims for unpaid rent.*)

Rule 510.3 (d)

## Judgment

This court must adjudicate the right to actual possession and not title. Rule 510.3 (e)

## Writ of Possession

A writ of possession may issue on the 6<sup>th</sup> day after judgment provided an appeal is not properly filed. A writ may not issue more than 60 days after a judgment is signed unless good cause is shown. A writ may not be executed after the 90<sup>th</sup> day after a judgment for possession is signed. Rule 510.8 (d) (1)(2)(3)

## Appeal

A party may appeal a judgment in an eviction case by filing a bond, making a cash deposit, or filing a sworn statement of inability to pay. This must be done within 5 days after judgment is signed. The Judge will set the amount of bond or cash deposit. The bond/cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of its appeal to effect and payment of any judgment and all costs rendered against it on appeal. Rule 510.9 (a) (b)

An appellant who can't furnish a bond or pay a cash deposit in the amount required may instead file a **Sworn Statement of Inability to Pay (SSIP)**. Rule 510.9(c) (1)

The statement may be contested within 5 days after the opposing party receives notice the statement was filed. Rule 510.9 (2)

The Court must provide to the defendant a written notice at the time the SSIP is filed, stating that rent is required to be posted into the justice court registry, the method by which deposit is required, the day the deposit is required which must be within 5 days of the date the SSIP is filed and a statement that failure to pay the required amount may result in the court issuing a writ of possession without a hearing. Rule 510.9 (5) (A) (i) (ii) (iii)(iv)

## Demand for Jury



Demand for Jury can be made by either party, must be made at least 3 days before trial and requires a jury fee of \$22 or by filing a sworn statement of inability to pay the jury fee. Rule 510.7(b)

No motion for new trial may be filed in an eviction case. Rule 510.8 (e)

No counterclaims are permitted in an eviction case. Rule 510.3(e)

CASE NUMBER: \_\_\_\_\_ -JP1

HEARING DATE: \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
PLAINTIFF(S)	§	
	§	
v.	§	PRECINCT NO. ONE
	§	
_____	§	
DEFENDANT(S)	§	WALLER COUNTY, TEXAS

**PETITION: EVICTION CASE**

**COMPLAINT:** Plaintiff hereby sues the following Defendant(s):

\_\_\_\_\_ for eviction of Plaintiff's premises (including storerooms and parking areas) located in the above precinct. The address of the property is:

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

**GROUND FOR EVICTION:** Plaintiff alleges the following grounds for eviction:

- Unpaid rent.** Defendant(s) failed to pay rent for the following time period(s): \_\_\_\_\_. The amount of rent claimed as of the 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.
- Other lease violations.** Defendant(s) breached the terms of the lease (other than by failing to pay rent) as follows: \_\_\_\_\_
- Holdover.** Defendant(s) are unlawfully holding over by failing to vacate at the end of the rental term or renewal of extension period, which was the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**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 \_\_\_\_\_, 20\_\_ by this method:

**SUIT FOR RENT:** Plaintiff  does or  does not include a suit for unpaid rent.

**ATTORNEY'S FEES:** Plaintiff  will be or  will not be seeking applicable attorney's fees. The attorney's name, address, phone and fax numbers are:

\_\_\_\_\_