

EVICTION IN TEXAS

- . Doing an Eviction in Texas can be broken down into 4 steps:
 - . Giving the Tenant a Notice to Vacate
 - . Filing an Original Petition to start a lawsuit against the Tenant
 - . Going to Court for your Hearing
 - . Filing a Writ of Possession to order the Constable to remove the Tenant

Texas also provides a way to lock out a Tenant who is delinquent in paying rent. This process is discussed at the end of this section.

NOTICE TO VACATE

Delivering the Notice to Vacate:

The Notice must be delivered in accordance with Texas law to be valid. There are a couple different ways you can deliver it:

. Personal delivery

You may hand deliver the notice to the tenant or to any person residing at the premises who is 16 years of age or older. You may also personally deliver the Notice to the property by affixing it to the inside of the main door (in case nobody is home). If the property has no mailbox, and there is no way for the landlord to enter the property (deadbolt, dangerous animal, etc), then the Landlord may affix the Notice to the outside of the main entry door.

.Mail

The law also allows you to mail the Notice to the tenant by regular mail, registered mail, or certified mail with a return receipt. It is highly recommended you send the Notice by certified mail.

Time periods

If you have a lease with a Tenant, check your lease to see how many days notice you must give a Tenant in the Notice to Vacate. If you do not have a lease with the Tenant, the standard is **3** days. The clock starts ticking for them to vacate when the Notice is actually delivered(not when it is mailed). You **MUST** wait out your notice period before you file your lawsuit.

Make copies!

Make 2 copies of the Notice to Vacate before you deliver it. You will need one for the Court if you have to file a lawsuit and you need one for your records. If you personally deliver the Notice, it is a good idea to write on your copies what time of day you delivered it, and to whom you delivered it to.

The Original Petition

After your Notice period is up and the Tenant is still occupying your property, you need to go to Court for help. The way you do this is by filing a lawsuit against the Tenant called a “Forcible Entry and Detainer” lawsuit.

You start the lawsuit by filing 4 forms:

. Original Petition

The Original Petition is what starts the lawsuit. It is also called a Complaint for Eviction or Forcible Entry and Detainer and other similar variations. Most Justice of the Peace Courts have an Original Petition that you can use available in their office, but you are welcome to use your own as long as it complies with Texas law.

. Military Affidavit

The purpose of this form is to protect the rights of members of our military while they are off protecting us. This form is filed along with the Original Petition.

. Certificate of Last Known Address

This form is filed along with the Original Petition.

. Justice Court Civil Case Information Sheet

This form is filed along with the Original Petition

Where to File

You must file your lawsuit in a Justice of the Peace Court in the Precinct that your property is located. Most counties in Texas are broken down geographically into Precincts. **It is your job to find out what precinct your property is located.** There are a few ways to do this. You can go to your County’s website and see if they have a precinct map. You can call the county’s Election office at 830-334-3975 and ask them to look up the address for you. It is a good idea to call your Precinct before you go there to file so you can find out what hours they are open and what the filing fees are.

Filing Fees

Filing fees will generally be **\$136.00**, that includes filing the case, having the Clerk prepare a Citation to be given to the tenant, and having the Constable or Sheriff serve (deliver) the Citation to the tenant. **ONLY A CONSTABLE OF SHERIFF CAN SERVE THE CITATION.**

Notarize the Forms

You must get the Original Petition and Military Affidavit notarized before they are filed. The Court Clerk can do this for you when you go to file the case but the forms must be signed and sworn to in front of the Clerk. They may charge a small fee to do this.

Get your Court Date

After you file the four documents listed above, the Court Clerk will send you a hearing Notice for your eviction hearing(your court date) or may give you the date when you file. You will show up to Court on that date to prove your case to the Judge.

Meanwhile, what is the Court doing?

The Court Clerk is going to prepare a “Citation” that tells your Tenant they are being sued for possession of the property and when to appear for Court. The Constable or Sheriff will then serve (deliver) the Citation and a copy of the Original Petition to your Tenant. **Your Tenant must have at least 6 to 10 days between being served the Citation and the court date.**

Going to Court

So now the Tenant has gotten your Notice to Vacate, has been served with a Citation and Original Petition by the Constable or Sheriff, and still has not vacated. It is now time to go to Court.

Here is what you bring to Court:

- . A copy of your Notice to Vacate
- . Your lease with the Tenant
- . Any witnesses you need to prove something(a lease violation perhaps)
- . Any other evidence (warning letters, rent receipts, ledgers, etc.)

When you show up for your court date, politely ask a clerk or bailiff where you should go for eviction hearings. They will usually direct you into a waiting room or directly into the courtroom. Always dress professionally and use your best manners when entering the courtroom. Do not allow your cell phone to ring in the courtroom.

The Judge will give instructions to the courtroom, and will “swear in” the entire room at once. When your case is called, you will go up in front of the Judge. The Judge will take control of the conversation, ask you questions, and tell you what to do.

If your Tenant does not show up, the Judge will award you a “Default Judgment.” This means you win automatically because the Tenant did not show up to defend themselves. If your Tenant shows up and defends the case, the Judge will render a decision either in favor of you or the Tenant after you have both presented your sides. If the Judge rules in your favor, then you will get a Judgment that says you are entitled to possession.

Now that you have won the initial suit, your Tenant has **5** days to leave or to file an appeal in the County Court. For your Tenant to file an appeal, they will have to post **2X** the judgment amount or a surety bond, or submit a “Statement of Inability to Afford Court Costs” alleging they cannot afford to post a bond. If your tenant files this appeal, you will have to argue the case again at the County Court level.

Writ of Possession

So you have won your lawsuit, the **5** day appeal period has passed, and your tenant is still there. On the 6th day from when you won your lawsuit, you may file a “Writ of Possession.” This form is available from the court where you filed your lawsuit. The fee for this Writ will be \$95.00.

The Writ of Possession orders the Constable to oversee the physical removal of your Tenant and your Tenant’s property. The Constable will post a **24 hour notice** to vacate the property, and after that will show up and physically remove the Tenants if necessary. **Talk to the Constable beforehand to see if you will need to bring people to move the Tenant’s belongings onto the curb.**

Bond for Immediate Possession

If you prevail in Court, doing an eviction by filing a Bond for Immediate Possession could shorten the eviction process down to 10 days. But if the Tenant appeals the case, the time will be just as long as a regular eviction case. This procedure includes giving a notice to the Tenant and posting a bond with the Court for surety or cash. **If you lose your case, you will lose all or part of your bond.** If you wish to file an eviction this way, contact the Justice of the Peace Court for your precinct and inquire as to procedure and forms.

Locking out a Tenant

Texas law provides a way to lock out a Tenant that is delinquent in paying rent. However, this is really more of a scare tactic, because the landlord has to let the Tenant back into the property immediately upon the Tenant’s request even if the Tenant does not tender the delinquent rent. There are strict rules on locking out a tenant so make sure you do this with good counsel. Here are the steps:

- . **3 days before locks are changed**, post a notice on the inside of the main entry door that says (A) the earliest date that the landlord proposes to change the door locks; (B) the amount of rent the Tenant must pay to prevent changing of the door locks; and (C) the name and street address of the individual to whom, or the location of the on-site management office at which the delinquent rent may be paid during the landlord’s normal business hours.

- . **Change the Lock**, and at the same time place a notice on the front door that says (A)An on-site location where the tenant may go 24 hours a day to obtain the new key or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number; (B) the landlord must provide the new key to the Tenant at any hour, regardless of whether or not the Tenant pays any of the delinquent rent; and (C)the amount of rent and other charges for which the tenant is delinquent.

A landlord may not change the locks on the door of a Tenant’s dwelling on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or on which any on-site management office is not open, for the Tenant to tender the delinquent rent.

A landlord who intentionally prevents a Tenant from entering the tenant’s dwelling must provide the tenant with a key to the changed lock on the dwelling without regard to whether the Tenant pays the delinquent rent.

If a landlord arrives at the dwelling in a timely manner in response to a Tenant’s telephone call to the number contained in the posted notice and the Tenant is not present to receive the key to the changed lock, the landlord shall leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the Tenant may go to obtain the key during the landlord’s normal office hours.

If a landlord violates these provisions, the Tenant may: (A) either recover possession of the premises or terminate the lease; and (B) recover from the landlord a civil penalty of one month’s rent plus \$500.00, actual damages, court costs, and reasonable attorney’s fees in an action to recover property damages, actual expenses, or civil penalties, less any delinquent rent or other sums for which the Tenant is liable to the landlord.

For more information on the Texas eviction process, see Chapters 24 and 92 of the Texas Property Code or the Texas Rules of Civil Procedure Part V.

*****THESE FORMS ARE PROVIDED TO YOU AS A COURTESY OF OUR OFFICE.*****
*****THIS COURT WILL NOT ANSWER ANY LEGAL QUESTIONS*****
*****OUR OFFICE PERSONNEL IS NOT ALLOWED IN ASSISTING YOU TO FILL OUT ANY PAPERWORK*****
*****ONCE A CASE IS FILED, THE JUDGE CANNOT DISCUSS YOUR CASE WITH YOU PRIOR TO THE TRIAL UNLESS ALL PARTIES ARE PRESENT*****

NOTICE TO QUIT AND TO VACATE

STATE OF TEXAS ***

COUNTY OF FRIO ***

DATE _____

To: _____, and all other occupants:

In accordance with the Texas Property Code Art. 24.005, you are hereby notified and required and deliver up peaceful possession of the premises you now hold owned by me, said premises are situated and described as follows: _____

Reason: Termination

____ Failure to pay rent. Amount due \$ _____

____ Property has been sold

____ Breaking lease agreement

____ Other _____

Should you and all authorized by you, fail to comply with my request to vacate the said premises _____

within _____ days then I shall proceed against you as the law directs. Forcible Detainer to follow.

Very Respectfully,

Landlord or Agent Signature

This notice was executed at the above address on _____ day of _____, 20__ at _____ am/pm.

____ delivery in person to tenant

____ leaving a true copy with a person over the age of 16 at the address listed above

____ posting a true and correct copy on the premises listed above

signed this _____ day of _____, 20____

Signature of person servicing notice

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____
 (e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones;
 In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

CONTACT INFORMATION OF PERSON COMPLETING INFORMATION SHEET:	***	NAME OF PARTIES IN CASE:
NAME: _____	TELEPHONE: _____	PLAINTIFF(S): _____
ADDRESS: _____	FAX: _____	_____
CITY/STATE/ZIP _____	STATE BAR NO. _____	DEFENDANTS(S) _____
EMAIL: _____		_____
SIGNATURE _____		[ATTACH ADDITIONAL PAGE AS NECESSARY TO LIST ALL PARTIES]

INDICATE CASE TYPE, OR IDENTIFY THE MOST IMPORTANT ISSUE IN THE CASE(SELECT ONLY):

DEBT CLAIM: A debt claim is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including Attorney fees if any.

EVICTION: 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.

REPAIR AND REMEDY: A repair and remedy case lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees if any.

SMALL CLAIMS: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. **(OCCUPATIONAL LICNESE, ORDER OF RETRIEAVAL, and TRUANCY CASES to be reported in Small Claims).**

Certificate of Last Known Address

The undersigned certifies that the last known mailing address of the Defendant against whom judgment is taken in this proceeding:

Defendant's Name: _____

Defendant's Address: _____

Plaintiff

Attorney of Record for Plaintiff

Address

City

State

Zip

Telephone number

This document is required to be filed when a judgment is taken by default so that the Court may notify the defendant of the entry of the default judgment.

The Service Members Civil Relief Act, 50 U.S.C. App 507 *Et Seq*, Passed December 19, 2003, requires the plaintiff in any civil proceeding in which the defendant does not make an appearance to file with the court an affidavit (A) stating whether or not the defendant is in the military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in the military service, stating that the plaintiff is unable to determine whether or not the defendant is in the military service.

PENALTY FOR MAKING OR USING A FALSE AFFIDAVIT: A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. Costs for an attorney ad litem may be assessed against the plaintiff as costs of court unless otherwise ordered by the court.

Cause No. _____

In the Justice Court, Precinct____, Frio County, Texas

Plaintiff VS _____
Defendant

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

Before me, the undersigned authority, on this day personally appeared:

who, under penalty of perjury (fine and/or up to one year in jail),
state the following:

My name is _____,

I am the ____ plaintiff or ____ Attorney of record or authorized agent of the
plaintiff. I am capable of making this affidavit. The facts stated in the
affidavit are within my personal knowledge and are true and correct.

(check one)

____ Defendant is not in the military.

____ Defendant is in the military service, I know this because

____ I am unable to determine whether or not the Defendant is in military
service.

Plaintiff Signature/Attorney or Agent for Plaintiff

SWORN TO and SUBSCRIBED before me on this _____day of _____, 20__.

Clerk of the Court

Notary Public in and for the
State of Texas

The Servicemembers Civil Relief Act applies to a civil proceeding in the Justice Courts. Before entering a default judgment against an individual defendant, the plaintiff must file with the court an affidavit stating whether or not the defendant is in the military service, showing necessary facts to support the affidavit, or stating that the plaintiff is unable to determine whether or not the defendant is in military service, if that is the case. The requirement for an affidavit may be satisfied by a written, signed document declared to be true under penalty of perjury. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the court is unable to determine if the defendant is in military service, the court may require the plaintiff to file a bond in an amount approved by the court. A person who makes or uses an affidavit under this Act knowing it to be false, may be fined or imprisoned or both. 50 U.S.C. App. 501 et seq. To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, you may access the public website: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. This website will provide the current active.

CAUSE NO. : _____

LANDLORD/PLAINTIFF

VS.

TENANT/DEFENDANT

IN THE JUSTICE COURT

PRECINCT _____

FRIIO COUNTY, TEXAS

REQUEST FOR WRIT OF POSSESSION

Date of judgment: _____

Premises located at _____

Date of request: _____

\$95.00 fee paid: _____

Landlord, Landlord's
Authorized agent, or
Landlord's attorney (if
attorney) bar code number:

Address

Phone: _____

Fax: _____

FRIO COUNTY
FILING FEE SCHEDULE
FOR CIVIL SUITS

Submit one original petition plus an additional copy for each defendant.

	<u>FILING FEES</u>	<u>IND. FEES</u>	<u>EFILING FEES</u>	<u>EDUCATION FEES</u>	<u>SERVICE FEES</u>	<u>TOTAL</u>
<u>Small claims:</u>						
Defendant in Frio Co.	25.00	6.00	10.00	5.00	90.00	136.00
2 Defendants	25.00	6.00	10.00	5.00	180.00	226.00
Defendant resides out of county	25.00	6.00	10.00	5.00	MUST CALL COUNTY FOR FEE**	46.00
<u>Evictions:</u>						
Forcible detainer (eviction)	25.00	6.00	10.00	5.00	90.00	136.00
<u>Repair and Remedy Case</u>	25.00	6.00	10.00	5.00	90.00	136.00
<u>Occupation Driver's License</u>	25.00	6.00	10.00	5.00		46.00
<u>Order of Retrieval</u>	25.00	6.00	10.00	5.00	90.00	136.00
Jury Fee	22.00					22.00
Abstract of judgment	5.00					5.00
Writ of Execution	5.00				90.00	95.00
Writ of Possession	5.00				90.00	95.00
Writ of Garnishment	5.00				90.00	95.00
Writ of Sequestration	5.00				90.00	95.00
Subpeona-service fee for each witness residing in Frio County Plus witness fee, a "tender"(ten dollars cash) to attach to each subpoena						75.00
Subpeona Duces Tecum-witness fee (ten dollars cash) plus Production Documents fee (one dollar in cash) to attach to each subpoena						
Certified copies (first page)						2.00
Each additional page						.25
Copying all other documents (first page)						1.00
Each additional page						.25
Transcript(required for Appeal to County Court)						10.00

****NOTE: IF THE DEFENDANT'S ADDRESS IS NOT IN FRIO COUNTY, THE PLAINTIFF WILL BE CHARGED FOR FILING AND ISSUED THE CITATION FOR PROCESS. IT WILL BE THE PLAINTIFF'S RESPONSIBILITY TO FIND OUT WHAT COUNTY THE DEFENDANT'S ADDRESS IS IN AND THE SERVICE FEE FOR THAT COUNTY****

FEES PAYABLE BY MONEY ORDERS ONLY. MADE PAYABLE TO THE PROPER COURT.