



Judge Douglas Zwiener
Justice of the Peace – Washington County – Pct. One
1305 East Bluebell Road, Suite 114
Brenham, Texas 77833
Phone: 979-277-6260 ~ Fax: 979-277-6296



EVICCTIONS

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 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://www.capitol.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 or 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 house guest 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 \$100.00—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.

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 Texas Property Code or the lease. See “Notice to vacate” information in this packet, and Chapters 24, 91 and 94 of the Texas Property Code.

THE PROPERTY IS A MOBILE HOME

Section 94.002 of the Texas Property Code Provides:

Applicability: (a) This chapter applies only to the relationship between a landlord 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 manufactured 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), Texas 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.

WHAT ABOUT LATE FEES IN AN EVICTION SUIT?

Texas Property Code 92.019(a) does not include any language permitting late fees to be included in an eviction suit, nor does Chapter 24 of the Property Code. The Texas Rules of Civil Procedure do not include late fees as a part of the damages that may be awarded (T.R.C.P. 749 and 752)

HOW MUCH WILL IT COST?

The Initial filing fee is \$46.00 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 that service is \$85.00 for a total eviction filing fee of \$131.00 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 service fee of \$180.00. 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, notice to vacate 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 requirements under section 24.005 of the Texas 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, workloads and staffing 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 10-21 days after service of process. NOTE: Continuances for periods up to 7 days are permitted, and trial settings are also affected by weekends, holidays, court recesses and workloads.

Once a judgment is rendered, either party has five days to file an appeal to the County Court at Law. An Appeal Bond must then be posted with the Court. If the case is appealed, the schedule of the County Court at Law will take over.

WILL I HAVE A TRIAL?

A hearing will be scheduled 10-21 days (or more than 10 days if Court is not in Session, or there is a continuance for good cause), after the date the citation is served on the defendant. At that time, a landlord, property manager, property owner or licensed counsel (as required), must make a personal appearance in court to "prove-up" the right to possession of the premises. If the tenant does not appear in Court, or does not dispute the claim, there will be a short hearing. If the tenant requests a trial, the trial proceeds as all other civil matters.

DO I HAVE TO HAVE A LAWYER IN COURT?

The Rules of Evidence, Rules of Discovery and the Texas Rules of Court apply in a Justice Court eviction. If you don't have a lawyer, you may be at a disadvantage. The Court can't offer any guidance or help. There are certain circumstances where a licensed attorney is required.

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 suit for possession. If there is no judgment of possession, there can be 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 or prove up) are quite short. The landlord or property owner must prove:

- Their ownership of the property,
- The basic terms of any written or oral agreement,
 - How the agreement was breached,
- That PROPER notice to vacate 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
 - Past due amounts only
 - No late fees or charges included (Under most instances)
 - Pro-rated through the date of judgment (not 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 evidence”- the greater weight of evidence in order to prevail when the tenant/Defendant disputes the landlord’s right to regain possession of the premises occupied by the tenant.

SERVICEMEMBER’S CIVIL RELIEF ACT (SCRA)

If the defendant is not personally served and 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 Servicemember’s 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 plaintiff does not have personal knowledge of the defendant’s military status, the Department of Defense has a procedure for obtaining a status record by:

The following information is provided by the Department of Defense:

1. Public Website, Online 24 hours a day at: <https://www.dmdc.osd.mil/scra/owa/home>
2. Requests in writing may be mailed to:
Defense Manpower Data Center
1600 Wilson Boulevard, Suite 400
ATTN: Military Verification
Arlington, VA 22209-2593

IMPORTANT: Mail requests MUST contain a self-addressed, stamped envelope

THE TENANT IS DELINQUENT IN BACK RENT EXCEEDING \$10,000.00

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 \$10,000.00 or less, interest excluded. Justice Courts have exclusive jurisdiction of suits for eviction. If the amount of back rent exceeds \$10,000.00, 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 – THAT 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 the 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 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 Washington County Court at Law 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, they 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 their 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 at Law.

Landlord may withdraw any or all of the rent in the County Court at Law registry under circumstances specified by the Texas Rules of Civil Procedure Rule 749(b).

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 required

No sleeveless shirts

No shorts

No exposed midriffs

No clothing displaying offensive words or pictures(Court reserves exclusive right to define "Offensive")

No Hats

Cleanliness (if necessary, washrooms are in the building)

Officers of the Court are held to a higher standard generally recognized in Texas Courts

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 Court. Loud, crying or unruly children should be taken out of Court.