

Self-Help Legal Information Packet: Filing an Eviction Case



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What is an Eviction Case?

An **eviction case** is filed whenever a person or company is trying to recover possession of real property (like land, a house, or an apartment building) from someone else. Usually, it is a landlord filing against a tenant. The person or company filing the case is called the **plaintiff** and the person or company they file against is called the **defendant**.

Do I Need to File an Eviction Case?

The clerk or judge **cannot** give you advice on whether or not to file an eviction case and **cannot** have a conversation with you about the facts of your situation.

If you are trying to end the legal right for a person or company to occupy property that belongs to you, you will need to file an eviction case.

You need to file an eviction case if:

- 1) You are trying to remove someone who was renting your property as their residence;
- 2) You are trying to remove someone who was renting your property for a business or other purpose; or
- 3) You allowed another person to use your property as their residence, even without a written lease or rent involved.

In order to win an eviction case, you will need to show:

- 1) The tenant **breached their lease** (this means they didn't pay their rent or did something they were not allowed to do under the contract, such as have unauthorized pets);

- 2) The tenant's lease has run out and they haven't left (this could include a month-to-month tenancy that you properly terminated);
- 3) The person was a **tenant at will** (meaning there was no set time when the lease would be over) **and** there was no rent due under the agreement, you gave a proper notice to vacate, and the person didn't leave; or
- 4) The person entered and remains in the property without your permission (**squatter**).

You do **not** need to file an eviction case if:

- 1) You are excluding someone from your property who was not renting the property or using it as their residence (such as an overnight visitor);
- 2) The person has already permanently vacated the property. If they have vacated but still owe you back rent, you can file a Small Claims Case to recover the back rent (see the information packet on How to File a Small Claims Case for details).

What Do I Do Before Filing an Eviction Case?

Step 1: Breach of Lease or Notice of Termination of Lease

If the defendant has a written lease agreement or pays you rent, you cannot just evict them from the property for no reason. If they have a lease with a set end date, they are entitled to stay in the property until that date, unless they don't pay their rent or violate some other term of the lease.

A **termination notice** is required if either:

- 1) the tenant has a written lease that they did not breach, and that lease does not have a set end date; or

- 2) they do not have a written lease, but there is an agreement that they pay you rent.

The termination notice is a written notice telling them the day that their lease now ends. This notice must be at least one rental payment period. Most agreements without set end dates are “month-to-month” agreements, so you would need to give at least one month’s notice. For example, you could give a termination notice on January 27th informing the tenant that the lease is terminated effective February 28th.

If they breached the lease, or there is no written lease and no agreement to pay rent, then no termination notice is needed, and you can proceed to Step 2: Notice to Vacate.

Step 2: Notice to Vacate

You **must always** deliver a **notice to vacate** to the defendant before filing an eviction case. This is a written demand for the defendant to leave the property within a set period of time. This period of time is **3 days**, unless you agreed in a contract to a different period of time (or the property was purchased at a tax sale or you are trying to remove the tenant of a person who was foreclosed upon).

The notice to vacate may be delivered to the defendant by:

- 1) Handing it to them personally,
- 2) Mailing it to the premises, addressed to the defendant, or
- 3) Posting it on the **inside** of their front door.

If you cannot post it on the inside of the front door due to a dangerous animal or deadbolt-type device, or because you fear personal harm will come to you or any other person, you may post it on the outside of the front door, in an envelope that has the

tenant's name, address, and the words "IMPORTANT DOCUMENT" on it. If you post it on the outside of the front door, you must also mail it to the tenant the same day.

You cannot file the eviction case until the time period in the notice to vacate runs out and the tenant fails to vacate the property. The time period begins on the day the notice is delivered to the tenant.

You **must** give a notice to vacate, even if you already gave a termination notice setting a lease end date. In the example above, you gave a termination notice on January 27th telling the tenant the lease will end on February 28th. If the tenant is still there on March 1st, you would be required now to give them a notice to vacate and allow the time period in that notice to run out before filing an eviction case.

If the person is a squatter, you can give them an oral notice to vacate the property immediately. If they fail to leave, you can file an eviction at that time.

Where Do I File an Eviction Case?

Eviction cases **must** be filed in the in the justice court in the precinct and county where the property is located. If you file the case in any other precinct, the court must dismiss your case, and you do not get a refund of the filing fees.

The court may be able to help you determine the proper precinct to file in. Other resources you may use include precinct maps or the elections office. It is ultimately **your responsibility** to file your case in the proper location!

How Do I File an Eviction Case?

The first step in filing a case is to file a **petition**, which is a form that says who you are suing, why you are suing them, how much you are suing them for, and provides contact information. An eviction petition must contain information about what the reason is for eviction (nonpayment of rent, they stayed past the end of their lease, etc.), where the property is located, and how and when you delivered the notice to vacate. If the tenant owes you rent, you need to put that (and how much they owe you) in the petition. The court will likely have a petition form that you can use.

IMPORTANT - If the tenant owes you money **other than back rent** (like late fees, unpaid utility bills, or property damage), you cannot recover that in an eviction case! Do not put these amounts in your petition. Only back rent, your costs to file the case, and attorney's fees (if you have a written lease authorizing attorney's fees) may be awarded. If the tenant owes you other money, you can file a small claims case to try to recover that money. See the information packet on Filing a Small Claims Case for details.

The petition must name each and every tenant that you are trying to evict. A tenant is anyone listed on a written lease or any person who is responsible for paying rent to you.

An eviction petition must be **sworn**, meaning you sign it in front of a notary or the clerk or judge, and are swearing under oath that everything in it is true to the best of your knowledge.

When you file the petition, you will have to pay a **filing fee**. Also, the petition and **citation** (the notice from the court to the defendant that they have been sued) must be **served on** (delivered to) the defendant. You will need to pay an additional **service fee** for each tenant for the constable or sheriff serving

the paperwork. You are **not allowed** to deliver the paperwork yourself!

If you win your case, you will be awarded the fees that you had to pay, in addition to the other money you are entitled to recover.

What if I Can't Afford to File a Case?

Courts **must not** deny you access to justice simply because you cannot afford filing fees or service fees. If you are unable to pay those fees, fill out a **Statement of Inability to Afford Payment of Court Costs** form - the court **must** provide this form for you.

You must swear to the information that you provide on this form and can face legal consequences if you do not fill it out to the best of your ability. Fill out the form completely and truthfully!

Do I Need a Lawyer to File a Case?

While you are allowed to have a lawyer in an eviction case, the rules and procedures are designed to be simple and straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted or represented in court by a family member or other person, such as a property manager.

The court is required to make the Rules of Civil Procedure available to you at no cost. Rule 510 specifically applies to Eviction Cases and Rules 500-507 are the rules that generally apply to justice court.

The court is **not** allowed to give you advice on whether you should file a case, who you should file a case against, or what steps you should take to win your case or collect your judgment.

Questions the court **can** answer for you are questions like “What do I need to do to have a jury trial?” or “How many days do I have to file an appeal?”

Questions the court **cannot** answer for you are questions like “Is it a good idea to get a jury for this case?” or “Am I going to win?”

If, after reviewing these materials and the rules, you still are not sure what to do, it may be best to consult an attorney.

What Happens After I File an Eviction Case?

The court will generate the **citation**, which tells the defendant that they are being sued. The citation then must be served on the defendant. You can either pay the service fee for the constable or sheriff to serve the citation or submit a Statement of Inability showing you cannot afford the fee.

Once the defendant is served with the citation, the court will set your case either for trial, which must be at least **6 days** after the defendant was served.

How Do I Send Paperwork to the Defendant?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the defendant as well as to the court. You can send those papers to the defendant by:

- 1) delivering it to them in person,
- 2) mailing it to them using certified or registered mail,

- 3) using a delivery service such as FedEx or UPS,
- 4) faxing it to them, or
- 5) sending it by email if the defendant provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the defendant.

What if We Reach an Agreement?

If the case goes to trial, usually there will be a “winner” and a “loser.” resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. If you reach a new agreement with the defendant allowing them to remain in the property, you will need to file a **nonsuit**, which is a request for your case to be dismissed. If the defendant then breaches that new agreement, you will have to start over from the beginning with a new notice to vacate and a new case.

Can I Have a Jury Trial?

Yes. Either side in an eviction case may request a jury trial. You must make a request in writing to the court at least 3 days before the date set for trial and pay a jury fee of \$22.

If no one requests a jury, the trial will be heard by only the judge, which is called a bench trial.

What if I Need More Time for Trial?

If you need more time for trial or have a conflict with the date that the trial is scheduled, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement. In eviction cases, the case can't be postponed for more than 7 days unless both sides agree in writing.

Do not just decide not to show up on your trial date! That likely will result in your case being dismissed.

What Happens at the Trial?

Be sure to bring all of your witnesses and documents with you on your trial date! If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Next, you will be able to give an opening statement if you wish, where you explain to the judge and jury what the case is about.

After that, you will call any witnesses you have and ask them questions so they can **testify**, or tell their story, to the judge or jury. The defendant will also be able to ask your witnesses questions. You can also testify yourself and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Next, the defendant can present any evidence and call any witnesses that they may have. You get to ask questions of any witnesses they call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case, but must remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

What if the Defendant Doesn't Appear?

If the defendant doesn't appear at trial, the information in your sworn petition will be taken as the truth. If you provided enough information in your petition, you will be awarded a default judgment. If you did not, you may need to provide information to the court about things such as how and when you delivered the notice to vacate before the court can award you a judgment.

To get a default judgment, you will also need to provide the last known address of the defendant to the court in writing, as well as an affidavit stating whether or not the defendant is on active duty in the U.S. military (or that you do not know if they are), and how you know that they are or not, or why you do not know if they are.

You can verify military service at <https://scra.dmdc.osd.mil/>.

What Happens if I Lose My Eviction Case?

If the judgment is in favor of the defendant, they will be able to remain in possession of the property. If you wish, you can file an **appeal**, which is a request for the county court to hear the eviction case over again. You can file an appeal within 5 days of the judgment. The 5 days include weekends and holidays. If the

fifth day is a weekend, holiday, or day the court closes before 5 P.M., you have until the next business day to file your appeal.

To appeal, you will have to file either:

- 1) An **appeal bond** (promise from another person, called a **surety**, to pay the bond amount to the defendant if you don't pursue the appeal) in an amount set by the court;
- 2) A cash deposit in an amount set by the court, which may be awarded to the defendant if you don't pursue the appeal; or
- 3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must send notice of the appeal to the defendant within five days of filing it with the court.

Once your appeal is filed with the county court, you will be required to pay the filing fee or file a Statement of Inability to Afford Payment of Court Costs with the county court.

What Happens if I Win My Eviction Case?

If the judgment is in your favor, the defendant has a right to file an appeal as described above.

If you get a judgment in an eviction case based on the defendant not paying rent, and the defendant appeals with an appeal bond or a Statement of Inability, the defendant will be ordered to pay one month's rent to the court. You can then receive that money, which covers the defendant's rent for the first month of the appeal process. This ensures that someone evicted for not paying rent isn't able to stay in the property for free during an appeal. If they do not pay the rent to the court, or if they do not file an

appeal but do not leave the property, you can get a **writ of possession**, which is an order for the defendant to be removed from the property.

You will have to pay a fee for issuance of the writ, and a fee to the constable for executing the writ. If a writ is issued, a 24-hour notice will be posted on the door, and if the property isn't vacated in that 24-hour period, the constable will come out and supervise the removal of the defendant's property.

If you were awarded money in the judgment, such as for back rent or attorney's fees, see the "What Happens if I Win My Small Claims Case?" section of the information packet on Filing a Small Claims Case for information on enforcing money judgments.

Resources

Texas Lawyer Referral Service - (800) 252-9690

To check military status - <https://scra.dmdc.osd.mil/>

Texas Justice Court Training Center information for self-represented litigants - www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site:
www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance: www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases - www.texaslawhelp.org

FEE SCHEDULE FOR EVICTIONS

Filing Fee	\$ 54.00
Service Fee	\$ 75.00
Writ of Possession	\$255.00
Abstract	\$ 5.00



Justice Court

1624 NE Loop 230
SMITHVILLE, TX

JUDGE ZACHARY CARTER
PRECINCT 2

P.O. BOX 5
512-581-7112

General Information Sheet

In order to assist us in the timely serving of civil papers, please furnish the following information:

Plaintiff's Information

Plaintiff's Name: _____

Plaintiff's Address: _____

Plaintiff's Phone Number: Home _____ Work _____

Defendant's Information

Defendant's Name: _____

Defendant's Address: _____

Defendant's Phone Number: Home _____ Work _____

Defendant's Place of Employment: _____

Defendant's Work Hours if Known: _____

Any information that you can furnish will help greatly in serving your papers.

Please furnish explicit directions or a map of possible. Thank you.

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT 2
	§	
_____	§	
DEFENDANT	§	BASTROP COUNTY, TEXAS

PETITION: EVICTION CASE

COMPLAINT: Plaintiff hereby sues the following Defendant(s) *(include name, DOB, and DL number, if known)* _____

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

Address: _____ City: _____ State: _____ Zip: _____

MONTHLY RENT: \$ _____

GROUND FORS 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, which was on _____, 20__.

NOTICE TO VACATE: Plaintiff has given Defendant(s) a written notice to vacate *(according to Property Code § 24.005)* and demand for possession. Such notice was delivered on the _____, 20__ by this method: _____

(IF POSSIBLE PLEASE PROVIDE A COPY OF THE NTV TO THE COURT WITH THIS PETITION.)

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:

IMMEDIATE POSSESSION BOND: If Plaintiff has filed a bond for immediate possession, Plaintiff requests that: (1) the court set the amount of the bond; (2) the court approve the bond; and (3) proper notices, as required by the Texas Rules of Civil Procedure, are given to Defendant(s).

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, or by delivery to a person over the age of 16 years at Defendant's usual place of residence. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other home or work addresses where Defendant(s) may be served are:

Plaintiff knows of no other home or work addresses of Defendant(s) in this county.

RELIEF: Plaintiff requests that Defendant(s) is served with the citation and that Plaintiff is awarded a judgment against Defendant(s) for: possession of the premises, including removal of Defendant(s) and Defendant's possessions from the premises, unpaid rent, if set forth above, attorney's fees, court costs, and interest on the above sums at the rate stated in the lease, or if not so stated, at the statutory rate for judgments.

I hereby request a jury trial. The fee is \$22 and must be paid at least 3 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: _____.

Plaintiff's Printed Name

Signature of Plaintiff or Agent or Attorney

Defendant's Information (if known): Name: _____

Date of birth: _____

Last three digits of Driver License: _____ Last three digits of Soc. Sec. No.: _____

SERVICE BY EMAIL: *(Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive, open, and view large attachments, and it is important that you check this email account every day. Even if you receive some documents by email, you will still receive some documents about the case by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.)*

Yes, I would like to receive documents related to this case by email at this email address:

_____.

No, I do not want to receive any documents by email.

REMOTE PARTICIPATION:

Hearing by Phone Call: *(When a hearing happens by phone call, you will be able to talk to and hear the judge, Plaintiff, or any witnesses, but you will not be able to see them. Copies of any evidence to be used must be exchanged by the parties and sent to the judge before the hearing.)*

- Yes, I am able to have any hearings in this case, except a jury trial, by phone call with the judge and Plaintiff and understand that I must have a phone to use on the date and time of the hearing.
- No, I am not able to have hearings by phone call.

Hearing by Video Conference: *(When a hearing happens by video conference, you can hear, see, and talk to the judge, Plaintiff, and any witnesses. You will be able to see any evidence presented during the hearing. You will need to have a computer, a smartphone, or tablet that has a camera feature. You will also need access to the internet to be able to have a video conference.)*

- Yes, I am able to have any hearings in this case, except a jury trial, by video conference. I understand that I am responsible for having the equipment and internet access needed to participate in a video conference on the date and time of the hearing.
- No, I am not able to have hearings by video conference.

NOTE: Your responses in this section do not guarantee that hearings will be held remotely, but rather they help the court know how you are able to participate.

Respectfully submitted,

Signature of Plaintiff

Signature of Attorney, if any

Printed Name: _____

Printed Name: _____

Address: _____

Address: _____

Email: _____

Email: _____

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

State Bar No.: _____

SWORN TO AND SUBSCRIBED before me on _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT 2
	§	
_____	§	
DEFENDANT	§	BASTROP COUNTY, TEXAS

SERVICEMEMBER’S CIVIL RELIEF ACT AFFIDAVIT

Instructions: The Servicemember’s 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 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. To obtain certificates of service or non-service under the Servicemember’s Civil Relief Act, you may access the public website: <https://www.dmdc.osd.mil/appli/scra/scraHome.do>. This website will provide the current active military status of an individual.

Plaintiff being duly sworn under oath swears that Defendant is: (*check one*)

- not on active duty in the military
- on active military duty and/or is subject to the Servicemember’s Civil Relief Act of 2003
- has waived in writing his/her rights under the Servicemember’s Civil Relief Act of 2003
- military status is unknown at this time

PLAINTIFF

SWORN TO AND SUBSCRIBED before me on _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY

**Penalty for making or using false affidavit – a person who makes or uses an affidavit 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.*