

FILING AN EVICTION LAWSUIT

VENUE:

Suit for possession of property, precinct in which all or part of the property is located.
Suit for rent in which all or part of the property is located.

REQUIREMENTS:

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or hold over beyond the end of the rental term or renewal period at least **THREE DAYS WRITTEN NOTICE TO VACATE THE PREMISES** before the landlord files a Forcible Detainer Suit, **unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.** If you have a written lease see attached statute 24.066.

To recover attorney's fees in a Forcible Entry and Detainer Suit, the written demand to vacate the premises must state that if the tenant does not vacate before the **11th DAY** after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. This notice must be sent certified mail, return receipt requested.

Notice to vacate may be by personal delivery to the tenant or any person residing at the premises who is sixteen (16) years of age or older or personal delivery to the premises by affixing the notice to the inside of the main entry door. Notice by mail may be registered or certified mail, return receipt requested, to the premises in question. _____

JURISDICTION:

In a forcible entry and detainer suit, the Court may render judgment for the possession of the property in question. The landlord may receive judgment for back rent if the amount in controversy is not more than \$5,000.00.

FILING SUIT:

The responsibility for filling out your petition rests with you, the Plaintiff. Court Clerks will assist you if you have procedural questions. List each adult tenant on the lease or in a verbal agreement. State tenant's full address including apartment number. List any known work address or other address where tenant may be located for service.

Paragraph #3 of the attached petition describes three separate causes of action. The first blank under paragraph #3 being for **NON-PAYMENT of RENT**. The second blank being for **BREACH of LEASE** by the tenant.

If neither is chosen, then the last paragraph will cover the action known as OWNER WANTS POSSESSION. Generally, this will require a THIRTY (30) DAY WRITTEN NOTICE TO VACATE.

When filing, the landlord should bring the following:

- A. A copy of the lease (if you have one);**
- B. A copy of the notice to vacate;**
- C. 111.00 Dollars for filing and services on one person.**

Generally, all parties named in the lease should be sued and served with citation in the eviction proceeding. Any judgment granted will run only against those who are specifically named and served.

CITATION:

The constable will serve each tenant with citation based on the information you give to the Court. The tenant will be informed in the citation the DATE and TIME of the hearing and a DEFAULT JUDGMENT may be rendered against him if he does not appear at the time designated.

REPRESENTATION:

The owner's agent may file any type of eviction suit and may represent the owner at any default judgment hearing. If the case is contested, an agent may represent either party if the case involves non-payment of rent or holding over.

HEARING:

Always arrive at least ten (10) minutes prior to trial and check in with the clerk and identify yourself by name along with the names of any witnesses that you want sworn to give testimony. **BE SURE TO HAVE A COPY OF YOUR LEASE, NOTICE TO VACATE, AND PAYMENT RECORDS or any records pertaining to the case .**

IF THE DEFENDANT DOES NOT APPEAR AT HEARING:

- A. The plaintiff will present their case to the Judge;
- B. If judge rules in plaintiff's favor, a DEFAULT judgement will be granted.

IF THE DEFENDANT APPEARS AT HEARING :

- A. Judge will hear both sides;
- B. Judge will render a decision;
- C. If Judge rules in Plaintiff's favor , defendant will have five (5) days to appeal judgment to County Court or vacate property.

IF THE DEFENDANT DOES NOT WITHIN FIVE (5) DAYS AFTER JUDGMENT OR DOES NOT APPEAL TO COUNTY COURT:

- A. A Writ of Possession and Restitution may be filed.
- B. Cost of Writ is Two Hundred (\$200.00) Dollars
- C. Writ of Possession shall order the officer executing the writ to instruct the tenant to remove or allow the landlord, the landlord's agent , or persons acting under the officer's supervision to remove all personal property claimed to be owned by the landlord and place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, or street and NOT while it is raining, sleeting , or snowing.

After you are sworn, present your evidence in sequence from beginning to end;

- A. Date lease of rental agreement began and if agreement is still valid on a month to month basis.**
- B. Terms of lease including rent per month and date rent is due.**
- C. Amount of pure, lived up, unpaid, back rent owed up to the Court date and how it was computed. Late charges , penalties, etc. cannot be pleaded for in eviction suit.**
- D. Prove that tenant is in violation of lease and why he is in violation.**
- E. Date that proper written notice to vacate was given to the tenant.**
- F. In summary, state specifically what you are pleading for:**

Example: I am pleading for possession of property and back rent in the amount of \$ _____, plus court cost.

NOTE: NEVER ACCEPT FUTURE RENT AFTER THE SUIT IS FILED. IF YOU

ACCEPT BACK RENT AFTER THE SUIT IS FILED, BE SURE TENANT IS TOLD THAT YOU ARE PROCEEDING WITH THE EVICTION SUIT.

Forcible may be dismissed ONLY in open court or by written request. We encourage you as agent or landlord to use the MOTION TO DISMISS included in this packet .

If you have additional **PROCEDURAL** questions , please contact this office at (325) 762-2232 ext. 1.

NO LEGAL QUESTIONS WILL BE ANSWERED BY THIS OFFICE.

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO :

JUDGE JAMES BREEDEN
P.O. BOX 2211
225 SOUTH MAIN
ALBANY, TEXAS 76430

EVICTON LAWSUIT- PLAINTIFF'S ORIGINAL PETITION

JUSTICE COURT PRECINCT #1
SHACKELFORD COUNTY , TEXAS

CAUSE # _____

TO THE HONORABLE JUDGE OF THE COURT:

PLAINTIFF: _____ **PHONE#** _____

ADDRESS: _____

AGENT OR ATTORNEY: _____

VS

DEFENDANT (S): _____

RESIDENCE ADDRESS: _____

WORK ADDRESS: _____

**ANY OTHER ADDRESS KNOWN TO YOU AT THE TIME OF FILING THIS
PETITION MUST BE LISTED:** _____

1. This lawsuit is to evict: _____, a tenant who
leases the property located at _____.

**THE PROPERTY IS WITHIN THE JUSTICE COURT PRECINCT #1,
SHACKELFORD COUNTY.**

THE OWNER/ LANDLORD IS : _____.

2. The tenant rented this property on or about _____, _____ and still holds the
property. The lease is (check one) ORAL () WRITTEN ().

3. The rent is \$ _____ per month and is due on the _____ day or each month.

4. Plaintiff entered into an agreement with the Defendant for occupancy of lease premises.

Defendant has violated the terms of the agreement by:

_____ A. Failing to pay rent for the period beginning _____ day of _____, 20_____, and
running through the present;

_____ B. Breaching the terms and conditions of the agreement by:

_____ C. In the event that neither of the above causes are checked, possession of the leased
premises is sought by the Plaintiff under the cause of action that the owner wants
possession . Plaintiff has given a timely notice to vacate as prerequisite to filing of this
lawsuit. Despite this written demand for return of the leased premises , thirty (30) days
Defendant has failed and refused to comply with said demand and is willfully with-
holding possession of the leased premises at the present time.

5. Written notice to vacate and demand for possession was given on _____, day of _____, 20____ in the following manner: () certified mail () delivered in person.

THE COURT IS ASKED TO EVICT THE TENANT AND ORDER THE TENANT TO:

- () Pay rent owed in the amount of \$_____, plus all rents accruing through the date Of judgment .
- () Pay Court Cost.
- () Pay reasonable attorney's fees of \$_____.

PLAINTIFF

ATTORNEY / AGENT

SAID PLAINTIFF (OR HIS AGENT / ATTORNEY), BEING DULY SWORN TO ME, THE UNDERSIGNED AUTHORITY , UPON OATH SAYS THAT THE FACTS AS STATED IN THE ABOVE INSTRUMENT ARE , WITHIN THE KNOWLEDGE OF SAID AFFIANT, TRUE AND CORRECT.

SWORN AND SUBSCRIBED BEFORE ME, THIS _____ DAY OF _____, 20_____.

NOTARY PUBLIC / CLERK OF COURT

OFFICIAL NOTICE TO VACATE

COUNTY OF SHACKELFORD

KNOW ALL MEN BY THESE PRESENT:

ADDRESS OF PROPERTY

DATE

TO _____

FINAL NOTICE IS HEREBY GIVEN YOU TO VACATE THE PREMISES YOU ARE OCCUPYING. SAID PREMISES BEING LOCATED AT ;

ADDRESS OF PROPERTY

SINCE YOU HAVE BREACHED YOUR AGREEMENT BY NOT PAYING THE CONSIDERATION HEREIN MENTIONED , WE ARE THEREFORE ENTITLED TO POSSESSION OF THE ABOVE DESCRIBED PREMISES, AND DEMAND IS HEREBY MADE OF THE POSSESSION OF SAME FROM YOU.

A. YOU MUST VACATE THE ABOVE DESCRIBED PREMISES WITHIN 3 DAYS NOT COUNTING THE DATE OF SERVICE OF THIS NOTICE.

THIS NOTICE IS GIVEN PURSUANT TO THE TEXAS PROPERTY CODE, SECTION 24.005-6 PRIOR TO FILING AN EVICTION LAWSUIT IN A COURT OF COMPETENT JURISDICTION.

SIGNATURE

WITNESS SIGNATURE

DATE SERVED