

# EVICTION CASES

## INSTRUCTIONS AND INFORMATION REGARDING FILING SUIT (PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION)

**EVICTION:** An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. It may or may not include a suit for rent.

**WHERE TO FILE:** An eviction suit must be filed in the county and precinct in which the rental property is located; otherwise, the Judge must dismiss the case.

**NOTICE TO VACATE:** The Notice to Vacate must be in writing and must be considered a demand for possession of the property. The notice must be signed by the landlord or his agent and must include the date and time of delivery. The notice may be hand delivered to the tenant at the address of the property demanded, or it may be mailed to the tenant's address.

**TIME REQUIREMENTS:** Unless there is a written agreement between the parties regulating the notice requirements, the landlord must give the tenant at least three (3) days' Notice to Vacate. Section 24.005 of the Texas Property Code sets out the notice requirements for eviction suits.

**FILING AN EVICTION SUIT:** If the tenant does not vacate the property by the date given in the notice, you may then file an eviction suit. You will need to bring the following information to the Judge's office:

1. Date the Defendant took possession of the property (moved in)
2. Date the Notice to Vacate was given and how it was given
3. One hundred sixteen dollars (\$116.00) fee for filing and service on one person. Additional service is \$75.00 per person.
4. The last three numbers of the Defendant(s) driver's license and social security.

**OTHER DOCUMENTS:** At the time of filing, a Case Information Sheet and a Military Affidavit for each Defendant must be filed.

**WHO TO SUE:** If the eviction is based on a written residential lease, the Plaintiff **must** name as Defendants **all** tenants obligated under the lease residing at the premises whom Plaintiff seeks to evict.

**WHO MAY FILE:** The owner or his agent may file an eviction suit; however, the agent may represent the owner in Court **only** if the case is for non-payment of rent or holding over. Other type of eviction suits, if contested, must be represented by the owner himself or by the owner's attorney.

**JOINING A SUIT FOR RENT:** A suit for rent may be joined with the eviction suit if the amount due is within the jurisdiction of the Justice Court (\$10,000.00). A statement that attorney fees are being sought, if applicable, must be included. Any damages or other charges may not be included in this action; however, a Small Claims case may be filed in Justice Court to cover the other charges.

**PROCEDURES AFTER FILING:** At the time the suit is filed a hearing date will be set ten (10) to twenty-one (21) days after filing date. A citation will be issued to each tenant who is named in the suit informing him of the date and time of hearing. The citation (or citations) will go to the Wichita County Constable's office to be served.

**THE HEARING:** You are required to appear personally for the hearing. Proper representation is essential. You will need to bring with you all the evidence pertaining to the case. The burden of proof lies with you as Plaintiff. You must show the Court good and sufficient evidence proving your right to regain possession of the property. **You must still prove your case even if the Defendant fails to appear for hearing.**

**JUDGMENT:** At the hearing a judgment will be rendered for either the Plaintiff or for the Defendant. A judgment for the Plaintiff may be for all or part of the initial claim. If you are awarded a judgment for possession and/or for back rent owed, there is a five-day appeal period in which the Plaintiff or Defendant may appeal the decision of the Court. If the Defendant has not appealed the case or moved from the premises at the expiration of this appeal period, you may then file a Writ of Possession. **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 and served with citation.**

**WRIT OF POSSESSION:** You must pay **\$155.00** filing/service fee to the Judge's office. A Writ of Possession will be issued to the Constable's office. This instrument directs the Constable to take possession of the property and return it to you. Your telephone number will be given to them, and you will be contacted. If the Defendant(s) is still in the property, the Constable will meet you there at a designated time. It will be your responsibility to remove the Defendant's possessions and place them outside. Any questions concerning this writ should be directed to the Constable's office.

Laws governing eviction procedures can be found in **Section 24 of the TEXAS PROPERTY CODE** and **Part V of the TEXAS RULES OF CIVIL PROCEDURE.**

If you have any further questions, please feel free to contact our office. **REMEMBER – THE JUDGE CANNOT DISCUSS THIS CASE WITH YOU PRIOR TO THE HEARING;** however, the Civil Clerk will be happy to assist you with clarifying procedures. **SHE CANNOT GIVE YOU LEGAL ADVICE.**

**NOTE: PERSONAL CHECKS CANNOT BE ACCEPTED. IF PAYING BY CASH, PLEASE BRING THE EXACT AMOUNT DUE.**