

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

Court Date: _____

Time: _____

Cause No. _____

_____	§	IN THE JUSTICE COURT
Plaintiff(s) (Landlord/Property Name)	§	
vs	§	PCT. 1
_____	§	
Defendant(s)	§	WOOD COUNTY, TEXAS

PETITION: EVICTION CASE

Total Monthly Rent _____

COMPLAINT: Plaintiff (Landlord) hereby complains of the defendant(s) named above for eviction of Plaintiff's premises (including storerooms and parking areas) located in the above precinct. Address of Property is:

_____	_____	_____	_____
Street Address	Unit # if any	City	Zip

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 the Defendant(s) may be served are:

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

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 since they failed to vacate at the end of the rental term or renewal of extension period, which was the ____ day of _____, 20____.

NOTICE TO VACATE: Plaintiff has given Defendant(s) a written notice to vacate (according to Ch. 24.005 of the Texas Property Code) and demand for possession. Such notice was delivered on the ____ day of _____, 20____,

by this method: _____.

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 & fax numbers are: _____

IMMEDIATE POSSESSION BOND: If Plaintiff has filed a bond for possession, Plaintiff requests (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 the Defendant(s).

RELIEF: Plaintiff requests that Defendant(s) is served with the citation and that Plaintiff is awarded a judgment against Defendant(s) for: Possession of 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 \$22.00 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:

_____.

I have reviewed the information about the Texas Eviction Diversion Program available at www.txcourts.gov/eviction-diversion/.

Petitioner's Printed Name

Signature of Plaintiff or Attorney

Plaintiff's (or Plaintiff's Attorney's) Address

City

State

Zip

Plaintiff's (or Plaintiff's Attorney's) Phone & Fax Number

DEFENDANT'S INFORMATION (if known)

Date of Birth: _____

*Last 3 numbers of Driver's License: _____

*Last 3 numbers of Social Security: _____

Sworn to and subscribed before me this the _____ day of _____, 20____.

Clerk of the Justice Court or Notary

YES !!! YOU MUST FILL OUT THIS FORM IF YOU WISH TO RECEIVE A DEFAULT JUDGMENT IN YOUR FAVOR!!!

CAUSE NUMBER: _____

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

My name is [please print] _____

I am [check one] the plaintiff or an authorized agent of the plaintiff in the case described above. I am capable of making this affidavit. I have been duly sworn on oath and the facts in this affidavit are within my personal knowledge and are true and correct.

[check or fill in as applicable]

1. No defendant in this case is on active duty in the U. S. military (Army, Navy, Air Force, Marines, or Coast Guard). The facts on which I base my conclusion are as follows: _____

2. Defendant [insert name(s)] _____ is on active duty in the U.S. military.

3. Defendant [insert name(s)] _____ has been deployed by the U.S. military to a foreign country.

4. Plaintiff and the undersigned (if the undersigned is acting agent of plaintiff) are not able to determine whether any defendant is in the U.S. military – except for any defendant named in 2 above.

5. Plaintiff and the undersigned (if the undersigned is acting as an agent of plaintiff) are not able to determine whether any defendant who is in the U.S. military has been deployed to a foreign country – except for any defendant named in 3 above.

6. Defendant [insert name(s)] _____ has signed, while on active duty, a **separate written waiver** of his or her rights under the U.S. Servicemembers Civil Relief Act of 2003.

Affiant

Sworn to and subscribed before me on this the _____ day of _____, 20_____.

(Judge) (Clerk) Justice Court – Pct. 1
Wood County, Texas

Notary Public in and for the State of Texas

You can find a person's military status by going to this website: <https://scra.dmdc.osd.mil/>

Penalty for making or using a false affidavit – A person who signs an affidavit, knowing it to be false, may be charged a fine as provided in Title 18 of the United States Code, or imprisoned for not more than one year, or both.

NOTICE

PROPER DRESS IN JUSTICE COURT IS REQUIRED AS FOLLOWS:

ALL Requirements pertain to both adult and juvenile males and females, unless otherwise noted.

Failure to comply may result in the reset of the case to a later date, Or in the extreme, CONTEMPT OF COURT.

SHOES ARE REQUIRED

NO SLEEVELESS SHIRTS

NO SHORTS

Women are permitted to wear dress shorts with hosiery

NO EXPOSED MIDRIFTS

NO CLOTHING DISPLAYING OFFENSIVE WORDS OR PICTURES

NO HATS

NO PAJAMAS

CLEANLINESS

The court appreciates many must come to court directly from work. If needed, washrooms are available in the building.

CHILDREN

Loud or crying children should be taken out of the courtroom



STATE OF TEXAS EVICTION DIVERSION PROGRAM

The Texas Eviction Diversion Program (TEDP) Set-Aside of the Texas Rent Relief (TRR) Program helps Texas tenants stay in their homes and provides landlords an alternative to eviction.

The TEDP may provide up to 12 months of rental and utility assistance for eligible tenants who are behind on their rent due to the COVID-19 pandemic and have been sued for eviction. Both the tenant and the landlord must agree to participate and meet the requirements listed on the back of this page.

This temporary program is a unique partnership between the Supreme Court of Texas, Texas Office of Court Administration, and the Texas Department of Housing and Community Affairs (TDHCA).

- If the rent is below the TRR Program limit, assistance can be used to pay the contracted rent for all past due rent as far back as March 13, 2020 (up to 12 months), plus up to an additional 3 months upon re-application if necessary to ensure housing stability and if funds are available.
- The TEDP uses a special court process that allows courts to put eviction lawsuits on hold and divert them to the TEDP. Under the TEDP, lump sum payments are provided to landlords for rent back payments in exchange for allowing tenants to remain in their homes and forgiving late fees. Diverted cases will be dismissed and made confidential from public disclosure.

LANDLORD / UNIT	TENANT / HOUSEHOLD
<p>Eligibility Requirements:</p> <ul style="list-style-type: none"> ■ Assistance for rent no older than March 13, 2020 ■ Rent for the household assisted may not exceed the TDHCA maximum limits (limits available by zip code at TexasRentRelief.com) ■ Must have a bank account and accept direct deposit ■ Public housing units are ineligible ■ Units where the household's portion of the monthly rent paid to the landlord can be adjusted based on a change in household income are ineligible ■ Units owned by a unit of government may be ineligible 	<p>Eligibility Requirements</p> <ul style="list-style-type: none"> ■ Household has been sued for residential eviction in Texas and has eviction court docket number ■ Household income at or below 80% of Area Median Income (limits available by county at TexasRentRelief.com) ■ <u>AND</u> one or more of the household members: <ul style="list-style-type: none"> ■ Qualified for unemployment benefits on or after March 13, 2020; OR ■ Attest in writing that due to or during the pandemic they have: <ul style="list-style-type: none"> • Experienced a reduction in household income, • Incurred significant costs, or • Experienced financial hardship ■ <u>AND</u> households must demonstrate that they: <ul style="list-style-type: none"> ■ Are at risk of homelessness or housing instability by providing an eviction notice or past-due utility or rent notice; OR ■ Live in unsafe or unhealthy housing conditions ■ Tenants are INELIGIBLE if their rental payments for a unit can be adjusted based on a change in their monthly household income) or they are in public housing
<p>Documents Needed:</p> <ul style="list-style-type: none"> ■ Copy of rent or lease agreement (or rent receipt or if no written lease, required certification proving tenancy) ■ Documentation of Missed Payments (ledger, etc.) ■ If individual: Government Issued ID; If incorporated: a Corporate resolution to participate in the program. ■ IRS Form W-9 ■ Landlord TEDP form completed ■ Landlord TEDP certification completed 	<p>Documents Needed:</p> <ul style="list-style-type: none"> ■ Government/personal ID of a person on the lease ■ Copy of rent or lease agreement (or rent receipt) ■ Income documentation: annual income documentation for 2020, or income evidence for past 60 days (more details on website) ■ Household TRR Application and certification completed ■ Notices of late rent payment or notice to evict ■ Copies of past due utility bills, if utility assistance is being requested ■ Unemployment documentation, if applicable ■ If receiving partial rental assistance from another source for the same month, contact the program
<p>You will be required to certify that you:</p> <ul style="list-style-type: none"> ■ Will waive late fees, penalties, and not pass court costs on to the tenant ■ Have not received assistance from another program for the same months of rent for this household and will not apply in the future for the covered months ■ Will release the tenant from payment liability for this time period, waive all claims raised in the eviction case, and not evict the tenant for the period covered by TEDP ■ Will reimburse the TEDP within 10 business days if you receive rent payment for this same unit and time period ■ If no current written lease, will certify the lease term, rent amount, and be able to provide proof of tenancy and the most recent expired lease (if applicable) 	<p>You will be required to certify that you:</p> <ul style="list-style-type: none"> ■ Have not received rental assistance for the same months of rent or the rental assistance received was less than the full amount owed, and will not seek such assistance in the future for the covered months ■ Will reimburse the TEDP within 10 business days if you receive rent (or utility) payment for this same time period ■ If no current written lease, must certify lease term, rent amount, and ability to provide proof of tenancy and the most recent expired lease (if applicable)

Program Eligibility, Process and Application:
[TexasRentRelief.com](https://www.texasrentrelief.com)
833-9TX-RENT / 833-989-7368

Court Process:
txcourts.gov/eviction-diversion
855-270-7655 (Texas Legal Service Center)

