

# FILING AN EVICTION LAWSUIT

## JURISDICTION:

An eviction case is a lawsuit to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$20,000, excluding statutory interest and court costs but including attorney fees, if any. Eviction cases are governed by Rules 500-507 and 510 Party V of the Rules of Civil Procedure.

## 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.

## NOTICE:

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 a **THREE DAY WRITTEN NOTICE TO PAY OR VACATE, OR NOTICE TO VACATE** before filing the Eviction Lawsuit: **UNLESS THE PARTIES HAVE CONTRACTED FOR A SHORTER OR LONGER NOTICE PERIOD IN A WRITTEN LEASE OR AGREEMENT. 24.005a Property Code**

## FILING SUIT:

The responsibility for filling out your petition and civil case information sheet rests with you. Court clerks will assist you if you have procedural questions. Please state the tenant's full address including the apartment number. List any known work address or other address where the tenant may be located for service. The filing fee is fifty-four **(\$54.00)** and the service fee is ninety **(\$90.00)** per defendant to be served in Caldwell County, for a total of one hundred thirty-four **(\$144.00)**. When filing, the Landlord should bring the following:

1. Copy of the lease (if you have one);
2. Copy of the Written Notice to Vacate; and **\$144.00** (if only one person being served).

**\*\*Payment must be in the form of a MONEY ORDER or CASHIER'S CHECK made payable to CALDWELL COUNTY TREASURER\*\***

**CITATION:**

The Constable/Sheriff will serve each tenant with a citation, based on the information you provide to the Court. The citation will inform the Defendant of the date and time of the hearing and that a Default Judgment may be rendered if he/she does not appear at the appointed time.

**REPRESENTATION:**

In eviction suits, either of the parties may represent themselves or be represented by their authorized agents in justice court or be represented by an attorney.

**HEARING:**

Always arrive at least 10 minutes prior to trial and check in with the clerk. Be sure to have **a copy of your lease, the notice to vacate and payment records or any records pertaining to the case.**

If the defendant does not appear at the Hearing:

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

If the defendant does appear at the Hearing:

- A. The Judge will hear both sides;
- B. The Judge will render a judgment;

If the defendant does not vacate the property or appeal the case within 5 days after the judgment; the plaintiff may request a Writ of Possession. The cost of the Writ of Possession is **\$250.00**. (Payment: Money order or Cashier's check payable to Caldwell County Treasurer)

Eviction Lawsuits may be dismissed only in open court or by written request. A "Motion to Dismiss" form is included in this packet.

**IF YOU HAVE PROCEDURAL QUESTIONS, PLEASE CONTACT THE COURT**

**LEGAL QUESTIONS WILL NOT BE  
ANSWERED BY THIS OFFICE**

CAUSE NO. \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT 1
	§	
_____	§	
DEFENDANT	§	CALDWELL COUNTY, TEXAS

**PETITION: EVICTION CASE**

**COMPLAINT:** Plaintiff hereby sues the following Defendant(s) *(include name, email address, DOB, and last 3 digits of DL & SSN, if known)* : \_\_\_\_\_

\_\_\_\_\_

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

_____	_____	_____	_____	_____
Street Address	Unit No. <i>(if any)</i>	City	State	Zip

**GROUND(S) 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: \$\_\_\_\_\_. Defendant

☐ has or ☐ has not been late/delinquent in paying rent before the month in which notice was given. 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 or periodic tenancy, which ended on \_\_\_\_\_, 20\_\_\_\_.

☐ **Squatter.** Defendant(s) never had a right to possess the property and are unlawfully occupying the premises after a demand to surrender possession given on \_\_\_\_\_, 20\_\_\_\_. Plaintiff ☐ has or ☐ has not attached a Motion for Summary Disposition under Rule 510.10.

☐ **Expiration of Tenancy at Will or by Sufferance.** Defendant(s) had no lease agreement and have failed to vacate the premises after being given a termination notice, if applicable, and a demand to surrender possession given on \_\_\_\_\_, 20\_\_\_\_.



**PRE-SUIT NOTICE:** Plaintiff has given Defendant(s) a ☐ notice to vacate ☐ notice to pay or vacate (according to Property Code § 24.005(f-3) or (f-4)) and demand for possession. Such notice was delivered on \_\_\_\_\_, 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 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. Home or work addresses other than the premises 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 if applicable, 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**.

**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, Defendant, 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 Defendant 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, Defendant, 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 Agent or 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

Justice of the Peace, Pct 1  
110 South Brazos St. Lockhart, TX 78644  
512-398-1810 512-398-2785 (Fax)

## SERVICEMEMBER'S CIVIL RELIEF ACT

CASE NO. \_\_\_\_\_

### AFFIDAVIT

Plaintiff being duly sworn on oath deposes\* and says that defendant(s) is (are)

(CHECK ONE)

- ☐ not in the military
- ☐ not on active duty in the military and/or
- ☐ not in a foreign country on military service
- ☐ on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- ☐ has waived his/her rights under the Servicemembers Civil Act of 2003
- ☐ military status is unknown at this time

\_\_\_\_\_  
PLAINTIFF

Subscribed and sworn to before me no this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY / CLERK

☐ Notary Public in and for the State of Texas

\_\_\_\_\_  
SEAL

☐ Clerk of the Justice Court

**\*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.**

Justice of the Peace, Pct 1  
110 South Brazos St. Lockhart, TX 78644  
512-398-1810 512-398-2785 (Fax)





# LANDLORD'S GUIDE TO WRITS OF POSSESSION

*This guide is intended to advise landlords what will occur so there is no misunderstanding about the procedure involved when a Writ of Possession is executed upon the property. This guidance constitutes the procedure in Caldwell County, TX*

CAUSE #: \_\_\_\_\_

A **Writ of Possession** is an order from the court which has previously made a ruling in favor of a landlord in an eviction case. The writ directs the Constable to deliver the premises to the possession of the landlord. In other words, the Constable will be forcing out the tenant who refuses to vacate after the Court has ordered the eviction. A tenant who does not vacate is ignoring or not respecting the ruling of the judge who ordered the eviction. In our legal system, court orders are binding on the individuals subject to the order. The Constable has a duty to serve the Court and will enforce the Court's orders.

The Constable's fee for executing a Writ of Possession is \$250.00. The writ fee includes the first two hours of service for all deputies involved in the execution of the writ. Caldwell County Commissioners Court has established an **additional fee at a rate of \$35.00 per-hour after the first two hours of service. Payment arrangements must be made prior to the execution of the writ.**

1. The Landlord shall be responsible for providing the needed personnel and supplies to remove the tenant's personal property from the rental unit. The deputy may also allow the tenant to help remove the property IF no disturbance or conflict occurs.
2. The Constable will post a required 24 hr. notice at the rental property advising the tenant that the Writ will be executed any time after the date written on the notice. The Constable will contact the landlord and arrange a date and time to execute the writ.
3. If the tenant creates a disturbance or disruption, or refuses to leave the location when ordered, the Constable may detain or arrest the tenant for any violation of the law. The landlord and their representatives are also expected to refrain from any disturbances or disruptions. The Constable has complete authority over the property and of the execution until it is released back to the landlord.
4. The tenant's property shall be removed in accordance with Chapter 24 of the Texas Property Code. **Removal of the tenant's property during and/or directly after inclement weather events is STRICTLY PROHIBITED.** Bad weather may delay the writ.
5. The Property code further states "the Tenants personal property can be moved and placed outside the rental unit at a nearby location". This location will be determined by the Constable.
6. Items that are obviously trash or solid waste need not be moved and can be disposed of later by the landlord. Every reasonable effort will be made to respect the tenant's property during removal.
7. The tenant's personal property shall never be placed onto a public easement or right of way, but instead may be placed at a furthest most point on the landlord's property that still allows the tenant a reasonable opportunity to retrieve the property after the writ is executed.
8. The tenant's property must remain at the location it was left at for at least 24 hours after the writ is executed. The landlord may not remove it for that time but is **NOT RESPONSIBLE** for its safety or security. That responsibility remains the tenants.
9. A written criminal trespass warning will be given to the tenant by the Constable when the execution of the writ has been completed. If the tenant IS PRESENT, a signed, written notice will be issued, and a copy will be given to the landlord. If the tenant is NOT PRESENT, notice will be posted at the closest entry point to the property. Both options satisfy the requirements under the **TX Penal Code Sec. 30.05 (b)(2).**
10. If the tenant departs the property prior to the execution of the writ, the landlord is directed to notify the Constable as soon as possible for further instructions.
11. Please contact the Caldwell County Constables Office PCT. 1 at (512) 359-4707 if you have any questions or issues.

My signature acknowledges that I have been given a copy of these rules and will comply with them during the execution of the Writ of Possession issued under this cause number.

Landlord Signature: \_\_\_\_\_ Date / Time Signed: \_\_\_\_\_

Issuing Court Clerk: \_\_\_\_\_ Date / Time Issued: \_\_\_\_\_