

PROCEDURES INVOLVING EVICTION SUITS IN JUSTICE CIVIL COURT

1. **NOTICE TO VACATE:** You must first give the tenants a written notice to vacate, demanding that the tenants leave the property immediately or by a specified deadline. ****NOTE:** If the landlord has previously given written notice to tenant that rent is owed, notice to vacate can demand that tenant pay or vacate by a certain date and time. The notice to vacate must be signed by a person entitled to possession of the property; (e.g., the landlord or the landlord's agent). The notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery:
 - a. To the tenant or any person residing at the premises who is 16 years of age or older or:
 - b. By affixing the notice to the inside of the main entry door ****NOTE:** Landlord can securely affix notice on outside of main entry door, if dwelling has no mailbox and has keyless bolting device, alarm system, or dangerous animal that prevents entry.
 - c. Notice by mail may be by regular mail or by registered or certified mail, return receipt requested, to the premises in question.

2. **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 before filing suit. ****NOTE:** A notice to vacate sent by registered or certified mail, return receipt requested, must give the tenant at least ten (10) days to vacate before filing suit. The notice period is calculated from the day that the notice is delivered.

3. **ATTORNEY'S FEES:** To be eligible to recover attorney fees you must give the tenant a demand that states that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney fees. ****NOTE:** The demand must be sent by registered or certified mail, return receipt requested, at least ten (10) days before the date the suit is filed.

4. **WHERE TO FILE:** An eviction suit must be filed in the county and precinct where the rental property is located.

5. **WHO MAY FILE:** The owner's agent may file any type of eviction suit, and he/she may represent the owner in any **default hearing**. The owner's agent may represent the owner in court only in cases of **non-payment of rent** and **holding over**. All other types of eviction suits if contested, must be represented by the owner in person or by an attorney.

6. **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 this court (\$10,000.00). Any damages or other charges may **not be included in this action**; *however*, a separate action for these damages may be filed in either Justice or Small Claims Court.

7. **PROCEDURES AFTER FILING:** After suit is filed a citation will be issued to the Constable's or Sheriff's office to be served on the tenant giving them the date and time of the hearing. The hearing date will be not less than six (6) days nor more than ten (10) days from date of service (TRCP 739).

- 8. THE HEARING:** You are required to appear personally for the hearing. Proper representation is essential (as per item 5). At the court hearing, both sides will have the right to present their side of the case, including witnesses, receipts, cancelled checks, photographs, etc. You will need to bring with you all evidence pertaining to the case. The burden of proof lies with you as the 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.*
- 9. JUDGMENT:** At the hearing, a judgment will be rendered for either the plaintiff or 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 of the premises and/or any back rent owed, there is a five (5) day appeal period in which the defendant may appeal the decision of the Court. If the defendant has not appealed the case at the end of the appeal period, judgment becomes final. Upon final judgment you may then file for a Writ of Possession.
- 10. WRIT OF POSSESSION:** This instrument directs the Constable or Sheriff to take possession of the property and turn it over to you. An additional fee of **\$200.00** is required for this service. A *written warning* must be posted outside the front door at least 24 hours before any action is taken. Your telephone number and address will be given to the Constable or the Sheriff and you will be contacted. Any questions concerning the Writ should then be directed to the Constable's or Sheriff's office.

REMEMBER***THE JUDGE CANNOT DISCUSS THIS CASE WITH YOU PRIOR TO THE HEARING. HOWEVER, WE WILL ASSIST YOU WITH CLARIFYING PROCEDURES.**

FOR LEGAL QUESTIONS-----CONSULT WITH AN ATTORNEY

\$46.00 Filing Fee
\$80.00 Service Fee (per individual named)

MUST MAKE MONEY ORDER OR CASHIER'S CHECK
PAYABLE TO: CALDWELL COUNTY TREASURER

Matt Kiely
Justice of the Peace, Pct. 1
110 S. Brazos
Lockhart, Texas 78644
(512) 398-1810
(512) 398-2785 (FAX)

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:

Name:

Telephone:

Address:

Fax:

City/State/Zip:

State Bar No:

2. Names of parties in case:

Plaintiff(s):

Defendant(s):

[Attach additional page as necessary to list all parties]

Email:

Signature:

3. Indicate case type, or identify the most important issue in the case (*select only 1*):

Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

Eviction: An eviction case is a lawsuit brought to recover possession of real property, 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 \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.

DOCKET NO. _____

AFFIDAVIT SEC. 201 (b)

Plaintiff being duly sworn on oath deposes and says that defendant(s):

_____ is not in the military

_____ not on active duty in the military and/or

_____ not in a foreign country on military service

_____ is on active military duty and/or is subject to the Service members Civil Relief Act of 2003

_____ defendant has waived his rights under the Service members Civil Relief Act of 2003

_____ military status is unknown at this time.

Plaintiff Signature

Subscribed and sworn to before me on this the _____ day of _____, 20_____.

Clerk of the Justice Court, Precinct 1
Caldwell County, Texas

** 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.*

PETITION: EVICTION CASE

CASE NO. (court use only) _____ **With suit for Rent** COURT DATE: _____

In the Justice Court, Precinct 1, Caldwell County, Texas

PLAINTIFF _____

(Landlord/Property Name)

Rental Subsidy (if any) \$ _____

VS.

Tenant's Portion \$ _____

DEFENDANT(S): _____

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 the property is:

Street Address Unit No. (If any) City State Zip

1. **SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

2. **UNPAID RENT AS GROUNDS FOR EVICTION:** Defendant(s) failed to pay rent for the following time period(s): _____ . **TOTAL DELINQUENT RENT AS OF 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.

3. **OTHER GROUNDS FOR EVICTION/LEASE VIOLATIONS:** Lease Violations (if other than non-paid rent – list lease violations) _____

4. **HOLDOVER AS GROUNDS FOR EVICTION:** 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_____.

5. **NOTICE TO VACATE:** Plaintiff has given defendant(s) a written notice to vacate (according to Chapter 24.005 of the Texas Property Code) and demand for possession. Such notice was delivered on the _____ day of _____ and delivered by this method:

_____ _____ _____

6. **ATTORNEY'S FEES:** Plaintiff _____ will be or _____ will NOT be seeking applicable attorney's fees. Attorney's name, address, and phone & fax numbers are: _____

7. **BOND FOR POSSESSION:** If Plaintiff has filed a bond for possession, plaintiff requests (1) that the amount of plaintiff's bond and defendant's counter bond be set, (2) that plaintiff's bond be approved by the Court, and (3) that proper notices as required by the Texas Justice Court Rules are given to Defendant(s).

REQUEST FOR JUDGMENT: Plaintiff prays that defendant(s) be served with citation and that plaintiff have judgment against defendant(s) for: possession of premises, including removal of defendants and defendants' 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 rental contract, or if not so stated, at the statutory rate for judgments under Civil Statutes Article 5069-1.05.

I give my consent for the answer and any other motions or pleadings to be sent to my email address which is: _____

Petitioner's Printed Name

Signature of Plaintiff (Landlord/Property Owner) or Agent

DEFENDANT(S) INFORMATION (if known):

Address of Plaintiff (Landlord/Property Owner) or Agent

DATE OF BIRTH: _____

City State Zip

*LAST 3 NUMBERS OF DRIVER LICENSE: _____

*LAST 3 NUMBERS OF SOCIAL SECURITY: _____

DEFENDANT'S PHONE NUMBER: _____

Phone & Fax No. of Plaintiff (Landlord/Property Owner) or agent

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

