

STEPS FOR FILING AN EVICTION LAWSUIT

(PLEASE READ CAREFULLY BEFORE COMPLETING PETITION)

VENUE – An eviction suit must be filed in the County and Precinct in which the property is located.

NOTICE TO VACATE – The notice to vacate must be in writing and must state **DEMAND** for the property. It must state the reason for demand and give a specific date by which the tenant must vacate the property. The notice must be signed by the landlord or his agent and it must include the date and time of delivery. The notice to vacate may be hand delivered to the tenant or any occupant that is 16 years of age or older at the address of the property demanded, or it may be mailed to the tenant's address. When mailing notice, see rules **Section 24.005 Texas Property Code**.

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 written notice to vacate in cases pertaining to non-payment of rent and/or breach of contract. If you need further details regarding time requirements, please consult the Texas Property Code, Sections 24.005 & 91.001 which provides notice requirements for eviction suits. **MAKE SURE YOU GIVE PROPER NOTICE.**

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. To file the suit, you will need to complete the Eviction Petition and the SCRA Military Affidavit. **The cost to file suit with service on one person is \$136.00.**

WHO MAY FILE – The landlord's agent may file any type of eviction suit and he may represent the landlord in default hearings. The landlord's agent may represent the landlord in court only in cases of non-payment of rent and hold over. All other types of eviction suits, if contested, the landlord must be present or represented by the landlord'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 jurisdictional limit of \$10,000.00. Any damages or other charges, such as late fees, may not be included in this action. However, the landlord or Attorney may file suit for these amounts in a separate action filed in either Justice Court or Small Claims Court.

PROCEDURES AFTER FILING – At the time the suit is filed, a hearing date will be set no less than 10 days or more than 21 days from the date petition is filed. A citation will be issued and delivered to the Constable to be served on the tenant giving him/her the date and time of the hearing. It is your responsibility to notify the court of any address or phone number changes so that the court can contact you, if the need arises.

THE HEARING – On the hearing date you will need to bring the evidence pertaining to the case. The burden of proof lies with you, the Plaintiff or landlord. You must show the court good and sufficient evidence providing your right to regain possession of the property. You will need to bring a copy of your notice, along with copies of ledgers, leases, etc. **You must still prove your case even if the defendant fails to appear for the 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 of the property and/or for any back rent owed, there is a five day appeal period in which the defendant may appeal the decision of the court. If the defendant has not appealed the case or moved from the property at the expiration of the 5th day, the Plaintiff may then file a Writ of Possession.

WRIT OF POSSESSION – You, the Plaintiff, must pay \$207.00 filing and service fee to the Judge's office. A writ of possession will be issued to the Constable for service. This instrument directs the Constable to take possession of the property and return it to you. Any questions regarding the 'take possession' date should be directed to the Constable.

If you have any questions, please feel free to contact our office. Remember, the Judge cannot discuss the case with you prior to the hearing; however, the Clerk will be happy to assist you by clarifying procedures. We cannot give any legal advice or suggest an Attorney.

LEGAL ASSISTANCE – This office does not provide legal counsel. Please consult the following agencies for guidance.

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|------------------------------|--------------|--|
| • State Bar of Texas | 800-204-2222 | www.texasbar.com |
| • Texas Young Lawyers Assoc. | 512-427-1529 | www.tyla.com |
| • Helping Hands-Rockwall | 972-771-4357 | 950 Williams St., Rockwall 75087 |
| • Texas Law Help | | www.TexasLawHelp.org |

PETITION: EVICTION CASE

CASE NO. (court use only) _____

With suit for Rent

COURT DATE: _____

In the Justice Court, Precinct 4, Rockwall County, Texas

PLAINTIFF _____
(Landlord/Property Name)

VS. _____
DEFENDANT(S): _____

Rental Subsidy (if any) \$ _____
Tenant's Portion \$ _____
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: _____

Phone & Fax # of Plaintiff (Landlord/Property Owner) or agent

DEFENDANT'S PHONE NUMBER: _____

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

Cause No. _____

SERVICEMEMBERS CIVIL RELIEF ACT

AFFIDAVIT
50 USC Sec.520

The Department of Defense Strongly supports the enforcement of the Service Members Civil Relief Act (SCRA), formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940. The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains official information regarding eligibility status of military personnel. You are strongly encouraged to obtain verification of the person's active duty status by contacting Department of Defense at the following link: <https://www.dmdc.osd.mil>. Failure to obtain Military Service verification could result in provisions of the SCRA being invoked against you.

Before me, the undersigned Justice of the Peace/Court Clerk/Notary personally appeared the below-named affiant, who under oath stated the following:

My name is _____
Plaintiff/Agent/Attorney

Being the plaintiff/agent/Attorney in the above case, I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct. Plaintiff being duly sworn on his oath deposes* and says that defendant(s):

CHECK ONE:

- _____ Is (are) NOT on active duty in the U.S. Military
- _____ IS (ARE) on active duty in the U.S. Military and/or is subject to the Servicemembers Civil Relief Act of 2003
- _____ HAS (HAVE) been deployed by the U.S. Military to a foreign country
- _____ has (have) signed, while on active duty, a separate written waiver of his/her rights under the U.S. Service Members Civil Act (SCRA) of 2003

OR

- _____ Plaintiff or the undersigned (if the undersigned is acting as agent of plaintiff) is not able to determine whether any defendant is on active duty in the U.S. Military
- _____ Plaintiff or the undersigned (if the undersigned is acting as agent of plaintiff) is not able to determine whether any defendant, who is on active duty in the U.S. Military, has been deployed to a foreign country

PLAINTIFF

DATE

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

Justice of the Peace/Court Clerk/Notary

*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 COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

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:	2. Names of parties in case:
<p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</p>	<p>Plaintiff(s): _____</p> <p>_____</p> <p>Defendant(s): _____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p>
3. Indicate case type, or identify the most important issue in the case (select only 1):	
<p><input type="checkbox"/> 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.</p>	<p><input type="checkbox"/> 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.</p>
<p><input type="checkbox"/> 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.</p>	<p><input type="checkbox"/> 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.</p>