

## FILING A FORCIBLE DETAINER/EViction SUIT

### VENUE:

Suit for possession of property and delinquent rent shall be filed in the precinct in which all or part of the property is located.

### REQUISITES:

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 **THREE DAY WRITTEN NOTICE TO VACATE THE PREMISES** before the landlord files a Forcible Detainer Suit, *unless the parties have contracted for a shorter or longer period in a written lease or agreement.*

To recover attorney's fees in a Forcible Entry and Detainer Suit, the written demand to vacate the premises must state that if the tenant does not vacate before the **11<sup>th</sup> DAY** after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. This notice must be sent certified mail, return receipt requested.

Notice to vacate may be personal delivery to the tenant or any person residing at the premises who is sixteen (16) years of age or older or personal delivery to the premises by affixing the notice to the inside of the main entry door. Notice by mail may be registered or certified mail, return receipt requested, to the premises in question.

### JURISDICTION:

In a Forcible Entry and Detainer Suit, the Court may render judgment for possession of the property in question. The landlord may receive judgment for back rent if the amount in controversy is not more than \$10,000.00.

### FILING SUIT:

The responsibility for filling out your petition rest with you, the Plaintiff. Court Clerks will assist you if you have a procedural question. List each adult tenant on the lease or in a verbal agreement. State the tenant's full address including apartment number. List any known work address or other address where the tenant may be located for service.

Paragraph #3 of the attached petition describes three separate causes of action. The first cause is for **NON-PAYMENT OF RENT**. The second cause is for **BREACH OF LEASE/CONTRACT** by the tenant. The third is for **HOLDING OVER THE LEASE PREMISES** by the tenant.

If neither is chosen, then the last paragraph will cover the cause of action known as owner wants possession.

When filing, the landlord should bring the following:

- A. A copy of the lease (if you have one);
- B. A copy of the notice to vacate;
- C. Filing fee of \$46.00 and service fee of \$100.00 per person. Generally, all parties named in the lease should be sued and served with citation in the eviction proceeding. Any judgment granted will run only against those who are specifically named and served.

**CITATION:**

THE Constable will serve each tenant with citation based on the information you give to the Court. The tenant will be informed in the citation the DATE and TIME of the hearing and a DEFAULT JUDGMENT may be rendered against him/her if he/she does not appear at the time designated.

**REPRESENTATION:**

The landlord's agent may file any type of eviction suit and may represent the landlord at any default judgment hearing. If the case is contested, an agent may represent either party if the case involves non-payment of rent or holding over.

**HEARING:**

Always arrive at least ten (10) minutes prior to trial and check in with the clerk and identify yourself by name along with the names of any witnesses that you want sworn to give testimony.

**IF THE TENANT APPEARS AT HEARING:**

- A. The Judge will hear both sides.
- B. The Judge will render a judgment.
- C. If the Judge rules in the landlord favor, the tenant will have five (5) days to appeal to County Court and or must vacate premises.

**IF THE TENANT FAILS TO APPEAR AT HEARING:**

- A. The landlord or landlord's agent will present their case to the Judge.
- B. If the Judge rules in the landlord's favor, a Default Judgment will be granted.

**IF THE TENANT DOES NOT MOVE WITHIN SEVEN (7) DAYS AFTER JUDGEMNT OR DOES NOT APPEAL TO COUNTY COURT;**

- A. A Writ of Possession may be requested and filed.
- B. The cost of a Writ of Possession Is \$205.00.
- C. A Writ of Possession shall order the officer executing the writ to instruct the tenant to remove or allow the landlord, the landlord's agent, or persons acting under the officer's supervision to remove all personal property claimed to be owned by the landlord and place or have an authorized person place the removed personal property outside the rental unit at a nearby location or street and NOT while it is raining, sleetin or snowing.

**NO LEGAL QUESTIONS WILL BE ANSWERED BY THIS OFFICE. If you have additional PROCEDURAL questions, please contact this office at (361) 645-3320.**

All correspondence should be addressed to:

Steven D. Kennedy  
Justice of the Peace, Pct. Two  
PO Box 25, Goliad, Texas 77963

Disclaimer: The information contained in this section is NOT purported to be all inclusive. Neither is it intended to serve as legal advice. You are strongly encouraged to consult the actual law, or consult with an attorney for answers to your questions.

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

**PETITION: EVICTION CASE**

**COMPLAINT:** Plaintiff hereby sues the following Defendant(s) for eviction of Plaintiff's premises (including storerooms and parking areas) located in the above precinct. The address of the property is:

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

**GROUND 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: \$ \_\_\_\_\_. 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 renewal or extension period, which was the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**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 \_\_\_\_\_, 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. Other home or work addresses 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, 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.

I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: \_\_\_\_\_.

Plaintiff's Printed Name

Signature of Plaintiff or Agent or Attorney

**Defendant's Information (if known):**

Date of birth: \_\_\_\_\_

Address of Plaintiff or Agent or Attorney

Last three digits of Driver License: \_\_\_\_\_

\_\_\_\_\_

Last three digits of Soc. Sec. No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\_\_\_\_\_

Phone & Fax No. of Plaintiff

or Agent or Attorney

**SWORN TO AND SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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CLERK OF THE JUSTICE COURT OR NOTARY

# 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.

<b>1. Contact information for person completing case information sheet:</b>		<b>2. Names of parties in case:</b>	
Name: _____		Plaintiff(s): _____	
Address: _____		Defendant(s): _____	
City/State/Zip: _____		State Bar No: _____	
Email: _____		[Attach additional page as necessary to list all parties]	
Signature: _____			
<b>3. Indicate case type, or identify the most important issue in the case (select only 1):</b>			
<input type="checkbox"/> <b>Debt Claim:</b> 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.	<input type="checkbox"/> <b>Eviction:</b> 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.		
<input type="checkbox"/> <b>Repair and Remedy:</b> 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.	<input type="checkbox"/> <b>Small Claims:</b> 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.		

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## Certificate of Last Known Mailing Address

The undersigned certifies that the last known mailing address of the Defendant against whom judgment is taken in this proceeding is:

Defendant's Name: \_\_\_\_\_

Defendant's Address: \_\_\_\_\_

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Plaintiff

Attorney of Record for Plaintiff

*This document is required to be filed when a judgment is taken by default so that the Court may notify the defendant of the entry of the default judgment.*

The Servicemembers Civil Relief Act, 50 U.S.C. App. 501 *et seq.*, passed December 19, 2003, requires the plaintiff in any civil proceeding in which the defendant does not make an appearance to file with the court an affidavit (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

**PENALTY FOR MAKING OR USING A FALSE AFFIDAVIT:** A person who makes or uses a military status affidavit, or statement, declaration, verification, or certificate, 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.

Costs for an attorney ad litem may be assessed against the plaintiff as costs of court unless otherwise ordered by the court.

CAUSE NUMBER: \_\_\_\_\_

PLAINTIFF

Vs.

DEFENDANT

§ JUSTICE OF THE PEACE

§ PRECINCT TWO

§ GOLIAD COUNTY, TEXAS

For any civil action where the defendant does not make an appearance, the plaintiff must make a statement about the military status of the defendant (Service member Civil Relief Act of 2003). A default judgment CAN NOT be granted against a defendant without a sworn statement stating whether the defendant is or is not in the military.

The plaintiff may wish refer to the military status database to determine the military status of the defendant. Attaching information found on this website may not be sufficient to determine the military status of the defendant. Website address: <https://www.dmdc.osd.mil/appj/scra/scraHome.do>

**SERVICEMEMBER AFFIDAVIT BY PLAINTIFF OR AFFIANT**

I the undersigned affiant state the following facts are based upon my personal knowledge about the defendant(s). I am over the age of 18 and am of sound mind and memory and make the following statement under penalty of perjury. To the defendant (check one):

Is NOT in the military on active duty.

Is on active military duty and/or is subject to the Service members Civil Relief Act.

Has waived his rights under the Service members Civil Relief Act of 2003.

Military status is unknown at this time.

Please state the necessary facts supporting how you personally know the military status of the defendant.

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PLAINTIFF

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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Notary Public in and for the State of Texas,  
Judge or Clerk of Court

CAUSE NO. \_\_\_\_\_  
STATE OF TEXAS § IN THE JUSTICE COURT OF  
VS. § PRECINCT TWO  
DEFENDANT § GOLIAD COUNTY, TEXAS

## Application for Deferred Disposition

Deferred Disposition is a suspended sentence (probation). On your plea of guilty or no contest, the Judge will defer the finding of guilt until a later date, assess the application fees, and order you to comply with certain conditions. If you successfully comply with the terms, your case will be dismissed. However, if you fail to comply with terms and conditions of Deferred Disposition a guilty judgment may be imposed and a conviction may be reported to the Texas Department of Public Safety in accordance with Texas Code of Criminal Procedure, Art. 27.14(c).

You may apply for Deferred Disposition via mail or email by plea and Application on or before your due date. The Judge will review your application and Deferred Disposition will only be granted at the discretion of the reviewing Judge.

Mail this application to: **Justice of the Peace, Precinct Two**  
**PO Box 25**  
**Goliad, Texas 77963**

Or email to: **jpeuttus@goliadcountytexas.gov**

I, the Defendant, in the above entitled cause, do hereby enter my plea of   No Contest  Guilty (check one), waive my right to a jury trial and request Deferred Disposition (Probation). I have not requested discovery from the State under Art. 39.14 of the Texas Code of Criminal Procedure. I request that the Court place me Deferred Disposition for this case. I understand that if I successfully complete the terms of the Deferred Disposition in a timely manner, my case will be dismissed. If I do not successfully complete the terms of the Deferred Disposition, I will receive a notice to appear in court to show cause why I did not complete the terms of Deferred Disposition as ordered. Furthermore, I understand that if I do not show sufficient cause, the Deferred Disposition will be revoked and a judgment of guilty entered and may be reported to the Texas Department of Public Safety in accordance with Texas Code of Criminal Procedure, Art. 27.14©

Furthermore, I DO NOT hold a Commercial Driver's License(CDL) and if I am 25 years of age or younger and stand charged with a traffic offense classified as a moving violation I understand I will be required to complete a state approved driving safety course.

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**Defendant Signature/Signature of Attorney of Record**

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Print Name

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**Address**

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City, State

Telephone#

*Citation Number*

### *Offense*

\_\_\_\_\_ (initial) I consent to email service of the answer and any other motions or pleadings, to my email address