

THE EVICTION PROCEDURE

All References from Chapter 24 of The Texas Property Code & The Texas Rules of Civil Procedure 510

LANDLORD MUST GIVE NOTICE TO VACATE

Sec 24.005 (a) (b) (c) **Written notice** - 3 days to vacate unless lease calls for shorter or longer time.

Sec 24.005 (d) If tenant took possession by "Forcible Entry" (just moved in) notice may be written or oral to vacate immediately.

If the eviction is a result of a foreclosure, the notice must be 30 days.

Sec 24.006 - If the landlord wishes to recover attorney fees the notice must state the tenant must vacate before the 11th day.

JURISDICTION

TX Property Code 24.003 TRCP 510.3(b)
The precinct where the property is located.

PETITION

TRCP 510.3(e) - The only issue in an eviction is possession of the rented premises.

TRCP 510.3(d) - Back rent suit (within court dollar jurisdiction) may be heard at the same time.

FILING OF SUIT

TRCP 510.4 - **Regular Filing** - (\$136.00)

The suit is filed and the court issues a citation that commands the tenant appear in court at a date and time, no less than **10 days and no more than 21 days** from date of filing. Service must be at least 6 days before the court date. TRCP 510.4(b)(2)

TRCP 510.5 - **Possession Bond Filing** - The landlord posts a bond set by the court. The notice served on the defendant will notify the possession bond has been filed. Judgement is granted on the 7th day if no bond or appeal is filed by the defendant. No writ may be issued before the 6th day. The writ issues on the 7th day and must be executed. The officer will place the plaintiff's in possession on or after the 7th day, after the date the defendant was served the notice. (*rarely ever used*)

TRIAL

TRCP 510.8(c)(1) - The judge hears the suit unless a jury trial has been requested. The trial is held and a judgment is granted for one party or the other. **Each party has 5 days to file an appeal.** If the landlord prevailed, on the 6th day, if no appeal has been filed, the Writ of Possession may be issued.

TRCP 510.9 TX PROP CODE 24.0051

Appeal as Pauper - Must pay rent into the registry of the court.

TX PROP CODE 24.0054

Failure to Pay The appeal court (or Justice Court if appeal has not been completed to higher court) issues a Writ of Possession on motion.

WRIT OF POSSESSION

TX PROP CODE 24.0061

After 5 days, if the tenant has not moved out or filed an appeal, the landlord may pay the fee (\$195.00) on the 6th day and the Writ of Possession may be issued. The Writ is directed to the Sheriff and requires a Warning be posted stating the day and time the Writ may be executed. The date must be at least 24 hours from the date the warning is posted. The writ is directed to the Sheriff and states the writ is to be carried out under the officer's supervision. The tenant and his belongings will be removed from the rental property to a nearby location. The officer may not execute the writ when it is raining, sleeting or snowing. The officer, at his discretion, may store all or part of the tenants belongings at no cost to the officer or landlord.

STORED PROPERTY

TX PROP CODE 24.0062

If property is stored, it must be in a bonded or insured warehouse. The warehouseman has a lien on the property when it is removed. During the first 30 days of storage, the property listed below can be redeemed by payment of the charges related to that item. After 30 days, all remaining charges must be paid to regain possession of any of the Stored property. If the property is stored, a written notice must be given to the defendant if he is present at the time the writ is executed. If he is not present the notice must be mailed (first class) to his last known address (the address he was evicted from) within 72 hours. The notice must contain the name, location and the phone number where the property is stored.

Property redeemable during first 30 days of storage item by item:

1. Wearing apparel
2. Tools, apparatus and books of trade or profession
3. School books
4. A family library
5. Family portraits & pictures
6. 1 couch, 2 living room chairs, dining room table & chairs
7. Beds and bedding
8. Kitchen furniture and utensils
9. Food and food stuffs
10. Medicine and medical supplies
11. 1 automobile and 1 truck
12. Agricultural equipment
13. Children's toys not commonly used by adults
14. Goods the warehouseman knows are owned by a person other than the tenant/occupant of the residence
15. Goods the warehouseman knows are subject to a recorded chattel mortgage or financing agreement
16. Cash

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 \$20,000, 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 \$20,000, 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 \$20,000, 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 \$20,000, excluding statutory interest and court costs but including attorney fees, if any.</p>

CAUSE NO. _____

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

PETITION – EVICTION CASE (WITH TEDP/CDC AFFIDAVIT)

COMPLAINT: Plaintiff hereby sues the following Defendant(s): _____ 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. (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 of extension period, which was _____, 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 _____, 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: _____.
- I have reviewed the information about the Texas Eviction Diversion Program available at www.txcourts.gov/eviction-diversion/.

Plaintiff's Printed Name

Signature of Plaintiff or Agent or Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff or Agent or Attorney

Phone & Fax No. of Plaintiff/Agent/Attorney

SWORN TO AND SUBSCRIBED on _____, 20_____

CLERK OF THE JUSTICE COURT OR NOTARY

Instructions:

The Servicemembers Civil Relief Act applies to a civil proceeding in the Justice courts. Before entering a default judgment against an individual defendant, the plaintiff must file with the court an affidavit stating whether or not the defendant is in the military service, showing necessary facts to support the affidavit, or stating that the plaintiff is unable to determine whether or not the defendant is in military service, if that is the case. The requirement for an affidavit may be satisfied by a written, signed document declared to be true under penalty of perjury. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If the court is unable to determine if the defendant is in military service, the court may require the plaintiff to file a bond in an amount approved by the court.

A person who makes or uses an affidavit under this Act knowing to be false, may be fined or imprisoned or both. 50 USC App. 501 et seq. To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, you may access the public website: <https://scra.dmdc.osd.mil/>. This website will provide the current active military status of an individual.

Military Status Affidavit

Case No. _____

§
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IN THE JUSTICE COURT

Plaintiff

TERRY COUNTY, TEXAS

Vs.

Defendant

BEFORE ME, on this day personally appeared, _____,
who, under penalty of perjury, stated that the following facts are true:

I am the Plaintiff. Attorney of Record for the Plaintiff in this proceeding.

_____, Defendant, **is not** in military service.

_____, Defendant, **is** in military service.

I know this because _____

I am **unable to determine** whether or not the Defendant is in military service.

Signed on _____

Signature

Printed Name

Address

Apt. #

City

Zip

Telephone

Email Address

THE STATE OF TEXAS §

COUNTY OF TERRY §

SWORN TO AND SUBSCRIBED BEFORE ME on _____

[seal]

Clerk of the Court

Notary Public, State of Texas



STATE OF TEXAS

EVICITION 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

Eligibility Requirements:

- 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](https://www.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

Documents Needed:

- 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

You will be required to certify that you:

- 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)

TENANT / HOUSEHOLD

Eligibility Requirements

- 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](https://www.texasrentrelief.com))
- AND one or more of the household members:
 - Qualified for unemployment benefits on or after March 13, 2020; OR
 - Attest in writing that due to or during the pandemic they have:
 - Experienced a reduction in household income,
 - Incurred significant costs, or
 - Experienced financial hardship
- AND households must demonstrate that they:
 - 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

Documents Needed:

- 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

You will be required to certify that you:

- 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)

