



Judge Jody Henry
Justice of the Peace
Precinct 1 | Cooke County

Cooke County Justice Center
320 CR 451 | Gainesville, Texas 76240
Tel: (940) 668-5463 | Fax: (940) 668-5411

EVICTION CASES

An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant.

The information in this document is intended to give a brief overview of the procedures in a suit for eviction. It is not, however, exhaustive and many issues and procedures are not covered herein. You should consult the [Texas Rules of Civil Procedure](#) for a more comprehensive overview of the procedure. Part V (Rules 500-510) apply to Justice Courts with Rule 510 addressing evictions specifically. All references to a *TRCP* in this document refer to these rules. You may also need to refer to various [Texas Statutes](#) regarding your case including Texas Property Code [Chapter 24](#) (Forcible Entry and Detainer) and [Chapter 92](#) (Residential Tenancies).

Nothing contained in this document is intended or offered as legal advice. Please also note that court clerks are not licensed attorneys and cannot give legal advice. This document should be able to answer your basic procedural questions. For further questions or more information, you should consult a licensed attorney.

BEFORE FILING SUIT

Notice to Vacate

Before a landlord can file a suit for eviction, a proper notice to vacate must be provided in accordance with the Texas Property Code. If the tenant has not vacated the premises by the deadline, the landlord may then file the suit for eviction. In filing the suit, the landlord must include in a statement describing when and how the notice to vacate was delivered. (TPC 24.005)

Precinct

A suit for eviction must be filed in the precinct where the premise is located. It is the plaintiff's responsibility to determine the correct precinct. The [precinct map](#) can be used to ensure that the case is filed the proper court. The court clerks cannot make this determination. A suit for eviction filed in the wrong precinct must be dismissed and filing fees will not be refunded. (TRCP 510.3(b))

Parties

The plaintiff must ensure that the suit is filed against the correct parties and in their correct legal capacity (individual, partnership, corporation, etc.). If there is a written residential lease, all tenants named in the lease must be named as defendants in the suit in order to be evicted. (TRCP 510.3(c))

Suit for Rent

Suit for nonpayment of rent can also be included in the suit for eviction. However, this must only be rent amounts, and cannot include late fees or other amounts owned by the tenant. The jurisdictional limit for justice courts is \$10,000. This means that the amount of unpaid rent sought can be **for no more than \$10,000**, excluding statutory interest and court costs but including attorney fees, if any. A person cannot reduce the amount sought for the purpose of bringing the suit in the justice court. (TRCP 500.3)

FILING THE SUIT

To file a suit for eviction suit, several documents (called pleadings) must be prepared and provided to the court clerk. Forms for many of these documents are available from the court or found on our [website](#). However, please note you are not required to use these forms and may prepare your own documents. ***You are responsible for making sure you file the correct documents and all forms are filled out correctly.***

Pleadings

A *Petition* is the original document filed with the court to initiate a lawsuit and to notify the defendant of the nature of the suit. The petition in a suit for eviction must state the grounds for the eviction and must be sworn to, meaning it must be signed in front of a notary or court clerk. There are several requirements for the contents of a petition in an eviction which can be found in the Texas Rules of Civil Procedure. (TRCP 502.2 and 510.3)

Along with the petition, the plaintiff must file a *Justice Court Civil Case Information Sheet*. (TRCP 502.2(b))

The plaintiff should also file a *Servicemembers Civil Relief Act Affidavit* regarding the defendant's military status. While this affidavit is not required for a new suit to be accepted by the clerk, it is required before a party may be granted a default judgment. Therefore, it is a good idea to file the affidavit with the initial pleadings.

Filing Fees

In order to initiate a law suit, the plaintiff is required to pay filing fee in the amount of \$54.00 or file a Statement of Inability to Afford Payment of Court Costs. Payment must be by cash, credit card, or money order/cashier's check. Personal checks are not accepted.

A service fee of \$100.00 per defendant will be charged at the time of filing for the constable to serve each defendant. (See *Service of Citation* below for more information.)

Request for Immediate Possession

At the time of filing the petition or at any time prior to final judgment, the plaintiff may file a *Bond for Immediate Possession*. This allows the plaintiff to obtain a writ of possession sooner than otherwise possible, provided certain requirements are met. (TRCP 510.5)

DURING THE SUIT

Service of Citation

The court clerk will prepare the citation for each defendant and provide it to the constable. Each defendant named in the law suit must be personally served with the citation and petition by the sheriff or constable unless the court has authorized alternate service. (TRCP 510.4)

It is ultimately the plaintiff's responsibility to ensure that all citations are properly served and that the return of service is filed with the court. Questions about this process should be directed to the constable.

Answer

Once the defendant is served, he or she may file an *Answer* with the court but is not required to do so. If the defendant files an answer, he or she should also provide a copy to the plaintiff.

Trial Setting

Once the petition is filed, the court clerk will set the case for a hearing not less than 10 days and not more than 21 days after the petition is filed. At the time of accepting the petition, the court clerk will notify the plaintiff of the date and time of the hearing. The defendant will receive notice of this trial setting on the citation prepared by the court and served on the defendant. The plaintiff is required to appear at this trial setting and must prove the case by the *preponderance of the evidence*. If the plaintiff fails to appear at the trial, the court will dismiss the suit.

Default Judgment

If the defendant is properly served, but fails to appear at the hearing and has not filed an answer, the plaintiff may be awarded a default judgment as long as the petition contains all required information and proof of service has been correctly filed with the court.

Before the court may issue a default judgment, however, the plaintiff must have filed the *Servicemembers Civil Relief Act Affidavit*. The affidavit must be signed under oath. A false statement in this affidavit is a violation of federal law. If the plaintiff states that the defendant is not in the military, he or she must also show necessary facts to support this affidavit. The best way to do so is to attach a printout from the [Department of Defense](#) website. If

the court is unable to determine whether the defendant is in military service, the court could require the plaintiff to post a bond to protect the defendant if the defendant is in fact in the military.

Judgment

If the court finds that the plaintiff has proved the case by the preponderance of the evidence, the court will grant a judgment in favor of the plaintiff for possession of the premises, costs, and unpaid rent if requested and proven. If the court finds that the plaintiff did not meet this burden, the court will grant a judgment in favor of the defendant and the defendant will be entitled to remain in possession of the property.

AFTER THE TRIAL

Appeal

Once the court has issued a judgment in the case, either party has 5 days to appeal that judgment to the Cooke County Court at Law. To appeal, a party must file a *notice of appeal* and either post an appeal bond by filing a *Plaintiff's Appeal Bond* or *Defendant's Appeal Bond*, make a cash deposit, or file a Statement of Inability to Afford Payment of Court Costs. The amount of the bond will be set by the court. (TRCP 510.9)

Once the notice of appeal and the bond is received and approved by the judge, the clerk will transmit the case to the county clerk. The appealing party will be responsible for paying the costs on appeal to the county clerk.

If the judgment is granted for the plaintiff because of nonpayment of rent, the court will also determine the amount of rent that the defendant must pay into the registry of the court during this appeal process.

Writ of Possession

If the plaintiff is granted possession of the premises at the hearing, and the defendant has not appealed the case or vacated the premises by the 6th day after the judgment, the plaintiff may pay the fee and request the court to issue a Writ of Possession to have the constable remove the defendant from the property. (TRCP 510.8(d))

Post-Trial Motions

No Motion for New Trial may be filed in an eviction suit. (TRCP 510.8(e))

Collection on Judgments

The court cannot assist in the collection of judgments. However, a prevailing party may file a request for the court to issue an *Abstract of Judgment*, a *Writ of Execution* or *Writ of Garnishment*. It is recommend that you consult an attorney regarding post judgment remedies available to you.

COMMERCIAL EVICTIONS

Commercial property is any property that is not "residential" as defined in Chapter 92 of the Texas Property Code. [Chapter 93](#) of the Texas Property Code addresses suits for evictions in commercial property cases.

The general procedures and time limits that apply to all eviction cases also apply to commercial evictions unless Chapter 93 states otherwise.

MANUFACTURED HOME EVICTIONS

Manufactured home eviction rules under [Chapter 94](#) of the Texas Property Code apply to a landlord who leases a lot in a manufactured home community (land with four or more lots) for the purpose of putting a manufactured home on the lot. Property Code § 94.002(a). These rules do not apply to (1) a landlord who owns a manufactured home and leases the manufactured home to the tenant; (2) a tenant who leases a lot for the placement of personal property to be lived in that is not a manufactured home, (such as an RV); or (3) a landlord who leases to his or her employee or agent. Property Code § 94.002(b).

The general procedures and time limits that apply to all eviction cases also apply to manufactured home evictions unless Chapter 94 of the Property Code states otherwise. If you are involved in a suit for eviction of a manufactured home, it is very important that you read and become familiar with the requirements of that chapter.