

FILING AN EVICTION SUIT



MARY TOM CURNUTT

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TO THE CITIZENS OF PRECINCT NO.2:

Justice Court is here for your benefit and it is our job to help in any way possible.

However, please understand that the rules of judicial ethics prohibit this office:

- 1) From giving legal advice, or
- 2) expressing opinions of the law.

Also, understand that the Judge and Court Clerks can answer questions only:

- 1) of a general nature,
- 2) about procedures of this court,
- 3) concerning court costs.

We must remain impartial. We cannot hear any part of a case, or discuss the merits of any case, unless all parties are present.

Please do not ask us to violate these rules.

The information contained herein is for your information and is offered as a guide to all interested parties. As always, we recommend that you seek some form of sound legal advice.

Rules of Civil Procedure and Rules of Evidence are available for examination during business hours at this location and on the Tarrant County website (www.tarrantcounty.com).

Thank you,

Mary Tom Curnutt
Justice of the Peace, Pct. 2

To verify military status:
www.dmde.osd.mil/appj/scra/scraHome.do

FILING AN EVICTION SUIT

You, as plaintiff, your attorney or your authorized agent (have authorization on file, or present it at time of trial) may appear in person to file your claim, or you may file a sworn statement of the claim by mail.

VENUE:

Petition must be filed in the precinct where the premises is located.

JURISDICTION:

- 1) Jurisdiction (\$ amount in which the court can grant a judgment)
- 2) Possession of the property in question
- 3) Delinquent rent, and attorney fees not to exceed \$10,000.00. Court costs may be added to that amount (\$10,000.00 + court costs).

FILING SUIT:

The responsibility for filling out your petition rests with you, the plaintiff. **PLEADINGS MUST BE FILED IN TRIPLICATE. PLEASE PRINT LEGIBLY USING BLACK OR BLUE INK.** The form must be typed or printed neatly in ink. If this information is incorrect or not legible, you may have to dismiss your case and refile, which will require another filing fee.

- A) State the name of the tenant or tenants.
- B) State tenant's full address, including apartment number and building number (if applicable) and the zip code.
- C) Provide the dates and amount of rent due (do not include late charges).
- D) If you are suing for HOLD OVER show the applicable date of holding over since they failed to vacate.
- E) If an eviction suit is for some reason other than nonpayment of rent or hold over, representation by agents WILL NOT be allowed in this court. Agents may FILE the suit, but an attorney or the property owner MUST represent the plaintiff AT THE TRIAL.
- F) FILL IN THE DATE YOU GAVE TENANT TO VACATE. Notice to Vacate should be given in accordance with your lease. If you have no written lease see the attached statute 24.005. If you are unsure of the proper notice to be given, contact an attorney.
- G) The last three lines of the complaint ask for your signature, your mailing address, including the city, state and zip code, daytime telephone number and email address (if consented to).

Fees for filing are payable with cash (correct change), cashier's check, money order, local check, or credit card (adds 3% fee). Always keep track of your cause number for reference when calling our office or purchasing a Writ of Possession.

PREPARING YOUR CASE FOR TRIAL:

At the time you file your case you will be given the court date. If this date is changed for any reason the court will call the number you gave us on the sworn complaint.

Evictions may be dismissed only in open court or in writing prior to judgment. There is a Release of Judgment form available in this office.

* Please remember that at the time of trial you must "prove your law suit" even if the defendant does not appear.

PRESENT YOUR EVIDENCE COMPLETELY IN THIS SEQUENCE ON A NON PAYMENT OF A RENT CASE:

- 1) State the date on which the lease or rental agreement began, and if the agreement is still valid on a month-to-month basis.
- 2) State the terms of the lease, including the rent per month and the date rent is due.
- 3) State the amount of pure lived-up, unpaid, back rent through the court date and how it is computed. Late charges, penalties, etc. cannot be pled for in Eviction suits. Utilities may be pled if provided for as additional rent in the Contract/Lease. (Use a 30 day Bankers calendar.)
- 4) Prove that tenant is in violation of lease and why he/she is in violation.
- 5) Prove that the lease gives Landlord/Plaintiff the right to possession of the property.
- 6) State the date on which proper written Notice to Vacate was given to Tenant/Defendant.
- 7) In summary, state specifically what you are pleading for. Example: "I am pleading for possession of property, back rent in the amount of \$----, and court cost."

Always arrive at least 15 minutes prior to trial. Check in with the clerks, by name of plaintiff (Apt. Name, Landlord, Etc.,) or by docket number and identify yourself by name. Provide the names of any witnesses who are going to testify on your behalf.

Always bring your lease and a copy of your Notice to Vacate to court. Also, be prepared to present payment records to the Judge.

AFTER JUDGMENT:

If you receive a judgment, the defendant has FIVE days to appeal the case to the County Court at Law in Tarrant County. Should the court rule that you recover nothing or should you receive a judgment for less than you requested, you may appeal the case to the County Court within FIVE days. On the SIXTH day, if the defendant is still in possession of the property, you may request a Writ of Possession, IF NO APPEAL HAS BEEN FILED.

THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU, NOR CAN WE FORCE THE DEFENDANT TO PAY THE JUDGMENT.

Some remedies to collect your judgment are as follows:

ABSTRACT OF JUDGMENT: You may obtain an Abstract of Judgment when judgment becomes final. The fee for obtaining an Abstract of Judgment is \$5.00 payable in cash (correct change), check, credit card (adds 3% fee) or money order or certified check. The Abstract of Judgment will be mailed to you. Take the Abstract of Judgment to the county clerk's office, at the Courthouse in Fort Worth, in order to file it in Tarrant County. Additional information may be obtained by calling (817) 884-1195 and asking for the county clerk's office. You may also file the Abstract of Judgment with any county clerk's office in the State of Texas if you have reason to believe your defendant owns property in other counties. The purpose of filing the Abstract of Judgment is to put a lien against any REAL PROPERTY in the defendant's name, if the defendant sells any real property within 10 years from the date of the judgment, the amount of the judgment should be paid, plus interest.

WRIT OF POSSESSION: If the judgment or verdict is in favor of the plaintiff, the judge must award a writ of possession upon demand of the plaintiff and payment of any required fees. Except as provided by Rule 510.5, no writ of possession may issue before the 6th day after the date a judgment for possession is signed or the day following the deadline for the defendant to appeal the judgment, whichever is later. A writ of possession may not issue more than 60 days after a judgment for possession is signed. For good cause, the court may extend the deadline for issuance to 90 days after a judgment for possession is signed.

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment. SHOULD THE DEFENDANT PAY ANY PORTION OF THE AMOUNT OWED AFTER YOU HAVE RECEIVED A JUDGMENT, IT IS NECESSARY FOR YOU TO NOTIFY THE COURT OF THE CREDIT, OR NOTIFY THE COURT THAT THE JUDGMENT HAS BEEN SATISFIED IN FULL, BY FILING A RELEASE OF JUDGMENT. IF YOUR ADDRESS CHANGES WITHIN THE 10 YEAR PERIOD FOLLOWING THE JUDGMENT, YOU SHOULD NOTIFY THE COURT OF YOUR NEW ADDRESS.

PROPERTY CODE

§ 24.005. Notice to Vacate Prior to Filing Eviction Suit

(a) If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days written Notice to Vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

(b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days written Notice to Vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written Notice to Vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure no later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

(c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days written Notice to Vacate before that landlord files a forcible detainer suit.

(d) In all situations in which the entry by the occupant was a forcible entry under Section 24.00 1, the person entitled to possession must give the occupant oral or written Notice to Vacate before the landlord files a forcible entry and detainer suit. The Notice to Vacate under this subsection may be to vacate immediately or by a specified deadline.

(e) If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice or proposed eviction, a Notice to Vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.

(f) Except as provided by Subsection (f-1), 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 to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested to the premises in question.

(f-1) As an alternative to the procedures of Subsection (f), a landlord may deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the notice to the tenant if:

(1) The premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the notice to vacate to the inside of the main entry door; or

(2) The landlord reasonably believes that harm to any person would result from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises by affixing the notice to the inside of the main entry door.

(f-2) Notice to vacate under Subsection (f-1) is considered delivered on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the notice is received.

(g) The notice period is calculated from the day on which the notice is delivered-default to midnight of the 1st day, time starts at 12:01 A.M.

(h) A Notice to Vacate shall be considered a demand for possession for purposes of Subsection (b) or Section 24.002.

(i) If before the Notice to Vacate is given, as required by this section, the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the Notice to Vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

Acts 1983, 68th Leg. p. 3515, ch. 576, § 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, § 1, eff. Sept. 1, 1985;

Acts 1989, 71st Leg., ch 688, § 3, eff. Sept. 1, 1989; Acts 1997, 75th

Leg., ch. 1205, § 2 eff. Sept. 1, 1997. Section 2 of the 1985 amendatory act provides:

This Act takes effect immediately except that Sections 24.005, 24.006, and 24.007, Property Code, as amended by this Act, take effect September 1, 1985, and apply only to notices to vacate given and suits filed on or after September 1, 1985, and to appeals of judgments that become final on or after September 1, 1985. Notices to vacate given and suits for forcible entry and detainer or for forcible detainer filed before September 1, 1985, and appeals of judgments in suits for forcible entry and detainer or for forcible detainer that become final before September 1, 1985, are governed by the law in effect at the time notice was given, suit was filed, or judgment became final, and the former law is continued in effect for this purpose.

FEE SCHEDULE FOR AN EVICTION SUIT

	COURT FEES	CONST. FEES	TOTAL FEES
EVICITION SUITS			
1 - Defendant	\$46.00	\$ 75.00	\$121.00
2 – Defendants	\$46.00	\$150.00	\$196.00
(For more than 1 Defendant, please add an additional \$75.00 for Constable fees and a copy of the Petition)			
JURY TRIAL	\$ 22.00		\$ 22.00
ABSTRACT OF JUDGMENT	\$5.00		\$5.00
WRIT OF POSSESSION	\$ 5.00	\$150.00	\$155.00
SUBPOENA (Add \$10.00 for Tendering Fee)-Must be in cash only		\$ 75.00	\$ 75.00
APPEAL (\$254.00 Fee Collected for County Court at Law)	\$20.00		\$274.00

DEFENDANT INFORMATION

When you are served with an Eviction citation by the court, you have the opportunity to appear on the specified time and date indicated on the citation.

If you contest the suit, you may ask for a trial before a jury. For a trial by jury, you must request same and pay a jury fee of \$22.00 at least 3 days before the trial date.

You may represent yourself or hire an attorney to represent you.

You should prepare a proper defense if you go to trial even though the burden is on the plaintiff to prove his/her allegations against you.

Keep in mind that evidence is always best if presented in court by the actual person with that knowledge, the repair worker, police officer, etc...

After the plaintiff rests their case at trial, you are then allowed to present your defense as to why the plaintiff should not recover their damages.

When the plaintiff and you have both rested your case, the court will enter a judgment that the plaintiff recovers from you all, part or nothing. Should the court withhold a ruling pending further review you will be notified by the clerk as to the judgment and date such is entered. Please ascertain that we have your current phone number before leaving court.

Either side may file an appeal with the court within 5 days from the signing of the judgment. The paperwork and information regarding filing fees to file an appeal is available in the clerk's office. We suggest that you not wait until the last day to file an appeal as extra time cannot be granted for any reason including insufficient bonds, defective bonds or filing fees and your right to appeal will be lost.