

## FILING AN EVICTION LAWSUIT

### VENUE:

Suit for possession of property, precinct in which all or part of the property is located.  
Suit for rent 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 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. If you have a written lease see attached statute 24.006.

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

There is a paragraph of the attached petition that describes three separate causes of action. The first blank being for NON-PAYMENT of RENT. The second blank being for BREACH of LEASE by the tenant.

If neither is chosen, then the last paragraph will cover the cause of action known as OWNER WANTS POSSESSION. Generally, this will require a THIRTY (30) DAY WRITTEN NOTICE TO VACATE.

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. Eighty-six (\$86.00) dollars for filing and service on one 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 a citation based on the information you give to the Court. The tenant will be informed in the citation of the DATE and TIME of the hearing and a DEFAULT JUDGMENT may be rendered against him if he does not appear at the time designated.

**REPRESENTATION:**

The owner's agent may file any type of eviction suit and may represent the owner 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. Identify yourself by name along with the names of any witnesses that you want sworn to give testimony. BE SURE TO HAVE A COPY OF YOUR LEASE, NOTICE TO VACATE, AND PAYMENT RECORDS or any records pertaining to the case.

**IF THE DEFENDANT DOES NOT APPEAR AT HEARING:**

- A. The plaintiff will present their case to the Judge;
- B. If Judge rules in plaintiff's favor, a DEFAULT judgment will be granted.

**IF THE DEFENDANT APPEARS AT HEARING:**

- A. Judge will hear both sides;
- B. Judge will render a decision;
- C. If Judge rules in Plaintiff's favor, defendant will have five (5) days AFTER JUDGMENT TO APPEAL TO COUNTY COURT. IF NO APPEAL IS FILED AND DEFENDANT DOES NOT MOVE:
  - A. A Writ of Possession and Restitution may be filed.
  - B. Cost of Writ is \$205.00
  - C. 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 tenant 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, sleeting or snowing.

After you are sworn, present your evidence in sequence from beginning to end;

- A. Date lease or rental agreement began and if agreement is still valid on a month to month basis.
- B. Terms of lease including rent per month and date rent is due.
- C. Amount of pure, lived up, unpaid, back rent owed up to the Court date and how it was computed. Late charges, penalties, etc. cannot be pleaded for in eviction suit.
- D. Prove that tenant is in violation of lease and why he is in violation.
- E. Date that proper written notice to vacate was given to the tenant.
- F. In summary, state specifically what you are pleading for:  
Example: I am pleading for possession of property and back rent in the amount of \$\_\_\_\_\_, plus court cost.

NOTE: NEVER ACCEPT FUTURE RENT AFTER THE SUIT IS FILED. IF YOU ACCEPT BACK RENT AFTER THE SUIT IS FILED, BE SURE TENANT IS TOLD THAT YOU ARE PROCEEDING WITH THE EVICTION SUIT.

Forcible Detainers may be dismissed ONLY in open court or by a written request. We encourage you as agent or landlord to use the MOTION TO DISMISS included in this packet.

If you have any additional PROCEDURAL questions, you may contact this office at (281) 316-8817.

**LEGAL QUESTIONS CAN NOT BE ANSWERED BY THIS OFFICE.**

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO:

JUDGE MARK A. FOSTER  
4500 10<sup>TH</sup> STREET  
P.O. DRAWER 8327  
BACLIFF, TEXAS 77518

**EVICTIION NOTICE**

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

YOU ARE HEREBY NOTIFIED TO VACATE THE PREMISES YOU OCCUPY  
LOCATED AT:

\_\_\_\_\_, \_\_\_\_\_, TEXAS

ON OR BEFORE THREE (3) DAYS FROM RECEIPT OF THIS NOTICE OR I  
PROPOSE TO FILE SUIT TO EVICT YOU FOR THE REASON OF:

**NON-PAYMENT OF RENT**

DELIVERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_

HOW SERVED: \_\_\_\_\_

TIME: \_\_\_\_\_ AM/PM

BY: \_\_\_\_\_

JUSTICE COURT  
PRECINCT SEVEN  
GALVESTON COUNTY, TEXAS

CASE # \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

VS

\_\_\_\_\_  
DEFENDANT

PLAINTIFF'S MOTION TO DISMISS

COMES NOW THE PLAINTIFF in the above styled and numbered cause and files this MOTION TO DISMISS the above styled case WITHOUT PREJUDICE, in accordance with RULE 162 of the Texas Rules of Civil Procedure, and cites the following reason (s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PLAINTIFF

ORDER OF DISMISSAL

Be it therefore ORDERED, ADJUDGED AND DECREED that the PLAINTIFF'S MOTION BE GRANTED. The above styled cause is DISMISSED WITHOUT PREJUDICE.

SIGNED AND ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
PRESIDING JUDGE

No. \_\_\_\_\_

Judge Mark A. Foster

\_\_\_\_\_  
Plaintiff (Landlord)

Justice Court, Pct. 7

VS.

Galveston County, TX

\_\_\_\_\_  
Defendant (Tenant's Name)

**Plaintiff's Original Petition in Forcible Detainer**

NOW COMES \_\_\_\_\_, hereinafter referred to as Plaintiff complaining of \_\_\_\_\_, AND ALL OCCUPANTS of the leases premises, hereinafter referred to as Defendant and for cause of action would respectfully show that Plaintiff is entitled to possession of leased premises, and would show the following:

1. Plaintiff does business in Galveston County, Texas. Defendant resides in Galveston County, Texas and may be served with process at the address of the leased premises, which is \_\_\_\_\_ or at such other place as Defendant may be found.
2. The leased premises are located within the jurisdiction of this Court.
3. On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Plaintiff entered into an agreement with Defendant for occupancy of leased premises. Defendant has violated the terms of that agreement by:  
 \_\_\_\_\_ Failing to pay rent for the period beginning the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and running to the present; and /or \_\_\_\_\_
4. In addition to possession of the leased premises, Plaintiff seeks judgment against Defendant for the back rent in the amount of \$\_\_\_\_\_, plus such daily rentals as may accrue between the time of filing this petition and the Defendant vacating the leased premises.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that the Defendant be cited to answer the complaint and upon final hearing thereof, the Defendant be adjudged guilty of Forcible Detainer, that restitution of the leased premises be made to the Plaintiff, and that the Plaintiff recover judgment for the amount to which Plaintiff may show this Court that it is entitled to recover and possession be returned to Plaintiff.

\_\_\_\_\_  
Plaintiff's phone number

\_\_\_\_\_  
Plaintiff's Signature

\_\_\_\_\_  
Address

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

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Precinct 7 Justice Court Deputy Clerk

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

IN THE JUSTICE COURT

\_\_\_\_\_  
PLAINTIFF

Vs

PRECINCT 7

\_\_\_\_\_  
DEFENDANT

GALVESTON COUNTY, TX

NON-MILITARY AFFIDAVIT

BEFORE ME, the undersigned authority, on this date personally appeared \_\_\_\_\_,  
Known to me to be a credible person, and after being duly sworn upon his oath did depose and say:

“I, \_\_\_\_\_, Plaintiff in the above-entitled and numbered cause and am duly  
authorized to make this affidavit.

Defendant, \_\_\_\_\_, was not, either at the time of the institution of this suit, or at  
any time since, been a member of any military or naval service in the United States of America insofar as  
is now or can be determined by affiant.”

Further affiant sayeth not.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

THE STATE OF TEXAS

COUNTY OF Galveston

SIGNED AND SWORN TO, BEFORE ME, the undersigned authority on this day \_\_\_\_\_  
to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary/Judge for the State of Texas