

Terri L. Mayer
Justice of the Peace, Precinct One

Polk County Judicial Center
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FILING AN EVICTION SUIT IN JUSTICE COURT

VENUE:

A justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

NOTICE TO VACATE:

By statute, the landlord must give the tenant WRITTEN notice of the eviction before filing a suit. 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 are 16 years of age or older or by personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question. The notice period is calculated from the day on which the notice is delivered.

If before the notice to vacate is given as required above 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 a demand that the tenant pay the delinquent rent OR vacate the premises by the date and time stated in the notice.

CAUSES OF ACTION: (the reason you are filing an eviction suit)

- 1.) Default of an oral or written lease - nonpayment of rent - 3 day written notice to vacate is required, unless a shorter or longer period is provided for in a written lease or agreement.
- 2.) Periodic tenancy - holding over beyond the end of the rental term or renewal period - 3 day written notice to vacate is required, unless a shorter or longer period is provided for in a written lease or agreement (Periodic tenancy may require certain termination requirements).
- 3.) Tenant at will or by sufferance - 3 day written notice to vacate is required, unless a shorter or longer period is provided for in a written lease or agreement.
Tenant at will - one who holds possession of premises by permission of the owner or landlord but without a fixed term.
Tenant by sufferance - one who, after rightfully being in possession of leased premises, continues to hold premises after their right has terminated.
- 4.) Forcible entry and detainer - where a person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.
Requires written notice to vacate immediately or by a specified deadline.

FILING THE SUIT:

The responsibility for completing your written sworn complaint rests with you. The court clerk will assist you if you have any procedural questions.

In eviction suits, the only issue to be decided is the right to actual possession of the premises and not the merits of title. A suit for rent may be joined with an action of eviction if the suit for rent is within the jurisdiction of the justice court.

COSTS:

The filing fee is \$54.00 In addition, there is a fee for servicing the citation to the defendant(s) which is \$100.00 per defendant. This must be made payable by cash, cashier's check or money order to: JUSTICE OF THE PEACE PCT 1. The Plaintiff must provide copies of all papers filed or copy fee will be charged.

CITATION:

A citation is sent to the sheriff or constable for service of the defendant(s). A hearing date will be given to you by the court clerk at the time you file the suit. It is your responsibility to call the court clerk to verify the defendant has been served prior to your court date.

REPRESENTATION:

In eviction suits for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

REPRESENTATION OF A CORPORATION OR OTHER ENTITY:

A corporation or other entity may

- 1.) Be represented by an employee, owner, officer, or partner of the entity who is not an attorney.
- 2.) Be represented by a property manager or other authorized agent in an eviction case; or
- 3.) Be represented by an attorney.

ATTORNEY'S FEES:

With some exceptions, to be eligible to recover attorney's fees in an eviction suit, a landlord must give tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the suit is filed. If the landlord provides the tenant written notice for attorney's fees or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover attorney's fees from the landlord. The prevailing party is entitled to recover all costs of court.

PLEASE NOTE

THE JUSTICE OF THE PEACE OR COURT CLERK CAN ONLY ASSIST YOU WITH PROCEDURAL INFORMATION. THEY CANNOT GIVE YOU LEGAL ADVICE AND THEY CANNOT HEAR YOUR EVIDENCE BEFORE YOUR COURT HEARING.

TRIAL BY JUDGE OR JURY:

At the time of your hearing to determine the possession of the leased property, you need to bring all information/evidence to support your suit. If you have any witnesses, you should bring them. The trial of your case may be heard by the Judge of the court sitting alone, or upon the request of either party, by a six person

jury. Any party shall have the right of trial by jury by making a request to the court on or before five days from the date the defendant is served with citation, and by paying a jury fee of \$22.00.

In a trial jury, the jury decides the facts of the case and will deliver the verdict. When the Judge hears the case alone, the Judge will make determination in the case and announce the decision.

For good cause shown, supported by the affidavit of either party, the trial may be postponed not exceeding six days.

AFTER JUDGMENT:

If you are awarded a judgment for possession of the premises and there is no appeal bond or other action filed, your remedy to gain possession of the premises is a writ of possession. If you are awarded a judgment for back rent, you may obtain an abstract judgment on the eleventh day after judgment is rendered.

WRIT OF POSSESSION:

A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered.

A writ of possession allows the sheriff or constable to oversee the move out of the defendant(s) from the leased premises and see that there is no breach of the peace.

The fee for a writ of possession is \$5.00 and the service fee for the sheriff or constable to execute this writ is \$200.00

APPEAL:

Either party may appeal from a final judgment to the county court by filing with the justice within five days after the judgment is signed, a bond to be approved by the justice and payable to the County Clerk, conditioned that they will prosecute the appeal with effect, and pay all costs and damages which may be adjudged against them. The justice will set the amount of the bond. Within five days following the filing of such bond, the party appealing shall give notice of the filing of such bond to the adverse party. You must pay the appeal fee \$54.00, the transcript fee \$10.00, and pay one month's rent made payable to the County Clerk when you file your appeal bond.

The information contained in this handout is intended to provide all parties with a brief overview of the general procedures in an eviction suit. For more detailed information or legal advice on how to proceed in your suit, please contact a licensed attorney.

PLAINTIFF MUST HAVE ON COURT DAY

1. PROOF OF OWNERSHIP AND RIGHT OF POSSESSION TO PROPERTY IN QUESTION.
2. PROOF OF WRITTEN NOTICE TO VACATE AND HOW DELIVERED TO TENANT.
3. COPY OF WRITTEN CONTRACT, IF ONE EXISTS.
4. RECEIPT BOOK SHOWING RECORD OF RENTAL PAYMENTS MADE BY TENANT.

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:										
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Name: _____</td> <td style="width: 50%; border: none;">Telephone: _____</td> </tr> <tr> <td style="border: none;">Address: _____</td> <td style="border: none;">Fax: _____</td> </tr> <tr> <td style="border: none;">City/State/Zip: _____</td> <td style="border: none;">State Bar No: _____</td> </tr> <tr> <td style="border: none;">Email: _____</td> <td></td> </tr> <tr> <td style="border: none;">Signature: _____</td> <td></td> </tr> </table>	Name: _____	Telephone: _____	Address: _____	Fax: _____	City/State/Zip: _____	State Bar No: _____	Email: _____		Signature: _____		<p>Plaintiff(s): NAME AND ADDRESS</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Defendant(s): NAME AND ADDRESS</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p>
Name: _____	Telephone: _____										
Address: _____	Fax: _____										
City/State/Zip: _____	State Bar No: _____										
Email: _____											
Signature: _____											

3. Indicate case type, or identify the most important issue in the case (select only 1):	
<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.	<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.
<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.	<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.

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. ONE
	§	
_____	§	
DEFENDANT	§	POLK COUNTY, TEXAS

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
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GROUND(S) 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.
- Amount of monthly rent** \$ _____.
- 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 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_____

CLERK OF THE JUSTICE COURT OR NOTARY

CONSTABLE SERVICE INFORMATION SHEET

IN ORDER FOR THE CONSTABLE'S OFFICE FOR PCT.1, POLK COUNTY TO SERVE THIS CITATION IN A TIMELY MANNER THE BELOW INFORMATION MUST BE COMPLETED AND RETURNED WITH THE PACKET.

ADDRESS DIRECTIONS

HOUSE AND YARD DESCRIPTION:

VEHICLE DESCRIPTION:

SHOULD THE CONSTABLE HAVE QUESTIONS, PLEASE LIST YOUR NAME AND NUMBER BELOW:

NAME: _____

PHONE NUMBER: _____

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 plaintiff to file a bond in an amount approved by the court.

A person who makes or uses an affidavit under this Act knowing it to be false, may be fined or imprisoned or both. 50 U.S.C. 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/scra/#/home>. This website will provide the current active military status of an individual.

Military Status Affidavit

Case No. _____ § In the Justice Court of
_____ § Polk County, Texas
Plaintiff _____ §
vs. _____ §
Defendant _____ § Precinct One Place One

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: _____

Telephone: _____
Fax: _____
E-Mail Address: _____

THE STATE OF TEXAS §
COUNTY OF POLK §

SWORN TO AND SUBSCRIBED BEFORE ME on _____

Clerk of the Court

NOTARY PUBLIC, State of Texas

CIVIL AND EVICTION FILINGS-REQUEST FOR COPIES

ALL FILINGS REQUIRE AN ORIGINAL PETITION AND 2 COPIES. ONE IS FOR THE COURT, ONE IS FOR THE DEFENDANT AND ONE IS FOR THE PLAINTIFF.

IF THE COURT HAS TO MAKE THOSE COPIES, THE BELOW POSTED FEES WILL APPLY TO THE COPIES.

ALL PERSONS REQUESTING COPIES MADE THROUGH THIS OFFICE WILL BE CHARGED THE POSTED FEES AS STATED IN THE LOCAL GOVERNMENT CODE, CHAPTER 118, SUBCHAPTER E.

CERTIFIED COPIES OF COURT PAPERS \$2.00 FIRST PAGE, \$.25
FOR EACH ADDITIONAL PAGE.

ALL OTHER DOCUMENTS, \$1.00 FIRST PAGE, \$.25
FOR EACH ADDITIONAL PAGE.

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA



Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: _____
(Print first and last name of the person filing the lawsuit.)

In the (check one):
 District Court
 County Court / County Court at Law
 Justice Court

And

Defendant: _____
(Print first and last name of the person being sued.)

_____ Texas
 _____ County

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: _____ My date of birth is: ____/____/____
First Middle Last Month/Day/Year

My address is: *(Home)* _____
(Mailing) _____

My phone number: _____ My email: _____

About my dependents: "The people who depend on me financially are listed below."

Name	Age	Relationship to Me
1 _____	_____	_____
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____

2. Are you represented by Legal Aid?

I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

I do not receive needs-based public benefits. - or -

I receive these public benefits/government entitlements that are based on indigency:

(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

- Food stamps/SNAP TANF Medicaid CHIP SSI WIC AABD
- Public Housing or Section 8 Housing Low-Income Energy Assistance Emergency Assistance
- Telephone Lifeline Community Care via DADS LIS in Medicare ("Extra Help")
- Needs-based VA Pension Child Care Assistance under Child Care and Development Block Grant
- County Assistance, County Health Care, or General Assistance (GA)
- Other: _____

4. What is your monthly income and income sources?

"I get this monthly income:

\$ _____ in monthly wages. I work as a _____ for _____
Your job title Your employer

\$ _____ in monthly unemployment. I have been unemployed since (date) _____

\$ _____ in public benefits per month.

\$ _____ from other people in my household each month: *(List only if other members contribute to your household income.)*

- \$ _____ from Retirement/Pension Tips, bonuses Disability Worker's Comp
 Social Security Military Housing Dividends, interest, royalties
 Child/spousal support
 My spouse's income or income from another member of my household *(if available)*

\$ _____ from other jobs/sources of income. *(Describe)* _____

\$ _____ is my total monthly income.

5. What is the value of your property?

"My property includes:	Value*
Cash	\$ _____
Bank accounts, other financial assets	\$ _____
_____	\$ _____
_____	\$ _____
Vehicles (cars, boats) <i>(make and year)</i>	\$ _____
_____	\$ _____
_____	\$ _____
Other property (like jewelry, stocks, land, another house, etc.)	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total value of property	→ \$ _____

6. What are your monthly expenses?

"My monthly expenses are:	Amount
Rent/house payments/maintenance	\$ _____
Food and household supplies	\$ _____
Utilities and telephone	\$ _____
Clothing and laundry	\$ _____
Medical and dental expenses	\$ _____
Insurance (life, health, auto, etc.)	\$ _____
School and child care	\$ _____
Transportation, auto repair, gas	\$ _____
Child / spousal support	\$ _____
Wages withheld by court order	\$ _____
Debt payments paid to: <i>(List)</i>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Monthly Expenses	→ \$ _____

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

7. Are there debts or other facts explaining your financial situation?

"My debts include: *(List debt and amount owed)* _____

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page.


8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

- I cannot afford to pay court costs.
 I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is _____ My date of birth is : ____ / ____ / ____

My address is _____
Street City State Zip Code Country

 signed on ____ / ____ / ____ in _____ County, _____
Signature Month/Day/Year county name State