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Justice of the Peace, Pct 1
Polk County, Texas

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The information in this handout is for procedure only. It is not intended for legal advice or to take the place of an attorney. The court clerks or judge are prohibited from giving legal advice.

FORCIBLE ENTRY & DETAINER
(Eviction Suit)

An eviction suit is a special type of lawsuit. This suit can only be filed in JUSTICE COURT. The plaintiff, by attorney or authorized agent may appear in person to file a claim, or may file a sworn statement of the claim by mail.

JURISDICTION

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. (TX Pro Code 24.004)

JURISDICTIONAL LIMIT

1. Delinquent rent and or attorney fees not to exceed \$20,000.00.
2. Court cost may be added to that amount. No extra damages can be awarded such as: late fees, bad check fees, fees relating to damaged property.

FILING SUIT

The responsibility for completing the complaint/petition, rest with the plaintiff. PLEADINGS MUST BE FILED IN DUPLICATE. The complaint shall describe the premises, the possession of which is claimed, with sufficient certainty to identify the same, and it shall also state the facts which entitle the complainant to possession. The facts showing a landlord tenant relationship between the plaintiff and defendant must also be set forth. The plaintiff should understand that for a potential judgment to be valid,

it is necessary to sue the defendant in their legal capacity. They are as follows:

INDIVIDUAL

a party personally responsible for damages.

SOLE PROPRIETOR OR PARTNERSHIP

a business that is not incorporated but has filed an assumed name certificate with the County Clerk in the county of business that lists the owner(s).The County Clerk's office for Polk County is in Livingston, (Phone: 936-327-6805).

CORPORATION

a business that is incorporated. To sue a corporation, the plaintiff must find the name of the REGISTERED AGENT, PRESIDENT OR VICE PRESIDENT of the corporation before filing the suit. The Secretary of State (512-463-5555) has that information.

COSTS AND SERVICE FEE IN POLK COUNTY

The filing fee is \$54.00. There is also a \$100.00 service fee per defendant.

CITATION

The Clerk prepares the citation and forwards it to the constable for service. In Precinct One, Polk County, no private entity may serve process.

ANSWER

The defendant(s) in the suit must file a written answer with the court by the 7th day before 10:00am from the date the citation was served upon the defendant(s).

REPRESENTATION

In cases for nonpayment of rent or holding over, the parties may represent themselves or be represented by their authorized agents, who need not be an attorney. In any eviction suit, an authorized agent requesting or obtaining a default judgment need not be an attorney. If a party is a corporation in an eviction, the corporation may be represented by an employee owner, officer or partner (non-attorney), property manager or authorized agent or, be represented by an attorney.

PREPARING YOUR CASE FOR TRIAL

The plaintiff has the burden of proof and must meet that burden by showing through evidence that the defendant is at fault. The plaintiff should bring to trial all proof and evidence necessary to substantiate the claim. It is the plaintiff's or defendant's responsibility to furnish copies of information to the court and all parties involved.

DEFAULT JUDGMENT

If the Defendant in the suit fails to answer to the Court, the Plaintiff needs to appear on the Default Judgment Docket. THE PLAINTIFF STILL MUST PROVE THE CASE TO THE JUDGE. Briefly state the facts of the case and present any written evidence to support your case.

TRIAL BY JUDGE OR JURY

If the Defendant in the suit files an answer, the Court will set a trial date. A notice will be mailed to both the Plaintiff and Defendant stating the time and date to appear in Court. If the Defendant request and pays the fee of \$22.00 for a jury in the appropriate time, trial will be set on the first available docket. IT IS NECESSARY FOR BOTH PARTIES TO BRING ALL WITNESSES AND ANY EVIDENCE TO SUPPORT THE CASE TO THE COURT AT THIS TIME.

AFTER JUDGMENT

WRIT OF POSSESSION

If judgment is granted in favor of the Plaintiff, no writ of possession shall issue until the expiration of five (5), (pursuant to Rule #4), days from the date the judgment is signed. The cost for filing a writ of possession in Polk County is \$205.00.

APPEAL

There is no Motion for New Trial remedy after an eviction case. Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered by filing with the Justice Court the documents required by Statute(s) within five (5) days after the judgment is signed and must pay a Transcript fee of \$10.00, \$54.00 Appeal fee plus, pay 1-month rent into the court's registry.

ABSTRACT OF JUDGMENT

The winning party may obtain an Abstract of Judgment after the judgment is final. The fee for obtaining an Abstract of Judgment is \$5.00. The Abstract will be mailed to the party requesting it. The Abstract of Judgment may be filed with the County Clerk's office in any county the losing party may have real property. After the Abstract of Judgment is filed with the County Clerk, if the losing party sells any real property within 10 years from the date of judgment the amount of the judgment should be paid. The County Clerk may charge an additional fee for filing the Abstract of Judgment.

WRIT OF EXECUTION

A Writ of Execution may be obtained any time after 30 days from the date of judgment. A Writ of Execution allows a constable or sheriff to seize non-exempt property from the losing party. If property is seized, an auction is held and the proceeds from the sale are credited toward your judgment. The cost for obtaining a Writ of Execution in Polk County is \$145.00. There may be other remedies available, which are not covered here.

MISCELLANEOUS

IMMEDIATE POSSESSION BOND

The Plaintiff at the time of filing his complaint may make a possession bond in an amount set by the Justice as the probable amount of the costs of the suit and the damages which may result to the Defendant if the suit has been improperly brought. The bond must be approved by the Justice and conditioned that the Plaintiff will pay the Defendant all costs and damages as may be adjudged against Plaintiff.

1. the right to remain in possession by filing a counter bond within six (6) days of the date the notice is served.
2. the right to demand a trial within those six (6) days;
3. that Plaintiff will be placed in possession of the premises if the Defendant does not file a counter bond or request a trial within six (6) days, after judgment is granted by default.
4. that Plaintiff will be placed in possession of the premises if the Defendant, instead of filing a counter bond, demands and is given a trial within the six days and loses the case.

The Defendant may remain in possession if:

(1) a demand for trial is requested in writing within the six day period, and the Defendant is entitled to remain on possession of the premises until the trial is concluded; or;

(2) executes and posts a counter bond within the six days in such amount as may be set by the Justice as the probable amount of costs of suit and damages which may result to the Plaintiff if possession of the property has been retained improperly by the Defendant.

APPLICABLE STATUTES GOVERNING JUSTICE COURT EVICTION SUITS INCLUDE BUT ARE NOT LIMITED TO THE TEXAS PROPERTY CODE AND RULES OF COURT, GOVERNMENT CODE, CHAPTER 27 AND CIVIL PRACTICES AND REMEDIES CODE.