Self-Help Legal Information Packet:
Filing an Eviction Case

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What is an Eviction Case?

An **eviction case** is filed whenever a person or company is trying to recover possession of real property (like land, a house, or an apartment) from someone else. Usually, it is a landlord filing against a tenant. The person or company filing the case is called the **plaintiff** and the person or company they file against is called the **defendant**.

Do I Need to File an Eviction Case?

The clerk or judge **cannot** give you advice on whether or not to file an eviction case and **cannot** have a conversation with you about the facts of your situation.

If you are trying to end the legal right for a person or company to occupy property that belongs to you, you will need to file an eviction case.

You need to file an eviction case if:

1) You are trying to remove someone who was renting your property as their residence;
2) You are trying to remove someone who was renting your property for a business or other purpose; or
3) You allowed another person to use your property as their residence, even without a written lease or rent involved.

To win an eviction case, you will need to show:

1) The tenant **breached their lease** (this means they didn't pay their rent or did something they were not allowed to do under the contract, such as have unauthorized pets);
2) The tenant's lease or other right to possession has ended, and they haven't left (this could include a month-to-month tenancy that you properly terminated);

3) The person was a **tenant at will** (meaning there was no set time when the lease would be over), **and** there was no rent due under the agreement, you gave a proper notice to vacate, and the person didn't leave; or
4) The person entered the property without permission by you or someone authorized to give permission like a tenant, or someone else in possession of the property, and refuses to leave immediately upon demand (**squatter**).

You do **not** need to file an eviction case if:

1) You are excluding someone from your property who was not renting the property or using it as their residence (such as an overnight visitor);
2) The person has already permanently vacated the property. If they have vacated but still owe you back rent, you can file a Small Claims Case to recover the back rent (see the information packet on ***How to File a Small Claims Case*** for details).

What Do I Do Before Filing an Eviction Case?

Step 1: Breach of Lease or Notice of Termination of Lease

If the defendant has a written lease agreement or pays you rent, you cannot just evict them from the property for no reason. If they have a lease with a set end date, they are entitled to stay in the property until that date, unless they don't pay their rent or violate some other term of the lease.

A **termination notice** is required if either:

1) The tenant has a written lease that they did not breach, and that lease does not have a set end date; or
2) They do not have a written lease, but there is an agreement that they pay you rent.

The termination notice is a written notice telling them the day that their lease now ends. This notice must be at least one rental payment period. Most agreements without set end dates are "month-to-month" agreements, so you would need to give at least one month's notice. For example, you could give a

termination notice on January 27th informing the tenant that the lease is terminated effective February 28th.

If they breached the lease, or there is no written lease and no agreement to pay rent, then no termination notice is needed, and you can proceed to *Step 2: Notices Before Eviction.*

Step 2: Notices Before Eviction

The first step in the eviction process is for you to give the tenant a notice. If the only reason you want to evict the tenant is nonpayment of rent, and they have only paid rent late once during your lease term, **you must** give them a "notice to pay rent or vacate". This means that if the tenant pays during the notice period, they will get to stay, and no eviction case can be filed against them.

However, after the tenant has paid rent late more than once during your lease term, you may give the tenant **either** a "notice to pay rent or vacate" or a "notice to vacate." A notice to vacate means that the tenant must leave within the notice period whether or not they pay, and if they do not, an eviction may be filed against them.

If the reason for an eviction is for a breach of the lease other than nonpayment of rent, the landlord is just required to give a notice to vacate.

If the tenant does not leave the premises (including removing their personal property) by the date specified in the notice, the landlord may be able to force the tenant out of the premises through the eviction process. The general rule is that the landlord must give a tenant 3 days in a notice to vacate, to move out before proceeding with an eviction. However, different rules may apply, including but not limited to when the lease provides for a different amount of time, there is an eviction after foreclosure, or if the tenant receives a federal housing subsidy.

The notice to vacate may be delivered to the defendant by:

1) Handing it to them or to any tenant of the premises who is 16 years of age or older,

2) Mailing it to the premises, addressed to the defendant,
3) Delivering to the inside of the premises, in a conspicuous (prominent or noticeable) place, or
4) If you and the tenant have agreed in writing, electronic communication, including email or other electronic means.

You **must** give a notice to vacate or pay, or a notice to vacate, even if you already gave a termination notice setting a lease end date. In the example above, you gave a termination notice on January 27th telling the tenant the lease will end on February 28th. If the tenant is still there on March 1st, you would be required now to give them notice to vacate and allow the period in that notice to run out before filing an eviction case.

If the person is a squatter, you can give them an oral notice to vacate the property immediately. If they fail to leave, you can file an eviction at that time. There may also be other options available to you.

Where Do I File an Eviction Case?

Eviction cases **must** be filed in the in the justice court in the precinct and county where the property is located. If you file the case in any other precinct, the court must dismiss your case, and you do not get a refund of the filing fees.

The court may be able to help you determine the proper precinct to file in. Other resources you may use include precinct maps or the elections office. It is ultimately **your responsibility** to file your case in the proper location!

How Do I File an Eviction Case?

The first step in filing a case is to file a **petition**, which is a form that says who you are suing, why you are suing them, how much you are suing them for, and provides contact information. An eviction petition must contain information about what the reason is for eviction (nonpayment of rent, they stayed past the

end of their lease, etc.), where the property is located, and how and when you delivered the pre-suit notice and whether it was a notice to vacate or a notice to pay or vacate. If the tenant owes you rent, you need to put that (and how much they owe you) in the petition. The court will likely have a petition form that you can use.

Important – If the tenant owes you money **other than back rent** (like late fees, unpaid utility bills, or property damage)**,** you cannot recover that in an eviction case! Do not put these amounts in your petition. Only back rent, your costs to file the case, and attorney's fees (if available – please contact your attorney) may be awarded. If the tenant owes you other money, you can file a small claims case to try to recover that money. See the information packet on ***Filing a Small Claims Case*** for details.

The petition must name each and every tenant that you are trying to evict. A tenant is anyone listed on a written lease or any person who is responsible for paying rent to you.

An eviction petition must be **sworn**, meaning you sign it in front of a notary or the clerk or judge, or under penalty of perjury, and swear under oath that everything in it is true to the best of your knowledge.

When you file the petition, you will have to pay a **filing fee of $54**. Also, the petition and **citation** (the notice from the court to the defendant that they have been sued) must be **served on** (delivered to) the defendant. You will need to pay an additional **service fee** for each tenant for the constable or sheriff serving the paperwork. You are **not allowed** to deliver the paperwork yourself!

If you win your case, you will be awarded the fees that you had to pay, in addition to the other money you are entitled to recover.

What if I Can't Afford to File a Case?

Courts **must not** deny you access to justice simply because you cannot afford filing fees or service fees. If you are unable to pay those fees, fill out a **Statement**

of Inability to Afford Payment of Court Costs form – the court **must** provide this form for you.

You must swear to the information that you provide on this form and can face legal consequences if you do not fill it out to the best of your ability. Fill out the form completely and truthfully!

Do I Need a Lawyer to File a Case?

While you are allowed to have a lawyer in an eviction case, the rules and procedures are designed to be simple and straightforward, allowing people to seek justice without needing to hire a lawyer.

If you do not have a lawyer, the judge may allow you to be assisted or represented in court by a family member or other person, such as a property manager.

The court is required to make the Rules of Civil Procedure available to you at no cost. Rule 510 contains the rules that apply to Eviction Cases.

The court is **not** allowed to give you advice on whether you should file a case, who you should file a case against, or what steps you should take to win your case or collect your judgment.

Questions the court **can** answer for you are questions like “What do I need to do to have a jury trial?” or “How many days do I have to file an appeal?”

Questions the court **cannot** answer for you are questions like “Is it a good idea to get a jury for this case?” or “Am I going to win?”

If, after reviewing these materials and the rules, you still are not sure what to do, you may talk to an attorney.

What Happens After I File an Eviction Case?

The court will generate the **citation**, which tells the defendant that they are being sued and what day the trial will be on, which has to be at least 10 and not more

than 21 days from the day you filed the case. The citation then must be served on the defendant, at least 4 days before the day set for trial. You can either pay the service fee for the constable or sheriff to serve the citation or submit a Statement of Inability showing you cannot afford the fee.

How Do I Send Paperwork to the Defendant?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the defendant as well as to the court. You can send those papers to the defendant by:

1) delivering it to them in person,
2) mailing it to them using certified or registered mail,
3) using a delivery service such as FedEx or UPS, or
4) sending it by email if the defendant provided their email address for document delivery and agreed to email service in writing.

On the copy you give to the court, you must write down how and when the paperwork was delivered to the defendant.

What is a Summary Disposition in an Eviction?

In an eviction case, a summary disposition is an expedited process for a landlord to get a judgment without a trial. A motion (request) for summary judgment is usually included with the petition. This motion should only be filed if the person being evicted **never had permission** from the owner, a tenant, or other person possessing the premises **to enter and occupy the premises (called forcible entry and detainer)**. In addition, there should not be any disputed facts that would prevent a judgment in favor of the landlord. You must include the facts that support your claim in the motion, and attach any documents you wish the court to consider.

To fight a motion for summary disposition, the defendant must file a response within 4 days after receiving notice of the motion setting out supporting facts and providing any applicable documents that the defendant is relying on.

What if We Reach an Agreement?

If the case goes to trial, usually there will be a "winner" and a "loser." resulting in someone being happy and someone being unhappy. To reduce that risk, parties will often come to a **settlement**, or an agreement on how to resolve the case. Settlement agreements should be in writing. They should also be signed by both parties or their attorneys. If you reach a new agreement with the defendant allowing them to remain in the property, you will need to file a **nonsuit**, which is a request for your case to be dismissed. If the defendant then breaches that new agreement, you will have to start over from the beginning with a new notice to vacate and a new case.

Can I Have a Jury Trial?

Yes. Either side in an eviction case may request a jury trial. You must make a request in writing to the court at least 3 days before the date set for trial, or 3 days after the day the defendant is served, whichever is later, and pay a jury fee of $22.

If no one requests a jury, the trial will be heard by only the judge, which is called a bench trial.

What if I Need More Time for Trial?

If you need more time for trial or have a conflict with the date that the trial is scheduled, you can file a motion (request) for **postponement**, also called a **continuance**. You should explain in writing why you need the postponement. In eviction cases, the case can't be postponed for more than 7 days unless both sides agree in writing.

Do not just decide not to show up on your trial date! That likely will result in your case being dismissed.

What Happens at the Trial?

Be sure to bring all of your witnesses and documents with you on your trial date! If the trial is a jury trial, the first step will be jury selection, which is formally called **voir dire**.

Next, you will be able to give an opening statement if you wish, where you explain to the judge and jury what the case is about.

After that, you will call any witnesses you have and ask them questions so they can **testify**, or tell their story, to the judge or jury. The defendant will also be able to ask your witnesses questions. You can also testify and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

Next, the defendant can present any evidence and call any witnesses that they may have. You get to ask questions of any witnesses they call, which is called **cross-examination**. You may ask the witnesses questions that relate to the facts of the case, but must remain calm, polite, and respectful of the court process, even if you disagree with what the witness says.

Finally, each side can make a final statement, called a **closing argument**, where you explain why you think you should win.

After that, the decision will be made by the jury if there is one, or by the judge if there is no jury. The decision will be announced in open court, and a written **judgment** will be made available.

What if the Defendant Doesn't Appear?

If the defendant doesn't appear at trial, the information in your sworn petition will be taken as the truth. If you provided enough information in your petition, you will be awarded a default judgment. If you did not, you may need to provide

information to the court about things such as how and when you delivered the notice to vacate before the court can award you a judgment.

To get a default judgment, you will also need to provide the last known address of the defendant to the court in writing, as well as an affidavit stating whether or not the defendant is on active duty in the U.S. military (or that you do not know if they are), and how you know that they are or not, or why you do not know if they are.

You can verify military service at https://scra.dmdc.osd.mil/.

What Happens if I Lose My Eviction Case?

If the judgment is in favor of the defendant, they will be able to remain in possession of the property. If you wish, you can file an **appeal**, which is a request for the county court to hear the eviction case over again. You can file an appeal within 5 days of the judgment. The 5 days include weekends and holidays. If the fifth day is a weekend, holiday, or day the court closes for all or part of the day, you have until the next business day to file your appeal.

To appeal, you will have to file either:

1) An **appeal bond** (a promise from you and another person, called a **surety**, to pay the bond amount to the defendant if you don't pursue the appeal) in an amount set by the court;
2) A cash deposit in an amount set by the court, which may be awarded to the defendant if you don't pursue the appeal; or
3) A Statement of Inability to Afford Payment of Court Costs if you cannot afford an appeal bond or cash deposit.

If you appeal with an appeal bond or a cash deposit, you must pay a filing fee of $54. You must also send notice of the appeal to the defendant within five days of filing it with the court.

Once your appeal is filed with the county court, you will be required to pay a separate filing fee or file a Statement of Inability to Afford Payment of Court Costs

with the county court within 7 days of being notified by the county court that you need to. If you appealed with a Statement of Inability, that covers you for the county court fee as well.

What Happens if I Win My Eviction Case?

If the judgment is in your favor, the defendant has the right to file an appeal as described above.

If you get a judgment in an eviction case, and the defendant appeals, the defendant will be ordered to pay one month's rent to the court. You can then receive that money, which covers the defendant's rent for the first month of the appeal process. During the appeal, the defendant will have to pay each month's rent to the county court as well if they want to stay in the property. This ensures that someone evicted isn't able to stay in the property for free during an appeal. If at any time during the appeal they do not pay the rent to the court, or if they do not file an appeal but do not leave the property, you can get a **writ of possession**, which is an order for the defendant to be removed from the property.

You will have to pay a fee for issuance of the writ, and a fee to the constable for executing the writ. If a writ is issued, a 24-hour notice will be posted on the door, and if the property isn't vacated in that 24-hour period, the constable will come out and supervise the removal of the defendant's property.

If you were awarded money in the judgment, such as for back rent or attorney's fees, see the ***"What Happens if I Win My Small Claims Case?"*** section of the information packet on Filing a Small Claims Case for information on enforcing money judgments.

Resources

Legal Aid - https://www.txcourts.gov/programs-services/legal-aid/

Texas Lawyer Referral & Information Service - (800) 252-9690

To check military status – https://scra.dmdc.osd.mil/

Texas Justice Court Training Center information for self-represented litigants – www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site - www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance - www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases – www.texaslawhelp.org