

# **INSTRUCTION FOR FILING A FORCIBLE DETAINER**

## **Notice to Vacate:**

By statute, the Landlord must give the Tenant written notice of the eviction suit before filing a suit for Forcible Detainer. Where written notices are required in the following causes of action, except for attorney's fees and costs of suit, the notice 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 by affixing the notice to the inside of the main entry door. Notice may also be by regular or certified mail, return receipt requested, to the premises in question.

If your cause of action (the reason you are filing) is:

- 1) Defaults of an Oral or Written Lease, i.e., Non-payment of rent, Dog on Premises, etc.: **3 day written notice is required** - can be as short as 1 day if that shorter period is provided for in a written lease. Some Notice is required.
- 2) Periodic Tenancies (month to month, week to week, etc.) Where Landlord desires possession. (This would also be in a case where the Tenant was holding over after the expiration of the primary term of the lease): 3 days written notice is required - can be shortened or lengthened by written lease or agreement. Some notice is required. Periodic tenancies may require a notice to terminate the lease or agreement.
- 3) Tenant at will or Tenant at Sufferance: 3 days written notice is required - can be shortened or lengthened by written lease or agreement. Some notice is required.
- 4) Tenant after Tax Foreclosure Sale or Trustee's Foreclosure Sale: If 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 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 rescheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser that requests payment.
- 5) Forcible entry and detainer suits (where a person enters the property without legal authority or by force and refuses to surrender possession on demand): Oral or written notice to vacate immediately or by a specified deadline.
- 6) Occupant is a Tenant of a person who acquired possession by Forcible Entry: 3 days written notice to vacate.
- 7) Attorney's Fees and Costs of Suit: 10 days noticed by registered or certified mail, return receipt requested. The notice period can be shortened or waived by a written lease. If the lease provides for attorney's fees, the notice provision in the lease controls. If the lease is silent as to attorney's fees, a 10 day notice is required. If the Landlord provides the Tenant 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. A prevailing party is entitled to recover all costs of court.

## **VENUE:**

Cases of Forcible Detainer and Forcible Entry and Detainer must be filed in the precinct of the county where all or part of the leased premises are located.

## **COSTS:**

The fee for filing on one Defendant (i.e., John Doe and all occupants) is \$131.00 (\$46.00 Court Filing Fee and \$85.00 Constable's Service Fee.) An additional \$89.00 is needed for each additional Defendant named in your suit (includes an \$85.00 Service Fee and \$4.00 additional Citation Issuance (ex: \$220.00 is the total due for 2 Defendants).

## **CITATION:**

A Citation (Notice to the Defendant) is prepared by our office and sent with a copy of your Petition to the Constable for Service. The Constable will be diligent to make personal contact with the Defendant. If personal contact is unable to be made the Constable will request to serve Defendant by alternative service.

**HEARINGS:**

There will be a hearing scheduled no sooner than the 10<sup>th</sup> day or later than the 21<sup>st</sup> day from the date your suit is filed with the Court. If you file your suit in person, you will be given a court date once your suit has been assigned a case number. If you file your suit by mail, you will be notified of your court date by mail. Be sure to ascertain the hearing date within 3 days of filing your suit as failure to appear for the scheduled hearing may result in your case being dismissed for want of prosecution.

**COURT APPEARANCE:**

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 responsibility of any party who files a motion, pleading, or other information with the Court to furnish a copy of the filing to all parties involved.

**DEFAULT JUDGMENT:** The Defendant in the suit may file an answer with the Court. Plaintiff should appear on the hearing date whether the Defendant files an answer or not. If the Defendant fails to appear for the Hearing, the Plaintiff may be awarded a Default Judgment. **THE PLAINTIFF STILL MUST PROVE THE CASE IN OPEN COURT** on the Hearing date.

**TRIAL BY JURY:**

Either party may request a trial by jury. The request must be filed with the court at least 3 days prior to the trial date. A jury fee of \$22.00 is due at the time requested.

**WHO MAY REPRESENT THE PLAINTIFF:**

- 1) For non-payment of rent or the Tenant is holding over after the rental period, the owner, agent (manager) or an attorney may represent the Plaintiff.
- 2) Any other reason, (i.e., Defaults on Executory Contracts, Mortgage Foreclosures, Forcible Entry and Detainer Suits; where Tenant enters by force or with out legal authority, defaults on lease provisions) only the owner of the premises or an attorney for the owner may represent the Plaintiff in a trial by the Judge or Jury.

**WRIT OF POSSESSION:**

If Plaintiff is: 1) awarded a judgment for possession of the premises; and 2) if the Defendant does not make a Motion to set aside default judgment within 5 days from the date the judgment is signed, or; 3) the Defendant does not appeal the judgment within 5 days from the date the judgment is signed, Plaintiff's remedy to gain possession of the premises is a Writ of Possession. On the 6<sup>th</sup> day after a judgment for possession is awarded, Plaintiff, may request a Writ of Possession which allows the Constable to oversee the move-out/removal of the Defendant(s) (and all property belonging to the Defendant), from the leased premises, and see that no breach of the peace is violated. The fee for filing a Writ of Possession is \$155.00 (\$5.00 Writ Issuance Fee and \$150.00 Constable Service Fee). You should call the Constable's Office for the procedures on executing a Writ of Possession.

**ADDITIONAL INFORMATION:**

At the time you file your Forcible Detainer suit, you may also file for back rent in the maximum amount of \$10,000.00.

**NOTE:**

**THESE INSTRUCTIONS ARE A BROAD INTERPRETATION OF THE LAWS THAT APPLY TO THE COURT. ANY LEGAL QUESTIONS OR LEGAL INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH OF THE MATTER OR THE ADVICE OF YOUR ATTORNEY.**

# NOTICE

Judges and court personnel may not give legal advice. You may consult with an attorney or you may research available resources.

<http://recenter.tamu.edu/pdf/866.pdf>

Therefore to help and better inform, both landlords and tenants, the guide is made available to all.

The Landlords' and Tenants' Guide, to make the statutes more understandable, has changed the language to lay terms when possible.

Landlords and tenants alike should be aware of the current statutes. For landlords, the awareness is critical, knowledge helps avoid liability. Tenants, on the other hand need to know the law so they can preserve, protect and claim their rights and remedies.

To get a copy of this guide you may write The Real Estate Center, Texas A&M University, College Station, Texas 77843-2115 or call 1-800-244-2144. The cost is approximately \$10.00.

If you have any questions on law the Judge and Court personnel CANNOT answer your questions, if you still have legal questions or are unsure of your rights you should consult an attorney.

**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.)*

And

Defendant: \_\_\_\_\_  
*(Print first and last name of the person being sued.)*

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

Court Number \_\_\_\_\_ 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.)	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total value of property</b>	<b>→ \$ _____</b>

**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>	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>Total Monthly Expenses</b>	<b>→ \$ _____</b>

\*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