

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. 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, may be sent by regular or certified mail, return receipt requested, to the premises in question, or may be by personal delivery to the premises by affixing the notice to the inside of the main entry door. If you do not have access to the main entry door and are unable to personally deliver the notice, you may affix the notice on the outside of the main entry door but it must be in a sealed envelope that is clearly marked "IMPORTANT DOCUMENT(S) ENCLOSED" and a copy of the notice must also be mailed to the residence the same day it is posted to the outside door.

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 \$139.00 (\$54.00 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: \$228.00 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 10th day or later than the 21st 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 6th 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 \$205.00 (\$5.00 Writ Issuance Fee and \$200.00 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 \$20,000.00

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
AVISO: ESTE DOCUMENTO CONTIENE INFORMACIÓN CONFIDENCIAL



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

Declaración sobre Incapacidad de Pago de Costas de Tribunal o de una Fianza de Apelación

Cause Number
Número de Caso _____

The Clerk's office will fill in the Cause Number when you file this form.

El Secretario del Tribunal anotará el Número de Caso cuando usted presente este formulario.

_____ v. _____
Copy information listed at the top left of the petition here.

Copie aquí la información ubicada en la parte superior izquierda del escrito de la demanda.

_____ Copy information listed at the top right of the petition here.

Copie aquí la información ubicada en la parte superior derecha del escrito de la demanda.

_____ Court Number
Número del Tribunal

_____, Texas
County
Condado

- District Court
Tribunal de Distrito
- County Court
Tribunal del Condado
- County Court at Law
Tribunal Estatutario
- Justice Court
Juzgado de Paz
- Probate Court
Juzgado Sucesorio

1. Your Information / Su Información

- My full legal name is / Mi nombre legal completo es

First Middle Last / Nombre de Pila Segundo Nombre Apellido

- My date of birth is / Mi fecha de nacimiento es

Month Day Year / Mes Día Año

- My address is / Mi dirección es

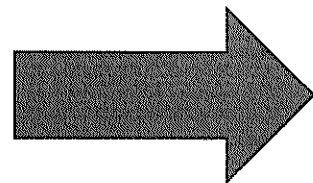
Home / Domicilio _____

Mailing / Dirección Postal _____

- My phone number / Mi número telefónico _____

- My email I check often / Mi correo electrónico que reviso con frecuencia

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2. About My Dependents / Mis Dependientes

“The people who depend on me financially are listed below.” **Use initials only for children under 18.** If needed, attach a separate piece of paper to list more dependents.

“Las personas a continuación dependen económicamente de mí.” **Use iniciales para los menores de 18 años** y, si es necesario, anexe una hoja por separado para enumerar a todos sus dependientes.

| Name Nombre | Age Edad | Relationship to me Parentesco Conmigo |
|----------------|-------------|--|
| | | |
| | | |
| | | |
| | | |
| | | |

3. Are you represented by Legal Aid? ¿Está siendo representado por alguna entidad de asistencia legal?

Check only one box. Seleccione solo una casilla.

- 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.”

Me está representando gratuitamente un abogado que trabaja para una entidad de asistencia legal o que recibió mi caso de una entidad de asistencia legal. El certificado que la entidad de asistencia legal me entregó lo adjunto bajo el título, “Anexo: Certificado de Asistencia Legal.”

or / o

- I am not represented by legal aid.

No me está representando ninguna entidad de asistencia legal.



5. What are your monthly income sources? ¿Cuáles son sus fuentes de ingresos mensuales?

➤ My **take-home** pay is \$_____ in monthly wages.

Mi **pago neto** es \$_____ en sueldo mensual.

➤ I work as a _____ (your job title) for _____ (your employer).

Yo trabajo como _____ (título de su puesto) para _____ (compañía o jefe).

➤ \$_____ is my total **monthly** income / son mis ingresos totales **al mes**.

These are my income sources. Estas son mis fuentes de ingresos.

➤ \$_____ in unemployment / en beneficios de desempleo.

I have been unemployed since _____ (date).

He estado desempleado desde _____ (indique fecha).

➤ \$_____ in public benefits / en beneficios de Asistencia Pública.

➤ \$_____ from people in my household other than my spouse / de ingresos de otras personas en mi hogar que no son de mi cónyuge.

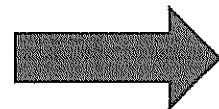
➤ \$_____ from retirement or pension / de jubilación o pensión.

➤ \$_____ from tips or bonus / de propinas o bonos.

➤ \$_____ from disability / de discapacidad.

➤ \$_____ from worker's comp / de compensación al trabajador.

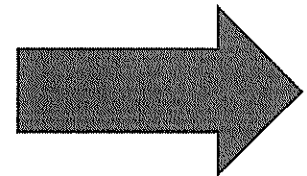
➤ \$_____ from social security / de seguro social.



- \$ _____ from military housing / de vivienda militar.
- \$ _____ from dividends, interest, or royalties / de dividendos, intereses, o regalías.
- \$ _____ from child or spousal support / de manutención de menores o manutención conyugal recibida.
- Answer only if your spouse is not your opponent. Responda tan sólo si su cónyuge no es parte contraria en esta causa legal. \$ _____ from my spouse's income / de ingresos de mi cónyuge.
- \$ _____ from other jobs/sources of income / de *otros* trabajos/ fuentes de ingresos.

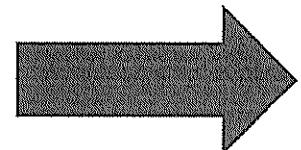
Describe / describa:

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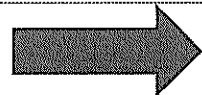
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| 6. What is the value of your assets or property? ¿Cuál es el valor de sus bienes o propiedades? | |
|--|--|
| My property includes: Mis bienes incluyen: | Value / Valor |
| | The value is the amount the item would sell for less the amount you still owe on it, if anything. El valor de sus bienes es la cantidad por la que la propiedad o pertenencia se vendería, menos el monto que aún se adeuda, si lo hubiera. |
| ➤ Cash Dinero en efectivo | \$ |
| ➤ Bank accounts, other financial assets Cuentas bancarias, otros bienes financieros | |
| | \$ |
| | \$ |
| | \$ |
| ➤ Cars and boats (make and year) Automóviles, lanchas (modelo y año) | |
| | \$ |
| | \$ |
| | \$ |
| ➤ Other property like jewelry, stocks, land, a second house. (Do not list your homestead.) Otros bienes como joyas, acciones, terrenos, una segunda casa. (No indique su hogar familiar.) | |
| | \$ |
| | \$ |
| | \$ |
| Total Value of Property Valor Total de Sus Bienes | \$ |



**7. What are your monthly expenses that are not deducted from your paycheck?
¿Cuáles son sus gastos mensuales que no son descontados de su cheque de sueldo?**

| My monthly expenses are: Mis gastos mensuales son: | Amount Cantidad |
|---|--------------------|
| ➤ Rent/house payments; maintenance Alquiler/hipoteca; mantenimiento de casa | \$ |
| ➤ Food and household supplies Alimentos y artículos para el hogar | \$ |
| ➤ Utilities and telephone Luz, gas, agua y teléfono | \$ |
| ➤ Clothing and laundry Ropa y lavado de ropa | \$ |
| ➤ Medical and dental expenses Gastos médicos y dentales | \$ |
| ➤ Insurance (life, health, auto, etc.) Seguros (de vida, médico, de automóvil etc.) | \$ |
| ➤ School and childcare Escuelas y guarderías | \$ |
| ➤ Transportation, auto repair, gas Transportación, reparaciones de automóviles, gasolina | \$ |
| ➤ Child/Spousal support Manutención a Menores/Manutención Conyugal | \$ |
| ➤ Debt payments to (list): Pagos por deudas hechas a (indíquelos): | |
| | \$ |
| | \$ |
| ➤ Wages withheld by court order Sueldo retenido por orden judicial | \$ |
| ➤ Other expenses (list): Otros gastos (indíquelos): | |
| | \$ |
| | \$ |
| Total Monthly Expenses Gastos Totales Mensuales | \$ |



**8. Are there debts or other facts explaining your financial situation?
¿Hay deudas u otros factores que expliquen su situación económica?**

My debts include (list debt and amount owed):

Mis deudas incluyen (indique deuda y la cantidad que debe):

| | |
|--|----|
| | \$ |
| | \$ |
| | \$ |
| | \$ |
| | \$ |

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."

Si usted desea que el tribunal considere otros factores, tales como gastos médicos excepcionales, emergencias familiares, etc., adjunte al formulario otra hoja con esta información y bajo el título, "Anexo: Información Adicional de Apoyo."

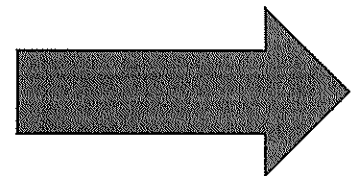
9. Ability to Pay Court Costs. Declaración sobre su Habilidad de Pagar Costas de Tribunal

Check only one box. Seleccione tan solo una casilla.

- I cannot afford to pay court costs. No puedo pagar las costas de tribunal.
- I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision, and I cannot afford to pay court costs.

No puedo aportar una fianza de apelación ni pagar un depósito en efectivo para apelar la decisión judicial de un magistrado, y no puedo pagar costas de tribunal.

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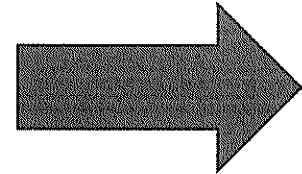
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10. Declaration/Affidavit. Declaración Escrita Bajo Juramento.

Fill out **only one** box. If you fill out the Declaration, you will not need to sign the form in front of a notary public. If you do not want to list your address for privacy or safety concerns, take the form and photo identification, and fill out the Affidavit box in front of a notary public.

Llene tan **solo una** opción. Si usted llena la Declaración, no necesitará firmar el formulario ante un notario. Si usted no quiere que aparezca su domicilio en el documento para conservar su privacidad o por motivos de su seguridad, lleve el formulario y una identificación con fotografía y llene la sección de la Declaración Escrita Bajo Juramento ante un Notario.

Go to next page



Pase a la siguiente página

Option 1 / Opción 1

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

Declaración: Yo declaro bajo pena de perjurio que la información a continuación es correcta y verdadera.

➤ My name is / Mi nombre es

➤ My date of birth is / Mi fecha de nacimiento es

____/____/____

➤ My address is / Mi domicilio es

Street, city, zip, country

Calle y número, ciudad, estado, código postal, país

➤

Signature

Firma

➤

Date (month, day, year)

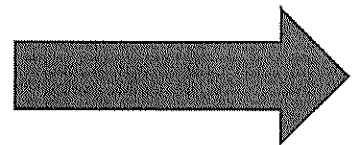
Fecha (mes, día, año)

➤

County, state

Condado, estado

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Option 2 / Opción 2

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

Declaración Escrita Bajo Juramento: Yo juro bajo pena de perjurio, que lo que precede es correcto y verdadero.

You fill out this section.

Usted llena esta sección.

➤ _____
Your printed name
Su nombre en letra de molde

➤ _____
Your signature
Su firma

The notary fills out this section.

El Notario llena esta sección.

➤ _____

Subscribed before me this day of
Juramentado y suscrito ante mí el día de hoy del mes de

_____, 20____

NOTARY
NOTARIO

