

# **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 \$126.00 (\$41.00 Justice Court Fee and a \$85.00 Constable's Service Fee.) An additional \$85.00 Constable Service Fee is needed for each additional defendant named in your suit.

## ***CITATION:***

A citation (notice to the defendant) is prepared by our office and sent with a copy of your petition to the Constable's office for service on the defendant. The Constable will be diligent to make personal contact with the defendant and should personal contact not be able to be made, the Constable will request from the Court alternative service.

**HEARINGS:**

There will be a hearing scheduled no sooner than the 10<sup>th</sup> day nor later than the 21<sup>st</sup> day from the date of service by the Constable at the Court where you filed the case. Be sure to call the Court Clerk to ascertain the hearing date within 3 days of filing your case. It is the responsibility of the Plaintiff to stay in touch with the Court to determine your hearing date. Failure to do so 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 Plaintiff's or Defendant's responsibility to furnish copies of information to the Court and all parties involved. At the time of the hearing, bring any receipts, rent ledgers, lease(s) or any witnesses you may have to support your case.

**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 JURY:**

You may request a trial by jury upon payment of a \$22.00 jury fee no later than 5 days after the citation is served upon the defendant.

**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 without 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 you as plaintiff are: 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, your 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, you as plaintiff, may request a Writ of Possession which allows the Constable to oversee the move-out of the defendant(s) out of 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 Justice Court Fee and \$150.00 Constable's 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.