

# INSTRUCTIONS FOR FILING AN EVICTION

## 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 a 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 lien holder 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 notice 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 of party of the leased premises are located.

## COSTS:

The fees for filing on one defendant (i.e., John Doe and all occupants) are \$77.00 - \$27.00 - Justice of the Peace filing fee and \$50.00 - Constable's service fee.) An additional \$50.00 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. When the citation is prepared, it is given to the Constable to serve. There will be a hearing between 6 – 10 days, normally on the 8th day, from the date of service at the court where you filed the case. **BE SURE TO CALL THE CLERK TO ASCERTAIN THE HEARING DATE TWO - THREE (2-3) DAYS AFTER FILING THE 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:**

At the time of the hearing to determine possession of the leased premises, you should bring any rent receipts, rent ledgers, lease, etc., you may have to support your case. Witnesses should also be brought to this hearing.

- **TRIAL BY JURY:**  
You may request a trial by jury upon payment of a \$5.00 jury fee no later than 5 days after the citation is served upon the defendant.
- **WHO MAY REPRESENT THE PLAINTIFF:**
  1. 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, for example, Defaults on Executory Contracts, Mortgage Foreclosures, Forcible Entry and Detainer Suits (tenant enters by force or without legal authority), Defaults on Lease (dog on premises, too many people living on the premises, public indecency convictions, etc.) **ONLY THE OWNER OF THE PREMISES OR AN ATTORNEY FOR THE OWNER MAY REPRESENT THE PLAINTIFF IN A TRIAL BY THE JUDGE OR JURY. IF THE DEFENDANT IN YOUR SUIT DOES NOT APPEAR AT TRIAL, the owner of the premises, an agent (manager) or an attorney for the owner may appear for the plaintiff and secure a default judgment.**

## **AFTER JUDGMENT:**

**IF** you are awarded a judgment for possession of the premises and **IF** the defendant does not make a Motion to Set Aside Default Judgment within 5 days from the date the judgment is signed OR appeal the case within 5 days from the date the judgment is signed, your remedy to gain possession of the premises is a WRIT OF POSSESSION.

### **WRIT OF POSSESSION:**

On the 6th day after a judgment for possession is awarded, you, as plaintiff, may request a Writ of Possession. A Writ of Possession allows the Constable to oversee the move-out of the defendant(s) out of the leased premises, and see that no breach of peace is violated. The fee for filing a Writ of Possession is \$105.00 (\$5.00 - Justice of the Peace filing fee and \$100.00 - Constable's or Sheriff's service fee). You may call the Constable's office at (903) 693-0385 or Sheriff's office at (903) 693-0333, Civil Department for his/her procedures on executing a Writ of Possession.

## **ADDITIONAL INFORMATION:**

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

If you have any additional questions please call the Civil Department of the appropriate Justice Court listed in this brochure.

\*\*\* All [money orders](#) or [cashier checks](#) are to be made payable to **“Panola County”** \*\*\*

## TENANT – DEFINITIONS

**Tenant at sufferance:** Such tenancy arises when one comes into the possession of property by lawful title, but wrongfully holds over after the termination of his interest. He has no estate nor title but only naked possession without right and wrongfully, and stands in no privity to landlord and is not entitled to notice to quit, and is a bare licensee to whom landlord owes merely duty not wantonly nor willfully to injure him.

**Tenant at will:** One who holds possession of premises by permission of owner or landlord, but without fixed term. Characteristics of a “tenancy at will,” whether created by express contract or by implication of law, are uncertain duration and right of either party to terminate on proper notice.

**Tenant from period to period:** A periodic tenancy which runs from month to month or from year to year (though term usually refers to period of less than one year.)

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Judge Lora J. Taylor  
Justice of the Peace, Precinct 2  
Room 103 Courthouse  
Carthage, TX 75633  
Phone: (903) 693-0377  
Fax: (903) 693-4708

Civil Department – Justice Court Precinct No. 2  
Room 107 Courthouse  
Carthage, TX 75633  
(903) 693-0377 or (903) 694-9450