Self-Help Legal Information Packet:

When an Eviction Case Has Been Filed Against You

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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 building) 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**.

I Got Served with an Eviction Notice, Now What?

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

However, after you paid rent late more than once during your lease term, the landlord may give you **either** a "notice to pay rent or vacate" or a "notice to vacate". A notice to vacate means that you must leave whether or not you pay.

If the landlord wants to evict you for a breach of the lease other than nonpayment of rent, the landlord is just required to give a notice to vacate.

If you do not leave the premises (including removing your personal property) by that date, the landlord may be able to force you 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 if the lease provides for a different amount of time, if there is an eviction after foreclosure, or if the landlord or tenant receives a federal housing subsidy.

The notice to vacate may be delivered to you by:

1) Handing it to you or to any tenant of the premises who is 16 years of age or older,
2) Mailing it to the premises, addressed to you,
3) Delivering to the inside of the premises, in a conspicuous (prominent or noticeable) place, or

4) If you and the landlord have agreed in writing, electronic communication, including email or other electronic means (potentially through an online portal where you pay rent or get notices from the landlord or management company).

After the proper notice is delivered and the notice period has expired and you have not complied with the notice, the landlord may file an eviction suit against you in court and pursue an eviction judgment. If they are able to prove their case in court, the landlord may get an eviction judgment against you. This judgment may include any rent that is due, plus the landlord's court costs and attorney's fees. Having an eviction judgment against you may make it more difficult for you to rent property in the future.

I Got Served with a Citation, Now What?

If the landlord files an eviction, the next thing that will happen is you will receive a **citation**, issued by the court, which is a notice that tells you that you are being sued and when you have to come to court. The **petition** was created by the plaintiff and will provide details of why the plaintiff is evicting you, and how much back rent, if any, they are suing for. ***Note***: back rent can increase during the eviction case as time passes.

If the petition isn't clear about what the plaintiff thinks you did wrong or what they want, you can file a **motion** with the court asking for them to clarify. A motion is a request for the court to do something. This is done by putting your request in writing and sending it to the court and to the plaintiff.

The citation should contain your trial date, which will be between 10 and 21 days from the day the landlord filed the case. If it does not contain your trial date, contact the court to find out when it is. 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 the landlord getting a judgment removing you from the property. If you cannot

appear on that date and do not get a postponement, try to send someone else to appear for you with any information or documents to present on your behalf.

Do I Need a Lawyer?

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. (*Resources for finding a lawyer can be found at the end of this packet*.)

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. This person can help you understand the proceedings and advise you on what to do or say.

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 will win a case or not, what to say in court, or what steps you should take to win your case or avoid paying a judgment. This is legal advice.

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 “Should I just move out instead of going to court?” or “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 for eviction cases, you still are not sure what to do, it may be helpful to talk to an attorney.

How Do I Send Paperwork to the Plaintiff?

Any paperwork such as motions, requests for a hearing, appeals, etc., must be sent to the plaintiff as well as to the court. You can send those papers to the plaintiff 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,
4) faxing it to them, or
5) sending it by email ***if*** the plaintiff 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 plaintiff.

The plaintiff's contact information will be available in the petition they filed, which was attached to the citation that you received.

Important - Make sure to keep your address updated with the court and the other party, so that you will receive any paperwork or notices sent to you.

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. This motion should only be filed against you if you never had permission from the owner, a tenant, or other person possessing the premises to enter and occupy the premises (called a forcible entry and detainer). In addition, there should not be any disputed facts that would prevent a judgment in favor of the landlord. To fight a motion for summary disposition, you must file a response **within 4 days after receiving notice** of the motion setting out supporting facts and providing any applicable documents that you are relying on.

What if the Plaintiff Owes Me Money?

When the defendant files a claim with the court stating the plaintiff owes money to the defendant, that is called a counterclaim. **Counterclaims are not allowed in eviction cases.** If you feel that the plaintiff owes you money, such as a security deposit, you need to file a separate small claims case to get a judgment for that money. For more information see the information packet on ***Filing a Small Claims 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 you are served with the citation, 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 the Plaintiff and I Make 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 plaintiff allowing you to remain in the property, continue to appear at all court dates until you receive a notice from the court confirming that the case has been 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**.

Then, the plaintiff will be able to give an opening statement if they wish, where they explain to the judge and jury what they feel the case is about. You can respond with your own opening statement, you can wait to give one until after the plaintiff has given all their information, or you can decide not to give one.

Next, the plaintiff will call any witnesses they may have, and ask them questions so that they can **testify**, or tell their story, to the judge or jury. 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.

Once the plaintiff has presented all their witnesses and evidence, they will rest, which means they are done. It is now your turn, and you can call any witnesses you have. You can also testify and show any evidence you may have (such as documents, contracts, cancelled checks, receipts, etc.).

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

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 I Don't Appear for Trial?

If you don't appear at trial, the information in the plaintiff's sworn petition will be taken as the truth. If they provided enough information in your petition, they will be awarded a default judgment.

What Happens if I Lose My Eviction Case?

If the judgment is in favor of the plaintiff, they will be able to remove you from 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 plaintiff 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 plaintiff 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.

In the appeal, the tenant appealing must also affirm under penalty of perjury that they have a good faith belief that they have a meritorious defense and that the appeal is not for the purpose of delay. If you appeal with an appeal bond or a cash deposit, you must pay a filing fee of $54 or file a Statement of Inability to Afford Payment of Court Costs. You must also send notice of the appeal to the plaintiff within five days of filing it with the court.

You will also be ordered to pay one month's rent to the court within 5 days. You will continue to pay rent into the court registry as rent becomes due while your appeal is pending. Once the appeal is transferred to county court, if rent becomes due again while the case is still pending, you are responsible for paying that rent into the county court registry. If at any time you fail to meet these obligations to pay rent into the court registry, your appeal will still be heard by the county court, but the plaintiff can have you removed from the property immediately, or at any time before your case can be heard by the county court. If that happens, and then the county court rules in your favor, you will be placed back in possession of the premises.

Once your appeal is filed with the county court, unless you appealed with a Statement of Inability, you will be instructed 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. If you do not, your appeal will be dismissed, and the plaintiff can begin the process of having you and your property removed from the property.

What If I Don't File an Appeal?

If you do not appeal within the 5-day time period, and don't leave the property, the plaintiff can come to the court and get a **writ of possession**, which is an order for you and your property to be removed from the premises. 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 you and your property.

If the plaintiff gets a judgment against you for money (such as back rent, court costs, or attorney's fees), they may seek to enforce the judgment against you.

Below is a brief description of some of the tools that the plaintiff can use against you to enforce a monetary judgment.

Post-Judgment Discovery: The plaintiff can send questions that you must answer describing what assets you have that could be used to satisfy a judgment. You will get at least 30 days to respond to these discovery requests, either by providing the requested information or by making an objection with the court. If you object, the court will hold a hearing to decide if you must provide the information.

Abstract of Judgment: If you own real property (land), the plaintiff can get an abstract of judgment from the court that issued the judgment and file it with the county clerk in the county or counties where you own the property. This puts a **lien** on the property in the plaintiff's name, which means if you sell the property, they could get the proceeds to satisfy the judgment.

Writ of Execution: This is an order for the constable to go out and seize your personal property and sell it to satisfy the judgment. **IMPORTANT** – many items of personal property are **exempt**, meaning it is not legal for the constable to seize them and sell them. The plaintiff generally must wait at least 30 days after judgment before getting a writ of execution.

Writ of Garnishment: If a third party, such as a bank, has assets that belong to you, the plaintiff can get a writ of garnishment to order them to be given to the plaintiff to pay the judgment.

Learn more about exemptions and the judgment enforcement process at www.texaslawhelp.org/exempt-property or by scanning this QR code with your camera phone:

What Happens if I Win My Eviction Case?

If the judgment is in your favor, the plaintiff has a right to file an appeal within 5 days. You will receive a notice in writing if the plaintiff appeals. This would mean the process would start all over in the county court.

Resources

Legal Aid - 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