

# Eviction

Important information on legal terms, guidelines, and the eviction process.

This brochure provides an outline of the eviction procedures in Freestone County, Texas. *It does not offer legal advice.* Its purpose is to provide a basic explanation of legal terms and to describe how an eviction lawsuit generally proceeds through the legal system. To obtain specific legal advice, please contact an attorney licensed to practice law in Texas.

## Eviction

Eviction is the legal process by which a landlord removes a tenant and other occupants from rented property. A landlord can bring an eviction lawsuit if a tenant fails to pay the rent or eviction may also occur for other reasons required by the lease other than pay rent. A tenant can also be evicted for staying longer than the lease agreement allows without the permission of the landlord.

If the landlord provides evidence of any of these reasons and the tenant fails to prove otherwise, the court can order the tenant to move out even if he or she does not want to move. If the tenant refuses to move, the constable or sheriff can cause the physical removal of the tenant, all occupants, and all belongings from the leased property.

## Rights of the Tenant

If the tenant has paid the rent, has not violated the lease agreement in any significant way, and is authorized to be on the property, the tenant can appear in court to explain the reasons he or she should not be forced to leave. After considering both sides, the court will determine whether or not the tenant must vacate the leased real property. This legal process prevents landlords from “taking the law into their own hands” and forcing tenants to leave without good cause as determined by the court.

## Proper Court

Only the Justice of the Peace Court (JP Court) in the JP precinct in which the leased real property is located has the power to decide eviction lawsuits. If you are sued for eviction, the papers delivered to you will have the address of the proper JP Court. If the eviction lawsuit has not yet been filed, call your local JP or constable’s office to find out which JP Court will be the proper court.

## Steps to Eviction

(1) The landlord must first give the tenant written notice to vacate, demanding possession by a specific date. The notice period stated in the written lease is sufficient, except that it cannot be less than 24 hours. If no notice period is stated in the written lease, at least three (3) days notice must be given before an eviction lawsuit can be filed. Exceptions to these general rules are cases where the tenant entered the real property without the landlord’s authority to do so (no written notice is required), or if the law requires a different specific notice period. This written notice must be sent by mail, given in person to the tenant, given in person to any person residing in the leased property who is at least sixteen (16) years of age, or posted on the inside of the main entry door to the leased property.

(2) If the tenant fails to move out before the deadline stated in the written notice to vacate, the landlord may file an eviction lawsuit with the JP Court. This lawsuit must state the specific reasons why the tenant must leave. The landlord can also ask for rent owed and attorneys’ fees, so long as the amount does not exceed \$10,000, plus all court costs. If the landlord wants to collect more than \$10,000 the landlord must bring a different lawsuit for monetary damages in a different court.

(3) After the landlord files the lawsuit, the tenant will be served with a citation (an official notice that he or she is being sued) and a copy of the

lawsuit, along with a notice advising the tenant of the date, time, and place of the hearing.

(4) A tenant should appear for the hearing at the JP Court on the date and time indicated in the papers. If the tenant has reached an agreement with the landlord resolving the dispute, the tenant should still appear at the JP Court for the hearing or he or she risks a default judgment (a judgment taken in the absence of the tenant), which is likely to be unfavorable to the tenant.

(5) The landlord may try to obtain immediate possession of the leased property by filing a bond for possession before the scheduled hearing occurs. If a bond is filed, the landlord may retake possession of the leased real property six (6) days after the tenant is served with the bond for possession, unless the tenant files a counter bond or requests that the eviction hearing occur within that six (6) day period. There is no fee to request a hearing. A tenant should file this request in writing with the JP Court. To file this request or any document, a person should make a copy of the document and take both the original and the copy to the court for filing. The clerk will file mark both the original and the copy and return the copy to the tenant.

(6) Both the landlord and the tenant must appear in JP Court on the hearing date to present evidence. At this time, the tenant may explain to the JP Court why the tenant should not be forced to leave by presenting witnesses (including the tenant and/or occupants), documents (such as those showing that the rent was paid or that the tenant did not violate the lease agreement), or any other evidence that may support the tenant's position. An individual tenant or landlord can represent himself or herself at this hearing and does not need to have an attorney. However, if a landlord is a corporation, it may be required to have an attorney present in some eviction cases.

(7) The Justice of Peace will make a decision after hearing all the evidence from both the landlord and the tenant. If either side wants a jury to decide whether the tenant should be forced to vacate the leased property or to be allowed to stay, that side must pay a jury fee in the amount of \$5.00 within five (5) days of the service date of the eviction papers. If no jury fee is paid, the Justice of the Peace presiding in the JP Court will make the decision.

(8) If the Justice of the Peace or the jury finds that the tenant should be evicted, the JP Court will sign and enter a judgment awarding possession of the property to the landlord. The judgment may also award past due rent, attorneys' fees, and court costs to the landlord. The landlord can request a writ of possession, which allows the constable or sheriff to physically remove the tenant, all occupants, and all belongings from the leased property. The writ cannot be issued until after the time to appeal expires, which is at least six (6) days after the hearing. Once the writ of possession is obtained, a constable or sheriff will supervise the removal of all persons and their belongings from the leased property after giving them 24 hours notice. If it is raining, sleeting, or snowing, the officers will not allow belongings to be placed outdoors, and typically they will not execute writs in these conditions.

### **The Appeal Process**

(1) Whichever party loses in the JP Court can appeal and receive a new trial in the County Court. Although an individual may represent himself or herself in the County Court, the complicated rules of civil procedure may be more strictly enforced. An individual may hire an attorney.

(2) The party wishing to appeal must file a notice of appeal with the JP Court no later than five (5) days after the judgment in the JP Court is signed. If the fifth day falls on a weekend or holiday, the deadline for appeal will fall on the next day that the JP Court is open.

(3) To appeal a case to the County Court, a tenant must put up a bond (a promise to pay a certain amount), which must be signed by the tenant and two other individuals (sureties) who have real estate in Texas or other assets (such as savings accounts, bonds, etc.) sufficient to pay the landlord if the tenant loses on appeal. The JP Court sets the amount of the bond (usually twice the amount of one month's rent plus approximately \$282.00 for court cost) and approves the bond. If the tenant wins the appeal, no payment on the bond will need to be made. If the tenant loses the appeal, the tenant will be required to pay the amount, and if he or she fails to make payment, the individuals who signed on the bond will be liable up to the amount of the bond.

(4) If the tenant cannot afford a bond, or is unable to obtain sureties, the tenant may choose to file a pauper's affidavit. A pauper's affidavit is a sworn statement (it must be notarized) made by the tenant stating that the tenant is too poor to make bond or pay costs. The pauper's affidavit must be filed on or before the fifth day after the judgment is signed or the tenant loses his ability to appeal will go forward. If the JP Court determines that the tenant has the ability to post bond, the pauper's affidavit will be disapproved and have no effect. In this case, the tenant can instead request that the County Court approve the pauper's affidavit. The JP Court will typically allow the tenant five (5) additional days to file an appeal bond or to ask that the County Court determine the validity of the pauper's affidavit. If the County Court also disapproves the pauper's affidavit, the tenant will typically be given another five (5) days to file an appeal bond.

(5) If the appeal papers are properly filed and the bond is in place, the tenant may stay in the leased property until the case is determined by the County Court. However, if a pauper's affidavit has been filed and approved, the tenant must deposit one month's rent within five (5) days of the filing of the pauper's affidavit if the eviction was for failure to pay rent. If this is not done, the tenant may be removed from the leased property before the trial in County Court.

(6) No matter who appeals the case, the tenant must file a written answer in the County Court within eight (8) days after the JP court files the transcript (the record of the proceedings from the JP Court) in the County Court. A tenant should contact the County Court assigned to hear the appeal to determine when the transcript has in fact been filed. A written answer is a written document that identifies the case, denies the claims made by the landlord, and may state the tenant's defenses (reason why he or she should not be evicted). If the tenant fails to file a written answer within this time period, the landlord may obtain a default judgment and the appeal will be lost without a trial occurring at the County Court.

(7) Once the tenant files a written answer, the County Court will set the matter for trial. The tenant must appear at the trial to present evidence (documents, witnesses, etc.) that he or she has paid the rent, has not violated the lease agreement, or is otherwise entitled to remain in the leased property. As with the trial in the JP Court, either side may remain in the leased real property. If the landlord wins, the landlord may obtain a writ of possession, as described above, and the tenant and all occupants must remove their belongings and vacate the premises.

**Nothing stated herein should be construed or interpreted to grant rights or remedies not otherwise granted under federal or state law.**

**This information is provided as a public service and is not intended as a substitute for legal advice or representation by a lawyer.**