NEW RULES AND FORMS EFFECTIVE AUGUST 31, 2013

EVICTION COURT PROCEDURES

LEGAL INFORMATION VS LEGAL ADVICE

The Judge or Court Personnel cannot give Legal Advice. Below is information the Court can and cannot provide.

We Can	We Cannot
Explain and answer questions about how the court works.	Tell you whether or not you should bring your case to court.
Provide the number of the local lawyer referral service, legal services program, Texas State Bar lawyer referral service, and other services where legal information is available	Tell you what words to use in your court papers. However, we will check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number and presence of attachments.
Give general information about court rules, procedure, and practices.	Recommend what to say in court.
Provide court schedules and information on how to get a case scheduled.	Give an opinion about what will happen if you bring your case to court.
Give you information from your case file.	Talk to the Judge for you or let you talk to the Judge in private.
Give you samples of court forms that are available.	Change an order signed by a judge.
Usually answer questions about court deadlines	Tell you what deadlines apply in your case.

PREPARATION FOR FILING AN EVICTION SUIT

1. Eviction suits cannot be filed in the Justice Court unless there is a landlord-tenant relationship, either expressed or implied. The tenant must have already failed to pay the rent as agreed. Landlord cannot refuse to accept rent and thereafter claim rent was not paid.

2. The law requires that prior to filing the forcible entry and detainer suit, the landlord **must** deliver a written **"Notice to Vacate" or "Demand for Possession"** naming each occupant the landlord seeks to evict from the premises. The notice must give the reason for demanding possession. The written notice must give the tenant time to vacate voluntarily. The time to vacate in the notice must be at least three (3) days. **(If the tenant contests the eviction in Court the burden is on the landlord to prove that the proper notice to vacate was given.)** Please present a copy of the written demand to vacate when filing the petition with the court. **(Sample notice to vacated included in the eviction packet)**

3. Delivery of the notice must be done by one of the following methods:

   A. **Handed to a tenant in person.** (or anyone living at the premises who is at least 16 years old)
   B. **Mailed to the tenant.** (If mailed, the landlord must wait an additional two (2) days to allow for the mail to be delivered before filing the eviction)
   C. **Attached to the inside of the main entry door.**

4. **The eviction case cannot be filed until the notice time has expired.**

5. After the notice is delivered and the notice period has expired, then go to the Justice of the Peace Court in the precinct where the property is located to file a written **"sworn complaint"** for eviction. According to Rule 510.3(c), if the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises whom plaintiff seeks to evict. The statement of "and/or all other occupants may be sufficient to evict anyone occupying the residence that may be listed as an occupant only on the lease or who is not listed as an occupant with the plaintiff.

PLAINTIFF OR AGENT: Is the landlord or representative of the owner.

DEFENDANT OR TENANT: Is the person(s) occupying the rental property.

COURT COST: Filing fee is $101.00
Writ of Possession is $130.00

VENUE: An eviction suit **must** be filed in the County and Precinct where the Defendant resides. **(No Exceptions)**

1. An eviction petition will be needed. This petition is available in the Court or online.

2. You may obtain immediate possession of the leased property by filing a bond for possession. This form can be obtained from the clerk of the Court or online. For more information reference Rule 510.5 of the Texas Rules of Procedure.

3. Once the petition is filed the filing fee accepted, the clerk of the court will issue a citation and the citation will be forwarded to the Constable.

4. When the Constable receives the citation from the clerk, he will attempt to serve the Defendant. Ten 10 to 21 days after the Petition is accepted by the Court the case will be heard. The clerk will notify the Plaintiff of a court date at the time the Petition is filed.

REQUESTING A CONTINUANCE FOR EVICTION

1. If a continuance is requested, the continuance will only be granted for no more than seven (7) days total unless both parties agree in writing. **Do not contact the court by phone for a postponement. Request must be in writing.**

TRIAL

1. On the court date it will be the Plaintiff's responsibility to prove their case against the Defendant.
   A. If the Defendant appears in court and the Judge gives judgment for the Plaintiff, the Defendant has five (5) days to vacate the property or file with the court and appeal bond.
   B. If the Defendant does not appear in court, a Default Judgment will be issued against them. The Defendant has five (5) days to vacate or file an appeal bond.

C. If the Defendant has not vacated or filed an appeal bond after the expiration of five (5) days from the date of judgment, the Plaintiff can ask for a Writ of Possession.

2. When a Writ of Possession is issued the Constable will contact the Plaintiff and work out a date to turn over the property to the landlord. It will be the Plaintiff's responsibility to remove any items of the Defendant's off the property. The Constable acts only as an observer.

APPEAL

WITHIN FIVE (5) DAYS, after judgment has been rendered, the party appealing (appellant) or his attorney must file with the court an appeal bond. The Justice Court Judge will set the amount of the bond or cash deposit to include the items enumerated in Rule 510.111. If the plaintiff in the case is the appellant, the same rules as above apply, however, the bond should be **double the amount of the costs incurred in the justice court and estimated costs in the county court.** When the bond has been filed and approved by the justice, the appeal shall be held to be perfected. **Within five (5) days following the filing of the appeal bond, the party appealing shall give notice of the appeal to all parties to the suit who has not filed such bond.**

The cost at the time of filing of the appeal bond is: $26.00 to the Justice Court.

One month's rent by money order made payable to the Gregg County Clerk must also be presented within five (5) days.

When the bond has been filed and approved, the costs have been paid and all parties have been notified, the court clerk will prepare the transcript and send all instruments filed, judgment and bond together with costs to the county clerk.

Appeal Bond forms (i.e Surety Bonds, Cash Bonds, and Pauper's Affidavit) are provided by the Court. The Bonds can be accessed in the Court or online.

The court clerks are prohibited from giving legal advice and can only help in procedural matters. We will be glad to assist and answer any questions that we can.

HONORABLE TALYNA CARLSON
JUSTICE OF THE PEACE, PCT #3

Gladewater Office:
1098 E COMERCE STREET
GLADEWATER, TX 75647
(903) 845-2672 x 1
Civil Clerk – (903)237-2653
Fax (903)845-6467

Kilgore Office:
622 KAY STREET
KILGORE, TX 75662
(903)986-8441
FAX (903)984-4345

SAMPLE FORM

3 DAY
NOTICE TO VACATE

Dear _____, (Name all Tenants)

Today is the _____ day of _____, 20_____.

You are hereby notified to vacate the property located at

_____

in three (3) days.

Reason for demanding possession: _____

_____

_____

If you do not move, a Forcible Detainer will be filed against you in the Justice of the Peace Court.

_____

Owner or Agent

A true copy of this notice was:

( ) Posted on Tenant's Door
( ) Handed to Tenant