EVICTION CASE INSTRUCTIONS

There are generally four types of Landlord/Tenant issues that present themselves in justice court:

1) Evictions (see eviction section below as well as Texas Property Code, Chapter 24)
2) Illegal lockouts (see Texas Property Code Chapter 92)
3) Illegal shutoff of utilities (see Texas Property Chapter 92)
4) Repair and Remedy cases (Governed by the Rules of Civil Procedure Chapter 509 and Chapter 92, Subchapter B of the Texas Property Code).

To file an eviction, you will need to do THREE THINGS:

1) Fill out an Original Petition for Eviction and Fill out a Justice Court Civil Case Information Sheet (MUST be the cover page and included with every case filed)
2) Bring the sheet and the petition to our office along with a check, cash or money order to pay the filing and service fees.

You are strongly encouraged to read the new rules of civil procedure. There are numerous changes to the eviction laws, such as Bond for Immediate Possession and other provisions.

- **The timeline for the hearing date is slightly different (Rule 510.4 (10)**
- **The rules for Bond of Possession have changed (Rule 510.5)**
- **Writ of Possession EXPIRES after 60 days (used to be indefinite) (Rule 510.8 (d)(1)**
- **Appeal rules have been modified under Rule 510.9**

1) **Evictions must be filed in the proper Justice of the Peace Court.** Checks or Money Order are accepted. **Cash must be for the exact amount only.** Your property must be properly marked with the physical address assigned by the 911 emergency address system or the appraisal district. If your property is not clearly marked, the Constable will return the eviction citation un-served and you will have to start over. Location number can be posted by numbers on the building proper or by numbers located on a sign posted in front of the property.

2) By law you must give a NOTICE TO VACATE before you can file an EVICTION SUIT. The landlord must give the tenant at least 3 days written notice to vacate before filing this eviction, unless the lease signed by both parties states otherwise. The NOTICE TO VACATE must be in writing and comply with Section 24.005 of the Texas Property Code. A defective NOTICE TO VACATE can result in DISMISSAL of your Eviction.

3) **COURT COSTS** for filing an eviction on one tenant are listed in the fees and court costs schedule posted by the Court and pursuant to Section 510.2 of the NEW Texas Rules of Civil Procedure states "The plaintiff must name as defendants all tenants obligated under the lease residing at the premises. You can ONLY get a judgment against the defendant served. If you wish to have a judgment against two parties, then you MUST pay for service and have both parties served. This is an additional service fee.

4) **ATTORNEY'S FEES:** To be eligible to recover attorney's fees in an eviction suit, a notice to vacate must be served by a process server, personally with a witness, or by return receipt requested certified mail (10) ten days prior to the date the suit is filed.

5) **WHO MAY FILE:** The owner or the owner's agent may file any type of forcible detainer suit, and he may represent the owner in the hearing. **EFFECTIVE September 1, 2013, every justice court civil filing will require a <u>JUSTICE COURT CIVIL INFORMATION</u> cover sheet. All cases filed must have, two copies of the cover sheet, one for the court file, and the other to be served along with the citation and original petition to the party being sued.**

6) **JOINING A SUIT FOR RENT:** A suit for rent may be joined with the eviction suit, if the amount due is within the jurisdiction of this court. ($10,000.00). Any damages, late charges, utilities, or other charges may not be included in this action; HOWEVER, The owner or the owner's attorney may file suit for these amount in a separate action filed in Justice Court as a Small Claims case.

7. **PROCEDURES AFTER FILING:** At the time the suit is filed, a hearing date and time will be set as close to 10 to 21 days from the filing date; A citation will be issued to the Constable's or Sheriff's office to be served on the tenant giving them the date and time of the hearing.

8. **THE HEARING:** You are required to appear personally for the hearing. Proper representation is essential.

At the court hearing, both sides will have the right to present their side of the case, including witnesses, receipts, canceled checks, photographs, and all other evidence.

You will need to bring with you all evidence pertaining to the case. The burden of proof lies with you as plaintiff. You must show the Court good and sufficient evidence proving your right to regain possession of the property. You must still prove your case, even if the defendant fails to appear.

9. **JUDGMENT:** At the hearing, a judgment will be rendered for either the plaintiff or the defendant. A judgment for the plaintiff may be for all or part of the initial claim. If you are awarded a judgment for possession of the premises and/or any back rent owed, there is a 5 day appeal period in which the defendant may appeal the decision to the County Court. If the Defendant has not appealed the case at the end of the appeal period, Judgment becomes final.

Upon final judgment you may then file for A Writ of Possession if the defendant has still not vacated the premises. A writ of possession authorizes the constable to supervise while the Plaintiff removes the property for the premises. You may wish to contact the Constable for more information on writs of possessions.

<u>MOBILE HOME CASES:</u> If you are seeking an eviction based on *late rent payments* for a MOBILE HOME LOT (tenant owns mobile home, you lease them the lot), you are required by law to give the Tenant a ten-day NOTICE TO CURE before you can file an eviction (Sec. 94.206, Texas Property Code). Without the NOTICE TO CURE, your case will be dismissed. If they do not cure the problem after the ten-day notice, you then give them a three day NOTICE TO VACATE. Texas Law contains specific rules regarding Mobile Homes.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER *(FOR CLERK USE ONLY)*: _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		**2. Names of parties in case:**
Name: _____	Telephone: _____	Plaintiff(s): _____ _____
Address: _____	Fax: _____	Defendant(s): _____ _____ _____
City/State/Zip: _____	State Bar No: _____	[Attach additional page as necessary to list all parties]
Email: _____		
Signature: _____		

3. Indicate case type, or identify the most important issue in the case *(select only 1)*:	
☐ ***Debt Claim***: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ ***Eviction:*** An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.
☐ ***Repair and Remedy***: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.	☐ ***Small Claims:*** A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than $10,000, excluding statutory interest and court costs but including attorney fees, if any.

CASE NO. _____

_____	§	**IN JUSTICE COURT**
PLAINTIFF/(LANDLORD),		
	§	**PRECINCT 1**
VS		
_____	§	**ELLIS COUNTY, TEXAS**
DEFENDANT/(TENANT), **AND ALL OTHER OCCUPANTS.**		

PLAINTIFF'S COMPLAINT FOR EVICTION AND SUIT FOR RENT

TO THE HONORABLE JUSTICE OF THE PEACE:

NOW COMES _____ (**Landlord**) herein referred to as Plaintiff, and files this complaint

against_____**(Tenant)**

Defendant(s) and all occupants of the premises described herein and respectfully shows the Court the following:

NOTE- THE PROPERTY ADDRESS MUST BE CLEARLY MARKED (UNIT 1, SIDE A, etc.) IF THE PROPERTY ADDRESS IN NOT CLEAR AND UNAMBIGUOUS, THE CONSTABLE MAY RETURN THE CITATION, CAUSING ADDITIONAL DELAY AND COST IN YOUR CASE.

COMPLAINT: Plaintiff (Landlord) hereby complains of the defendant(s) named above for eviction of plaintiff's premises (including storerooms and parking areas) located in the above precinct. Address of the property is:

I solemnly swear defendant(s) does reside in the above-mentioned Justice Court of Ellis County, Texas and may be served with process at the specifically described leased premises:

Street Address: _____

Apt/Unit No: _____

City/State/Zip: _____

Phone No: _____

1. **SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are: _____

   Plaintiff entered into a written and or oral (circle one) agreement with Defendant for occupancy of the leased premises. Defendant has violated the terms of the agreement by

2. ☐ **UNPAID RENT AS GROUNDS FOR EVICTION:** Defendant(s) failed to pay rent for the following time period(s): _____. **TOTAL DELINQUENT RENT AS OF DATE OF FILING IS: $_____**
   Plaintiff reserves the right to orally amend the amount at trial to include rent due from the date of filing through the date of trial.

3. ☐ **OTHER GROUNDS FOR EVICTION/LEASE VIOLATIONS:** Lease Violations (if other than non-paid rent – list lease violations) _____

4. ☐ **HOLDOVER AS GROUNDS FOR EVICTION:** Defendant(s) are unlawfully holding over since they failed to vacate at the end of the rental term or renewal of extension period, which was the _____ day of _____, 20_____.

5. **NOTICE TO VACATE:** Plaintiff has given defendant(s) a written notice to vacate (according to Chapter 24.005 of the Texas Property Code) and demand for possession. Such notice was delivered on the _____ day of _____ and delivered by this method:_____

6. **ATTORNEY'S FEES:** Plaintiff ☐ will be or ☐ will NOT be seeking applicable attorney's fees. Attorney's name, address, and phone & fax numbers are:_____
   ATTORNEY'S FEES: To be eligible to recover attorney's fees in an eviction suit, a notice to vacate must be served by a process server, personally with a witness, or by return receipt requested certified mail ten days prior to the date the suit is filed.

7. ☐ **BOND FOR POSSESSION:** If Plaintiff has filed a bond for possession, plaintiff requests (1) that the amount of plaintiff's bond and defendant's counter bond be set, (2) that plaintiff's bond be approved by the Court, and (3) that proper notices as required by the Texas Justice Court Rules are given to Defendant(s).

   REQUEST FOR JUDGMENT: Plaintiff prays that defendant(s) be served with citation and to Answer the complaint and upon final hearing that plaintiff have judgment against defendant(s) for: possession of premises, including removal of defendants and defendants' possessions from the premises, unpaid rent IF set forth above, attorney's fees, court costs, and interest on the above sums at the rate stated in the rental contract, or if not so stated, at the statutory rate for judgments under Civil Statutes Article 5069-1.05.
   NOTE- you will need to bring an itemized list of what you are seeking in back rent to your hearing, along with your signed lease and any receipts for payment in the months where rent is in q

PLAINTIFF'S/AGENT SIGNATURE: _____

MAILING ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NUMBER: _____

SWORN TO AND SUBSCRIBED before me this_____ day of _____, 20_____.

_____
Notary Public in and for the State of Texas/or
Clerk of the Justice Court

CASE NO. _____

AFFIDAVIT

SEC. 201(b)

Plaintiff being duly sworn on oath deposes and says that Defendant(s)

- ☐ is not in the military
- ☐ not on active duty in the military and/or
- ☐ not in a foreign country on military service
- ☐ is on active military duty and /or is subject to the Servicemembers Civil Relief Act of 2003.
- ☐ defendant has waived his rights under the Servicemembers Civil Relief Act of 2003.
- ☐ military status is unknown at this time.

PLAINTIFF'S SIGNATURE: _____

Subscribed and sworn to before me on this the _____ day of_____, 20___.

_____

Notary Public in and for the State of Texas/or
Clerk of the Justice Court

Penalty for making or using false affidavit – a person who makes or uses an affidavit known it to be false, shall be fined as provided in title 18 United States Code, or imprisoned for not more than one year, or both.