

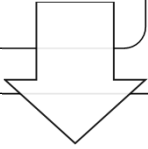
# Residential Evictions: Filing Through Judgment

**Hon. David Patronella**  
**Justice of the Peace, Pct. 1, Pl. 2**  
**Harris County**

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Step by step process for a standard residential eviction case.



From filing through judgment.

What We Will Cover

2

## What is an Eviction Case?

3

## What is an Eviction Case

- An eviction case is a lawsuit to recover possession of real property from someone who is occupying it.
  - For example, a suit to make someone move out of an apartment they are renting.
- If a person is **evicted**, they no longer have a right to remain on that property.

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## What is an Eviction Case

- The most common eviction case is filed by a landlord to remove a tenant from the landlord's property
  - Rule 500.3(d)
- Landlord = the person who owns the property
- Tenant = the person occupying or renting the property
- Real Property = land and buildings (like a house or apartment)

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## What laws and rules apply?

- Chapters 24 & 92-94 of the Property Code
  - These are laws enacted by the Legislature.
- Rule 510 of the Texas Rules of Civil Procedure
  - This is a rule from the Texas Supreme Court that deals specifically with eviction cases.
  - Rules 500-507: the general rules in civil cases also apply in eviction cases but if there is any conflict, follow Rule 510.

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When Can  
Someone be  
Evicted?

7

### **Poll**

A landlord may pursue eviction of any tenant at any point if they decide they don't want the tenant living on their property anymore.

- A. True**
- B. False**

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## Breach of Lease

- Most Evictions happen when a tenant breaches (meaning **violates**) a term of the lease.
- For example:
  - Tenant fails to pay rent.
  - Tenant has pets but lease prohibits this.
  - Tenant has loud parties late at night but lease prohibits it.

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## End of Lease

- An eviction may also occur when a tenant's lease or right to stay on the property has ended but they don't leave.
- For example:
  - The lease is for six months. At the end of the six months, the landlord does not renew the lease but the tenant refuses to move out.

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## No Fixed Lease Term


- Sometimes a tenant has the landlord's permission to live there but there is no set period for how long.
- This is called a tenancy at will.
- Common examples of a tenant at will include:
  - a person allowing a significant other or adult child to use that person's property as their residence; or
  - helping out a friend or relative by letting them stay with them.

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## No Fixed Lease Term

- If the tenant is not being charged rent and there is no agreement in writing, the landlord may end the tenant's right to possession at any time by demanding possession of the property with a written **notice to vacate** (discussed in next section).
- For example, your brother-in-law has been sleeping on the couch in your living room for six months; it's time for him to move on.


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<h2>Termination Notice</h2> 	<ul style="list-style-type: none"> <li>▪ But if the tenant <b>is</b> paying rent, then even if there is no fixed lease term (such as a month-to-month tenancy), the landlord must first give the tenant a written <b>termination notice</b>.</li> <li>▪ This tells the tenant there is no longer any agreement giving the tenant the right to remain on the landlord's property.</li> </ul>
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<h2>Termination Notice</h2> 	<ul style="list-style-type: none"> <li>▪ This notice must be for at least one rent paying period (usually one month). <ul style="list-style-type: none"> <li>▪ For example, the landlord is renting an apartment above his garage to a college student but he wants to let his niece live there instead. If the student is paying monthly rent, the landlord has to give them a one-month notice of termination.</li> </ul> </li> <li>▪ If the tenant doesn't vacate once the termination notice has expired, the landlord must then give the tenant a notice to vacate.</li> </ul>
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<p style="text-align: center;">No Termination Notice Required if there is a Breach</p> 	<ul style="list-style-type: none"> <li>▪ A termination notice is <b>not necessary</b> if the tenant breaches the terms of the lease. <ul style="list-style-type: none"> <li>▪ For example, if the tenant fails to pay their rent or has a pet that is prohibited by the lease, the landlord does not have to give a termination notice.</li> </ul> </li> <li>▪ In that situation, the landlord would simply give the tenant a <b>notice to vacate</b>.</li> </ul>
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<p style="text-align: center;">Foreclosure</p> 	<ul style="list-style-type: none"> <li>▪ If someone stops making mortgage payments, the mortgage company may <b>foreclose</b> on the property. <ul style="list-style-type: none"> <li>▪ If the house is sold at a foreclosure sale, the new owner may bring an eviction suit against the former owner, who is now a <b>tenant by sufferance</b>, meaning they previously had the right to be in the property but no longer have a right to be there.</li> </ul> </li> <li>▪ If the occupants were renting the house from the previous owner, they have additional rights since they probably weren't aware of the foreclosure.</li> <li>▪ See the Evictions Deskbook at pages 13 – 14.</li> </ul>
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## Squatter



- What if someone never had permission to be on the property in the first place?
  - For example: Someone moves into a hunting cabin. They never had a right to be there; they just started living there and refuse to leave when told.
- This person is a **squatter** and the owner may bring an eviction suit to remove them.

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What Do You  
Say When  
They Ask You?

18

“Do I Have a  
Good  
Case?”

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Sometimes someone will ask you: “Should I file an eviction suit?” Or “Can I kick them out for this?”

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These are not questions you can answer because you don’t know all the facts and are not allowed to give legal advice.

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“What Should I  
Do?”

**SRL**

- But you may give them an SRL (Self-Represented Litigant) packet that explains what an eviction suit is and gives them information and forms about how to bring an eviction suit or defend one.
- The SRL packets and legal aid contact information are on our website *at* [www.tjctc.org/SRL](http://www.tjctc.org/SRL).
- You may also suggest they talk to a lawyer.

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“Is This The  
Right  
Precinct?”

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You **MAY** tell them that an eviction case **must** be filed in the precinct where the property is located.

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If they ask if they are in the right precinct, you **MAY** ask them what the address of the property is and you **MAY** then look up that address with them and tell them whether or not it is in your precinct.

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Notice to  
Vacate

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## “What is a Notice to Vacate?”

- A notice to vacate is a notice the landlord has to give a tenant saying they have to leave or an eviction suit will be filed.
  - Property Code §24.005
- The notice has to give the tenant a deadline (such as three days) to move out and the landlord may not file the eviction suit until that deadline is up.
- A notice to vacate is different from a notice of **termination**.
  - A notice of termination merely sets a date on which the lease will end. If a notice to terminate is given and the tenant does not move out by the date the lease terminates, the landlord still has to give a proper notice to vacate before filing an eviction suit.

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## Must Wait to File Suit

- The landlord has to prove that they gave this notice to the tenant and gave the tenant a chance to move out **before** they filed the suit.
- For example, the landlord may not hand a three-day notice to vacate to a tenant and file the eviction suit the same day “in case” the tenant fails to leave.
- If the landlord “jumps the gun,” they are not entitled to a judgment for possession.

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## How Much Notice?

- How much notice does the tenant get?
- In most cases a tenant gets three days' written notice to vacate.
- But the lease might have a shorter or longer period.
  - For example, it might say the landlord only has to give one day's notice to vacate.

-- Property Code §24.005(a)

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## How Much Notice?

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## Tenant of a Foreclosed Property

- A tenant of a person who gets foreclosed on gets a 90-day written notice to vacate under the Protecting Tenants at Foreclosure Act as long as they haven't breached the lease.
  - But if the tenant has a lease with a fixed term (and does not breach the lease), then they get to stay in the house through the end of the lease term, unless the new owner is going to use the house as their primary residence.
- See the Evictions Deskbook at pages 13 – 14.

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## How Much Notice?

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## Squatter

- A squatter gets a notice to vacate but it can be immediate and oral.
- For example:
  - “Git off my property right now!”
- If the squatter doesn’t leave, the landlord may file an eviction suit.

--Property Code §24.005(d)

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## Poll

A landlord gives you an eviction petition to file. You notice that the petition does not include any information about whether there was a proper notice to vacate. You should:

- A. Reject the filing.
- B. Tell the landlord that he needs to include information about the notice to vacate in the petition.
- C. Accept the filing and flag the potential issue for your judge.
- D. Accept the filing and don’t say anything to your judge.

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## Filing an Eviction Suit

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### “How Does an Eviction Suit Get Filed?”

- An eviction suit starts when the plaintiff files a **petition** asking the court to evict a person occupying their property.
- In an eviction case:
  - The landlord or owner of the property is the plaintiff.
  - The tenant or person who is occupying the property is the defendant.

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## Filing and Service Fees

- When the landlord files a petition, they must also pay filing and service fees or file a Statement of Inability to Afford Payment of Court Costs.
- The filing fee in most counties is \$54 (as of 1/1/22).
- Remember: a clerk must make the Statement of Inability form available for free to anyone without the person having to request the form. – Rule 502.3

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## Filing and Service Fees

- Service fees (which cover the cost of having the Constable serve the case on the defendant) are set by your Commissioners Court.
- Each defendant must be served and a separate service fee paid for each one.
- It is important to verify how many defendants are listed on the petition.

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## Petition Requirements

- A petition in an eviction case must be sworn to by the plaintiff.
  - This means the plaintiff signs it in front of a notary, the clerk, or the judge.
    - That person also signs the petition, not to say it is true, but to confirm that they saw the plaintiff sign it.
- They may sign a declaration under “penalty of perjury” instead.

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## What Does the Petition Have to Include?



- The petition **must** contain:
  - A description of the premises;
  - A statement of the facts and the grounds for eviction;
  - A description of when and how the notice to vacate was delivered;
  - The total amount of rent due and unpaid at the time of filing, if any; and
  - A statement that attorney’s fees are being sought, if they are.

-- Rule 510.3(a)

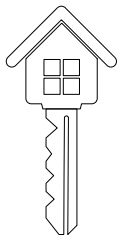
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## Where is the Petition Filed?

- The petition must be filed in the **precinct** where the property is located.
  - This is because the court only has jurisdiction over an eviction suit when the property is located in that court's precinct.
  - If a case is filed and the property is not in your precinct, the judge should immediately dismiss the case for lack of jurisdiction (no motion or hearing needed).

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## Scenario



- An assisted living community has filed an eviction petition. The defendant is a resident. The monthly rent is \$5,225; the box is checked Unpaid Rent As Grounds For Eviction; the total delinquent is \$24,814.97 (Sept.-Dec.). The person told you that they did not want the back rent but just wanted them out but that statement is nowhere in the petition.
- Should the case be dismissed as Not Within Jurisdiction due to the amount?
- See Evictions Deskbook at page 5.

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## Citation & Service

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## Issuance of Citation

- When a petition is filed and filing fees paid or Statement of Inability filed, the court must immediately issue a citation directed to each defendant.
  - This means each person named as a defendant has to be served with a citation so they are notified that they have been sued.
  - It is up to the plaintiff to decide whom to file the case against.

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## What Does the Citation Include?

- The citation must:
  - Be signed by the clerk under seal of court or by the judge.
- State the plaintiff's cause of action and relief sought.
  - For example, this is an eviction suit seeking possession of the premises, back rent, attorney's fees and court costs.

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## What Does the Citation Include?

- State the date of the trial (not less than 10 days nor more than 21 days after the petition is filed).
- State that if the defendant fails to appear for trial, a default judgment may be entered against them.
- Attach a copy of the petition and any other documents filed with the petition.
  - Including the Statement of Inability if one was filed.

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## How Does the Tenant Get the Citation?

- In an eviction case, only a constable or sheriff may serve a citation unless the court authorizes someone else to in a written order.
  - It is usually the constable so we will just refer to the constable in this discussion; but the sheriff also has authority to do this.

-- Rule 510.4(b)

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## Poll

What if the plaintiff asks the court to authorize the plaintiff to serve the defendant? Should this be allowed?

- A. Yes.
- B. No.
- C. Only if the plaintiff is also a private process server.

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## How Does the Constable Serve the Citation?



- The constable:
  - Must deliver the citation and petition to the tenant in person (this can be done anywhere the tenant can be found); or
  - Leave a copy of the citation and petition with a person, other than the plaintiff, over the age of 16 at the defendant's usual place of residence.
  - If the constable is unable to perform service by these primary methods, the constable may ask the court to allow service by posting the citation and petition on the premises and also mailing it by first class mail.

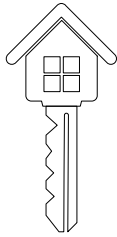
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## When Does the Tenant Have to be Served?

- The tenant has to be served at least 6 days before the day set for trial.  
-- Rule 510.4(b)
- The Return of Service has to be filed at least one day before the day set for trial.  
-- Rule 510.4(b)

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## Poll



- Q. In an eviction case, the **primary** methods of serving the citation are (select all that are correct):
  - A. Handing the citation to the defendant in person;
  - B. Mailing the citation by certified mail, return receipt requested;
  - C. Leaving the citation with someone over the age of 16 at the defendant's residence;
  - D. Posting the citation on the outside of the defendant's residence;
  - E. However the court directs.
  
- See Evictions Deskbook at page 29 – 30.

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How Do You  
Set an  
Eviction Case  
for Trial?

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## Setting the Trial Date

- The trial date must be:
  - NO LESS than 10 days after the date the petition was filed; and
  - NO MORE than 21 days from the date the petition was filed.

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## How Do You Count the Time to Set the Trial Date?

- You exclude the day the petition was filed and start counting on the next day.
- You count every day, including Saturdays, Sundays, and legal holidays.
- You include the last day of the period.
- If the last day is a Saturday, Sunday, or legal holiday, you go to the next day that is not one of those things.

-- Rule 500.5

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Setting Trial Date: Example

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	<b>(Day 0) Case Filed</b>	<b>(Day 1) Independence Day Holiday</b>	(Day 2)	(Day 3)	(Day 4)	(Day 5)
(Day 6)	(Day 7)	(Day 8)	(Day 9)	<b>(Day 10) First day trial can be set</b>	(Day 11)	(Day 12)
(Day 13)	(Day 14)	(Day 15)	(Day 16)	(Day 17)	(Day 18)	(Day 19)
(Day 20)	<b>(Day 21) Last day to set trial</b>					
30	31					

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Notice of the Trial Date

- The Rules do not state how notice of a trial date is to be given to the **plaintiff**, but some suggestions are:
  - Give the plaintiff a copy of the citation with the trial date;
  - Have the plaintiff contact the court to find out the trial date;
  - Mail, email or fax notice of the trial date to the plaintiff; or
  - Give the plaintiff written notice of a tentative date upon filing the case.
    - For example, write the court date and time on the receipt.

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## What Does the Tenant Have to Do Once They are Served?

- The tenant must show up for trial on the day and time set in the citation.
- They are not required to file an answer, but they may do so if they wish either before or on the trial date.

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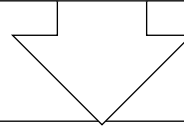
Default  
Judgment

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## What is a Default Judgment?

Often a tenant who was served with the citation does not show up for trial

Sometimes this is because they have moved out already.



If the defendant does not show up for trial (and has not filed a written answer), then the court should enter a default judgment (meaning the landlord wins) after verifying some things (on the next two slides).

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## Requirements for Granting Default Judgment

There is proof of proper service of the citation: served in an allowed manner at least 6 days before trial date and return filed at least 1 day before trial date.

The petition is sworn to by the landlord and includes all of the required information.

- If something is missing, petition may be amended orally and evidence provided through testimony if amendment will not operate as a surprise to the defendant.
- If nothing missing, then no evidence is needed.

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## Servicemembers Civil Relief Act Affidavit

- The court cannot go forward with a default judgment if a Servicemembers Civil Relief Act (SCRA) affidavit stating the defendant's military status has not been filed.
- If an affidavit has been filed:
  - If the defendant is not in the military, the court can proceed with the default as normal.
  - See Ch. 7 of the Evictions Deskbook for what to do if the affidavit states that the defendant is in the military or that the plaintiff is unsure whether the defendant is in the military.

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## New Requirement!

- New Supreme Court rules went into effect on May 1, 2022.
- Rule 505.1(c)(5) requires that **any** judgment that awards money damage include this statement in English and Spanish: “If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting [www.texaslawhelp.org/exempt-property.](http://www.texaslawhelp.org/exempt-property)”
- Rule 510.6 was expressly amended to require that language to be included in a default judgment in an eviction case.
- TJCTC forms have been updated.

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## Notice of Default Judgment

A default judgment must be in writing and signed by the judge.

The clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address provided by the plaintiff and, if different, at the address of the premises. -- Rule 510.6(c)

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## Sample Default Judgment

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_ § IN THE JUSTICE COURT  
 PLAINTIFF §  
 §  
 v. § PRECINCT \_\_\_\_  
 §  
 \_\_\_\_\_ §  
 DEFENDANT § \_\_\_\_\_ COUNTY, TEXAS

**DEFAULT JUDGMENT (EVICITION)**

On \_\_\_\_\_, 20\_\_\_\_, this case was called for trial.

Plaintiff appeared  in person  by attorney/agent: \_\_\_\_\_

Defendant failed to answer or appear.

The court has reviewed the court file and/or taken testimony from the plaintiff and makes the following findings:

- The return of service was on file for at least one day prior to the trial date;
- The citation was properly served on the defendant at least six days prior to the trial date and in accordance with Rule 510.4;
- Plaintiff filed an affidavit in compliance with the Servicemember's Civil Relief Act, 50 U.S.C., App. § 502;
- The allegations of the sworn petition are taken as admitted in accordance with Rule 510.6.

The court therefore finds that judgment should be entered in favor of Plaintiff for possession of the following premises described in Plaintiff's petition: \_\_\_\_\_

It is therefore **ORDERED** that the Plaintiff be awarded possession of the above referenced premises.

It is further **ORDERED** that Plaintiff be awarded:

Costs in the amount of \$ \_\_\_\_\_

Rent \$ \_\_\_\_\_

Attorney's Fees \$ \_\_\_\_\_; it is therefore

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## Sample Default Judgment

ORDERED that Plaintiff recover from Defendant the sum of \$ \_\_\_\_\_, with interest at the rate of \_\_\_\_\_% compounded annually.

**ADDITIONAL FINDINGS OF THE COURT:**

Pursuant to Property Code § 24.00511, the amount of the **appeal bond** is:

\$ \_\_\_\_\_.

Pursuant to Property Code §24.0053(a), the monthly **rental amount** due is

\$ \_\_\_\_\_.

*(If applicable)* Pursuant to TProperty Code §24.0053 (b), Defendant's portion of the rent is \$ \_\_\_\_\_. \$ \_\_\_\_\_ is the portion of the rent of the following governmental entity:

\_\_\_\_\_.

All others terms of the former rental agreement apply during any appeal of this cause.

**Important Notice**

If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

**El Aviso Importante**

Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property).

ISSUED AND SIGNED on \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
\_\_\_\_\_  
COUNTY, TEXAS

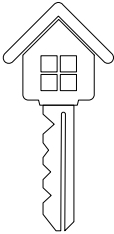
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## Poll

What if the defendant is not present when the court calls the case but appears before a default judgment has been entered. What should the court do?

- A. Proceed with the default judgment.
- B. Proceed with the trial and hear evidence from both parties.
- C. Dismiss the case.

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<p style="text-align: center;">Poll</p> 	<ul style="list-style-type: none"><li>• If a citation has not been served on a defendant, but the defendant has already moved out of the plaintiff's rental property, can we proceed with the eviction hearing?<ul style="list-style-type: none"><li>• Yes</li><li>• No</li></ul></li> <li>• See Rules 501.3(h) and 510.6(b)</li></ul>
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<p style="text-align: center;">Trial</p>
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## Proceeding with the Trial

- If both parties appear, the case proceeds to trial and the judge or jury hears evidence and makes a decision.
  - For more info on conducting the trial, see the Trial Notebook and Ch. 4 of the Evictions Deskbook
- If the landlord doesn't appear, the case can be dismissed or re-set.
- The trial must be reset if it is less than 6 days after service of the citation on the tenant or less than 1 day after the return of service has been filed.
  - Unless both parties say they want to go ahead and proceed – and no one can be pressured to do so.

-- Rule 510.7(a)

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## Jury Trial

- Any party can make a written request for a jury at least 3 days before the trial date.
- They must pay a \$22 jury fee or file a Sworn Statement of Inability to Afford Payment of Court Costs.
- If no jury is demanded, the case will be heard by the judge.

-- Rule 510.7(b)

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## Postponement

- The trial must not be postponed more than 7 days unless both parties agree in writing.

-- Rule 510.7(c)

- Circumstances beyond the control of the court or the parties may require some flexibility in applying this rule.

- For example:

- Unexpected court closings.
- Original trial date rescheduled due to citation being served less than six days before trial.

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## No Motion for New Trial



- A motion for a new trial is a request by the losing party for a “do over” – a whole new trial.

- NO motion for new trial may be filed in an eviction case.

-- Rule 510.8(e)

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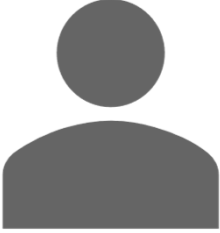
## Judgment

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## Written Judgment

- A judge must announce the judgment orally in court from the bench following a trial.
- The judgment must also then be put in writing and signed by the judge with the date of the judgment.

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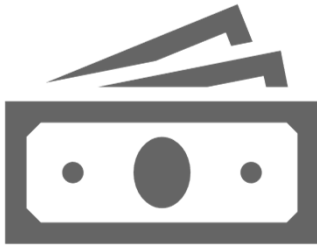
<h2>Judgment for Landlord</h2> 	<ul style="list-style-type: none"> <li>▪ If the landlord wins, the judge must enter a judgment for possession of the property, and also award as part of that judgment: <ul style="list-style-type: none"> <li>▪ court costs;</li> <li>▪ back rent (if any) as of the date of the judgment; and</li> <li>▪ attorney's fees (if the landlord is entitled to recover them). <ul style="list-style-type: none"> <li>-- Rule 510.8(b)</li> </ul> </li> </ul> </li> <li>▪ See the Evictions Deskbook at pages 45 – 46 concerning attorney's fees in an eviction case.</li> <li>▪ Nothing else may be sought in an eviction case.</li> </ul>
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<h2>Judgment for Tenant</h2> 	<ul style="list-style-type: none"> <li>▪ If the tenant wins, the judge must enter a judgment for the tenant to remain in possession, and award as part of that judgment: <ul style="list-style-type: none"> <li>▪ court costs, if any (for example, the \$22 jury fee if the tenant requested a jury); and,</li> <li>▪ attorney's fees (if the tenant is entitled to recover them). <ul style="list-style-type: none"> <li>-- Rule 510.8(c)</li> </ul> </li> </ul> </li> <li>▪ A tenant may not file a counterclaim in an eviction case so they can't recover anything else from the landlord.</li> </ul>
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## Judgment Must Include the Amount of the Appeal Bond



- The amount of the appeal bond must be stated in the court's judgment if the suit was for nonpayment of rent.
  - The amount of the appeal bond is based on the likely cost to the party that won of having to defend the case on appeal.
    - Property Code § 24.00511(a); Rules 510.9(b) and 510.11.

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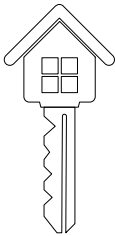
## Judgment for Nonpayment of Rent Eviction

- If an eviction was for nonpayment of rent and the landlord won, the judgment must also note the amount of rent to be paid each rental pay period during the pendency of any appeal
  - Judge determines this based on the rental agreement and any applicable laws.
    - Property Code §24.0053(a); Rule 510.9(c)(5)(A).

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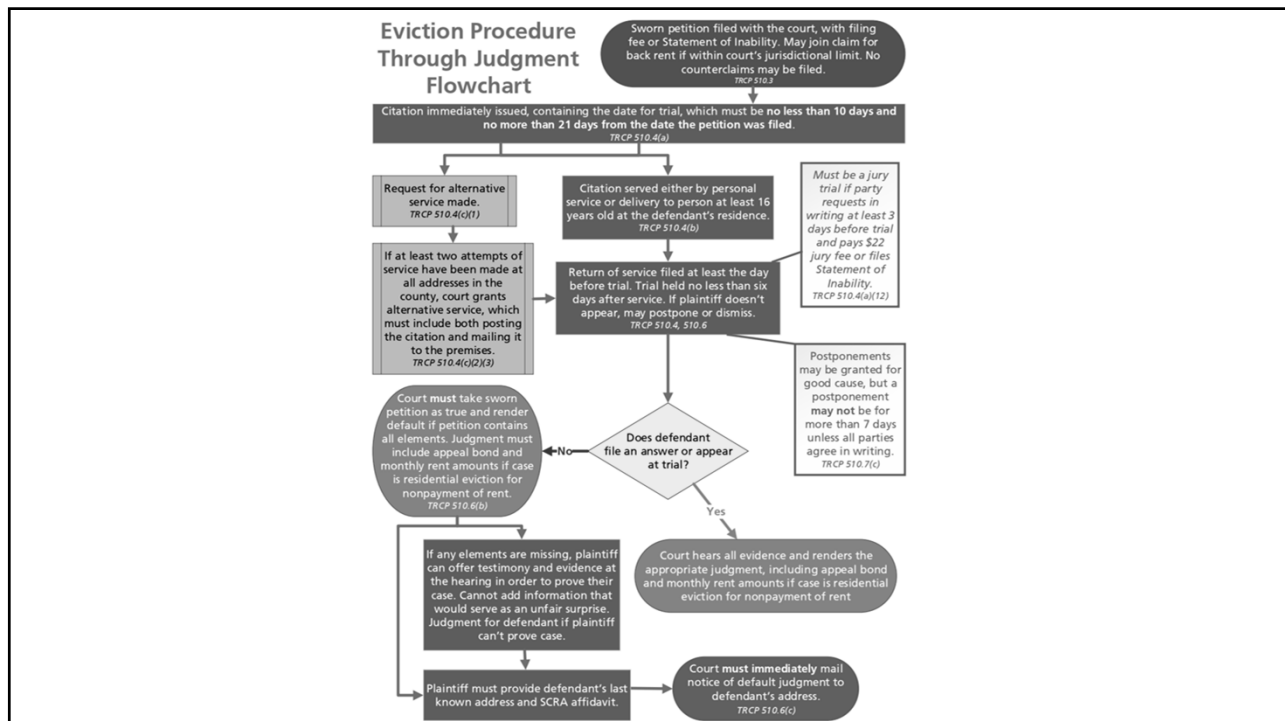
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## What happens if the landlord wants the court to address other issues such as damages to the premises?

- A. They would have to file a separate small claims case to address any other issues.
- B. The court may hear evidence and award any other damages in the eviction case.
- C. There is no remedy available for this under the law.

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## Resources

<b>Evictions Deskbook</b>	• <a href="http://www.tjctc.org/tjctc-resources/Deskbooks.html">www.tjctc.org/tjctc-resources/Deskbooks.html</a>
<b>TJCTC Website: Forms, Charts, SRL Packets, Webinars, Legal Board, etc.</b>	• <a href="http://www.tjctc.org/tjctc-resources.html">www.tjctc.org/tjctc-resources.html</a>
<b>Property Code CH. 24, 92-94</b>	• <a href="http://statutes.capitol.texas.gov">statutes.capitol.texas.gov</a>
<b>Rules 500-507 and 510, Texas Rules of Civil Procedure</b>	• <a href="http://www.txcourts.gov/rules-forms/rules-standards/">www.txcourts.gov/rules-forms/rules-standards/</a>

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Questions?

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