BRAZORIA COUNTY
JUSTICE OF THE PEACE, PRECINCT 3, PLACE 1
JUDGE MIKE MERKEL
INFORMATION ON JUSTICE COURT CASES

Four different case types may be filed in the Justice Court. If you are unsure of which case type, if any, you would like to file, then you may want to contact an attorney or legal aid service for assistance. By law, the Judge and Court Clerks are not allowed to assist you in determining which case type, if any, you should file.

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. (See pages 2 of this packet for additional information)	**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. (See pages 3 of this packet for additional information)
DEBT CLAIM: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector of 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. (See page 2 of this packet for additional information.)	**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. (See page 3 of this packet for additional information.)

****See last page of handout for information on additional miscellaneous hearings, writs or remedies available in the JP Court. ****

GENERAL INFORMATION

The following information is general and applies in most case types; you may consult the Texas Rules of Civil Procedure for more specific rules based on the case type you will be filing.

1. Name and physical service address for Defendant (person or entity being sued).
   a. Name- The way you "style" your suit is very important. The person filing the suit is the Plaintiff and the person or business the suit is filed against is the Defendant. If you are bringing suit against a business, wherein the business or corporation is named as the defendant, you must provide the name and address of an individual who can be served the citation. For a privately owned business, DBA (doing business as) information may be obtained from the County Clerk's office. If the Defendant is a corporation, citation service must be made on the corporation's Registered Agent. There is a place to list the Registered Agent in the body of the petition. You may contact the Secretary of State at 512-463-5555 or the State Comptroller at 1-800-252-1386 for information about a corporation's Registered Agent. The clerks in the Justice of the Peace Court cannot advise you about whom to name as the Defendant in your suit. For legal assistance, you may contact an attorney or a legal aid service.
   b. Address- Please provide the Defendant's physical address in the State of Texas for serving the citation. You may also provide a map and description of the physical location where the citation can be served on the Defendant, along with a mailing address for the defendant. You may have a Defendant served at his/her place of employment.
2. Determine the total dollar amount for which you are suing and provide a brief description of the reason for your claim in your Petition. You will have an opportunity during your hearing to present written documents, personal knowledge or to produce witnesses to testify in your behalf to help prove your damages or allegations in your suit. At the Judge's discretion, court fees may be added to the amount of your suit as part of the Judgment.
3. Generally, filing fees are **$41.00 per case**. Service fees vary by county. You will be responsible for researching and determining the appropriate service fee and method of payment accepted by other counties. The service

fee for a citation in Brazoria County is currently **$75.00 per defendant**; if you list more than one defendant in your suit, you will incur multiple service fees, as each defendant must be served. If the Constable returns a citation for any reason, a new service fee will be required when the citation is re-issued.

4. The party filing the suit (Plaintiff) will be required to sign the Original Petition and provide the Case Information Sheet. The Original Petition will need to include the Plaintiff's mailing address and telephone number for contact. If there is a change in the Plaintiff's contact information, please notify the court of the new address or phone number.
5. Federal law requires the Plaintiff to file an affidavit of Military Status before a default judgment may be taken. Military status maybe obtained free of charge at the following website: www.dmdc.osd.mil/scra/owa/home.
6. If the defendant is "never home", there are legal steps for serving family members or posting the citation.
7. *(Small Claim and Debt Claim Cases Only)* The defendant's "Answer Date" is determined by the date of the citation's service and the hearing date is based on the defendant's answer. Therefore, until an answer is filed, the court will not be able to inform you of a hearing date. The defendant has to file an answer within 14 days from the date of service. When an answer is received, a hearing is set and notice is mailed to both parties. If the defendant does not file an answer, the plaintiff must make a written request for a Default Hearing. Please allow 4 weeks for service of citation, answer and hearing notice. After this time, you may inquire about the status of your case and/or request a Default Hearing.
8. The Judge, by law, is not allowed to speak to you about your suit before the hearing. This is so a fair and impartial judgment may be rendered after hearing "both sides" of the case. The Court Clerks will assist you with any questions regarding procedures for filing your suit. Court Clerks cannot give you legal advice. If you need legal advice, you may consult an attorney or legal aid service.
9. If you are awarded a judgment, please be advised there are no guarantees you will recover the amount awarded from the opposing party. However, there are other legal remedies available, such as a Abstract of Judgment, Writ of Possession, Writ of Execution, etc. (See Post Judgment Remedy section at the end of this packet)

SMALL CLAIMS

Please read the General Information portion of this packet for additional information that may be helpful.

1. Prior to filing your suit, the Judge requests the Plaintiff (person filing the suit), notify the Defendant (person being sued) in writing of the intent to sue before filing the suit. The written notice should include the following:
   a. the reason for the claim
   b. an amount due or action necessary to satisfy your claim
   c. a reasonable deadline for the person to respond to your claim

   Make a copy of the written notice for your records. The notice should be sent to the Defendant by certified mail, return receipt requested.
2. The jurisdiction of the Justice of the Peace Court is $10,000.00. If your damages are greater than this amount, the Justice of the Peace Court does not have the authority to render a judgment.
3. You may file your case in any Justice of the Peace Court in the State of Texas; *however,* there are specific rules about venue in the Texas Rules of Civil Procedure, regarding precinct and county. Filing in an office where venue is not proper according to the rules may result in a delay and/or additional fees if the defendant disputes the improper venue. You may want to consult the Texas Rules of Civil Procedure concerning proper venue for your case, prior to filing it.
4. Law requires the Plaintiff to file a *Case Information Sheet* at the time of filing.

DEBT CLAIM CASES

Please read the General Information portion of this packet for additional information that may be helpful.

1. Debt claim cases should only be filed by certain parties. Consult the Texas Rules of Civil Procedure to determine if you should file your suit under this case type, and if so, what rules apply.
2. The filing fee for a Debt Claim is **$41.00**. Service fees vary by county. You will be responsible for researching and determining the appropriate service fee and method of payment accepted by other counties. The service fee for a citation in Brazoria County is currently **$75.00 per defendant**; if you list more than one defendant in your suit, you will incur multiple service fees, as each defendant must be served. If the Constable returns a citation for any reason, a new service fee will be required when the citation is re-issued.
3. Law requires the Plaintiff to file a Case Information Sheet at the time of filing.

REPAIR & REMEDY CASES

1. You may consult the Texas Rules of Civil Procedure and/or Section 92.0563 of the Texas Property Code for information on Repair & Remedy Claims. For legal assistance, you may contact an attorney or a legal aid service.
2. The filing fee for a Repair & Remedy Claim is **$41.00**. Service fees vary by county. You will be responsible for researching and determining the appropriate service fee and method of payment accepted by other counties. The service fee for a citation in Brazoria County is currently **$75.00 per defendant**; if you list more than one defendant in your suit, you will incur multiple service fees, as each defendant must be served. If the Constable returns a citation for any reason, a new service fee will be required when the citation is re-issued.
3. Law requires the Plaintiff to file a *Case Information Sheet* at the time of filing.

Note: There is no provision in the law that allows a tenant to withhold rent based on issues that may be addressed in a Repair & Remedy case.

EVICTION CASES

1. The first step required is a *Notice to Vacate*. For information on *Notice to Vacate*, please refer to Texas Property Code, Chapter 24. The Texas Property Code maybe obtained free of charge at the following website: www.statutes.legis.state.tx.us

The law requires Forcible Detainer Suits to be filed in the Justice of the Peace Court for the precinct where the property is located. A suit filed in the wrong precinct will be dismissed. You may verify which precinct the property is located in by using the maps located in our building foyer, or you may contact the following Departments:

Brazoria County Voter Registration Department	281-756-1311
Precinct One Constable's Office	979-233-4188
Precinct Two Constable's Office	281-756-2491
Precinct Three Constable's Office	281-997-9777
Precinct Four Constable's Office	979-345-2155

2. The filing fee for an Eviction suit is **$41.00**. A service fee of **$75.00 per defendant** is also due at the time of filing. A suit with one defendant costs a total of $116.00 at the time of filing.
3. The suit for possession of property may also include a claim for past due rent. You may not include late fees as part of past due rent. The jurisdictional limit of this court is $10,000.00.
4. At the time the suit is filed, the case is immediately docketed and a hearing date/time is scheduled (TRCP 510.4 (a)(10)). The Plaintiff (person or entity filing the suit) is given the court date and time on the receipt for filing fees. The Defendant will be notified of the court date and time by citation. Any party may call to confirm the hearing date or time.
5. Law requires the Plaintiff to file a *Case Information Sheet* at the time of filing. Additionally, an *Affidavit of Military Status* must be filed before a default judgment may be taken. Military status maybe obtained free of charge at the following website: www.dmdc.osd.mil/scra/owa/home.

HEARING

1. Both parties will be allowed to present their cases. Be prepared to provide your lease, receipts for rent, proof of mailing, etc.
2. The Judge will make his ruling based on the evidence presented and the law.
3. Either party may appeal the ruling. An appeal bond must be filed within 5 days of the ruling.

SOME POST JUDGMENT REMEDIES

The following are some common post judgment remedies that may be available in your case; this is not a complete listing of all post judgment remedies. If you are unsure whether you would like to pursue your judgment using one of these remedies, you may consult an attorney or legal aid service. All requests must be made in writing and comply with any governing rules/laws.

WRIT OF POSSESSION (Eviction Cases)

1. When the Judge awards possession to a landlord in an Eviction Case, the Judge is required by law to give most defendant(s) 5 days vacate.* After the vacate time has lapsed, if the defendant has not vacated or filed an appeal bond (or *Sworn Statement of Inability to Pay* with first month's rent deposited into the JP court registry), the Plaintiff may request a *Writ of Possession.*
2. A *Writ of Possession* authorizes the Constable to deliver possession of the premises to the Plaintiff.
3. A Writ of Possession may not issue more than 60 days after the date of issuance of the Judgment.
4. The fee for a *Writ of Possession* is $155.00 per defendant.

*Defendants who own a mobile home on the property for which possession is sought may have up to 30 days to vacate the property in an Eviction Case.

ABSTRACT OF JUDGMENT

1. Available anytime after 10 business days from the date the judgment was signed.
2. Creates a lien of real estate in the county in which the abstract is recorded. Can be recorded in any and all counties in which the defendant may have property.
3. Made available to the Credit Bureau.
4. Draws interest at a rate set by law, currently interest is awarded at the rate of 5% per annum.
5. Is effective for 10 years and is renewable for an additional 10 years, conditioned on a Writ of Execution having been issued anytime during the first 10 year period.
6. It is very helpful to have the defendant's birth date and/or drivers license number on the Abstract. If you have this information, please provide it to the court with your request for an Abstract.
7. The Abstract is $5.00 per copy and is issued by this court upon your request and the payment of the fee. You must have the Abstract recorded at the County Clerk's office, where you will have to pay additional filing fees.

WRIT OF EXECUTION

1. Available anytime after 30 days from the date the judgment was signed.
2. Orders the Constable to seize non-exempt* property or collect payment to satisfy the judgment.
3. May issue as many times as necessary the satisfy judgment.
4. The cost for the issuance of the Writ is $5.00 and the cost for service in Brazoria County is $150.00 along with the following: Fees collected on Execution Sale: 5% of the monies collected. Fees collected without a sale: 2.5% of monies collected.

NOTE: Pursuant to the Texas Property Code, 42.001, there exists a personal property exemption of $60,000.00 for a couple and $30,000.00 for a single adult, in addition to 12 other items listed in the form of Personal Property.

MISCELLANEOUS HEARINGS, WRITS & REMEDIES

There are other types of hearings, writs or remedies available through the JP Court. For your convenience, the below list is provided. The court cannot advise any party regarding the selection of a hearing, writ or remedy that would best suit their scenario. Petitions for each of the items listed below are available upon request.

Tow Hearing- *See Texas Occupations Code Chapter 2308, Subchapter J.*
Filing fee is $36.00

The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement or booting.

Writ of Re-Entry- *See Texas Property Code 92.0081 & 92.009.*
Filing fee is $41.00, If Writ is granted by Judge, then Writ fees are $155.00

This writ may be sought by a residential tenant in order to recover possession of a leased premise if a landlord has locked a tenant out of leased premises in violation of Property Code 92.0081.

Writ of Restoration- *See Texas Property Code 92.008 & 92.0091.*
Filing fee is $41.00, If Writ is granted by Judge, then Writ fees are $155.00

This writ may be sought by a residential tenant in order to obtain relief if a landlord has interrupted utility service in violation of Property Code, Section 92.008.

Order of Entry & Retrieval of Property- *See Texas Property Code Chapter 24A.*
Filing fee is $41.00, Service of Hearing Notice and Writ Fees for county where property is located apply. For Brazoria County the Hearing Notice Service Fee is $75.00 and the Writ fees are $155.00.

This order may be sought if a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry. This order would authorize the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property. The law restricts these items to: medical records, medicine and medical supplies, clothing, child-care items, legal or financial documents, checks or bank or credit cards in the name of the applicant, employment records or personal identification documents.