

Civil Matters

Important! Important! Important!

The Judge, by law, is not allowed to speak with you about your suit prior to the hearing. This is so he can render an impartial and fair ruling after hearing "both sides" of the case. The Court Clerks will be more than happy to answer your questions and provide you with procedural information needed for filing your suit. Keep in mind that clerks cannot give you legal advice.

If legal advice is needed, you must contact an attorney.

THE COURT DOES NOT COLLECT THE JUDGMENT FOR YOU.

☐ ***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.

[I've Been Sued, Now What \(information\)](#)

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Refer to www.peopleslawyer.net to gain more information on Civil matters.

Other references: www.texasjusticecourts.com

Texas Rules of Civil Procedure:

http://www.supreme.courts.state.tx.us/rules/trcp/rcp_all.pdf

Texas Rules of Evidence:

<http://www.courts.state.tx.us/rules/tre-toc.asp>

Civil Practices & Remedies Code-Chapter 15, Subchapter E:

<http://www.statutes.legis.state.tx.us/docs/cp/htm/cp.15.htm>

Read the attached material carefully. It may save you time and money. If you wish to file a suit, the below listed steps are suggested:

1. Send the person or corporation a **registered letter** outlining your grievance and tell them what you expect them to do to avoid litigation. Keep your green card.
2. Wait at least ten days for the defendant to respond. If the problem cannot be resolved, **bring in your green card and a copy of your demand letter** you sent and see the Civil Clerk to complete a complaint form. State law requires you pay all fees and service charges at the time you file your suit.

Generally, the venue of the case is where the damages took place or where the defendant resides. You may file in any JP Office in the State of Texas, however, filing in the wrong office may result in a delay and/or additional fees if the venue is disputed.

Information Needed at the Time of Filing

Name, physical address, and identifiers for Defendant:

Name The way you "title" 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 (the Business or Corporation is the Defendant), you must provide the name and address of an individual for service of 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 a 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 this office cannot advise you about whom to name as the Defendant.

Address Please provide a physical address in the State of Texas or a drawn map and description of property or place of employment for service of the citation along with a mailing address.

Identifiers - date of birth and/or driver's license number - Although not necessary, this information is useful.

Determine the total dollar amount for which you are suing and provide a **brief** description of the reason for filing your suit.

The filing fee \$41.00. Service fees vary from county to county. **Determine the county where the citation is to be served and provide that information to the court.** Service fees for Brazoria County are: **\$75.00**. You may call our office for the service fees for out of county Defendants or Agents. **If a Constable returns a citation for any reason, a new service fee will be required when the citation is re-issued.**

The signature of party filing suit (Plaintiff) with mailing address and telephone number(s) where you can be reached is an important part of your petition. If your phone number or address changes, please inform us.

General Information

If the defendant is "never home," there are legal steps for serving family members or posting the citation.

The Defendant's "answer date" is determined by the date the citation's service and the hearing date is based on the defendant's answer. The defendant has 14 days from being served to answer to the court. When an answer is received, a hearing is set and notice is mailed to both parties. 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.

Briefly show how you arrived at the amount of suit, minus fees. You will have an opportunity during your hearing to present written documents, personal knowledge, or for a witness to testify in your behalf. Court fees may be added to the amount of judgment at the Judge's discretion.

I'VE BEEN SUED, NOW WHAT?

PLEASE KEEP IN MIND BY LAW WE ARE NOT ALLOWED TO ANSWER LEGAL QUESTIONS OR GIVE LEGAL ADVICE. THIS IS ONLY A BRIEF OUTLINE TO HELP YOU. THE RULES THAT GOVERN JUSTICE COURTS CAN BE FOUND IN PART V OF THE TEXAS RULES OF CIVIL PROCEDURE.

MAY I SEE THE JUDGE?

The Judge by law is not permitted to discuss a pending civil case with either party prior to trial. He must remain impartial in order to render a fair judgment. This is the reason for the instruction sheet.

WHEN DO I APPEAR FOR MY HEARING?

You may call the court and ask when the hearing date has been set. PLEASE provide your case number to the civil clerk.

DO I NEED TO FILE A WRITTEN ANSWER?

When you are sued and served with a citation from the Justice Court, you must answer the suit by filing with the Court a proper Written Answer. Your answer is due by the end of the 14th day after the day you were served. You must also send the Plaintiff (person suing you) a copy of your Written Answer by certified mail. If you do not respond, you are agreeing that the suit may be tried in Brazoria County and the Plaintiff may recover the full amount he is seeking.

DO I NEED AN ATTORNEY?

The choice is yours. An attorney is not required but permitted.

MAY I REQUEST A RESET?

The Judge will consider a reset only upon proof of good reason for not being able to appear.

SHOULD I BRING A WITNESS TO TESTIFY IN MY BEHALF, OR WILL A NOTARIZED AFFIDAVIT BE OKAY?

Although an affidavit is permitted, it is always better to have a witness present to be able to answer any questions.

CAN MY WIFE/HUSBAND OR FRIEND APPEAR IN MY PLACE?

This is not a yes or no answer. Better that someone appear than no one. But no one can present the facts better than you.

WHAT SHOULD I BRING TO PROVE MY SIDE?

Any written documents, or anyone to give testimony in your behalf.

WILL I BE ARRESTED IF I DON'T SHOW UP?

No, this is not a criminal action.

I DON'T OWE ANY MONEY, WHY SHOULD I APPEAR,?

This is your opportunity to present the facts as you see them to the Judge. Also, the ruling could be against you simply for not appearing.

WHY ARE THEY SUING ME?

Anyone can sue, and anyone can be sued. The Plaintiff is required to prove his case, and prove he has sued the correct person, if it is challenged by the defendant.

WHAT HAPPENS IF I DON'T PAY?

In order to answer this question, we must first assume you have appeared for a hearing and the Judge has ruled against you and a money judgment awarded to the other party, or you did not answer or appear for a hearing and the Judge ruled Judgment by Default against you. If you fit into one of the above situations, the following could be the next course of action if you do not appeal within 10 days of judgment.

ABSTRACT OF JUDGMENT (Property Code – Chapter 52)

1. Available after judgment signed
2. Creates a lien on real estate in the county in which abstract is recorded. Can be recorded in any and all counties in which defendant may have property.
3. Made available to credit bureau.
4. Draws interest at the rate set by Consumer Credit Commissioner.
5. Is effective for 10 years from date of recording 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. Defendant's birthdate and driver's license number will be added to abstract if made available to court.
7. Recorded through the County Clerk's Office.

WRIT OF EXECUTION (Rules of Court – Rule 621)

- 1 Available anytime after 30 days from date of judgment.
- 2 Available for specifically described personal property.
- 3 Purpose is to seize non-exempt property or obtain payment to satisfy judgment.
- 4 Must be executed by any sheriff or constable within State of Texas.
- 5 Returnable in 30, 60 or 90 days, Plaintiff's choice.
- 6 May issue as many times as necessary to satisfy money judgment or personal property judgment.
- 7 May be served in any county in State of Texas.
- 8 All fees expended by Plaintiff to this point will be included in a bill of cost attached to Writ.

NOTE: Pursuant to Texas Property Code, 42.001, there exists a personal property exemption of \$60,000 for a family and \$30,000 for a single adult, in addition to 12 other items listed in the form of personal property.

Remedies to Aid in the Collection of the Judgment

Abstract of Judgment

(Property Code, Chapter 52)

1. Available anytime after 10 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 that defendant may have property.
3. Made available to the Credit Bureau.
4. Draws interest at a rate set by law, go to www.occ.state.tx.us to check current interest rate.
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 date of birth 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 the court upon your request and the payment of the fee. You must have the Abstract recorded at the County Clerk's office at an additional cost.

Writ of Execution

(Rules of Court, Rule 621)

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 to satisfy the 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.

*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.

Forcible Detainer (Evictions)

Eviction cases are governed by Rules 500-507 and 510 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 510 and the rest of Part V, Rule 510 applies

An eviction is an action filed by the landlord or owner of the property to have a tenant or someone else removed from the property. The landlord can include a request for unpaid back rent in their suit.

It requires a suit to be filed in the justice of the peace court in the Precinct and County where the property is located.

Before you can file an eviction suit, you are required by law to give the tenant a written "Notice to Vacate." (Texas Property Code 24.005)

If the tenant fails to appear the landlord may win by default and a judgment for possession may be granted in their favor. If the landlord fails to appear then the court may dismiss the case without prejudice.

If the tenant fails to appeal the JP Court's decision within the 5-day appeal period then the landlord may file a "Writ of Possession."

Information for Defendants

1. When you are sued and served a citation from the Justice Court, your answer is due (in writing) by the end of the 14th day after the day you were served. If the 14th day is a Saturday, Sunday, or legal holiday, or non-business day, your answer is due by the end of the first business day following the 14th day that is not a Saturday, Sunday, or legal holiday. You must answer in writing and advise the Court if you wish to contest the suit and have a trial by Judge or by a Jury. If you wish to have a jury trial there will be a \$22.00 fee payable before trial. A written demand for a jury must be filed no later than 14 days before the date a case is set for trial, no later than 3 days for Eviction cases. If the demand is not timely, the right to a jury is waived unless the late filing is excused by the judge for good cause. Any cross or counter claims suits will require a filing fee.
2. If you do not desire to contest the suit, and you agree that the plaintiff should recover the full amount he is seeking, you may request (written) the court to enter a consent judgment against you.

3. You should prepare a proper defense if you go to trial even though the burden is on the Plaintiff to prove his allegation against you.
4. If you have witnesses to your suit who will not come to Court voluntarily you may ask the Court to subpoena those individuals prior to trial. This request should be made as soon as possible allowing at least a week for service of the subpoena. There is a fee for the service of the subpoena and you will need to contact the court for the cost.
5. After the Plaintiff presents his case at the trial as to his right to recover, you are then allowed to present your defense as to why he should not recover.
6. You should remember that hearsay evidence is inadmissible in Justice Court and cannot be used if objected to by the Plaintiff. Examples of hearsay evidence are affidavits, garage estimates, police reports, and what other people orally say. Evidence in Court is allowed at the discretion of the Judge.
7. When the Plaintiff and you have both rested your case, the Court will enter a Judgment - that the Plaintiff recovers from you, all, part, or nothing.
8. If a judgment is rendered against you, you may appeal the ruling of this Court to the County Court within 21 days by making a bond in the amount set by this Court.
9. Should the Court rule that the Plaintiff recover nothing from you, the Plaintiff may appeal within 21 days or his right to recover from you is forever lost.
10. Should the plaintiff be awarded a judgment from you and you do not appeal it, the plaintiff may take further legal action against you to collect the amount of judgment plus court costs.
11. The plaintiff may ask that an execution be issued to the Constable or the Sheriff to collect the judgment from you by levying on certain belongings that you own.
12. The plaintiff may obtain an abstract of judgment from the Court and file it with the County Clerk. Interest accrues against the judgment at the current rate of interest set by law.
13. If you have any other procedural questions, please call and we will try to assist you, although **THE COURT MAY NOT ANSWER ANY LEGAL QUESTIONS.**
14. It is important that you provide the Court with contact information and immediately notify us of any changes in your number or address.