

Introduction to Residential Evictions

John Lackey
Staff Attorney
Texas Justice Court Training Center

1

Funded By A Grant From The Texas Court Of Criminal Appeals

© Copyright 2023. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd; Suite 530, Austin, TX, 78744.

2

Resources (1 of 2)

www.tjctc.org

- Deskbooks, Forms, Charts, and Checklists
- Legal Question Board and Legal Calls
- Recordings and Self-Pace Modules

www.sll.texas.gov/legal-help

- Has Texas Laws and Court Rules

www.txcourts.gov/rules-forms/rules-standards/

- Texas Rules of Civil Procedure

3

Resources (2 of 2)

Specific For This Class:

- Eviction Deskbook
- Property Code 24, 91-94
- TRCP 510's

4

Evictions Basics

5

What Type of Case are Eviction Cases?

- **Eviction cases** are **civil cases** but are a special category with many special rules.
- They are **not** criminal cases, and **do not** result in criminal convictions or fines.

6

What is an Eviction Case?

An **eviction case** is a court case to recover possession of real property from someone who is occupying it.

- For example, a suit to make someone move out of a property they are renting.

7

What is Real Property?

- **Real property** is property such as buildings, houses, or land, that cannot be moved or relocated.
- On the other hand, **personal property** is property that can be moved like books, cars, or mobile homes.

8

Mobile Homes

- Much more on evictions involving mobile homes will be discussed coming up in the next class.

9

Eviction Cases

- 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 real property
- Tenant = the person occupying or renting the real property

10

What Rules Apply?

- The rules for eviction cases are found in two places:
 - The Property Code, primarily Chapter 24
 - These are laws enacted by the Legislature.
 - Rule 510 of the Texas Rules of Civil Procedure
 - These are rules from the Texas Supreme Court that deal specifically with eviction cases.
 - Rules 500 – 507 (the general rules in all civil cases) also apply in eviction cases, but if there is any conflict, follow Rule 510.

11

What Is a “Forcible” or an FED?

- It stands for **F**orcible **E**ntry and **D**etainer
- Section 24.001 of the Property Code describes two kinds of eviction cases:
 - **“Forcible Entry and Detainer”** meaning when someone comes onto someone else’s property without a right to be there and then will not leave when told.
 - **“Forcible Detainer”** meaning someone originally had permission to be there but now will not leave when the right to be there has expired.

12

Forcibles vs. Eviction Cases

- Even though most evictions are “Forcible Detainers” since the person entered with permission, many courts call them all “Forcibles” or “FEDs.”
- TJCTC recommends using “eviction cases” as a catch-all rather than those terms.

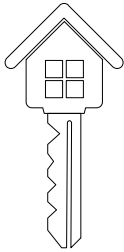
13



**When Can Someone
be Evicted?**

14

Poll 1



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

A. True

B. False

15

Breach Of Lease



- Most evictions happen when a tenant breaks or violates a provision of the lease (also called a “breach”).
- For example:
 - Tenant fails to pay rent.
 - Tenant has pets prohibited by the lease.
 - Tenant has loud parties late at night disturbing others in violation of the lease.
 - Tenant damages landlord’s property.

16

End Of Lease



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

17

Tenants at Will



- 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.

18

Tenants at Will – With Rent



- Often, a tenancy at will does not involve paying rent.
- But agreements where there is rent paid, but no set end period (like a month-to-month lease), are also tenancies at will.
- In the next section, we will cover the rules on terminating tenancies at will, which vary depending on if rent is being paid.

19

Foreclosure



- If one stops making mortgage payments, the mortgage company may **foreclose** on (take back) the property, which may result in an eviction suit against the former owner or possibly tenants of the former owner.
- Post-foreclosure evictions will be covered in the Tricky Issues class.
- See the Evictions Deskbook at pages 12 – 15.

20

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.

21

Criminal Trespass?



- Many situations that could be a squatter eviction could also potentially be handled as criminal trespass cases, which are criminal cases.
- Law enforcement may sometimes be reluctant and tell landlords that this is a “civil matter” and they should file evictions instead.
- Court’s role is process whatever is filed.

22

What Do You Say When They Ask You?

23

“Do I Have A Good Case?”

If someone asks: “Should I file an eviction suit?” or “Can I kick them out for this?”

- These are not questions you can answer because you do not know all the facts, and because your court must not give legal advice!

24

“What Should I Do?”

SRL

- But you (or your clerk) 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 are on our website at www.tjctc.org/SRL.
- You may also suggest they talk to a lawyer (State Bar and Legal Aid contact information also on our SRL page).

25

“Is This the Right Precinct?”



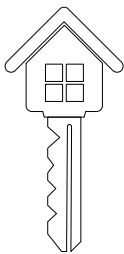
- You (or your clerk) may tell them that an eviction case **must** be filed in the precinct where the property is located.
- If they ask if yours is the right precinct, you can ask them for the address of the property.
- You (or your clerk) can then look up that address with them and tell them whether or not their property is in your precinct.

26

Group Discussion!

27

Discussion Problem 1

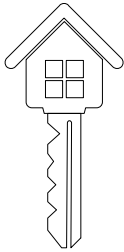


- Q. Bill lets Danny stay in his guestroom, and Danny is not paying rent. Danny likes the Cowboys and Bill likes the Steelers. The Cowboys beat the Steelers 56-10 and Bill decides he wants Danny to leave, but Danny refuses.
- Is Danny a squatter or a tenant at will?
- Can Bill evict Danny for this reason?

See Evictions Deskbook Ch. 3A—3C.

28

Discussion Problem 2



- Q. Someone comes to your office and tells your clerk that someone is living in a small apartment above their garage. The person says he allowed them to stay there rent free for two weeks, but it has been four months now and they refuse to leave. They say they know their rights and cannot be evicted. He wants to know what he should do. What do you tell him?

29

**Notice
to
Vacate**

30

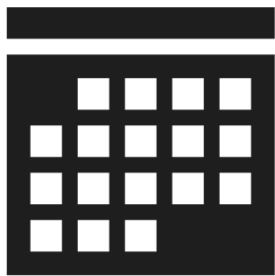
What is a Notice to Vacate?



- A **notice to vacate** is a written notice the landlord must give a tenant saying they have to leave or an eviction suit will be filed.
 - *Property Code Sec. 24.005*
- The notice must 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.

31

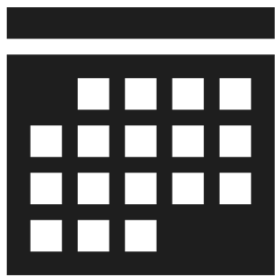
How Much Notice?



- How much time 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 Sec. 24.005(a)*

32

How Much Notice For Squatters?



- A squatter gets a notice to vacate but it may be immediate and does **not** have to be in writing.

- For example: “***Git off my property right now!***”

- *Property Code Sec. 24.005(d)*

33

Other Tricky Issues

- In the Tricky Issues class, we will discuss topics such as:
 - How notices to vacate work in post-foreclosure evictions
 - How notices to vacate must be delivered
 - What happens if the landlord does not do it right

34

Termination Notice – Rent Paid



- If there is no set end date to the tenant's right to possession but the tenant **is** paying rent (such as a month-to-month tenancy), then before a landlord can deliver the required notice to vacate:
 - the landlord **must** first give the tenant a written **termination notice**.
- This tells the tenant there is no longer any agreement giving the tenant the right to remain on the landlord's property.

35

Termination Notice – Period



- This notice must be for at least one rent paying period (usually one month).
 - If the rent period is more than a month (such as quarterly rent), then only a month's notice is required.
- If the tenant does not vacate once the period in the termination notice has expired, the landlord must then give the tenant a notice to vacate.

36

NTV After Termination Notice – Why?

- Think of it this way – the termination notice simply establishes the end date of the lease.
- If Amber has a lease that expires on December 31, 2022, and she does not move out, a notice to vacate must be given before she can be evicted.
- Similarly, if Amber is a tenant at will, and is given a termination notice expiring December 31, 2022, if she does not move, it is the same as the prior situation.

37

No Termination Notice Required if there is a Breach



- A termination notice is **not necessary** if the tenant breaches the terms of the lease.
 - 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.
- In that situation, the landlord would simply give the tenant a **notice to vacate**.

38

**No Termination
Notice –
No Rent Paid**



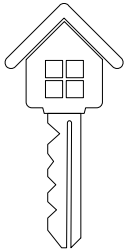
- If the tenant is **not** being charged rent, the landlord may end the tenant's right to possession at any time by demanding possession of the property with a written **notice to vacate, with no termination notice needed.**
- For example, your brother-in-law has been sleeping on the couch in your living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

39

**Group
Discussion!**

40

Discussion Problem 3



- Q. Remember Danny and Bill from earlier where Danny was staying in Bill's guestroom:
- Would Bill need to give a termination notice? Why or why not?
- What if Danny was paying \$100/month in rent, then would Bill need to give termination notice?
- If Danny did not leave by the time in the termination notice, can Bill file the eviction right then?

41

Filing an Eviction Suit

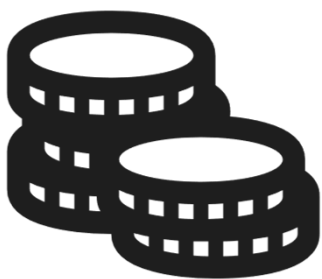
42

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.
- A petition is the legal document where the landlord (plaintiff) says what the tenant (defendant) did wrong and what they want from the court.

43

Filing and Service Fees



- When the landlord files a petition, they must also pay filing and service fees.
 - The filing fee in most counties is \$54.
 - Service fees (which cover the cost of having the Constable serve the papers on all defendants) are set by your county's Commissioners Court.
- The service fees may be found on page 27 of the Evictions Deskbook.

44

What if Someone Cannot Afford to Pay the Fees?



- A plaintiff who is unable to afford to pay the fees may file a **Statement of Inability to Afford Payment of Court Costs** (often just called “Statement of Inability” or by its old name “pauper’s affidavit” though that is no longer correct).
- A copy of the Statement is available on the TJCTC forms page.

45

Statement Of Inability (1 of 2)



- This form **must** be made available for free to anyone without the person having to request it.
-- Rule 502.3
- For example, the form may be made available on the counter at the clerk’s window and noted on a sign posted near the window.
- **In addition**, it is a good idea to post it on the court’s website.

46

Statement of Inability (2 of 2)



- After receiving the petition and Statement of Inability, the clerk must:
 - docket the case; and
 - issue the citation (discussed coming up).
- A copy of the Statement must be attached to the petition and citation.

47

The Petition Has to be Sworn



- A petition in an eviction case must be **sworn to by the plaintiff.**
-- Rule 510.3(a)
- Remember from the Introduction to Justice Court class the various ways that a document may be **sworn to.**

48

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)

49

Petition Form



- TJCTC's forms page has many eviction forms, including petition forms.

50

Where is the Petition Filed? (1 Of 2)

- The petition **must** be filed in the *precinct* where the premises are located.
 - This is because you **do not** have jurisdiction over an eviction suit if the property is located outside your JP precinct.
 - **Remember:** “jurisdiction” means your authority to hear and decide a case.

51

Where is the Petition Filed? (2 Of 2)

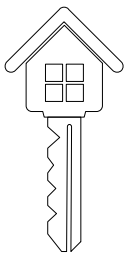
- If the suit is filed in your precinct but the property is **not** located in your precinct, you **must** dismiss the case.
 - To dismiss means to end the case
 - You will need to sign a written order dismissing it for “lack of jurisdiction.”
 - You do not need to wait for someone to file a motion asking for the case to be dismissed; do it when you discover the property is not within your JP precinct.
 - Rule 510.3(b)

52

Group Discussion!

53

Discussion Problem 4



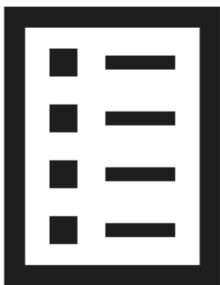
- Q. An assisted living community has filed an eviction petition. The defendant is a resident. The monthly rent is \$6,200; the box is checked Unpaid Rent As Grounds For Eviction; the total delinquent rent is \$24,800 (Sept.-Dec.). The person commented to your clerk that they did not want the back rent but just wanted them out, but that statement is nowhere in the petition.
- Should you dismiss this case for lack of jurisdiction due to the amount?
- See Evictions Deskbook Ch. 2D.

54

Citation and Service

55

Citation



- Where are we in the case?
 - The landlord has (presumably) given the tenant a notice to vacate.
 - The landlord has filed a sworn petition.
 - The landlord has paid a filing fee or filed a Sworn Statement of Inability to Afford Payment of Court Costs.
- Now the court needs to give the tenant notice of the lawsuit.
- This is done through a document the court prepares called a **citation**.

56

Issuance of Citation



- If a case is properly filed, the court must immediately issue a citation **directed to each defendant**.
- This means each person named as a defendant (tenant) by the plaintiff (landlord) has to be served with a citation so they are notified that they have been sued.
 - It is up to the plaintiff to decide against whom to file the case.

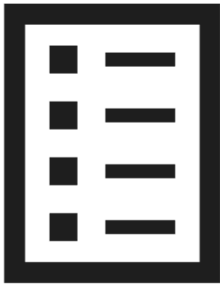
57

What Does the Citation Include?

- The citation must:
 - Be signed by the clerk ***under seal of court*** or by the judge.
 - Under “seal of court” just means it has the court’s official seal on it.
 - State the plaintiff’s cause of action and relief sought.
 - For example, this is an eviction suit seeking possession of the premises for non-payment of rent, back rent, attorney’s fees, and court costs.

58

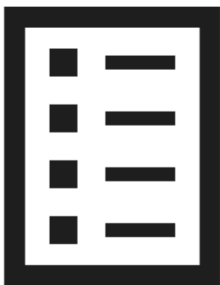
Citation Contents (1 of 2)



- State the date of the trial (**not less than 10 days nor more than 21 days *after* the day the petition is filed**).
- How you count the days is discussed below.
- State that if the defendant fails to appear for trial, a **default judgment** may be taken against them.
 - This means they will likely lose the case automatically (discussed below) without a trial.

59

Citation Contents (2 of 2)



- State that the defendant can request a trial by jury **no later than 3 days before the day set for trial**.
- Include the following statement:
"For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and ***also at the court*** listed on this citation."
-- Rule 510.4(a)

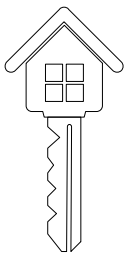
60

How Does the Tenant Get the Citation?

- A constable or sheriff gives the citation, with petition attached, to the tenant.
 - This is called **service**.
- In an eviction case only a **sheriff** or **constable** may serve a citation unless the court authorizes someone else 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)

61

Poll 2



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.

62

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.**

63

What If The Constable Is Not Able To Serve The Tenant?

- If the constable is unable to perform service by the usual methods, the constable may ask the court to allow **Alternative Service.**
 - This will be discussed in the Tricky Issues class.

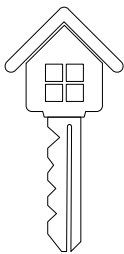
64

When Does the Tenant Need to be Served?

- The tenant must be served **at least 6 days before** the day set for trial.
 - Rule 510.4(b)
- The constable lets the court know the tenant was served by filing a form called a **Return of Service**.
 - This has to be filed at least **one day** before the day set for trial
 - Rule 510.4(b)

65

Poll 3



- 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 Ch. 4A(4).

66

How Do You Set an Eviction Case for Trial?

67

Setting the Date



- The trial date must be:
 - **No less than 10 days** after the date the petition was filed; and
 - **No more than 21 days** after the date the petition was filed.
- Rule 500.10 covers court appearances, including rules for virtual court proceedings.

68

How Do You Count the Time to Set the Trial Date? (1 of 2)	<ol style="list-style-type: none">1. The day the petition was filed must be excluded when counting days, so start counting on the next day.2. Count every day, including Saturdays, Sundays, and legal holidays; and3. Include the last day of the time period – but...
--	---

69

How Do You Count the Time to Set the Trial Date? (2 of 2)	<p>If the last day is a Saturday, Sunday, or legal holiday, you go to the next day that is not a Saturday, Sunday, or legal holiday.</p> <p>-- Rule 500.5</p> <ul style="list-style-type: none">▪ An example is on Handout 1
--	--

70

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.

71

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.
- The tenant is not required to file an **answer**, but they may do so if they wish either before or on the date set for trial.
 - An answer is a written response to the petition stating why they should not be evicted.

72



**Default
Judgment**

73

**Tenant
Does Not
Answer or
Appear?**

- Often a tenant who was served with the citation and petition does not file a written answer or even show up for trial.
 - This sets up a situation described in the citation – a default judgment.

74

What is a Default Judgment?

- If the tenant does not show up for trial (and has not filed a written answer), the court **must** take the petition as true. This means that the court should enter a **default judgment** in favor of the landlord **as long as the requirements are met** (explained on the next four slides).
-- Rule 510.6(b)

75

Before Granting a Default Judgment (1 of 4)



- Before granting a default judgment, the court should make sure that:
 - There is proof of service of the citation;
 - This means the constable filed the **return of service** at least **one day** before the trial date showing how they served the tenant.
 - The **citation** was served at least **six days** before the trial date;

76

**Before
Granting a
Default
Judgment
(2 of 4)**



- The service of the citation was proper;
 - This means it was done the way the rules require (like serving the tenant personally or leaving it at the residence with someone over 16).

77

**Before
Granting a
Default
Judgment
(3 of 4)**



- The petition is sworn to by the landlord including a statement that:
 - A notice to vacate was properly served on the tenant with the right amount of time for the notice to vacate; and
 - Why the landlord is entitled to possession (for example, how the tenant breached the lease).

78

Before Granting a Default Judgment (4 of 4)



- A Servicemembers Civil Relief Act (SCRA) affidavit has been filed if the tenant is an individual.
 - This states whether or not the tenant is in active military service.
 - This will be explained in the Tricky Issues class.

79

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 of the premises
-- Rule 510.6(c)

80

Poll 4

- You notice in court that the petition does not include any information about whether there was a proper notice to vacate. The tenant did not appear. You should grant judgment:
 - A. For the landlord since the tenant did not raise the issue.
 - B. For the tenant unless the landlord puts on evidence that a proper notice to vacate was given since notice is an element of the landlord's case.

81



Trial Time

82

Trial Basics



- For more information on conducting trials, see the Trial Notebook and Chapter 4D of the Evictions Deskbook.
- If the landlord does not appear, the case can be **dismissed** or re-set for another date.

83

Jury Trial – Request



- Any party can make a written request for a jury at least **3 days** before the trial date.
 - A \$22 jury fee must be paid or a Sworn Statement of Inability to Afford Payment of Court Costs must be filed (discussed above).

84

Jury Trial



- If demanded and fee paid on time, the case must be heard by a jury.
 - How to conduct a jury trial will be discussed in other classes (and in the Trial Notebook).
- If no jury is demanded, the case will be heard by the judge (bench trial).
 - Rule 510.7(b)

85

Limit on Trial Postponement



- A party may ask for a postponement of the trial, but it must be in writing (may be orally if both parties present.)
- But the court **may not** postpone the trial at the request of a party for more than 7 days unless both parties agree in writing.
 - Rule 510.7(c)

86

Trial Procedure



- At the trial the plaintiff (landlord) always goes first and presents evidence showing why the tenant should be evicted.
 - For example, the tenant has not paid rent.
- When the landlord is finished, the tenant is allowed to present evidence showing why they should not be evicted.
 - For example, the tenant tried to pay the rent when due, but the landlord refused to take it.

87

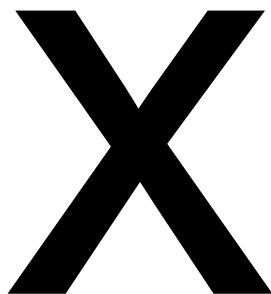
Trial



- If the landlord proves their case “by a preponderance of the evidence,” then the landlord wins.
 - Preponderance of the evidence just means that it is **more likely than not** that the tenant breached the lease.
 - If the evidence is 50/50 as to whether or not the tenant breached the lease, then the landlord did not prove the case by a preponderance of the evidence and the tenant wins.
- This will be discussed more in later classes.

88

No Motion for New Trial

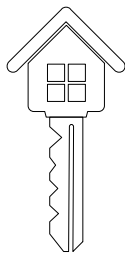


- A motion for a new trial is a request by either party for a “do over” – a whole new trial. But . . .
- **No** motion for new trial may be filed in an eviction case.

-- Rule 510.8(e)

89

Poll 5



- Q. An eviction case is set for trial on Thursday at 10:00 a.m. What is the latest day the plaintiff may request a Jury Trial?
 - A. Thursday (the day of trial) before 10:00 a.m.
 - B. Monday before 10:00 a.m.
 - C. Monday before the court closes for the day.
 - D. The preceding Friday.
- See Evictions Deskbook Ch. 4D(7); Rule 500.5, 510.7(b) of the Texas Rules of Civil Procedure.

90

Judgment

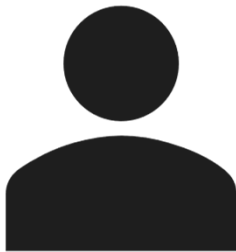
91

What is a Judgment?

- A **judgment** is a formal decision by a court finding in favor of one party or the other.
- A judge should announce a judgment orally in court from the bench following a trial.
- The judgment must then be put in writing and signed by the judge with the date of the judgment.
 - Judgment forms are available at www.tjctc.org.

92

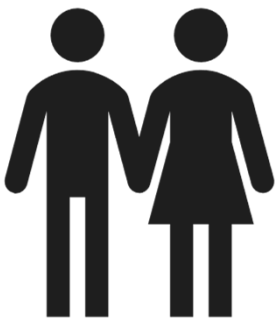
Judgment for Landlord



- If the landlord wins, the judge must enter a judgment for possession of the property, and also award as part of that judgment:
 - court costs;
 - back rent (if any) as of the date of the judgment; and
 - attorney's fees (if the landlord is entitled to recover them).
 - Rule 510.8(b)
- See the Evictions Deskbook Ch. 4D(8) concerning when a landlord or tenant is entitled to recover attorney's fees.

93

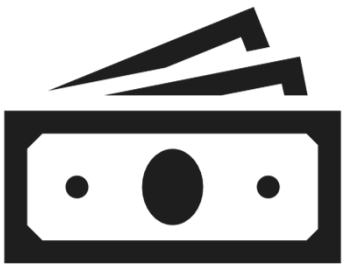
Judgment for Tenant



- If the tenant wins, the judge must enter a judgment for the tenant to remain in possession, and award as part of that judgment:
 - court costs, if any (for example, the \$22 jury fee if the tenant requested a jury); and,
 - attorney's fees (if the tenant is entitled to recover them).
 - Rule 510.8(c)

94

Judgment Must Include the Amount of the Appeal Bond

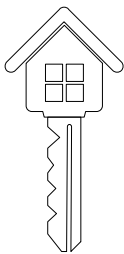


- The amount of the appeal bond must be stated in the court's judgment if the suit was for nonpayment of rent.
- How the court sets the amount of the appeal bond is discussed below.

-- *Property Code § 24.00511(a)*

95

Poll 6



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.

96

Appeal

97

Appeals Are Tricky!

- Be sure to review:
 - Evictions Deskbook Ch. 4F, including flowcharts in 4F(6)
 - Eviction Appeals module

98

What Can the Losing Party Do? (1 of 2)

- Either party (usually the one that loses the case) in justice court may file an appeal.
- An appeal of an eviction case is heard by a county court (or in some counties by a district court).

99

What Can the Losing Party Do? (2 of 2)

- The appeal is **de novo**.
 - This means the county court hears the case all over again from scratch.
 - The county court does not review the justice court's decision to see if it is right or wrong.
 - It treats the case as if it had been filed in the county court to begin with and just starts all over.

100

How Does Someone Appeal?

- A party may appeal a judgment for possession within five days after the judgment for possession is signed by filing:
 - An appeal bond;
 - A cash deposit; or
 - A statement of inability to afford payment of court costs
-- Rule 510.9(a)

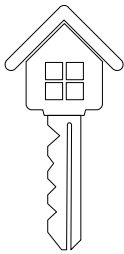
101

How Do You Count the Time to Appeal?

- The rules for counting days for an appeal are exactly the same as we discussed before with one important exception:
 - If the court closes before 5:00 p.m. on the day the appeal is due, the party gets until the next business day to file their appeal.
 - Examples are on Handouts 2 & 3

102

Poll 7



- Q. Our court closes at 4:30 p.m. every day. Does this mean the tenant always gets an extra day to file an appeal?

A. Yes
B. No

- See Rule 500.5(a)(3), 510.8(d)(1) of the Texas Rules of Civil Procedure; Evictions Deskbook Ch. 4E

103

What is an Appeal Bond? (1 of 2)

- An appeal bond is a guarantee by the appealing party to pay what the appeal might cost the opposing party if the appealing party does not pursue the appeal, and to pay any judgment and costs awarded against the appealing party if they also lose on appeal.
-- Rule 510.9(b)

104

What is an Appeal Bond? (2 of 2)

- In other words, if a tenant who loses in justice court appeals the eviction, the landlord may rely on the bond to recover any damages they have due to the appeal being filed and to recover the amount they are owed if they win again on appeal.
-- Rule 510.9(b)

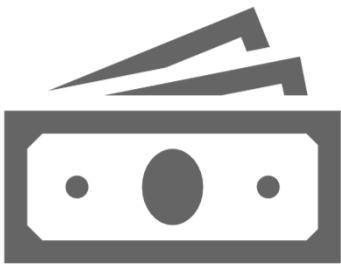
105

How Much is the Appeal Bond or Cash Deposit?

- The judge must set the amount of the appeal bond or cash deposit so that it covers what it will cost the other party while the appeal is being decided.
 - This may include the loss of rent to the plaintiff during the appeal, court costs, and attorney's fees in both the justice and county courts (if they are recoverable).
 - The court must also take into account the rent that is paid into the registry.
-- Rule 510.11

106

**Appeal by
Filing a
Statement of
Inability to
Afford
Payment of
Court Costs**



- If the losing party cannot get an appeal bond or pay a cash deposit, they may file a Statement of Inability to Afford Payment of Court Costs.
- It is the same one that a plaintiff would file when they file a case (discussed above).
-- Rule 510.9(c)(1)

107

**What Happens
Once an
Appeal is
Perfect?**

- Once the appeal is perfected (meaning an appeal bond, cash deposit, or statement of inability has been properly filed), the justice court judgment is **null and void**.
 - This means the justice court judgment is no longer in effect.
 - It is just as if it never happened.

108

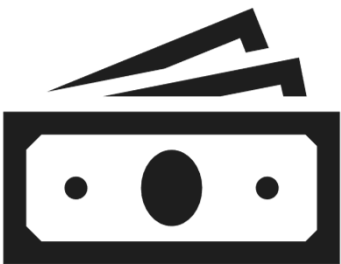
Transmission of the Record



- Once the appeal is perfected, the justice court **must** transmit all the papers in the case to the clerk of the county court.

109

Payment of Rent During the Appeal



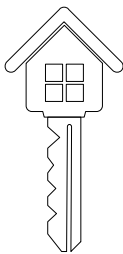
- In a nonpayment of rent case, if the tenant appeals by
 - filing a Statement of Inability to Afford Payment of Court Costs, or
 - by filing an appeal bond,
- then the tenant has to pay their rent into the registry of the court (meaning it is held by the court or the county auditor) while the appeal is pending.
- How this works is discussed in the Tricky Issues Class.
- See Evictions Deskbook Ch. 4F(4).

110

Group Discussion

111

Discussion Problem 5



- If a defendant appeals an eviction case with a Statement of Inability but fails to pay the first month's rent into the registry of the court, does the court still send the case to the county court?
- See Property Code Sec. 24.0054(a-2); Rule 510.9(f)

112

Writ of Possession

113

What is a Writ of Possession?

- A writ of possession is an order from the court to a Constable ordering them to move the tenant out (if necessary) and turn the property back over to the landlord.
- A Constable may use reasonable force to do this.

114

How Does a Landlord Get a Writ of Possession?

- If the court decides the case in favor of the landlord and signs a judgment for possession, the court has to issue a writ of possession if:
 - the landlord requests one; and,
 - pays the fee for having the Constable serve the writ of possession on the tenant.

115

When May the Court Issue a Writ of Possession ?

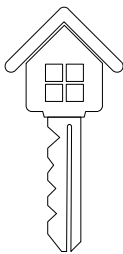
- The court may not issue a writ of possession until the later of:
 - **6 days** after the judgment for possession was signed; or
 - the **day after the deadline** to file for **appeal**.
- An exception to this is when an immediate possession bond was issued; this will be discussed in the Tricky Issues class.

116

Group Discussion

117

Discussion Problem 6



- Q. The court closes at 4:30 p.m. every day. A judgment for possession is issued on Tuesday, December 5, 2023. What is the first day a writ of possession can be issued?
- See Rule 500.5(a)(3), 510.8(d)(1) of the Texas Rules of Civil Procedure; Evictions Deskbook Ch. 4E.

118

When May the Court Issue a Writ of Possession? (1 of 2)

- The court may issue a writ of possession up to **60 days** after the judgment for possession was signed,
- unless the judge extends this deadline to no more than **90 days** if the court finds there is good cause for extending the time.

119

When May the Court Issue a Writ of Possession? (2 of 2)

- For example, suppose after a judgment for possession is signed the landlord is in a traffic accident and not able to get to court within 60 days to ask for a writ of possession; he could ask the court to extend the time to issue a writ of possession for another 30 days.

120

How Long is the Writ of Possession Good For?

- A writ of possession cannot be **executed** (meaning used by a constable to remove the tenant from the property) more than 90 days after the date the judgment for possession was signed.
- In other words, the last day the writ of possession could be executed is Day 90; the writ cannot be executed on Day 91.
-- Rule 510.8(d)

121

What if the Tenant Appeals?

- The court **must not** issue a writ of possession if an appeal is perfected.
-- Rule 510.8(d)

122

**Questions?
Thank you!**

John Lackey
Staff Attorney
Texas Justice Court Training Center

Handout 1--Setting Trial Date --Example

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 (Day 0) Case Filed	4 (Day 1) Independence Day Holiday	5 (Day 2)	6 (Day 3)	7 (Day 4)	8 (Day 5)
9 (Day 6)	10 (Day 7)	11 (Day 8)	12 (Day 9)	13 (Day 10) First day trial can be set	14 (Day 11)	15 (Day 12)
16 (Day 13)	17 (Day 14)	18 (Day 15)	19 (Day 16)	20 (Day 17)	21 (Day 18)	22 (Day 19)
23 (Day 20)	24 (Day 21) Last day to set trial	25	26	27	28	29

Handout 2—Counting Appeal Time (1 of 2)

September						
Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Sat.
3	4	5	6	7	8	9
	Labor Day	Judgment for Possession Signed	(Day 1)	(Day 2)	(Day 3)	(Day 4)
10	11	12	13	14	15	16
(Day 5) Fifth day ends on a Sunday; therefore, defendant has until next day that is not a Saturday, Sunday, or legal holiday to file an appeal	(Day 6) Defendant must file appeal if court does not close before 5:00 p.m.	(Day 7) First day of writ of possession may issue				
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Handout 3—Counting Appeal Time (2 of 2)

September						
Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Sat.
					1	2
3	4	5	6	7	8	9
	Labor Day	Judgment for Possession Signed	(Day 1)	(Day 2)	(Day 3)	Day 4)
10	11	12	13	14	15	16
(Day 5) Fifth day ends on a Sunday; therefore, defendant has until next day that is not a Saturday, Sunday, or legal holiday to file an appeal	(Day 6) Court closes before 5:00 p.m.; therefore, defendant has until the next day to file appeal	(Day 7) Defendant must file appeal	(Day 8) First day a writ of possession may issue			
17	18	19	20	21	22	23
24	25	26	27	28	29	30