

Evictions – Legislative Update

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Resources

- SB 38, www.capitol.Texas.gov
- TJCTC Eviction Resources
 - Updated by January 1!
 - Evictions Deskbook
 - Eviction Forms
 - Eviction Modules
 - SRL Packets
- Property Code Ch. 94
- Texas Rules of Civil Procedure
 - Updated by January 1!

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Agenda

- Notices to Vacate
- Summary Disposition
- Service of Citation
- Trial Changes
- Service of Writs of Possession
- Appeals

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SB 38

*Effective 1/1/2026, **applies to eviction suits filed on/after this date.***

***Except:** Rulemaking authority for the Supreme Court took effect 9/1/25.*

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Computation of Time

- Time periods for filings and notices include weekends and holidays, but if the last day falls on a weekend or holiday, the deadline moves to the next business day.
- ***This includes timeframes in notices to vacate.***

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Texas & Federal Holidays

January 1

January 19

3rd Monday in January

3rd Monday in February

March 2

March 31

Good Friday

April 21

Last Monday in May

June 19

July 4

August 27

1st Monday in September

2nd Monday in October

November 11

4th Thursday in November and subsequent Friday

December 24-26

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Notice to Vacate (NTV)

- Landlords must give at least 3 days written NTV, unless the lease specifies otherwise (*Same as before*).
- For nonpayment of rent cases:
 - **Must give** “pay rent or vacate” notice if the tenant was **not previously late**.
 - **May give either** “pay rent or vacate notice” or “notice to vacate” if tenant **was previously late**.

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Delivery of NTV

- Notices must be delivered using at least one of the following methods:
 - mail, including first class mail, registered mail, certified mail, or a delivery service;
 - delivery to the inside of the premises, in a conspicuous place;
 - hand delivery to any tenant of the premises who is 16 years of age or older; or
 - if the parties have agreed in writing, electronic communication, including e-mail or other electronic means.
- If the tenant actually receives notice, method of delivery requirement doesn't apply.
- The bill essentially got rid of the old notice to vacate delivery procedures and made them simpler/easier for landlords.

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The tenant has not been previously late with rent, but the landlord thinks it will continue to be a problem since they've lost their job and wants to do a notice to vacate instead of a notice to pay or vacate. Can the landlord choose to do this?

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The tenant has never been late before but doesn't pay the rent that is due December 1st. The landlord gives a notice to vacate on December 11th, and files the eviction case on December 15th. It comes to trial on January 6th. Is this proper notice to vacate?

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The tenant has never been late before but doesn't pay the rent that is due December 1st. The landlord gives a notice to vacate on December 11th, and files the eviction case on January 5th. It comes to trial on January 16th. Is this proper notice to vacate?

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Mark gives his tenant John an electronic notice to vacate, which the lease allows, on December 15th and files suit on December 20th.

Is this proper notice? Does it matter if John agrees he received it?

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Mark gives his tenant John an electronic notice to vacate, which the lease allows, on December 15th and files suit on January 5th.

Is this proper notice? Does it matter if John agrees he received it?

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Thea places a notice to vacate under Jessica's windshield wiper on December 15th. She files suit on December 22nd and it comes to trial on January 7th. Jessica appears and testifies she received the NTV. Thea proves her case otherwise?

Who wins?

Same answer if case is filed on January 5th and heard January 22nd?

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Thea places a notice to vacate under Jessica's windshield wiper on December 15th. She files suit on January 7th. Jessica does not appear. Thea proves her case otherwise. Who wins?

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NTV – Federal Laws

- **What the bill says:** If federal law requires a longer notice, the landlord can file suit after the state notice period, but cannot serve a writ of possession until the federal period expires.
- This will be at issue when things like the CARES Act, PTFA, and federally subsidized housing rules apply.
- **Problem:** The tenant arguably hasn't committed a forcible detainer until they fail to deliver possession back to the landlord after a proper demand has been made. How can this happen until the notice period runs?
- **3 potential options for courts to follow:**

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Option 1

- Statute doesn't change the definition of forcible detainer, so there is no cause of action until they haven't moved out by the longer federal NTV deadline.
- If case is filed before federal NTV deadline, court will issue a judgment for defendant, because COA didn't accrue before filing (which is a long-held requirement under case law).
- *Concern with this approach:* This interpretation essentially renders meaningless the new language in the statute that allows for filing prior to the federal NTV deadline.

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Option 2

- Statute overrides the requirement to have a COA before filing but still need it before judgment.
- Court will give judgment to the plaintiff if they prove their case and the tenant didn't move out by the deadline, and that all occurred prior to judgment.
- *Concern with this approach:* The lack of a COA prior to filing goes against established law and the eviction filing (even without a judgment) can be damaging to a person's ability to rent despite the fact that they've done nothing wrong.

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Option 3

- Statute overrides all relevant caselaw and the need for a cause of action prior to judgment (or NTV creates COA despite federal requirement of 30 days).
- Court can give a judgment to the Plaintiff if they otherwise prove their case even if the federal NTV deadline has not yet passed (but must wait until after the federal deadline to give a writ of possession).
- *Concern with this approach:* There is arguably no justification for the judgment at the time it is signed, and if the tenant does move out by the deadline, they will have a judgment against them and all the negative effects of that even though they complied with the law.

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• Which option do you think your court prefers?

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NTV & Notice of Proposed Eviction Timeframes May Run Concurrently

- If the lease or applicable state or federal law or rule requires a landlord to give a tenant an opportunity to respond to a notice of proposed eviction before filing an eviction suit:
 - the notice period in a “notice to pay rent or vacate” or “notice to vacate” may, at the landlord's discretion, run concurrently with the period provided for the tenant to respond to the notice of proposed eviction; and
 - the “notice to pay rent or vacate” or “notice to vacate” may include the required opportunity to respond to the notice of proposed eviction.

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NTV & Notice of Proposed Eviction Timeframes - Examples

- Examples:
 - The 10-day notice of delinquent rent in manufactured home eviction cases for non-payment of rent can run concurrently with the NTV. So, if the 10-day notice is required and there is a 3-day NTV, the NTV can be given at any point during the 10-day period, and they can run together. An eviction case can be filed if both periods have expired. The landlord does not need to give the 10-day notice, wait those 10 days, and then give the 3-day NTV and wait 3 more.
 - Subsidized housing also often has notices of proposed eviction, and those periods can also now run concurrently with whatever NTV period is required.

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Rebecca is late paying her rent in a manufactured housing community. Amber, her landlord, gives her a 10-day notice to pay rent on Thursday, November 13th.

When does Rebecca have to pay rent by in order to avoid eviction?

If Amber gives a 3-day notice to vacate on November 14th, when can she file the eviction suit? Is this notice proper?

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Summary Disposition – New Expedited Version

- Current summary disposition procedures almost never apply to eviction cases due to how long summary disposition motions must be on file before being considered and the timeframe in which an eviction must be heard.
- Now there is a new expedited summary disposition procedure only for evictions – but ***only for Forcible Entry & Detainer/Squatter cases***
 - If one of these is filed in a case where the defendant is **not** a squatter, it must be denied even if you believe the landlord will win at trial.

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Summary Disposition – Definition of Squatter

- Prop Code Sec. 24.001: A person commits a forcible entry and detainer (FED) if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.
- It does **not** count as a FED if the person enters with the consent of:
 - A person in actual possession of the property;
 - A tenant at will or by sufferance; or
 - A person who acquired possession by forcible entry (a squatter).

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Summary Disposition – General Procedures

- Landlords may include a motion for summary disposition (*a judgment without trial*) with their petition if there are no disputed facts.
- Tenants have four days after service to respond and request a trial if there is a genuine dispute.
- The sworn motion must set out all supporting facts and any documents relied on must be attached.
- The petition must include a required notice (language on next slide).

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Summary Disposition – Notice in the Petition

- The following notice must be in English & Spanish on the first page in **bold and conspicuous print**.

The petition includes a motion for summary disposition. If the motion shows there are no genuinely disputed facts that would prevent a judgment in favor of the landlord, the court may enter judgment in favor of the landlord without a trial unless:

(1) not later than the fourth day after you are served with the landlord's sworn petition, you file a response setting out supporting facts and any applicable documents on which your response relies; and

(2) the justice court determines that service on you was proper and, based on the landlord's sworn petition and your response, there are genuinely disputed facts that would prevent a judgment in favor of the landlord.

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Summary Disposition – Ruling on the Motion

- Should be **granted** if:
 - Motion and petition show no disputed facts,
 - There was proper service on the tenant, and
 - The tenant did not answer *or* the answer does not show a disputed fact.

Note: the court **may** consider a tenant's late answer if it was received prior to judgment and **"it shows a genuinely disputed fact that would prevent judgment in favor of the landlord."**

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Summary Disposition – Notice to the Defendant

- Notice of a summary disposition should be sent to the defendant just like a default judgment.

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Summary Disposition – Timing

- The bill says that if the court determines that there are genuinely disputed facts, the court shall set the trial date between 10 and 21 days from the filling of the petition, or may immediately set the case for trial upon the tenant's request for a trial/showing of disputed facts.
- But as of now, TRCP 510.4(a)(10) states that the trial date must be included in the citation, which will need to be served on the defendant prior to the court's determination of the summary disposition.
- Court could potentially rule on the summary disposition on the date/time of trial if desired.
- If done before, must make sure it is clear ASAP to all parties whether the motion was granted/denied and if there is still a trial setting or not.

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Service of Citation and Petition

- Sheriff/constable must make diligent effort to serve the citation and petition not later than the 5th business day after the petition is filed.
- If not served on/before 5th business day, landlords may use other law enforcement officers *who have received appropriate training in the service of process, eviction procedures, and the execution of writs as determined by the Texas Commission on Law Enforcement (TCOLE)*.
- If plaintiff is calling the court about the status of service and you do not yet have a return on file, you should refer them to the sheriff/constable.

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Petition

- A court may **not** adopt local rules, forms, or standing orders for eviction suits that:
 - require content in or with the petition other than the content required by the TRCP; or
 - authorize the dismissal of an eviction suit on the basis that the petition is improper if the petition meets the requirements of the TRCP or can be amended to do so.

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What if the citation isn't issued/sent to the constable/sheriff right away?

- This will make it very difficult to hit the serve within 5 business days deadline.
- *Courts*: Make sure citations are issued and sent ASAP.
- *Constable Offices*: Document when you receive them and do your best.
- *Everyone*: Talk to each other and work together!

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Practically, who else other than a constable or sheriff's office could serve eviction papers?

- Likely very limited, because other agencies are busy and most won't have the desire, time, and/or resources to take the required training.

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Trial Deadlines

- Trials **must** still be set **between 10 and 21 days after filing** and continuances are still limited to 7 days **unless both parties agree (no change here)**.
- But now, trials may not be set before the **4th** day after service (used to be 6th day).

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Mediation/Pretrial Conferences

A court may **not** adopt local rules, forms, or standing orders for eviction suits that require any mediation, pretrial conference, or other proceeding before trial.

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What about asking the parties to talk prior to a trial/hearing?

- Definitely okay if the parties are willing.
- Might not be okay to require it, and not all that useful anyways if they're unwilling.

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Electronic Appearances

- Courts may allow any party to appear virtually if they agree.
- But cannot require them to if they want to come in person.

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Representation

Clarified: Any party may be represented by a non-lawyer agent in any justice court eviction suit.

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Information in Judgment

- All judgments (not just nonpayment of rent ones) must now include:
 - The appeal bond amount.
 - The amount of rent to be paid each rental pay period during the pendency of any appeal.

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Writs of Possession

- *Clarification:* A court does not have discretion over whether or not to issue a writ of possession. If the requirements are met and no other law bars it, then it must be issued.
- Writ is issued by justice **or county court** as applicable.
 - Writ for failure to pay rent – clarified that applies if not paid at any point as due during appeal, not just if initial payment not made.

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Writs of Possession - Service

- Service of writ must occur within 5 business days from issuance of the writ, or landlords may use other trained officers.
- TJCTC interpretation is that “service” means service of the initial notice, but others have argued that it means complete execution of the writ.
 - In the end, this shouldn’t matter if they’re moving forward and coordinating with the plaintiff.
- If plaintiff is calling the court about the status of service/execution and you do not yet have a return on file, you should refer them to the sheriff/constable.

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Appeals

- Appeals from justice courts (bond, cash deposit, or statement of inability to pay) must be filed within 5 days (*clarification for all appeal types/codification of current rules*).
- Tenants must affirm, under penalty of perjury, “the tenant's good faith belief that the tenant has a **meritorious defense** and that the appeal is **not for the purpose of delay**.”

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Notice Regarding Appeals

- If a tenant appeals, the court must give a notice of:
 - the **amount of rent to be paid** into the justice court *or county court* registry,
 - **how** the payment can be paid,
 - the **calendar date** by which it must be paid,
 - the **time the court closes** (if before 5 pm), and
 - a statement that a **writ of possession may result without a hearing** if they do not pay into the registry.
- Only change here is that notice must include that payment is to justice court or county court, as applicable.

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Processing Appeals

- Justice court must forward the transcript and original papers to county court **not earlier than 4 pm on the 6th day or not later than 4 pm on the 10th day**, unless the court confirms that the tenant has timely paid rent into the registry, and then they may forward the case immediately.
- If the justice court issues a writ of possession, they immediately should forward the case to the county court.

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Rent During Appeals

- If appealing, tenants must pay one rental period's rent into the court registry within 5 days and continue to pay as due during the appeal – **in whichever court the case is pending at the time of payment.**
- **No longer just for nonpayment of rent cases**, and covers all appeal types, **including cash deposits.**
- Courts must disburse these funds to the landlord on request (will usually happen in county court).

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Rent During Appeals - Amount

- Amount in rental agreement.
- If no amount in a lease, the court must determine the “pay period” and the amount to be paid per period using the following standard:
 - Greater of \$250, or
 - Fair market value as determined by the court.
- Either party can file a motion to reconsider the amount of rent during the pendency of appeal.

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Rent During Appeals – Gov’t Agency

- If a government agency pays part of the rent, the court determines what the tenant owes and either party may contest this. *(Only change is that this now applies to all eviction cases instead of just nonpayment of rent.)*
- When there is a motion for tenant to pay the full amount because the government agency isn’t paying, the landlord no longer has to take reasonable action to solve the problem first. The other requirements still apply.

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A tenant appeals and affirms that there is a meritorious defense and it is not just for delay, but the court isn't sure if that is true. What do you do?

- Send it up to county court and let them decide.

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County Court - Timeframe

- County courts must hold a trial **within 21 days** after the date the transcript and original papers are delivered to the court.

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County Court – “Remaining Issues”

- Sec. 24.0054(a-2) now reads: *If the justice court issues a writ of possession under this section, the justice court shall forward the transcript and original papers in the eviction case to the county court for trial de novo to resolve any remaining issues in the case, such as rent or attorney's fees, notwithstanding the fact that the writ has been issued or executed.*
 - What does this mean?
 - TJCTC interpretation: This is just a clarification that once the case is forwarded to the county court, they now have jurisdiction and are to handle all remaining issues in the case, which could still include possession.
 - Other interpretation we've heard: If there is a writ of possession, the issue of possession is now moot, and only other issues will be considered on appeal.
 - But it will be the county court – and not the justice court – who will have to decide how they interpret this. Either way, justice court judgment is void upon perfection of appeal.