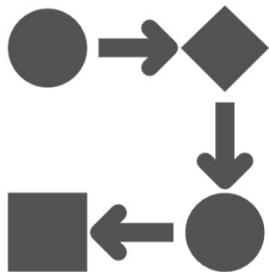


# Fundamentals of Residential Eviction Cases



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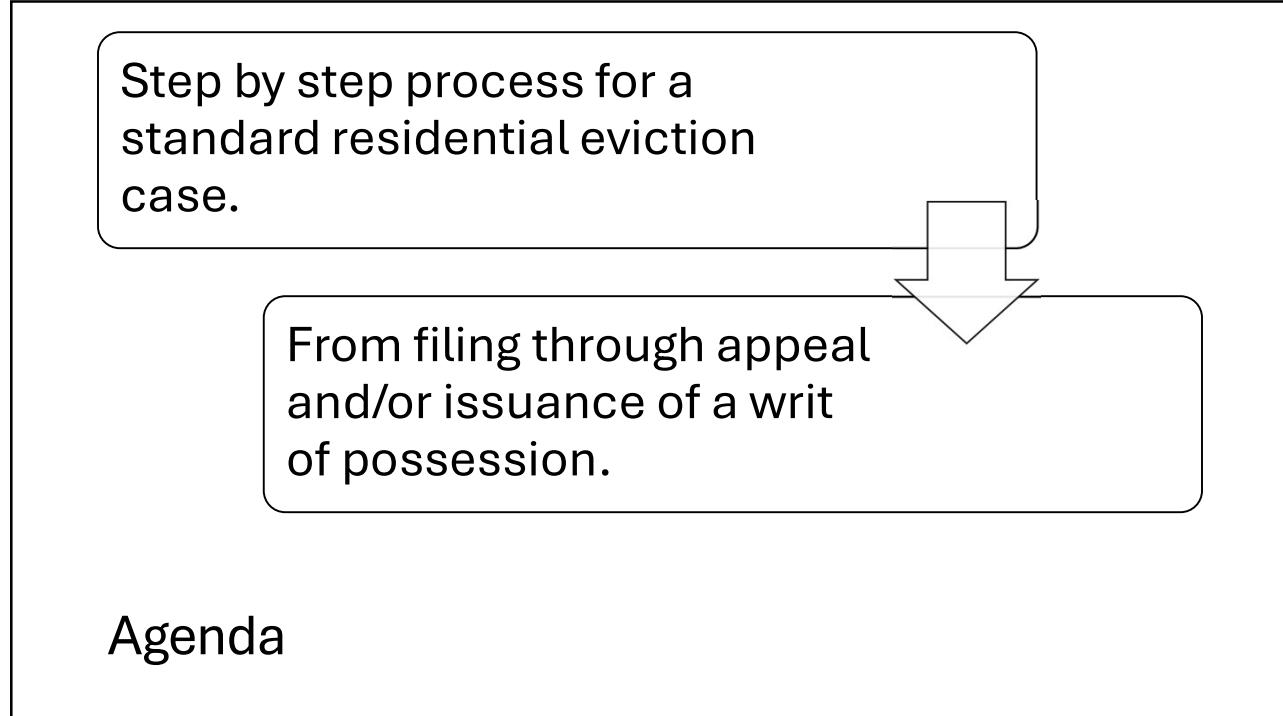
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Evictions Deskbook ( <b><i>includes citations to statutes/rules</i></b> )	• <a href="http://www.tjctc.org/tjctc-resources/Deskbooks.html">www.tjctc.org/tjctc-resources/Deskbooks.html</a>
TJCTC Website: Forms, Charts, SRL Packets, Legal Board, Self-Paced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

## Resources

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## Agenda

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- New laws and rules went into effect on 1/1/26. These apply to any cases filed on/after 1/1/26.
- Any cases filed before 1/1/26 are governed by the laws and rules that were in effect at that time.
- There is an Eviction Rule Change Summary/Cheat Sheet on TJCTC's website.

## Note About New Laws/Rules

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## Fill In The Blanks As We Go Along

On some slides in your handout, there will be a blank that you need to fill in.

The word that you need to put in the blank will be **bold and teal** in the presentation slide.

Example:

- Handout will look like this:  
Step by Step \_\_\_\_\_ Procedure
- Presentation will look like this:  
Step by Step **Eviction** Procedure

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## What is an Eviction Case?

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## Eviction Case

- An eviction case is a lawsuit to recover possession of real property from someone who is occupying it.
- If a person is \_\_\_\_\_, they no longer have a right to remain on that property.
- The most common eviction case is filed by a landlord to remove a tenant from the landlord's property.

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## Parties

- Landlord = the person who owns the property
- Tenant = the person renting the property
- Real Property = land and buildings (like a house)

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## What statutes and rules apply? (1 of 2)

- Chapter 24 & 92-94 of the Property Code
  - These are laws enacted by the Legislature.
- Rule 510 of the Texas Rules of Civil Procedure
  - This is a rule from the Texas Supreme Court that deals specifically with eviction cases.
- Rules 500 – 507 (general rules for civil cases)
  - *For cases filed before 1/1/26*, the version of these rules that was in place before 1/1/26 applies, except for any rule that conflicts with Rule 510 as it was before 1/1/26.
  - *For cases filed on/after 1/1/26*, these do not apply in eviction cases.

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## What statutes and rules apply? (2 of 2)

- Other Rules of Civil Procedure and Rules of Evidence
  - *For cases filed before 1/1/26:* only if the judge decides to apply a rule to ensure the proceedings are fair to all parties or if a law/rule specifically says a rule applies.
  - *For cases filed on/after 1/1/26:* only if a law/rule specifically says a rule applies.
- Any local rules/ordinances that conflict with state laws are not valid.

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## When Can Someone be Evicted?

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**Poll #1:**

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

A. True

B. False

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- Most Evictions happen when a tenant breaches (that is \_\_\_\_\_ a term of the lease)
  - Tenant fails to pay their rent.
  - Tenant has pets but lease prohibits this.
  - Tenant has loud parties late at night, but lease prohibits it.

## Breach of Lease

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

## End of Lease

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- 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**.
  - Ex: month-to-month leases, a person allowing a significant other or adult child to live with them.
- If the landlord tells a tenant at will that they need to move out and the tenant refuses, an eviction suit may be brought.
  - In a month-to-month lease, the landlord has to give a month's notice that the tenancy is being terminated.
  - No set time for notice of termination of other types of tenancies at will.

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## No Fixed Lease

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- When someone stops paying their mortgage, the bank holding the mortgage may **foreclose** on their property.
  - When this happens, the house may get sold at a foreclosure sale to a new owner.
  - The new owner has a right to occupy the house and may bring an eviction suit against the former owner.
  - If someone was renting the house from the former owner, they have additional rights, since they probably weren't aware of the foreclosure.

## Foreclosure

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- 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.
- This person is a \_\_\_\_\_ and the owner may bring an eviction suit to remove them.

## Squatter

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# What Do You Say When They Ask You?

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“Do I Have a  
Good  
Case?”

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

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These are not questions you can answer for them because you are not allowed to give legal advice.

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**Breakout Room Discussion: What would you do?**

- *How would you respond to questions like these? How would you phrase what you say?*
- *What are the resources you can refer them to?*

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## “Is This The Right Precinct?”

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

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

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## Pre-Suit Notice

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## What is a Pre-Suit Notice?

- **Notice to Vacate:** A notice the landlord has to give a tenant saying they have to leave or an eviction suit will be filed.
- **Notice to Pay or Vacate:** A notice the landlord has to give a tenant saying they have to pay rent or an eviction suit will be filed.
  - *For cases filed on/after 1/1/26 - Required* to give this instead of a Notice to Vacate if the tenant has never been delinquent in rent.
  - *Optional* to give it instead of a Notice to Vacate at any time.
- The notice has to give the tenant a deadline (ex: three days) to move out or pay as applicable and the landlord may not file the eviction suit until that deadline is up.

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## Pre-Suit Notice vs. Termination Notice

- A pre-suit notice is different from a notice of \_\_\_\_\_.
- A notice to terminate merely sets a date on which the lease will end.

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## How Much Notice?

- How much notice does the tenant get?
- In most cases a tenant gets three days' written notice.
- 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.

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## How Much Notice?

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## Tenant of a Foreclosed Property

- A bona fide tenant of a person who gets foreclosed on gets a 90-day written notice to vacate under the Protecting Tenants at Foreclosure Act (PTFA) as long as they haven't breached the lease.
- However – if the tenant has a bona fide lease with a fixed term (and does not breach the lease), then they get to stay in the house through the end of the lease term, unless the new owner is going to use the house as their primary \_\_\_\_\_.
- For more info on the PTFA, see Ch. 3 of the Evictions Deskbook.

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## How Much Notice?

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### CARES Act

- For a CARES Act covered dwelling in a nonpayment of rent eviction, the tenant gets 30 days' written notice.
- *Covered dwelling*: all housing programs such as public housing, project-based section 8, Housing Choice Vouchers, LIHTC, etc, as well as the rural voucher program and properties with federally-backed mortgages (HUD, Fannie Mae, Freddie Mac).

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## Calculation of Notice Period

- The day the notice is given is Day 0.
- *For cases filed on/after 1/1/26*, if the last day lands on any weekend or state or federal holiday, the period extends to the next day that isn't a weekend or holiday.

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## How Must the Notice Be Delivered?

- *For cases filed before 1/1/26:*
  - Mail; Delivery in person; or Posting on the outside of the door in certain situations with restrictions.
- *For cases filed on/after 1/1/26:*
  - Mail; Delivery to the inside of the premises in a conspicuous place; Hand delivery to any tenant at least 16 years of age; or Electronically if the parties have agreed in writing.
  - If shown that defendant received notice, delivery method doesn't matter and notice is valid.

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## Is a Squatter Entitled to Notice?

- A squatter gets a notice to vacate but it can be immediate and oral.
- For example:
  - “Git off my property right now!”

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**Poll #2:**

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

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

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## Filing an Eviction Suit

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

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

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### Where is the Petition Filed?

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

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- When the landlord files a petition, they must also pay filing and service fees or file a Statement of Inability to Afford Payment of Court Costs .
  - The filing fee in most counties is \$54.
  - A clerk must make the Statement of Inability form available for free to anyone without the person having to \_\_\_\_\_ the form.
  - A Statement of Inability can sometimes be contested – see Ch. 4, Section A of the Evictions Deskbook for more information on the procedures for this.

## Filing and Service Fees

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

## Service Fees

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## Petition Requirements

- A petition in an eviction case must be sworn.
  - This means the plaintiff signs it in front of a notary, the clerk, or the judge.
  - That person also signs the petition, not to say it is true, but to confirm that they saw the plaintiff sign it.
  - Could sign a declaration under “penalty of perjury” instead.
- The petition must contain the items listed in the previous version of Rule 510.3(a) *for cases filed before 1/1/26* and in current Rule 510.6(a) *for cases filed on/after 1/1/26*.

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## Sworn Motion for Summary Disposition

- In a case filed on/after 1/1/26 where the defendant is a squatter, the plaintiff may include a motion for summary disposition in or with the petition.
  - This motion claims that there are no disputed facts and requests that the judge enter a judgment in favor of the plaintiff without a trial (if the motion is not successfully disputed by the defendant).
  - If filed, the citation must include a warning to the defendant with specific information.
  - This is different from the summary disposition procedure available in other civil cases.
  - For more information about the requirements and procedures for these motions, see Chapter 4, Section (A)(3)(g) of the Evictions Deskbook.

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## Citation & Service

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## Issuance of Citation

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

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- An “\_\_\_\_\_” is someone who is living at the residence but who is not obligated under a lease with the landlord.
  - For example, a temporary guest of the tenant or the tenant’s minor children.
- Since “occupants” are not on the lease, the landlord may not know who they are and so he doesn’t have to name them.
  - He can evict the “occupants” of the tenant along with the tenant.
  - The occupants’ right to be there is based solely on the tenant’s right to be there.

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## “And All Occupants”

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- But what if one of the “occupants” is really a tenant who signed the lease?
  - For example, the wife is a tenant on the lease and the landlord just sues the husband “and all occupants.”
  - The landlord cannot evict the wife who is a tenant just by suing her husband and “all occupants.”
- A judgment or writ of possession may **not** be issued or executed against a tenant obligated under a lease who is not named in the petition and served with a citation.

## Occupants vs. Tenants

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**“Annotate” Tool Activity – Use the stamps to answer the question!**

Arrow rented a house from Amber for him and his 10-year-old daughter Heart. A year later, Star moved in with them and was added to the lease. Arrow has now also subleased the garage apartment to Checkmark. Who is a tenant of Amber and who is an occupant?

Tenant	Occupant

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**What Does  
the Citation  
Include?**

The citation must:

- Be signed by the clerk under seal of court or by the judge.
- Include all of the information in previous Rule 510.4(a) *for cases filed before 1/1/26* and all of the information in current Rule 510.8(b) *for cases filed on/after 1/1/26*.
- Have a copy of the petition and any other documents filed with the petition attached.
  - Including the Statement of Inability if applicable.

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## How Does the Tenant Get the Citation? (1 of 2)

- In an eviction case, generally only a \_\_\_\_\_ or sheriff may serve a citation.
- It is usually the constable so we will just refer to the constable in this presentation; but the sheriff also has authority to do this.

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## How Does the Tenant Get the Citation? (2 of 2)

- *For cases filed before 1/1/26*, the court may also authorize someone else in a written order (this is rare).
- *For cases filed on/after 1/1/26*, the court cannot authorize someone else anymore; but if citation is not served within 5 business days, the plaintiff may request issuance of a new citation to be served by any other law enforcement officer trained in civil process.
  - The plaintiff will not be entitled to a refund of any service fee and is responsible to the other law enforcement for any fee they charge.

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### Poll #3

When do you start counting the 5 business days for service from?

- A. From when the petition is filed.
- B. From when the citation is issued.
- C. From when the constable receives the citation.

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### Service of Citation

- The constable must follow certain rules for how the citation and petition may be delivered.
- If the constable is unable to successfully serve the defendant following these rules, they can request that the judge authorize “alternative service,” which will let them serve the defendant in another way.

For more info on the requirements for service and alternative service, see Ch. 4 of the Evictions Deskbook.

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## When Does the Tenant Have to be Served?

- *For cases filed before 1/1/26, the tenant has to be served at least 6 days before the day set for trial.*
- *For cases filed on/after 1/1/26, the tenant has to be served at least 4 days before trial.*
- The Return of Service has to be filed at least one day before the day set for trial.

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## How Do You Set an Eviction Case for Trial?

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- The trial date must be:
  - **No less** than 10 days after the date the petition was filed; and
  - **No more** than 21 days from the date the petition was filed.

## Setting the Trial Date

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

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

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1						
2	(Day 0) Case Filed	(Day 1) Independence Day Holiday	(Day 2)	(Day 3)	(Day 4)	(Day 5)
9	(Day 6)	(Day 7)	(Day 8)	(Day 9)	(Day 10) First day trial can be set	(Day 11)
16	(Day 13)	(Day 14)	(Day 15)	(Day 16)	(Day 17)	(Day 18)
23	(Day 20)	(Day 21) Last day to set trial	25	26	27	28
30	31					29

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Case Filed	3	4	5	6	7
8	9 Holiday	10	11	12	13	14
15	16	17	18	19	20	21
22	23 Holiday	24	25	26	27	28
29	30	31				

Use the calendar to calculate the trial date range:

The case was filed on the 2<sup>nd</sup>, and the 12<sup>th</sup> and 23<sup>rd</sup> are holidays.

When is the first day trial can be set?

When is the last day trial can be set?

Use the “Annotate” tool to answer! (Heart stamp for first day, star stamp for last day)

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## Notice of the Trial Date

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

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## Default Judgment

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## What is a Default Judgment?

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

Sometimes this is because they have moved out already.

If the defendant does not show and the landlord wants to continue with the case, the court should enter a default judgment (meaning landlord wins) after verifying some things.

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## Requirements for Granting Default Judgment When No Answer Has Been Filed

There is proof of proper service of the citation – Served in an allowed manner at least 6 days before (4 days *if filed on/after 1/1/26*) and return filed at least 1 day before.

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

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

Plaintiff has provided defendant's last known mailing address (and e-mail address *for cases filed on/after 1/1/26*) and has filed a Servicemembers Civil Relief Act (SCRA) affidavit – *more info on next slide*.

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## Servicemember's Civil Relief Act

### – If Defendant Is In Military or It Is Uncertain

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

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## Requirements for Granting Default Judgment When an Answer Has Been Filed

Service has to have been completed at least 6 days before (4 days *for cases filed on/after 1/1/26*) and the return filed at least 1 day before.

Plaintiff has provided defendant's last known mailing address (and e-mail address *for cases filed on/after 1/1/26*).

The plaintiff must put on testimony under oath and provide all necessary evidence to prove their case.

- Even if all the info is in the petition.
- (This is different from when no answer has been filed!)

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## Notice of Default Judgment

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

The clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises.

*If case filed on/after 1/1/26, the plaintiff must also serve the judgment on the defendant by email (if known), and otherwise by another method under Rule 510.5. The plaintiff must submit a certificate of service with the court.*

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### Poll #4

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

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

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## Trial

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### Proceeding with the Trial

- If both parties appear, the case proceeds to trial and the judge or jury hears evidence and makes a decision.
  - For more info on conducting the trial, see the Trial Notebook and Ch. 4 of the Evictions Deskbook
- If the landlord doesn't appear, the case can be \_\_\_\_\_ or re-set.
- The trial must be reset if it is less than 6 days after service of the citation on the tenant (4 days *if case filed on/after 1/1/26*) or less than 1 day after the return of service has been filed.
  - Unless both parties say they want to go ahead and proceed – and no one can be pressured to do so.

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## Jury Trial

- Any party can make a written request for a jury.
  - *For cases filed before 1/1/26*, must be at least 3 days before the trial date.
  - *For cases filed on/after 1/1/26*, must be at least 3 days before the trial date or 3 days after service of citation and the petition, whichever is later.
- They must pay a \$22 jury fee or file a Sworn Statement of Inability to Afford Payment of Court Costs.
- If no jury is demanded, the case will be heard by the judge.

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## Virtual Trials

*For cases filed on/after 1/1/26:*

- Courts may allow but cannot require parties to appear electronically in eviction cases unless the party agrees.
- Non-parties may be allowed or required by the court to appear electronically.

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## Postponement

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

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## No Motion for New Trial

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

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## Judgment

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- A judge must announce the judgment orally in court from the bench following a trial.
- The judgment must also then be put in writing and signed by the judge with the date of the judgment.
  - Refer to TJCTC's sample forms for suggested language!

## Written Judgment

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- Must Include:
  - Appeal Rights Notice
  - Appeal Bond Amount
    - *Only required for nonpayment cases if filed before 1/1/26*
    - The amount of the bond is set by the judge – more on appeal bonds coming up in the next section.
  - Protected Property Notice
    - If judgment awards monetary damages.
- See TJCTC's sample forms for specific language that is required.
- Plenary Power
  - *For cases filed on/after 1/1/26*, the court only has plenary power (the ability to modify or vacate the judgment) until an appeal is perfected or the day after the appeal is due.
  - *For cases filed before 1/1/26*, the law is silent on plenary power.

## All Judgments

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- If the landlord wins, the judge must enter a judgment for \_\_\_\_\_ of the property (*do not include move out date!*), and also award as part of that judgment:
  - court costs;
  - back rent (if any) as of the date of the judgment;
  - attorney's fees (if the landlord is entitled to recover them)
    - See Ch. 4 of the Evictions Deskbook for when this is allowed; and
    - post-judgment interest on any money that is awarded.
- Nothing else can be sought in an eviction case!

## Judgment for Landlord (1 of 2)

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- Judgment must also note the amount of rent to be paid by the tenant each rental pay period during the pendency of any appeal.
  - *Only required for nonpayment cases if filed before 1/1/26.*
- Amount is based on the rental agreement and any applicable laws.
- *If filed on/after 1/1/26 and no rental agreement, amount is the greater of \$250 or fair market value.*

## Judgment for Landlord (2 of 2)

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### Poll #5

So what happens if the landlord has other issues they want to address, like wanting to be compensated for damages to the premises?

- A. They would have to file a separate small claims case to address any other issues.
- B. They would have to file a case in a different court to address any other issues.
- C. There is no remedy available for this under the law.

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- If the tenant wins, the judge must enter a judgment for the tenant and award as part of that judgment:
  - court costs (for example, the \$22 jury fee if the tenant requested a jury);
  - attorney's fees (if the tenant is entitled to recover them)
    - See Ch. 4 of the Evictions Deskbook for when this is allowed; and
  - post-judgment interest on any money that is awarded.
- No counterclaims allowed in eviction cases – so nothing else a tenant could get without filing a separate case!

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## Judgment for Tenant

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## Appeal

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<h2>What Can the Losing Party Do?</h2>	<ul style="list-style-type: none"> <li>▪ Either party (usually the one that loses the case) in justice court may file an appeal.           <ul style="list-style-type: none"> <li>▪ They must swear a good faith belief in a meritorious defense and that it is not for purpose of delay (court does not determine if this is true or not).</li> </ul> </li> <li>▪ An appeal of an eviction case is heard by a county court (or in some counties by a district court).</li> <li>▪ Will be heard “de novo”           <ul style="list-style-type: none"> <li>▪ This means the county court hears the case all over again from scratch.</li> <li>▪ The county court does not review the justice court’s decision to see if it is right or wrong.</li> </ul> </li> </ul>
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<h2>How Does Someone Appeal?</h2>	<ul style="list-style-type: none"> <li>▪ A party may “perfect” an appeal within _____ after the judgment is signed by filing:           <ul style="list-style-type: none"> <li>▪ <b>An appeal bond;</b> <ul style="list-style-type: none"> <li>▪ This is a guarantee by the appealing party to pay what the appeal might cost the opposing party if the appealing party doesn’t pursue the appeal, and to pay any judgment and costs awarded against the appealing party if they also lose on appeal.</li> </ul> </li> <li>▪ <b>A cash deposit;</b> or</li> <li>▪ <b>A statement of inability to afford payment of court costs.</b></li> <li>▪ <b>Note:</b> <i>Unless a Statement of Inability is filed, another filing fee is required at this time as well.</i></li> </ul> </li> </ul>
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<h2>Contest of Appeal Bond or Statement of Inability</h2>	<ul style="list-style-type: none"><li>▪ An appeal bond or a Statement of Inability can both sometimes be contested.</li><li>▪ See Ch. 4, Section F of the Evictions Deskbook for more information on the procedures and timeframes for these contests and what happens if they are sustained.</li></ul>
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<h2>How Do You Count the Time to Appeal?</h2>	<ul style="list-style-type: none"><li>▪ The rules for counting days for an appeal are exactly the same as we discussed before with one important exception:<ul style="list-style-type: none"><li>▪ 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.</li></ul></li><li>▪ Examples are on the next two slides.</li></ul>
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## Example 1

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 (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	11 (Day 6) Defendant must file appeal if court does not close before 5:00 p.m.	12 (Day 7) First day of writ of possession may issue	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

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## Example 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 (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	11 (Day 6) Court closes before 5:00 p.m.; therefore, defendant has until the next day to file appeal	12 (Day 7) Defendant must file appeal	13 (Day 8) First day a writ of possession may issue	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

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**Poll #6**

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

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## 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 \_\_\_\_\_ 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 any rent that is required to be paid into the registry.

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<h2>Payment of Rent During Appeal</h2>	<ul style="list-style-type: none"> <li>▪ Depending on when the case was filed, the defendant may be required to pay rent into the registry within 5 days of filing their appeal if they want to remain in the premises while the appeal is pending. When this is required, the court must provide a written notice (details on next slide).</li> <li>▪ <i>For cases filed before 1/1/26:</i> <ul style="list-style-type: none"> <li>▪ Required if a tenant appeals an eviction suit for <b>nonpayment of rent</b> by filing a <b>Statement of Inability to Afford Payment of Court Costs</b> or by filing an <b>appeal bond</b>.</li> </ul> </li> <li>▪ <i>For cases filed on/after 1/1/26:</i> <ul style="list-style-type: none"> <li>▪ Required if a tenant appeals any eviction suit by any method.</li> <li>▪ Deadline to pay extends to the next day if final day is a holiday (even if court is open) or if court closes for all or part of the day.</li> </ul> </li> </ul>
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<h2>Payment of Rent During Appeal – Contents of Written Notice</h2>	<ul style="list-style-type: none"> <li>▪ The amount of rent that must be paid into the justice court registry and how it must be paid (cash, cashier's check or money order);</li> <li>▪ the date it has to be paid;</li> <li>▪ For a court that closes before 5:00 p.m. on the specified date, the time the court closes; and</li> <li>▪ that if they fail to pay as required, the court may issue a writ of possession without a hearing.</li> <li>▪ <i>For cases filed on/after 1/1/26</i>, must also include the dates that payments must be paid into the justice or county court as applicable during the pendency of the appeal and the times those courts close on those days if before 5:00 p.m.</li> </ul>
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<h2>Notice to Other Parties</h2>	<ul style="list-style-type: none"> <li>▪ If a party files a Statement of Inability to Afford Payment of Court Costs, the court must also send a notice to all the other parties no later than the next business day telling them that a Statement was filed.</li> <li>▪ This form is available at <a href="http://tjctc.org">tjctc.org</a>.</li> </ul>
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<h2>If Tenant Fails To Pay Into Registry</h2>	<ul style="list-style-type: none"> <li>▪ If the tenant was given the notice but fails to pay the rent into the justice court registry by the date given in the notice, the landlord is entitled (upon request and payment of the applicable fee) <b>to a writ of possession, which the justice court must issue immediately and without a _____.</b></li> <li>▪ But this <b><i>does not stop the appeal!</i></b> This just means that the tenant will not get to remain in the premises while their appeal is pending.</li> <li>▪ <b>Note:</b> If the case has already been sent up to county court before they request the writ, then they must go to the county court to request it.</li> </ul>
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<p><b>Transmission of Case to County Court for Cases filed before 1/1/26</b></p>	<ul style="list-style-type: none"> <li>▪ Once the appeal is perfected, the justice court must transmit all of the papers in the case to the clerk of the county court immediately.</li> <li>▪ <b>Exception:</b> If a nonpayment of rent case is appealed with a Statement of Inability, the court may not send the case up before 6th day after the Statement was filed unless the rent has been paid into the registry. <ul style="list-style-type: none"> <li>▪ If the tenant doesn't pay the rent into the registry, TJCTC recommends waiting 1-2 business days after the 6-day period has expired so the landlord can request a writ of possession if they want to.</li> </ul> </li> </ul>
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<p><b>Transmission of Case to County Court for Cases filed on/after 1/1/26</b></p>	<ul style="list-style-type: none"> <li>▪ Once the appeal is perfected, the justice court must transmit all of the papers in the case and any money in the court registry to the clerk of the county court no earlier than 4 p.m. on the sixth day and no later than 4 p.m. on the 10<sup>th</sup> day after the date the tenant files the appeal.</li> <li>▪ <b>Exception:</b> The court may immediately forward the case once the initial rent payment into the justice court registry has been confirmed.</li> </ul>
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<h2>What Happens to the Justice Court Judgment?</h2>	<ul style="list-style-type: none"> <li>▪ Once an appeal is perfected, the justice court judgment is <b>null and void and cannot be enforced.</b> <ul style="list-style-type: none"> <li>▪ Except the landlord can get a writ of possession while the appeal is pending if the tenant did not pay rent into the registry as required and the case has not yet been sent to the county court.</li> <li>▪ <i>Note:</i> If a party fails to pay the filing fees in county court as required (or submit a Statement of Inability), the appeal is not perfected and should be dismissed, which would send the case back to the justice court for enforcement of its judgment.</li> </ul> </li> </ul>
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<h2>Want More Information?</h2>	<p>See Ch. 4 of the Evictions Deskbook and the “Eviction Appeals” self-paced module for more details about appeal procedures.</p>
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## Writ of Possession

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### 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 \_\_\_\_\_ force to do this.
- As with citations, if the writ is not served within five days of issuance, the plaintiff may have the writ served by any other law enforcement officer who has been trained on service of civil process, execution of writs, and eviction law.

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## 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 after waiting the required amount of time (see next slide);
  - the tenant has not appealed (or has appealed, but hasn't paid rent into the registry as required and the case has not yet been sent up to the county court); and
  - The landlord pays the writ fee and the fee for having the constable serve the writ of possession on the tenant (or has filed a Statement of Inability).

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## How Long Does the Landlord Have to Wait Before They Can Request a Writ of Possession?

- The court may not issue a writ of possession until 6 days after the judgment for possession was signed or the day after the appeal deadline, whichever is later.
- An exception to this is when an immediate possession bond has been issued (see next slides).

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## Immediate Possession Bonds – for Cases filed before 1/1/26

- A writ of possession must issue immediately upon demand and payment of any fees if:
  - An immediate possession bond was filed, approved, and a notice was served on the defendant;
  - The defendant did not file an answer or appear for trial; and
  - A default judgment was rendered against the defendant.
- But the writ may not be executed until at least the 7<sup>th</sup> day after the defendant was served with notice of the immediate possession bond.

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## Immediate Possession Bonds – for Cases filed on/after 1/1/26

- The writ of possession may be issued immediately if judgment for possession is granted and an immediate possession bond has been approved.
- The writ of possession may not be executed, however, until:
  - At least the 7th day after the defendant was served with notice of the possession bond and;
  - If the judgment was a default judgment, until the plaintiff shows they have served notice of the default judgment on the defendant as required.
- A writ of possession may not be issued if the defendant perfects an appeal and pays rent into the registry as required.
- See Ch. 4, Section B of the Evictions Deskbook for more information.

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**Poll #7**

What is the exact page number of the Evictions Deskbook where the section on immediate possession bonds starts?

- A. Page 10
- B. Page 40
- C. Page 51
- D. Page 87

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What is the  
Last Day That  
a Court May  
Issue a Writ of  
Possession?

- The court may not normally issue a writ of possession more than \_\_\_\_\_ after the judgment for possession was signed.
- But the judge may extend this deadline up to 90 days if the court finds there is good cause for extending the time.

100

## How Long is the Writ of Possession Good For?

- A writ of possession cannot be *executed* (this is when the constable uses the writ that the court issued to remove the tenant from the property) more than 90 days after the date the judgment for possession was signed.

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## Questions?

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