

Evictions – Legislative Update

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Resources

- SB 38, www.capitol.Texas.gov
- TJCTC Eviction Resources
 - Evictions Deskbook – updated!
 - Eviction Forms – updated!
 - Eviction Modules – updates coming soon!
 - SRL Packets – updated
- Property Code Ch. 24
- Texas Rules of Civil Procedure
 - Updated and effective January 1!

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Agenda

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

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Application of Rules

- Rule 510.1 now states that courts cannot apply other rules of procedure or evidence and cannot overrule Rule 510.

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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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Notice to Vacate (NTV)

- 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, registered, or 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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Computation of Time

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

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Computation of Time – Court

- Additionally, for any time period for filing an item with the court or paying rent into the registry, the time period extends to the next business day if the court is closed for all or part of the day. – Rule 510.4.
 - ***What does “part of the day” mean?***
 - ***Does it matter if the court is closed for calculating notice to vacate periods?***

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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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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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Amber gives Rebecca a 3-day notice to vacate on Tuesday, July 1. What is the first day that Amber can file an eviction suit if Rebecca does not vacate the premises?

What if Amber gives Rebecca the notice on Thursday, July 3?

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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? What if he filed the suit on January 5?

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Thea places a notice to vacate under Jessica's windshield wiper on December 15th. She files suit on January 5th and it comes to trial January 22nd. Jessica appears and testifies she received the NTV. 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?

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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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Petition – Rule 510.6

- 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.
- Petitions must include what type of pre-suit notice was given, and whether the defendant had previously been delinquent in rent.
- Additionally, the petition must state if they are including a motion for summary disposition for a forcible entry & detainer

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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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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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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 citation must include a required notice (language on next slide).

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Summary Disposition – Notice in the Citation

- 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 – Trial 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 510.8(b)(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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Summary Disposition – Notice to the Defendant

- Notice of a summary disposition should be sent to the defendant immediately by first class mail to the defendant at the address provided by the plaintiff and the address of the premises, if different.

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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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Trial Deadlines and Timeframes

- Now, trials may not be set before the **4th** day after service (used to be 6th day). – Rule 510.15(b)
- Jury requests must be made no later than the 3rd day before trial or the 3rd day after service of the citation, whichever is later. – Rule 510.15(c)
- Same timeframe as jury requests for requests for a different judge because a fair trial cannot be obtained (old Fair Trial Venue Change rule). – Rule 510.13(a)
- The court may vacate or modify the judgment until an appeal is perfected or the appeal window closes – Rule 510.24(a)

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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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Default Judgment

- Default judgments must now also be emailed to the defendant, if an email address is known, in addition to mail to the defendant at all addresses.
 - Rule 510.16(c)
- Also, the plaintiff must serve the default judgment on the defendant by email, if address known, and otherwise by any method authorized by Rule 510.5.
 - Rule 510.16(b)

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Immediate Possession Bond

- The plaintiff may file an immediate possession bond, and the citation or a subsequent notice must alert the defendant that a bond is filed and that the consequences. – Rule 510.9(a),(b)
- If a bond is filed and approved, the plaintiff can get a writ of possession immediately after judgment, and it may be executed if the notice was served at least 7 days prior, and if the judgment was by default, the plaintiff has completed service of the default judgment. – Rule 510.9(c)
- A writ may not be issued if the defendant has perfected an appeal and paid rent into the registry. – Rule 510.9(d)

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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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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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Notice Regarding Rent on Appeal – Rule 510.19(b)

- If a tenant appeals, the court must give a notice for the initial and subsequent rent deposits 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 or county clerk’s office, as applicable, 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.

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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 - 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.

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SB 1333 – “Squatter Bill”

Penal Code § 28.03(b), 32.56, 32.57

- New Criminal Offenses (not in JP jurisdiction)
 - Criminal Mischief (while trespassing)
 - False, Fraudulent, or Fictitious Document Conveying Real Property Interest
 - Fraudulent Sale, Rental, or Lease of Residential Real Property

Property Code Ch. 24B

- Immediate Removal & Action for Wrongful Removal

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Immediate Removal of Unauthorized Occupants *Not filed in Justice Court*****

- Property owners (or their agents) can request immediate removal by sheriff/constable of a person unlawfully occupying a dwelling, if:
 - The property was not open to the public when entered,
 - The property is not the subject of pending litigation between the parties,
 - The owner/agent has directed the person to leave, and they have not done so, and
 - The occupant is not a current/former tenant (under written or oral lease), immediate family, owner, or co-owner.

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Immediate Removal - Procedure

- The owner/agent must file a complaint with the sheriff or constable in the county where the property is located.
- Complaint must be sworn (or have an unsworn declaration) and include everything listed in the statute.
- Valid ID must be attached to the complaint (and if they are an agent, they must also provide documentation of authority to act on owner's behalf).
- Law enforcement must verify ownership and entitlement of the complainant, and then without delay, serve notice to immediately vacate (by hand delivery or affixing the notice to the front door or entrance of the dwelling) and restore possession to the owner.

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Immediate Removal – Verifying Ownership & Identifying Occupants

- Complainant must be:
 - the record owner of the property that is the subject of the complaint or the owner's agent; and
 - otherwise entitled to the relief sought in the complaint.
- Occupants
 - The serving officer must attempt to verify the identity of each person occupying the dwelling and note each identity on the return of service.

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Immediate Removal – Keeping the Peace

- The property owner or owner's agent may request that the sheriff or constable remain on the property to keep the peace while the owner or owner's agent:
 - changes any locks; and
 - removes any personal property of an occupant from the dwelling and places the personal property at or near the property line of the owner's property.

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Immediate Removal – Arrest

Law enforcement may arrest unauthorized occupants for trespass, outstanding warrants, or other offenses for which there is PC.

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Immediate Removal – Return of Service

- The statute doesn't say what should happen with the return of service.
- TJCTC's advice is to provide it to the person that filed the complaint and also keep a copy in the file at the constable/sheriff's office.

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Immediate Removal – Fees and Liability

- Sheriffs/constables may charge a fee equivalent to executing a writ of possession, plus an hourly rate if asked to remain on-site during removal.
- Law enforcement is shielded from liability for loss/damage during removal.
- Owners/agents are generally not liable for property loss/damage from removal but may be sued for wrongful removal and a judgment could be entered for damages, court costs, and attorney's fees.

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If an owner does the immediate removal procedure, could law enforcement also pursue criminal trespass charges?

- Yes. This new removal process does not limit owners' other legal rights or law enforcement's authority to arrest for other crimes (criminal trespass, eviction, etc.).

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Action for Wrongful Removal

- A person wrongfully removed or whose personal prop is wrongfully removed can bring a civil suit to:
 - Recover possession of the real property, and
 - Recover damages from the person who requested the removal.
- Court must set the case at the earliest practicable date to expedite the action.
- *Note:* No reason they couldn't also still ask for a Writ of Re-entry (as long as all requirements for that are met).

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Action for Wrongful Removal - Damages

- Damages available:
 - Actual damages,
 - Exemplary/punitive up to 3x the fair market rent,
 - Court costs, and
 - Reasonable Attorney's fees

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Issues Not Addressed in the Bill

- Where can the action be filed?
- What period of time of fair market rent is used to calculate exemplary damages?
- How is a judgment for possession enforced?