FILING AN EVICTION LAWSUIT

VENUE:

Suit for possession of property, precinct in which all or part of the property is located. Suit for rent in which all or part of the property is located.

REQUISITES:

If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least **THREE DAYS WRITTEN NOTICE TO VACATE THE PREMISES** before the landlord files a Forcible Detained Suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If you have a written lease see attached statute 24.006.

To recover attorney's fees in a Forcible Entry and Detainer Suit, the written demand to vacate the premises must state that if the tenant does not vacate before the **11th DAY** after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. This notice must be sent certified mail, return receipt requested.

Notice to vacate may be by personal delivery to the tenant or any person residing at the premises who is sixteen (16) years of age or older or personal delivery to the premises by affixing the notice to the inside of the main entry door. Notice by mail may be registered or certified mail, return receipt requested, to the premises in question.

JURISDICTION:

In a forcible entry and detainer suit, the Court may render judgment for possession of the property in question. The landlord may receive judgment for back rent if the amount in controversy is not more than $10,000.00.

FILING SUIT:

The responsibility for filling out your petition rests with you, the Plaintiff. Court Clerks will assist you if you have procedural questions. List each adult tenant on the Lease or in a verbal agreement. State tenant's full address including apartment number. List any known work address or other address where tenant may be located for service.

Paragraph #3 of the attached petition describes three separate causes of action. The first blank under paragraph #3 being for **NON-PAYMENT of RENT**. The second blank being for **BREACH OF LEASE** by the tenant.

WHEN FILING, THE LANDLORD SHOULD BRING THE FOLLOWING:

A. A copy of the lease (if you have one);

B. A copy of the notice to vacate;

C. One-hundred and sixteen ($116.00) dollars for filing and service on one person (additional service is $85.00 per person).

Generally, all parties named in the lease should be sued and served with citation in the eviction proceeding. Any judgment granted will run only against those who are specifically named and served.

CITATION:

The Constable will serve each tenant with a citation based on the information you give to the Court. The tenant will be informed in the citation the **DATE** and **TIME** of the hearing and a **DEFAULT JUDGMENT** may be rendered against him/her if he/she does not appear at the time designated.

REPRESENTATION:

The owner's agent may file any type of eviction suit and may represent the owner at any default judgment hearing. If the case is contested, an agent may represent either party if the case involves non-payment of rent or holding over.

HEARING:

Always arrive at least ten (10) minutes prior to trial and check in with the clerk and identify yourself by name along with the names of any witnesses that you want sworn to give testimony. **BE SURE TO HAVE a COPY OF YOUR LEASE, NOTICE TO VACATE, AND PAYMENT RECORDS** or any records pertaining to the case.

IF THE DEFENDANT DOES NOT APPEAR AT THE HEARING:

A. The plaintiff will present their case to the Judge;

B. If Judge rules in plaintiff's favor, a **DEFAULT** judgment will be granted.

IF THE DEFENDANT APPEARS AT THE HEARING:

A. Judge will hear both sides;

B. Judge will render a decision;

C. If Judge rules in Plaintiff's favor, defendant will have five (5) days to appeal judgment to County Court or vacate property.

AFTER YOU ARE SWORN, PRESENT YOUR EVIDENCE IN SEQUENCE FROM BEGINNING TO END;

A. Date lease or rental agreement began and if agreement is still valid on a month to month basis.

B. Terms of lease including rent per month and date rent is due.

C. Amount of unpaid back rent owed up to the Court date and how it was computed. Late charges, penalties, etc. cannot be pleaded for in an eviction suit.

D. Prove that the tenant is in violation of lease and why he is in violation.

E. Date that proper written notice to vacate was given to the tenant.

F. In summary, state specifically what you are pleading for:

Example: I am pleading for possession of property and back rent in the amount of $_____, plus court costs.

NOTE: NEVER ACCEPT FUTURE RENT AFTER THE SUIT IS FILED. IF YOU ACCEPT BACK RENT AFTER THE SUIT IS FILED, BE SURE TENANT IS TOLD THAT YOU ARE PROCEEDING WITH THE EVICTION SUIT.

IF THE DEFENDANT DOSE NOT MOVE WITHIN FIVE (5) DAYS AFTER JUDGMENT OR DOES NOT APPEAL TO COUNTY COURT:

A. A Writ of possession and Restitution may be filed.
B. Cost of Writ is two hundred ($200.00) dollars.
C. Writ of Possession shall order the officer executing the writ to instruct the tenant to remove or allow the landlord, the landlord's agent, or persons acting under the officer's supervision to remove all personal property claimed to be owned by the landlord and place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, or street and **NOT** while it is raining, sleeting, or snowing.

Forcibles may be dismissed ONLY in open court or by written request.

If you have additional PROCEDURAL questions, please contact this office at (830) 792-2233.

NO LEGAL QUESTIONS WILL BE ANSWERED BY THIS OFFICE.

COURT COORDINATOR-MISTY SMITH

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO:

JUSTICE KATHY K. MITCHELL, PCT THREE
700 MAIN STREET, BA101
KERRVILLE, TEXAS, 78028

KATHY MITCHELL
JUSTICE OF THE PEACE
PRECINCT THREE
KERR COUNTY, TEXAS 78028

Courtroom Attire:

All PERSONS present in the Courtroom shall be dressed in a manner that shows dignity and respect for the Court.

Unacceptable attire includes:

1. Shorts, cut-offs, baggy pants, flip-flop style shoes, or hats.
2. Muscle shirts, T-shirts, clothing indicating gang affiliation or other clothing with offensive, vulgar, racist, sexist, obscene, suggestive words, slogans, depictions, or pictures, including grotesque creatures. Clothing should be neat and clean if at all possible. ***ALL SHIRTS MUST BE TUCKED INSIDE PANTS!***
3. Provocative clothing designed or styled, or worn to provoke emotion or disrupt or distract.

Courtroom Conduct:

Conduct in the "Courtroom" also includes the reception/foyer area, jury room, and/or any office space assigned to the Justice Court.

PRO SE parties (non-attorneys representing themselves) should be prepared to present their cases in proper manner. It is <u>not the court's duty</u> to represent you nor instruct you on evidence, rules, or how to present and prove your case. If you are unprepared, unaware and not knowledgeable as to presenting your case, you may lose your case.

1. Weapons are prohibited in the courtroom and this building except for law enforcement personnel. ***YOU ARE SUBJECT TO SEARCH!***
2. **Be on time.**
3. Rise when the Judge enters and remain standing until the Judge or bailiff announces "Be seated", or until the Judge is seated. Rise when the Judge exits the courtroom.
4. Do not approach the Judge's bench without permission.
5. Do not bring drink or food items into the Courtroom.
6. Do not talk at the same time as the court, opposing counsel, or witnesses. Courtroom visitors should not engage in excessive, loud talk or conversation.
7. Racist, sexist, obscene, or profane language is prohibited unless it is pertinent to a case, and is elicited and quoting from facts in the case.
8. Do nothing to disturb or distract the court, counsels, witnesses, or other court personnel.
9. It is normally inappropriate to bring small infants or young children into a court proceeding. Please refrain from doing so unless the presence of the child is necessary for the proceeding.
10. Cellular phones are inappropriate in the Courtroom. Please turn them off before entering the Courtroom.
11. All property in the Courtroom and reception areas must be treated with respect.
12. **No recording devices are allowed without judicial approval.**

Failure to comply with these rules may result in sanctions imposed by the Court.