

# EVICTION

**MAPPING THE PATH TO POSSESSION**



## ABOUT US

- Graduated from Texas Tech School of Law and were licensed in 2012.
- Founded a general practice civil litigation firm in The Woodlands in early 2014.
- Soon after its founding, our practice developed a focus on landlord/tenant and real estate law.
- We've practiced primarily "property law" ever since and currently represent commercial and residential tenants, property managers, and landlords in cases relating to security deposit disputes, evictions, breach of contract, and more.

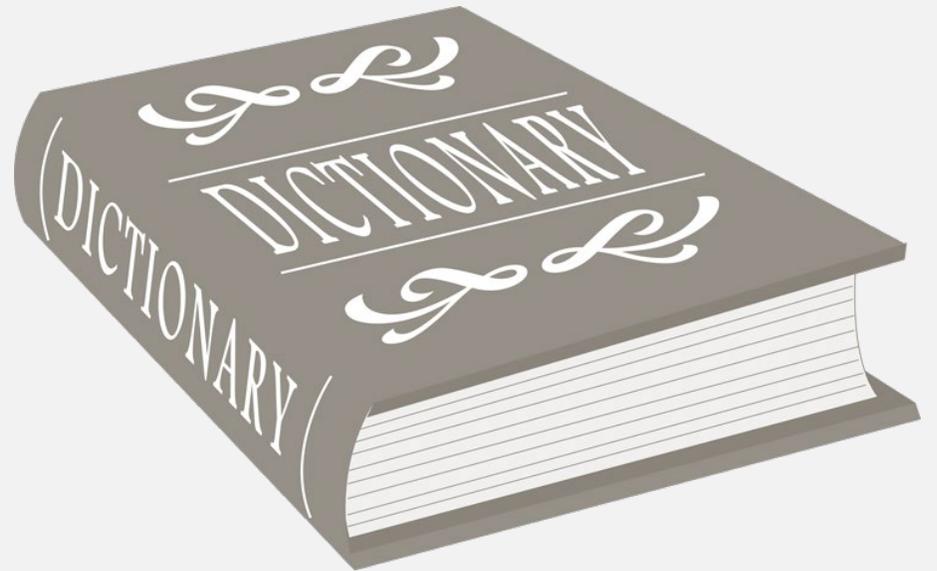


# RESIDENTIAL EVICTIONS



# INTRODUCTIONS

- “An eviction case is a lawsuit brought to recover possession of real property under Chapter 24 of the Texas Property Code, often by a landlord against a tenant.” Tex. R. Civ. P. 500.3(d)
- Why “often”? Other potential parties include anybody with a *superior right to possession* (e.g. party under a sublease or a foreclosing bank).



# PARTIES

- Landlord or Authorized Agent of Landlord (See Tex. R. Civ. P. 500.4) – “Owner”
- Tenant(s) – “Possessor”
- Occupant(s) – An resident of the property that is not named as a tenant in the lease.
  - “All Other Occupants” on the petition.



# PARTIES

- Representation by agents.
  - This is not only possible, but is very likely and permitted under the rules.



# IMPACT AND RISK

- An eviction can haunt a tenant well after the current lease is terminated. Most leasing applications ask if you have ever been evicted.
- An eviction can also result in greater property damage.
  - E.g., damage caused by leaving in a rush, hurt feelings resulting in less concern for the condition of the property, or even intentional damages.



# ALTERNATIVES TO EVICTION

- Even though evictions are typically very fast, it is better to seek an alternative solution before filing.
  - An exception to this being if someone at the property is endangered. There are special provisions relating to this and it isn't something an attorney should take-on without guidance or experience.
- The concept of “cash for keys”.
  - Would it be faster, easier, cheaper, less likely to result in damages, etc., to pay tenant enough to move?
  - This approach allows the tenant to have a stake in the negotiation process.
  - This allows a landlord to avoid the costs and stress of the eviction process.
- Agreement to vacate on/by a date certain.



# LEASING PRECAUTIONS

- Take precautions like the following:
  - encourage open communication between landlord or property management company and tenant (written communication is always preferable);
  - adhere to the lease terms from the beginning of the lease (if a landlord must ask a tenant to vacate, it is better to do so before a pattern has formed); and
  - preform adequate finance screening before entering into a lease.
    - I.e., verify income where possible. Sometimes this means reviewing financial documents, sometimes this means following up with an employer listed on a leasing application. This is not foolproof, but is helpful.



# INITIAL EVALUATION OF CASE

- What is the basis for the eviction?
  - Examples:
    - non-payment of rent;
    - holdover from lease; or
    - lease violation.



# INITIAL EVALUATION OF CASE

- Which Court has Jurisdiction?
  - All cases relating to possession *must* be filed in a Texas Justice Court.
  - If the amount of past due rent exceeds the jurisdictional limit of the court, a separate lawsuit may be filed for that dispute.



# INITIAL EVALUATION OF CASE

- Check for local forms, rules, and requirements
  - The justice courts prefer, and sometimes demand, their own forms.
  - We will touch on this more later.



# NOTICE TO VACATE

- Substance
  - An unconditional demand to vacate within a stated period of time.
    - At least 1-day (if permitted in the lease), but judges prefer and sometimes require a 3-day notice to vacate no matter what the lease says.
    - A 10-day notice is required if you are asking for attorney fees and there is not a provision for attorney fees in the lease.



# NOTICE TO VACATE

- Sec. 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT.
  - (a) 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 detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.
  - (b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If a building is purchased at a tax foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.
  - (c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days' written notice to vacate before the landlord files a forcible detainer suit.
  - (d) In all situations in which the entry by the occupant was a forcible entry under Section 24.001, the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files a forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline.
  - (e) If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.



# NOTICE TO VACATE

- Delivery can take place
  - by hand;
  - by mail, either
    - certified mail \*recommended\* or
    - regular mail; or
  - posted inside the door.
  - If there is *no mailbox* and *a deadbolt* or if the landlord believes they will be harmed if they attempt personally serve the notice or affix it to the inside of the door, then you can firmly affix it to the exterior of the door. This is an extremely rare situation. We never recommend this.



# NOTICE TO VACATE

- Sec. 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT. (CONTINUED)
- (f) Except as provided by Subsection (f-1), the notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question.
- (f-1) As an alternative to the procedures of Subsection (f), a landlord may deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the notice to the tenant if:
  - (1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the notice to vacate to the inside of the main entry door; or
  - (2) the landlord reasonably believes that harm to any person would result from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises by affixing the notice to the inside of the main entry door.



# NOTICE TO VACATE

- Sec. 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT. (CONTINUED)
- (g) The notice period is calculated from the day on which the notice is delivered.



# AT WILL OR MONTH-TO-MONTH

- Typically, if a landlord is leasing “at will” or month-to-month the landlord must send a 30-day notice of lease termination before the separate 3-day notice to vacate.
- Most importantly... *read the lease.*



# CLAIM

- The focus will be on (1) possession and (2) past-due rent
  - Landlord clients will often ask about late fees and damages. While recovery for these sums is “possible”, it is very unlikely that (A) they will be rewarded and (B) they will be collectable.
  - We find that it is better to regularly remind landlord clients that we want to focus on possession and that the award and recovery of anything more than possession is a bonus.
- Housing covered under government programs and tenants with government assistance have extra requirements.

# PETITION

- A petition in an eviction case must be *sworn to by the plaintiff*, and must contain:
  - (a) A description of the premises that the plaintiff seeks possession of,
  - (b) A description of the facts and the grounds for eviction;
  - (c) A description of when and how notice to vacate was delivered;
  - (d) The total amount of rent sought by the plaintiff, if any;
  - (e) Attorneys fees, if applicable, if any.
- The petition must be filed in the precinct where the property is located. If it is filed in a precinct other than the precinct where all or part of the property is located, the judge shall dismiss the case. The plaintiff will not be entitled to a refund of the filing fee, but will be refunded any service fees paid if the case is dismissed before service is attempted.

# ATTORNEY FEES

- May not be collectable, even if awarded (*always* prepare a landlord client for this).
- Look to the lease first. Standard leases have a section that addresses attorney fees for the winning party.
- If you don't have a section in the lease, remember you will need a 10-day notice to vacate.
- If you are representing a landlord and they have already filed without asking for attorney fees, but wish to seek attorney fees, you will likely need to (1) amend your petition and (2) reserve your amended petition.

# ATTORNEY FEES

- Sec. 24.006. ATTORNEY'S FEES AND COSTS OF SUIT.
  - (a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises 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. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.
  - (b) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.
  - (c) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.
  - (d) The prevailing party is entitled to recover all costs of court.

# **SERVICEMEMBER'S CIVIL RELIEF ACT AFFIDAVIT AND CERTIFICATE**

- “SCRA” Affidavit.
- Some courts require this with the initial filing, some require it only in the event of a default.
- For this reason, and others, it is always a good idea to get a copy of any tenant’s driver’s license or photo ID for your records so that you have their full name and birthdate.



## **CERTIFICATE OF LAST KNOWN ADDRESS**

- Much like with the SCRA affidavit, many courts will require this document with your initial filing.



# CARES ACT AFFIDAVIT

## \*NEW\*

- The idea behind this is that you need to have someone swear that they are not a covered entity.
  - This information is not necessarily easy to determine.
  - At this time, because there is no database, we are having landlord's contact their loan/mortgage servicers to collect the necessary information.
- Harris County
  - Checklist
  - Documents must be e-filed (cannot pass things to the bench)

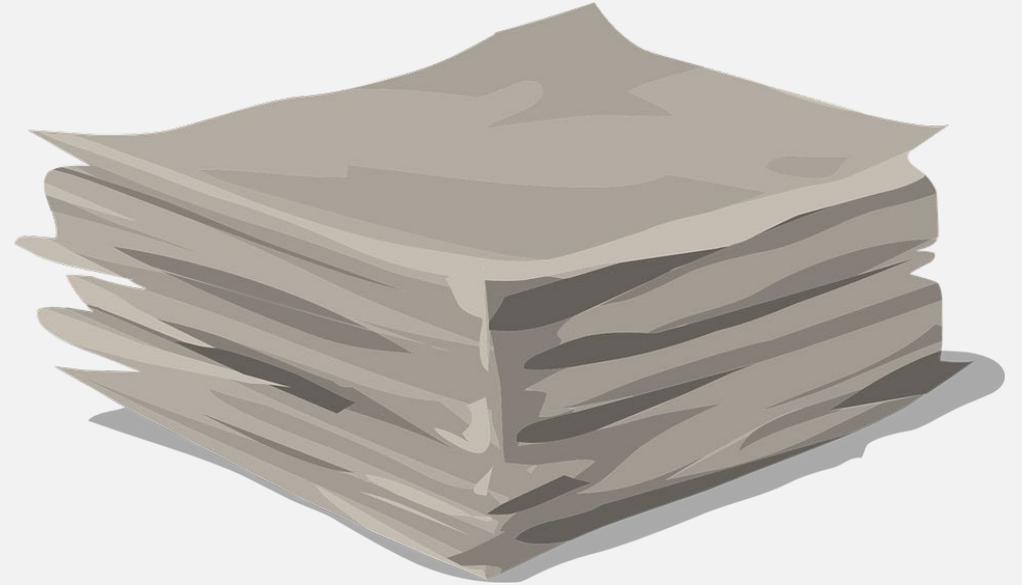


# SERVICE

- Unlike with most cases, service is court-directed.
  - This includes substitute service, if needed.
- And, the timeline is very short.
  - The citation must “state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed...” TEX. R. CIV. P. RULE 510.4

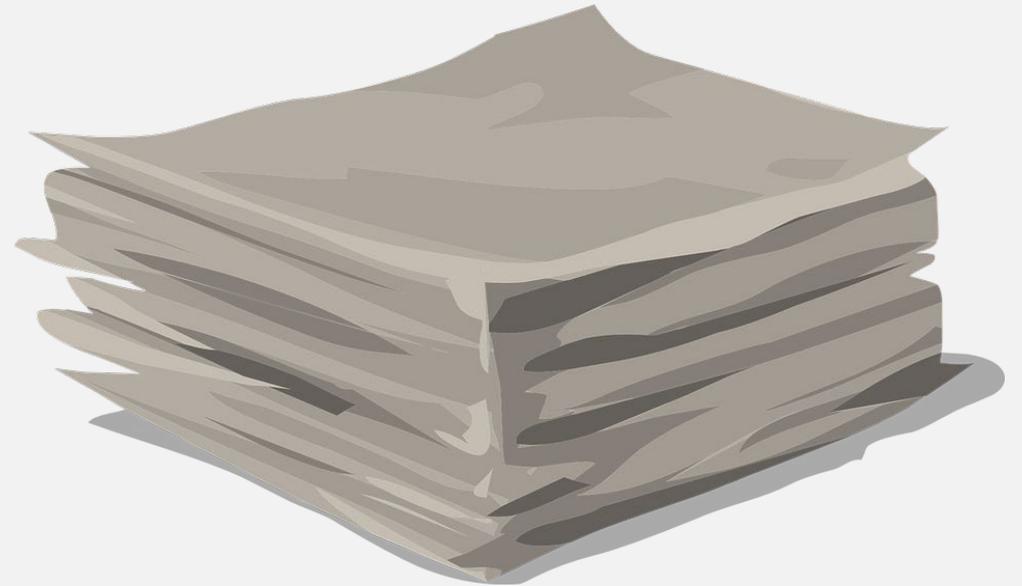
# PRE-TRIAL EVIDENCE GATHERING

- Lease
- Notice to Vacate
- Payment Ledgers/Receipts
- Police Reports
- Maintenance logs
- Text messages
- Emails
- Letters
- Notices
- Photographs



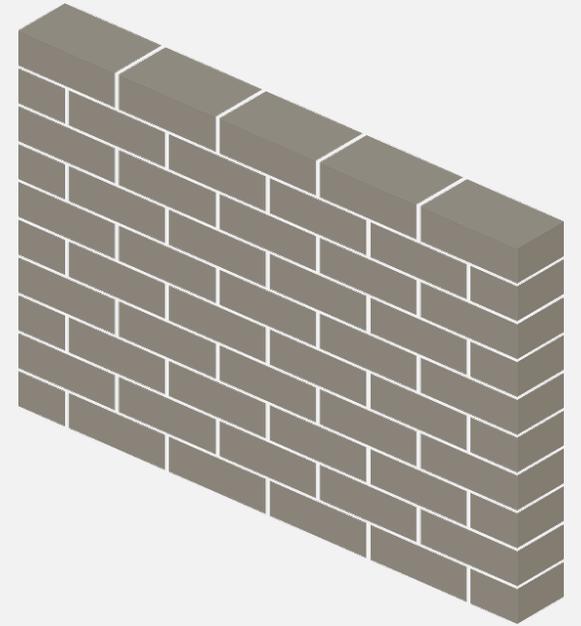
## PRE-TRIAL EVIDENCE GATHERING

- Any discovery you wish to send must be requested by motion and granted by the court. Tex. R. Civ. P. 500.9(a).
  - Often, evictions work too quickly for traditional discovery to be effective.
  - If you do need to conduct discovery, file your desired discovery with your motion requesting permission to conduct discovery.



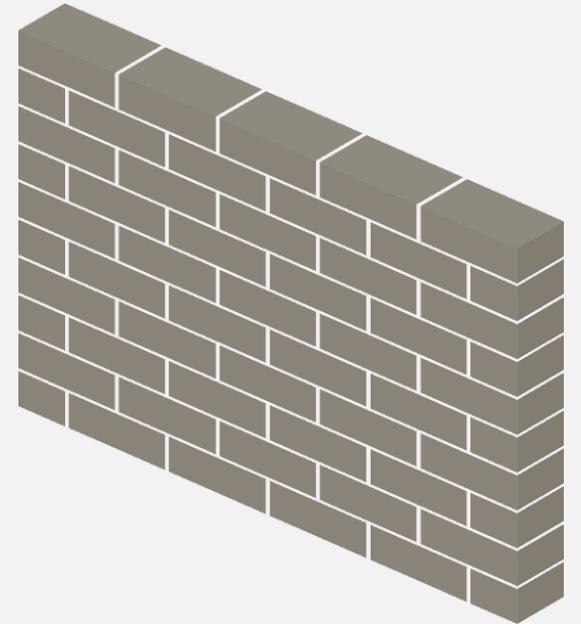
# DEFENSES

- Remember there are *no counterclaims*.
- Repair and remedy can be a defense, but is rarely executed properly.
- Retaliation is a defense, but does not work if rent is owed.
- Payment accepted after notice to vacate was issued.
- Questions of title.
  - This puts a freeze on an eviction as a suit for title cannot take place at the JP level. Worried? Bring a deed.



# ANSWER NOT REQUIRED

- RULE 510.6. TRIAL DATE; ANSWER; DEFAULT JUDGMENT
  - (a) Trial Date and Answer. The defendant must appear for trial on the day set for trial in the citation. The defendant may, but is not required to, file a written answer with the court on or before the day set for trial in the citation.



# TRIAL

- Evidence
  - lease;
  - ledgers and/or receipts; and
  - proof of notice to vacate. (we like having a postal white card)
- Trial Structure will depend on the court.
  - Some will hold full trials with formal rules, others will not.
- Jury Trial
  - Be prepared for a delay with a jury request. Even pre-COVID-19, many JP courts were not prepared for holding jury trials. It will be interesting to see what happens with JP level jury trials now.



# TRIAL TIMELINE

- **RULE 510.7.TRIAL**

- (a) Trial. An eviction case will be docketed and tried as other cases. No eviction trial may be held less than 6 days after service under Rule 510.4 has been obtained.
- (b) Jury Trial Demanded. Any party may file a written demand for trial by jury by making a request to the court at least 3 days before the trial date. The demand must be accompanied by payment of a jury fee or by filing a sworn statement of inability to pay the jury fee. If a jury is demanded by either party, the jury will be impaneled and sworn as in other cases; and after hearing the evidence it will return its verdict in favor of the plaintiff or the defendant. If no jury is timely demanded by either party, the judge will try the case.
- (c) Limit on Postponement. Trial in an eviction case must not be postponed for more than 7 days total unless both parties agree in writing.



# DEFAULT

- If you didn't already file SCRA and Last Known Address affidavits, have them ready.
  - Even if you did file an SCRA affidavit, have a new one ready. Many courts will require a recent one.
- You will still have to prove your case before the court.



# POST-JUDGMENT

- Tenant has seven (7) days to appeal a judgment against them.
  - To appeal, tenant will need either:
    - A bond of double the judgment, or
    - An affidavit of inability to pay costs
      - It is very rarely, but not always, worth fighting these. If you do, be careful with the timeline.
- It is easy for a landlord client to get caught up in the excitement of a judgment in their favor.
  - Make sure to have a discussion about the realities of collection at the very beginning of the eviction process.
  - Remember, the foremost goal should always be to regain possession.

# APPEAL

- Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT.
- (a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:
  - (1) the tenant's identity;
  - (2) the nature and amount of the tenant's employment income;
  - (3) the income of the tenant's spouse, if applicable and available to the tenant;
  - (4) the nature and amount of any governmental entitlement income of the tenant;
  - (5) all other income of the tenant;
  - (6) the amount of available cash and funds available in savings or checking accounts of the tenant;
  - (7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;
  - (8) the tenant's debts and monthly expenses; and
  - (9) the number and age of the tenant's dependents and where those dependents reside.



# APPEAL

- Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT. (CONTINUED)
- (b) The justice court shall make available an affidavit form that a person may use to comply with the requirements of Subsection (a).
- (c) The justice court shall promptly notify the landlord if a pauper's affidavit is filed by the tenant.
- (d) A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the justice court shall notify the parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.
- (e) If the justice court approves the pauper's affidavit of a tenant, the tenant is not required to pay the county court filing fee or file an additional affidavit in the county court under Subsection (a).



# APPEAL

- Sec. 24.00512. CONTEST OF CERTAIN APPEAL BONDS.
  - (a) This section does not apply to an appeal bond issued by a corporate surety authorized by the Texas Department of Insurance to engage in business in this state.
  - (b) If a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, form of the bond, or financial ability of a surety to pay the bond by filing a written notice with the justice court contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and serving a copy on the other party. After the notice is filed, the justice court shall notify the other party and the surety of the contest.
  - (c) Not later than the fifth day after the date the contest is filed, the justice court shall hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety.
  - (d) If a party contests the amount or form of the bond, the contesting party has the burden to prove, by a preponderance of the evidence, that the amount or form of the bond, as applicable, is insufficient. If a party contests the financial ability of a surety to pay the bond, the party filing the bond must prove, by a preponderance of the evidence, that the surety has sufficient nonexempt assets to pay the appeal bond. If the justice court determines that the amount or form of the bond is insufficient or the surety does not have sufficient nonexempt assets to pay the appeal bond, the justice court must disapprove the bond. If the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be disapproved.



# APPEAL

- Sec. 24.00512. CONTEST OF CERTAIN APPEAL BONDS. (Continued)
  - (e) Not later than the fifth day after the date the justice court disapproves an appeal bond, the party appealing may make a cash deposit, file a sworn statement of inability to pay with the justice court, or appeal the decision disapproving the appeal bond to the county court. If the party appealing fails to make a cash deposit, file a sworn statement of inability to pay, or appeal the decision disapproving the appeal bond, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee.
  - (f) If an appeal is filed, the justice court shall transmit to the county court the contest to the appeal bond and all relevant documents. The county court shall docket the appeal, schedule a hearing to be held not later than the fifth day after the date the appeal is docketed, notify the parties and the surety of the hearing time and date, and hear the contest de novo. The failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal. A writ of possession may not be issued before the county court issues a final decision on the appeal bond.
  - (g) After the contest is heard by the county court, the county clerk shall transmit the transcript and records of the case to the justice court. If the county court disapproves the appeal bond, the party may, not later than the fifth day after the date the court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by making a cash deposit in the justice court in an amount determined by the county court or by filing a sworn statement of inability to pay with the justice court pursuant to the Texas Rules of Civil Procedure. If the tenant is the appealing party and a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee. If the landlord is the appealing party and a cash deposit is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final. If the appeal bond is approved by the county court, the court shall transmit the transcript and other records of the case to the justice court, and the justice court shall proceed as if the appeal bond was originally approved.



# APPEAL

- Sec. 24.00521. CONTEST OF CERTAIN APPEAL BONDS IN COUNTY COURT.
  - A contest under Section 24.00512 does not preclude a party from contesting the appeal bond in the county court after the county court has jurisdiction over the eviction suit. After the county court has jurisdiction over the eviction suit, the county court may modify the amount or form of the bond and determine the sufficiency of the surety.



# APPEAL

- Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION.
  - (a) If the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment. If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination shall be in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.
  - (a-1) In an eviction suit for nonpayment of rent, if a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 or an appeal bond pursuant to the Texas Rules of Civil Procedure, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit or appeal bond is filed that contains the following information in bold or conspicuous type:
    - (1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;
    - (2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;
    - (3) the calendar date by which the initial deposit must be paid into the justice court registry;
    - (4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and
    - (5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without a hearing.



# APPEAL

- Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION. (CONTINUED)
- (a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by the Texas Rules of Civil Procedure.
- (a-3) If a tenant files an appeal bond to appeal an eviction for nonpayment of rent, the tenant must, not later than the fifth day after the date the tenant filed the appeal bond, pay into the justice court registry the amount of rent to be paid in one rental pay period as determined by the court under Subsection (a). If the tenant fails to timely pay that amount into the justice court registry and the transcript has not yet been transmitted to the county court, the plaintiff may request a writ of possession. On request and payment of the applicable fee, the justice court shall issue the writ of possession immediately and without a hearing. Regardless of whether a writ of possession is issued, the justice court shall transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees.
- (a-4) On sworn motion and hearing, the plaintiff in the eviction suit may withdraw money deposited in the court registry before the final determination in the case, dismissal of the appeal, or order of the court after final hearing. The county court shall give precedence to a hearing or motion under this subsection.
- (b) If an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, the tenant shall pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal, in accordance with the Texas Rules of Civil Procedure and Subsection (a). If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court under Subsection (a) to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).



# APPEAL

- Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION. (CONTINUED)
- (c) If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.
- (d) If the tenant objects to the justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.
- (e) If either party files a contest under Subsection (c) and the tenant files a pauper's affidavit that is contested by the landlord under Section 24.0052(d), the justice court shall hold the hearing on both contests at the same time.



# APPEAL

- This is an “appeal” in name only. It is a trial de novo.
- Watch the days carefully.
  - As soon as a new month starts under the lease, call the registry.
  - If you are the tenant, make sure you pay into the registry.
- Registry funds get confusing while the courts are working on a transfer.
  - Sometimes it will be necessary to call the registry at both levels to determine if funds have been submitted. Once the case has been transferred from JP on appeal, it will likely be a longer process for a landlord.
- If rent has not been paid into the registry, a landlord can file a motion for immediate possession (effectively, a default).



# APPEAL

- Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL.
- (a) During an appeal of an eviction case for nonpayment of rent, the justice court on request shall immediately issue a writ of possession, without hearing, if:
  - (1) a tenant fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure, and Section 24.0053;
  - (2) the justice court has provided the written notice required by Section 24.0053(a-1); and
  - (3) the justice court has not yet forwarded the transcript and original papers to the county court as provided by Subsection (a-2).
- (a-1) The sheriff or constable shall execute a writ of possession under Subsection (a) in accordance with Sections 24.0061(d) through (h). The landlord shall bear the costs of issuing and executing the writ of possession.



# APPEAL

- Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL. (CONTINUED)
- (a-2) The justice court shall forward the transcript and original papers in an appeal of an eviction case to the county court but may not forward the transcript and original papers before the sixth day after the date the tenant files a pauper's affidavit, except that, if the court confirms that the tenant has timely paid the initial deposit of rent into the justice court registry in accordance with Section 24.0053, the court may forward the transcript and original papers immediately. If the tenant has not timely paid the initial deposit into the justice court registry, the justice court on request shall issue a writ of possession notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's affidavit that has been approved by the court. The justice court shall forward the transcript and original papers in the case to the county court for trial de novo, notwithstanding the fact that a writ of possession under this section has already been issued.
- (a-3) Notwithstanding Subsections (a) and (a-2), the justice court may not issue a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant under Section 24.0053(d).
- (a-4) During an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the justice court or county court registry as the rent becomes due under the rental agreement in accordance with the Texas Rules of Civil Procedure and Section 24.0053, the landlord may file with the county court a sworn motion that the tenant failed to pay rent as required. The landlord shall notify the tenant of the motion and the hearing date.



# APPEAL

- Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL. (CONTINUED)
- (b) If the county court finds that the tenant has not complied with the payment requirements of the Texas Rules of Civil Procedure and Section 24.0053, the county court shall immediately issue a writ of possession unless on or before the day of the hearing the tenant pays into the court registry:
  - (1) all rent not paid in accordance with the Texas Rules of Civil Procedure and Section 24.0053; and
  - (2) the landlord's reasonable attorney's fees, if any, in filing the motion.
- (c) If the court finds that a tenant has failed to timely pay the rent into the court registry on more than one occasion:
  - (1) the tenant is not entitled to stay the issuance of the writ by paying the rent and the landlord's reasonable attorney's fees, if any; and
  - (2) the county court shall immediately issue a writ of possession.
- (d) A writ of possession issued under Subsection (c) may not be executed before the sixth day after the date the writ is issued.
- (e) In a motion or hearing under Subsection (a-4), or in a motion to dismiss an appeal of an eviction case in county court, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.



# APPEAL

- Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL. (CONTINUED)
- (f) During the appeal of an eviction case, if a government agency is responsible for payment of a portion of the rent and does not pay that portion to the landlord or into the justice court or county court registry, the landlord may file a motion with the county court requesting that the tenant be required to pay into the county court registry, as a condition of remaining in possession, the full amount of each rental period's rent, as it becomes due under the rental agreement. After notice and hearing, the court shall grant the motion if the landlord proves by credible evidence that:
  - (1) a portion of the rent is owed by a government agency;
  - (2) the portion of the rent owed by the government agency is unpaid;
  - (3) the landlord did not cause wholly or partly the agency to cease making the payments;
  - (4) the landlord did not cause wholly or partly the agency to pay the wrong amount; and
  - (5) the landlord is not able to take reasonable action that will cause the agency to resume making the payments of its portion of the total rent due under the rental agreement.



# APPEAL

- The appeal trial will look much like the JP trial. Although, it may be more formal, depending on the court.
  - Be prepared to start from the beginning with your evidence.
- More than at the JP level, appeal judges will try to get the parties to negotiate a settlement.
  - We find it is helpful to prepare a client for this eventuality.
  - Interestingly, there is actually a rule against ADR if it will delay the trial at the JP level. See Tex. R. Civ. P. 503.5.



# APPEAL'S APPEAL

- Sec. 24.007. APPEAL.
  - A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.



# WRIT OF POSSESSION

- If a tenant does not voluntarily vacate after a judgment against them, it may be necessary to seek a writ of possession.
- These writs are handled by the constable.
- The constable will first alert the tenant that they must be out of the property by a certain date/time.
- If the tenant is not out of the property by that time, the constable will return to facilitate the removal of the tenant's personal property.
  - Notes
    - The constable does not perform the labor. That is the responsibility of the landlord.
    - The constable may require all the furniture to go to the curb (even if the property was furnished).
    - The landlord should be prepared to change the locks at this time, too.



# WRIT OF POSSESSION

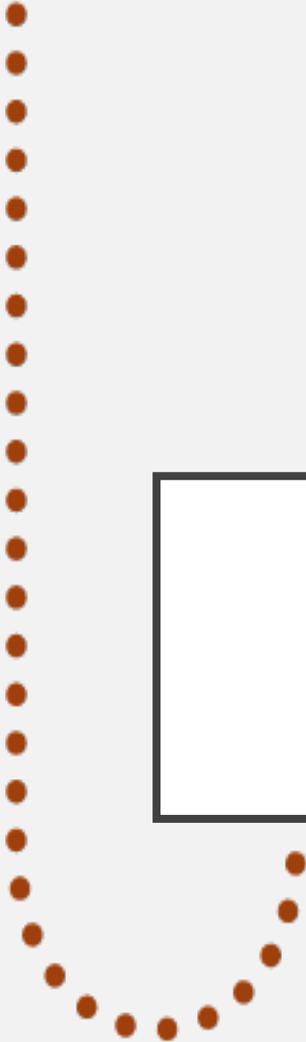
- Sec. 24.0061.WRIT OF POSSESSION.
- (d) The writ of possession shall order the officer executing the writ to:
  - (1) post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and
  - (2) when the writ is executed:
    - (A) deliver possession of the premises to the landlord;
    - (B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;
    - (C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from the rental unit other than personal property claimed to be owned by the landlord; and
    - (D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing, except as provided by Subsection (d-1).



# POST- POSSESSION DAMAGES

- Aggressive collection attempts post-possession are rarely effective.
  - If you do seek to collect anything, know that it will require an separate, new lawsuit.
- Security Deposit for Damages
  - A tenant's security deposit may be used to satisfy unpaid rents at the time of the eviction. This does not mean that the tenant cannot sue their former landlord for the return of the deposit.



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# **COMMERCIAL EVICTIONS**

## **HOW IS THIS DIFFERENT FROM RESIDENTIAL?**

- Focusing more on the specific provisions of the lease.
- Lockout as an option for the landlord.