

EVICTON PACKET  
AS OF JANUARY 5, 2021:

1. INFORMATION FOR FILING EVICTON
2. EVICTON FORMS

## **INFORMATION FOR FILING EVICTION SUIT**

### **Please read carefully before completing the Petition and filing the Eviction Suit**

- An Eviction Case is a lawsuit brought to recover possession of real property, usually by a landlord against a tenant. A claim for rent may be joined with an Eviction Case if the amount of rent due and unpaid is not more than \$10,000, including attorney fees, if any, but excluding statutory interest and costs.
- Eviction Cases are governed by Texas Rules of Civil Procedure 500 – 507, and Rules 510.1 - 510.13, Texas Rules of Civil Procedure (Rules of Practice in Justice Courts) and Texas Property Code, Chapters 24, 91, 92, 93, and 94, govern the relationship between landlord and tenant, tenancies, and eviction proceedings. Eviction Cases must be filed in the Justice Court in the Precinct in the county in which the real property is located. See Section 24.004, Texas Property Code. Computation of Time see TRCP 500.5

<b><u>Fee Schedule for Eviction Suits:</u></b>	<b><u>Court Fees</u></b>	<b><u>Service Fee</u></b>	<b><u>Total</u></b>
One (1) Defendant in Orange County	\$46.00	\$75.00	\$121.00
Two (2) Defendants in Orange County	\$46.00	\$150.00	\$196.00
Defendant(s) outside of Orange County	\$46.00	Plaintiff's responsibility	
Jury Fee	\$22.00	\$0	\$22.00
Abstract of Judgment	\$ 5.00	\$0	\$ 5.00
Writ of Possession	\$ 5.00	\$125.00	\$130.00
Writ of Garnishment	\$51.00	Plaintiff's Attorney's responsibility	

#### **1. NOTICE TO VACATE PRIOR TO FILING THE SUIT**

- Generally, a landlord must give the tenant a notice to vacate 3 days before filing the Eviction Suit. Please see chapter 24 of the Texas Property Code for exceptions and more information.
- The Texas Property code is very specific as to how you must give notice to the tenant. Please Review Chapter 24 & 91 of the Texas property Code for the correct procedure that pertains to your specific case.
- The notice period is calculated from the day on which the notice is delivered.
- For Recovery of Attorney's Fees and Costs see Section 24.006, Texas Property Code.

#### **2. FILING EVICTION SUIT**

- An Eviction Suit must be filed in the precinct where the premises is located. If it is filed elsewhere, the judge must 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. TRCP 510.3(b)
- Court personnel are prohibited from telling you which precinct your address is located in. You may consult the county map located in the court's lobby or contact the Orange County Elections Administration at 409-882-7973 or the Orange County Tax Office at 409-882-7971 to determine which precinct the property is located.
- Your case will be set for a bench trial within 10-21 days after the petition is filed. See TRCP 510
- Immediate Possession Bond, please read TRCP 510.5

#### **Petition & Other Required Forms**

- The Plaintiff must file a petition in writing.
- Each tenant who has signed a lease must be joined in the eviction proceeding.
- Additional forms have to be filed along with the Petition. A Military Affidavit Sec. 201 (b) (If the defendant doesn't appear, a Military Status Report is required (see <https://scra.dmdc.osd.mil/scra/#/single-record>) and Justice Court Civil Case Information Sheet both need to be provided to the court.

### **Issuance of Citation**

- When the case has been filed and the filing fee and the service fee have been paid, the clerk will issue a citation and deliver the citation as directed by the plaintiff. If the eviction is based on a written residential lease, the plaintiff must name as defendants all tenants obligated under the lease residing at the premises. TRCP 510.3
- The citation is directed to the defendant and informs the defendant of the filing of the petition. The citation notifies that the defendant must appear for trial at the Justice Court on the date specified in the citation, which must not be less than 10 days nor more than 21 days after the petition is filed, and warns that the defendant's failure to appear in person for trial may result in a default judgment. The citation also informs the defendant of the right to a jury trial on request and payment of the jury fee in the amount of \$22.00 no later than 3 days before the date set for trial.
- The citation in an Eviction Case must be served by a sheriff or constable, unless otherwise authorized by written order of the Court.

### **3. TRIAL**

- Once served, the defendant may file a written answer, but whether or not an answer is filed, the defendant is required to appear for trial on the date specified in the citation.
- If the defendant fails to enter an appearance or file an answer before the case is called for trial, and proof of service has been properly filed, judgment by default may be rendered. The clerk will immediately mail written notice of the default judgment to the defendant at the address of the premises. TRCP 501.6
- If the defendant does not appear, the Court requires a Military Status Report (see <https://scra.dmdc.osd.mil/scra/#/single-record>) for a Default Judgment.

### **Representation**

- An individual may represent himself or herself in Justice Court, or may be represented by an attorney. In an Eviction Case, an individual may be represented by an authorized agent. TRCP 500.4.
- In an Eviction Case, a corporation or other entity may be represented by an attorney, or by an employee, owner, officer, or partner who is not an attorney, and may be represented by a property manager or other authorized agent in an Eviction Case. TRCP 500.4.
- In an Eviction Case in Justice Court based on nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.
- In any Eviction Case in Justice Court, an authorized agent requesting or obtaining a default judgment need not be an attorney. See Section 24.011, Texas Property Code.

### **Request for Jury Trial**

- Either the plaintiff or the defendant has the right to a trial by jury by making a written demand for a jury trial no later than 3 days before the trial date, and by paying a jury fee of \$22.00. TRCP 510.7

### **Postponement of Trial**

- The trial in an eviction case cannot be postponed for more than 7 days total unless the plaintiff and defendant agree in writing to the postponement. TRCP 510.7

### **Judgment**

- If the plaintiff prevails, the court will enter judgment for the plaintiff for possession of the premises, and on request of the plaintiff and payment of required fees, will award a writ of possession. The writ of possession cannot issue before the 6th day after the date the judgment for possession is signed.
- If the tenant prevails, the court will give judgment for the tenant against the landlord for costs. TRCP 510.8

### **Writ of Possession**

- A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. "Premises" includes the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally. See Section 24.0053, Texas Property Code.
- The officer may not require the landlord to store the property.



- A writ of possession cannot be issued more than 60 days after a judgment for possession is signed, and a writ of possession cannot be executed after the 90th day after a judgment for possession is signed. TRCP 510.8
- See Section 24.0061 Texas Property Code and TRCP 510.8 for more information on Writ of Possession.

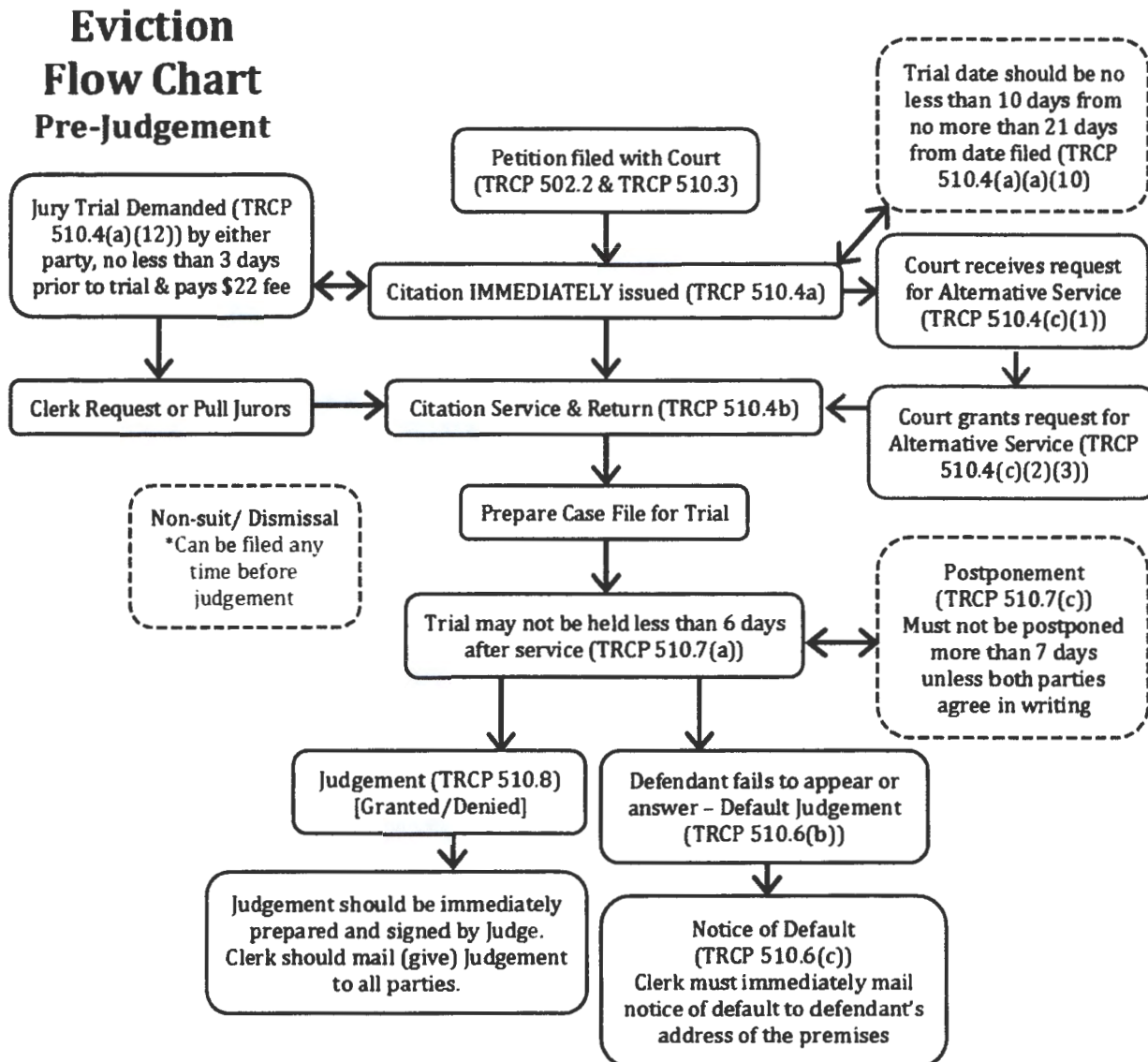
#### 4. **APPEAL**

- If the Justice Court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the Justice Court shall determine the amount of rent to be paid each rental pay period during the pendency of the appeal and note that amount in the judgment.
- Calculation of time, TRCP 500.5, if the last day is a Saturday, Sunday, or legal holiday, the time period is extended to the next day that is not a Saturday, Sunday, or Legal Holiday; and if the last day for filing falls on a day during which court is closed before 5:00 pm, the time period is extended to the court's next business day.
- Either party may appeal from a final judgment in an Eviction Case within 5 days after the judgment is signed by filing a bond, making a cash deposit, or filing with the Justice Court a Sworn Statement of Inability to Pay. The Court will set the amount of the bond or cash deposit based on damages, if any, for withholding or defending possession of the premises during the appeal, loss of rentals during the appeal, and attorney fees, if any. TRCP 510.11
- The bond or cash deposit must be payable to the appellee and must be conditioned on the appellant's prosecution of the appeal to effect and the payment of any judgment and all costs rendered against the appellee on appeal. A party filing a bond or making a cash deposit must serve written notice of the appeal on all other parties within 5 days of filing the bond or making the cash deposit.
- A Sworn Statement of Inability to Pay may be contested within 5 days after the opposing party receives notice that the Sworn Statement of Inability to Pay was filed. If the contest is sustained, within 5 days of the date of the Justice Court's order sustaining the contest, the appellant may appeal the Justice Court's decision to the County Court at Law by filing notice of the appeal of the contest with the Justice Court. The County Court at Law must set the contest for a hearing within 5 days. If the County Court at Law sustains the contest, within 1 business day, the appellant must file with the Justice Court either an appeal bond or make a cash deposit. TRCP 510.9

#### **Payment of Rent in Nonpayment of Rent Appeals** (See also Section 24.0053 and Section 24.0054, Texas Property Code)

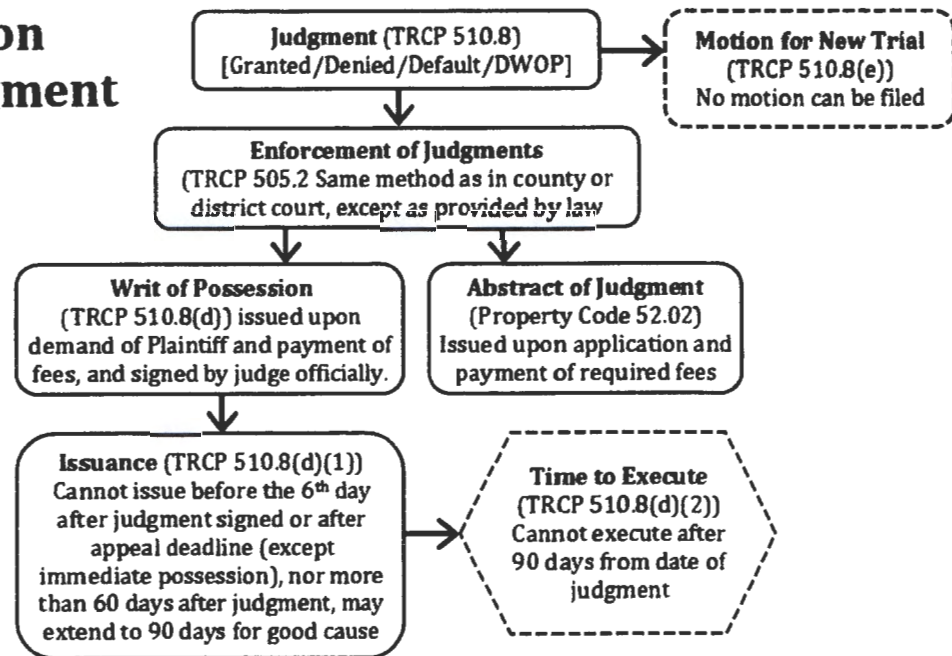
- If a defendant appeals an eviction for nonpayment of rent by filing a Sworn Statement of Inability to Pay, the Justice Court will give the tenant a written notice at the time the Sworn Statement of Inability to Pay is filed that notifies the tenant (1) of the amount of the initial deposit of rent that the tenant must pay into the registry of the Justice Court; (2) whether the initial deposit of rent must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order must be made payable; (3) the calendar date within 5 days of the date the Sworn Statement of Inability to Pay is filed, and if applicable, the time, by which the initial deposit must be paid; and (4) a statement that failure to pay the required amount into the Justice Court registry by the date and time specified may result in the issuance of a writ of possession without hearing.
- The defendant appealing by Sworn Statement of Inability to Pay may remain in possession of the premises during the pendency of the appeal by (1) making the initial deposit of rent into the Justice Court registry within 5 days of the date the defendant files the Sworn Statement of Inability to Pay, and (2) paying the rent within 5 days of the rental due date under the rental agreement into the registry of the County Court at Law.
- An Eviction Case appealed to the County Court at Law will be tried at any time after the expiration of 8 days after the transcript is filed. If the defendant did not file a written answer in the Justice Court, the defendant must file a written answer in the County Civil Courts at Law within 8 days after the transcript is filed in the County Civil Courts at Law. Failure to file a written answer in the County Civil Courts at Law will result in the entry of a judgment by default. TRCP 510.12

## Eviction Flow Chart (Pre-Judgment)



## Eviction Flow Chart (Post-Judgment)

### Eviction Post Judgment



### CHECKLIST FOR FILING EVICTION CASES

- ☐ Proper Notice has been given to the Defendant(s);
- ☐ **COMPLETED** Petition for Eviction listing each TENANT you are wanting to evict;
- ☐ **COMPLETED** Military Affidavit Form **ALONG** with supporting evidence (See affidavit) - MUST BE ON FILE BEFORE A DEFAULT JUDGMENT IS ISSUED;
- ☐ **COMPLETED** CARES Act/CDC Moratorium Affidavit;
- ☐ Payment - \$46.00 per case and \$75.00 for each tenant to be served. If the person(s) you want evicted are listed in the lease or you have an oral lease agreement with said person(s) they MUST be served and DO NOT fall under "All Other Occupants."

**\*\*\*\*\*IF YOU DO NOT HAVE ALL THESE CHECKED YOUR CASES MAY BE DELAYED OR DISMISSED DUE TO LACK OF INFORMATION.**

If you have any questions please review the Eviction Information Sheet you were previously given. Clerk are NOT ALLOWED to give legal advice and can only assist regarding procedure.

Other resources are:

1. Information Sheet provided by Justice of the Peace Pct. 3
2. Texas Property Code 24 and 91
3. Texas Rules of Civil Procedure 510
4. <https://www.tjctc.org/SRL.html> - Self-Represented Litigants Information Page
5. TexasLawHelp.org





CAUSE NO. \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT NO. _____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

**PETITION: EVICTION CASE**

**COMPLAINT:** Plaintiff hereby sues the following Defendant(s) \_\_\_\_\_  
\_\_\_\_\_ for eviction of Plaintiff's premises (including  
storerooms and parking areas) located in the above precinct. The address of the property  
is:

_____	_____	_____	_____	_____
Street Address	Unit No. (if any)	City	State	Zip

**GROUND FOR EVICTION:** Plaintiff alleges the following grounds for eviction:

- ☐ **Unpaid rent.** Defendant(s) failed to pay rent for the following time period(s):  
\_\_\_\_\_. The amount of rent claimed as of the  
date of filing is: \$ \_\_\_\_\_. Plaintiff reserves the right to orally amend  
the amount at trial to include rent due from the date of filing through the date  
of trial.
- ☐ **Other lease violations.** Defendant(s) breached the terms of the lease (other  
than by failing to pay rent) as follows: \_\_\_\_\_
- ☐ **Holdover.** Defendant(s) are unlawfully holding over by failing to vacate at the  
end of the rental term or renewal of extension period, which was the \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

**NOTICE TO VACATE:** Plaintiff has given Defendant(s) a written notice to vacate (according  
to Chapter 24.005 of the Texas Property Code) and demand for possession. Such notice was  
delivered on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by this method: \_\_\_\_\_

**SUIT FOR RENT:** Plaintiff ☐ does or ☐ does not include a suit for unpaid rent.

**ATTORNEY'S FEES:** Plaintiff ☐ will be or ☐ will not be seeking applicable attorney's fees.  
The attorney's name, address, phone and fax numbers are: \_\_\_\_\_

**IMMEDIATE POSSESSION BOND:** If Plaintiff has filed a bond for immediate possession,  
Plaintiff requests that: (1) the Court set the amount of the bond; (2) the Court approve the

bond; and (3) proper notices, as required by the Texas Rules of Civil Procedure, are given to Defendant(s).

**SERVICE OF CITATION:** Service is requested on Defendant(s) by: personal service at home or work, or by delivery to a person over the age of 16 years at Defendant's usual place of residence. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other home or work addresses where Defendant(s) may be served are: \_\_\_\_\_

Plaintiff knows of no other home or work addresses of Defendant(s) in this county.

**RELIEF:** Plaintiff requests that Defendant(s) is served with the citation and that Plaintiff is awarded a judgment against Defendant(s) for: possession of the premises, including removal of Defendant(s) and Defendant's possessions from the premises, unpaid rent, if set forth above, attorney's fees, court costs, and interest on the above sums at the rate stated in the lease, or if not so stated, at the statutory rate for judgments.

☐ I hereby request a jury trial. The fee is \$22 and must be paid at least 3 days before trial.

☐ I hereby consent for the answer and any other motions or pleadings to be sent to my email address as follows: \_\_\_\_\_

☐ I hereby incorporate by reference the attached Verification of Compliance with Sections 4023 and 4024 of the CARES Act and the CDC Eviction Moratorium Order.

\_\_\_\_\_  
Plaintiff's Printed Name

\_\_\_\_\_  
Signature of Plaintiff or Agent or Attorney

**Defendant's Information** (if known):

Date of birth: \_\_\_\_\_

\_\_\_\_\_  
Address of Plaintiff or Agent or Attorney

Last three digits of Driver License: \_\_\_\_\_

Last three digits of Soc. Sec. No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone & Fax No. of Plaintiff  
or Agent or Attorney

**SWORN TO AND SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
CLERK OF THE JUSTICE COURT OR NOTARY

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff*

§

IN THE JUSTICE COURT

VS.

§

PRECINCT THREE (3)

\_\_\_\_\_  
*Defendant*

§

ORANGE COUNTY, TEXAS

### **AFFIDAVIT**

*Service-member's civil Relief Act SEC. 201 (b)*

Plaintiff being duly sworn on oath deposes\* and says that defendant(s) is (are):

\_\_\_\_\_  
*Defendant*

(CHECK ONE)

- \_\_\_\_\_ not in the military
- \_\_\_\_\_ not on active duty in the military and/or
- \_\_\_\_\_ not in a foreign country on military service
- \_\_\_\_\_ on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- \_\_\_\_\_ has waived his/her rights under the Servicemembers Civil Relief Act of 2003
- \_\_\_\_\_ military status is unknown at this time

**Facts supporting affidavit must be file by Trial.**

(See <https://scra.dmdc.osd.mil/scra/#/single-record>)

\_\_\_\_\_  
*PLAINTIFF's signature*

Subscribed and sworn to before me no this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public / Clerk of the Justice Court

***\*Penalty for making or using false affidavit – a person who makes or uses an affidavit knowing it to be false shall be fined as proved in Title 18, United State Code, or imprisoned for not more than one year, or both.***





CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

§  
§  
§  
§  
§  
§  
§

PRECINCT NO. \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**VERIFICATION OF COMPLIANCE WITH SECTION 4024 OF THE CARES ACT AND THE CDC  
ISSUED FEDERAL EVICTION MORATORIUM ORDER**

My name is: \_\_\_\_\_  
First Middle Last

I am (check one) ☐ the Plaintiff or ☐ an authorized agent of the Plaintiff in the eviction case described at the top of this page. I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

**1. Verification:**

a. Plaintiff is seeking to recover possession of the following property:

\_\_\_\_\_  
Name of Apartment Complex (if any)

\_\_\_\_\_  
Street Address & Unit No. (if any) City County State ZIP

b. I verify that this property (select the one that applies): ☐ is ☐ is not a "covered dwelling" as defined by Section 4024(a)(1) of the CARES Act. The facts on which I base my conclusion are as follows:

*(Please identify whether the property has a federally backed mortgage loan or federally backed multifamily mortgage loan, and if not, which database or information you have used to determine that fact. If the property does not have a federally backed mortgage loan or federally backed multifamily mortgage loan, please state whether or not: (1) the property is a Low Income Housing Tax Credit (LIHTC) property, (2) the property is federally subsidized under any HUD program, or (3) the property leases to persons with Section 8 vouchers.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. I verify that I have reviewed the information about the Texas Eviction Diversion Program, found at [www.txcourts.gov/eviction-diversion](http://www.txcourts.gov/eviction-diversion).

d. I verify that the premises (select the one that applies): ☐ is ☐ is not a property securing an FHA-insured Single Family mortgage.

e. I verify that plaintiff (select the one that applies):

☐ has provided the defendant with 30 days' notice to vacate as required under Section 4024(c) and 4023(e) of the CARES Act.

☐ has not provided the 30 days' notice, because the property is not a "covered dwelling."

f. I certify that the plaintiff: ☐ has ☐ has not received a CDC Sworn Declaration from the tenant stating that they are a "covered person" under the CDC issued Federal Eviction Moratorium Order. *Any landlord proceeding with a nonpayment eviction of a "covered person" despite receiving a Declaration can be fined up to \$100,000 under federal law, with enhanced penalties, including jail, if a death occurs.*

**2. Declaration or Notary:** Complete only one of the two following sections:

a. **Declaration:** I declare under penalty of perjury that everything in this verification is true and correct. My name is : \_\_\_\_\_

First Middle Last

My birthdate is: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Day Year

My address is:

Street Address & Unit No. (if any) City County State ZIP

Signed on \_\_\_\_/\_\_\_\_/\_\_\_\_ in \_\_\_\_\_ County, Texas.  
Month Day Year

\_\_\_\_\_  
Your Signature

OR

b. **Notary:** I declare under penalty of perjury that everything in this verification is true and correct

\_\_\_\_\_  
Your Printed Name

\_\_\_\_\_  
Your Signature (sign only before a notary)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE COURT OR NOTARY

**CARES Act**  
**Public Law 116-136**

**Sec. 4024 TEMPORARY MORATORIUM ON EVICTION FILINGS.**

(a) **DEFINITIONS.**—In this section:

(1) **COVERED DWELLING.**—The term “covered dwelling” means a dwelling that—

(A) is occupied by a tenant—

(i) pursuant to a residential lease; or

(ii) without a lease or with a lease terminable under State law; and

(B) is on or in a covered property.

(2) **COVERED PROPERTY.**—The term “covered property” means any property that—

(A) participates in—

(i) a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or

(ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or

(B) has a—

(i) Federally backed mortgage loan; or (ii) Federally backed multifamily mortgage loan.

(3) **DWELLING.**—The term “dwelling”—

(A) has the meaning given the term in section 802 of the Fair Housing Act (42 U.S.C. 3602); and (B) includes houses and dwellings described in section 803(b) of such Act (42 U.S.C. 3603(b)).

(4) **FEDERALLY BACKED MORTGAGE LOAN.**—The term “Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that —

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(5) **FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN.**—The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) **MORATORIUM.**—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—

(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or

(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

(c) **NOTICE.**—The lessor of a covered dwelling unit—

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

