

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

Fee Schedule for Eviction Suits:

	<u>Court Fees</u>	<u>Service Fee</u>	<u>Total</u>
One (1) Defendant in Orange County	\$54.00	\$180.00	\$134.00
Two (2) Defendants in Orange County	\$54.00	\$160.00	\$214.00
Defendant(s) outside of Orange County	\$54.00		
Jury Fee	\$22.00	\$0	\$22.00
Abstract of Judgment	\$ 5.00	\$0	\$ 5.00
Writ of Possession	\$ 5.00	\$155.00	\$160.00
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

CAUSE NO. _____

§

IN THE JUSTICE COURT

Plaintiff (s) (Landlord/Property Name)

VS.

§

PRECINCT THREE (3)

§

ORANGE COUNTY TEXAS

Defendant (s)

Court Date: _____
@ 10 am

PETITION: EVICTION CASE

COMPLAINT: Plaintiff (Landlord) 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 and unit # _____ City _____ State _____ Zip _____

SUIT FOR RENT: Plaintiff does or does not include a suit for unpaid rent.
(must check one)

Total Monthly Rent:	\$ _____
Government Subsidy:	\$ _____
If subsidy, Amount paid by Tenant	\$ _____

SUIT FOR COURT COSTS: Plaintiff does or, does not include a suit for
court costs. (must check one)

GROUND(S) FOR EVICTION: Plaintiff alleges the following grounds for eviction (must check one):

- 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____.
- Other:** _____

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 (must check one):

- hand delivered posted inside of door mailed certified, RRR regular mail other: _____

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 (in Orange County): _____
- Plaintiff knows of no other home or work addresses of Defendant(s) in this Orange 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: _____

First Defendant's Information (if known):

Date of Birth: _____
Last three digits of Driver's License #: _____
Last three digits of the Soc. Sec. #: _____
Phone No.: _____

PRINT NAME OF PERSON FILING PETITION

Address of Plaintiff or Agent or Attorney

Second Defendant's Information (if known):

Date of Birth: _____
Last three digits of Driver's License #: _____
Last three digits of the Soc. Sec. #: _____
Phone No.: _____

City State Zip

Phone & Fax No. of Plaintiff or Agent or Attorney

SIGNATURE OF: PERSON FILING PETITION

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____

CLERK OF THE JUSTICE COURT OR NOTARY

CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

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§
§
§
§
§

IN THE JUSTICE COURT

PRECINCT NO. 3

ORANGE COUNTY, TEXAS

BOND FOR IMMEDIATE POSSESSION

Plaintiff desires possession of the premises described in the above-styled case on or after the seventh day after the date Defendant is served with the notice of this Bond under Rule 510.5 of the Texas Rules of Civil Procedure if the Defendant does not file an answer or appear for trial and judgment for possession is granted by default.

We, the undersigned, as Principal and Sureties, acknowledge ourselves bound to pay to Defendant, the sum of:

\$ _____, being the probable amount of costs of suit and damages which may result to the Defendant in the event the above-styled and numbered suit has been improperly instituted, and conditioned that Plaintiff will pay Defendant all such costs and damages as shall be adjudged against him/her in said case.

Witness our hands this ____ day of _____, 20____.

Principal (signature): _____

Print name of Principal: _____

Address _____ City _____ State _____ Zip _____

Surety (signature): _____

Print name of Surety: _____

Address _____ City _____ State _____ Zip _____

Surety (signature): _____

Print name of Surety: _____

Address _____ City _____ State _____ Zip _____

ORDER SETTING AND APPROVING BOND

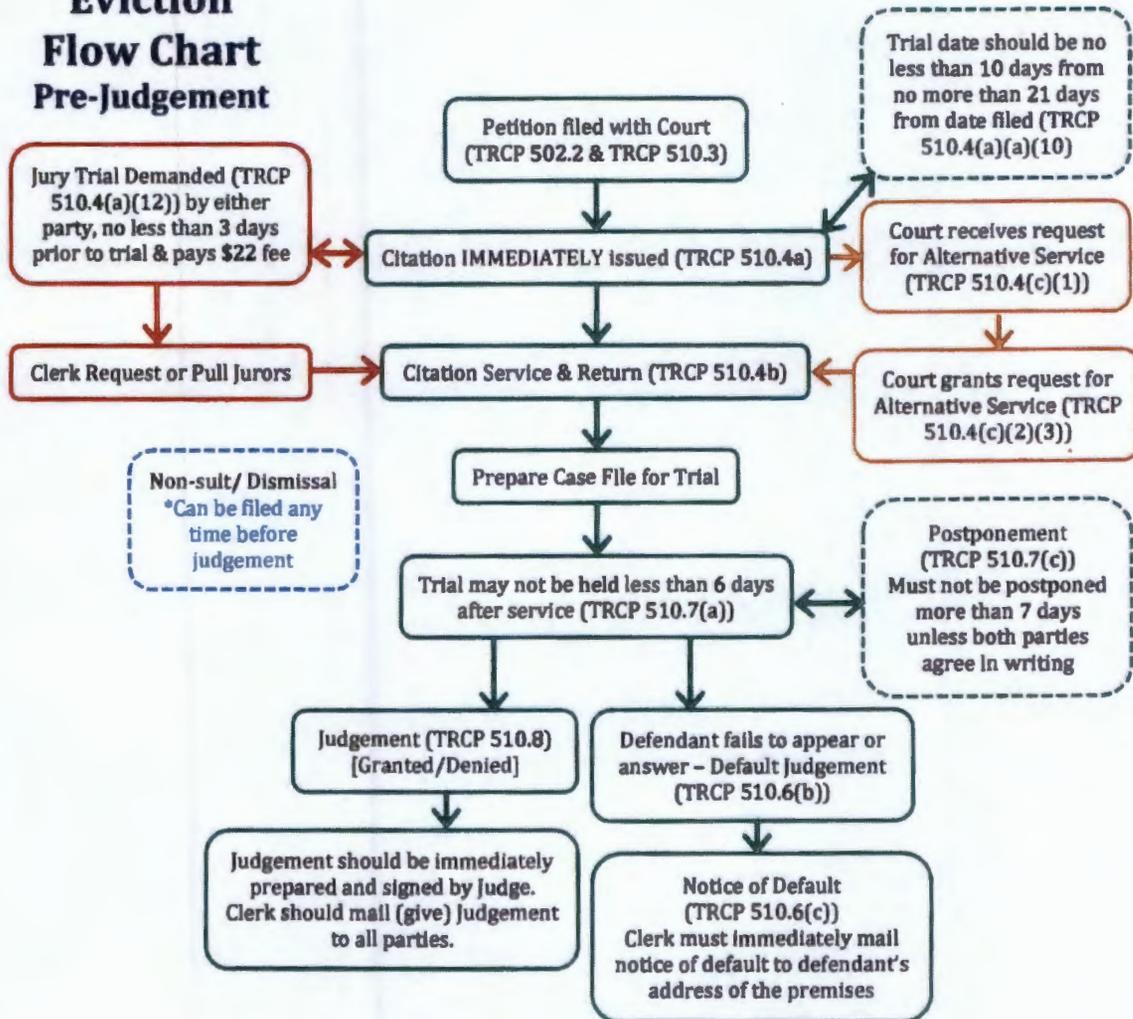
The amount of Plaintiff's bond for immediate possession has been fixed by me in the sum of \$ _____, and this bond is hereby approved this ____ day of _____, 20____. The notice to Defendant must be served with, or in the same manner as service of, the citation pursuant to Rule 510.5(b).

ISSUED AND SIGNED this the _____ day of _____, 20____.

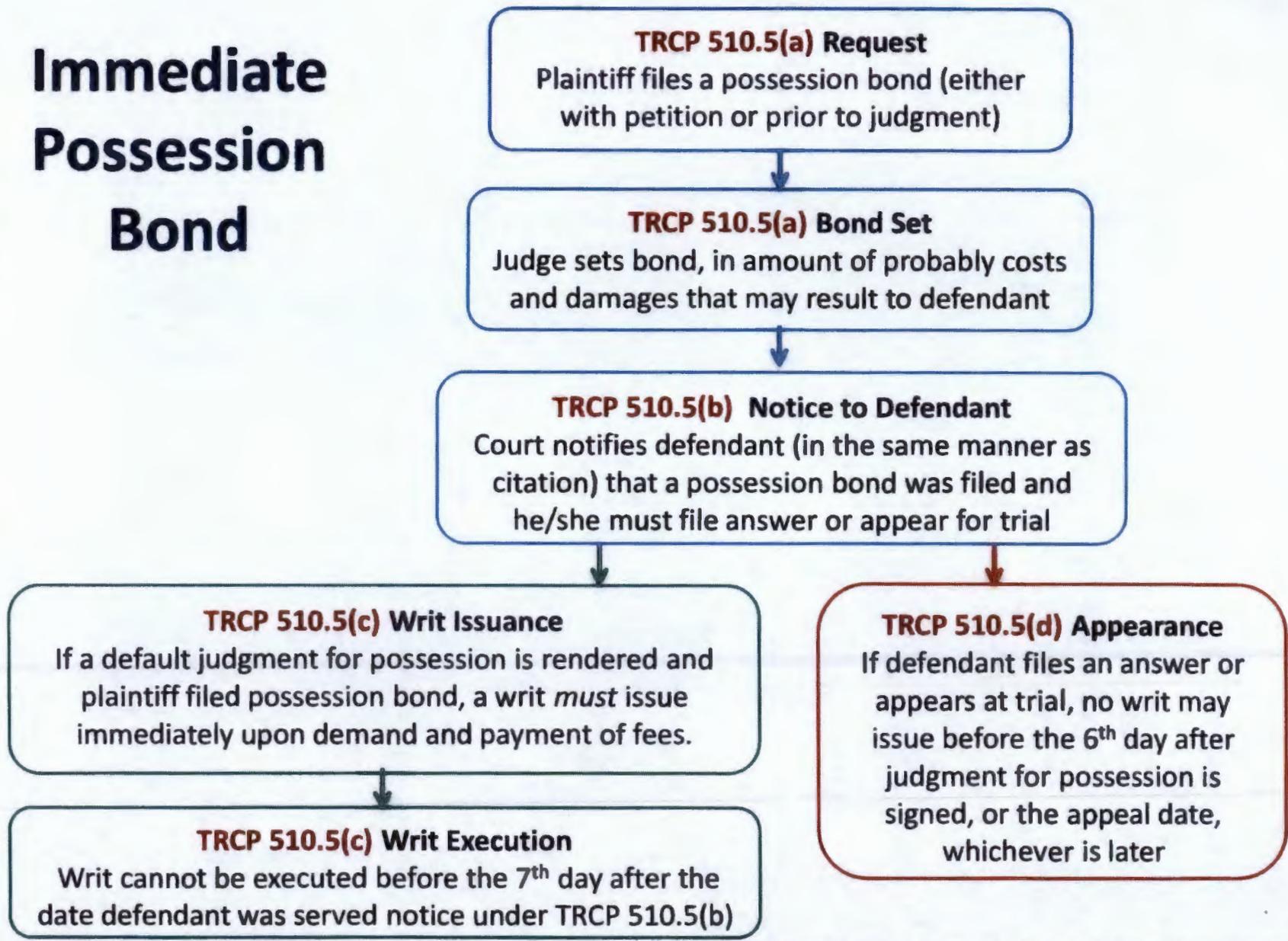
JUSTICE OF THE PEACE, PRECINCT 3
ORANGE COUNTY, TEXAS

Eviction Flow Chart (Pre-Judgment)

**Eviction
Flow Chart
Pre-Judgement**



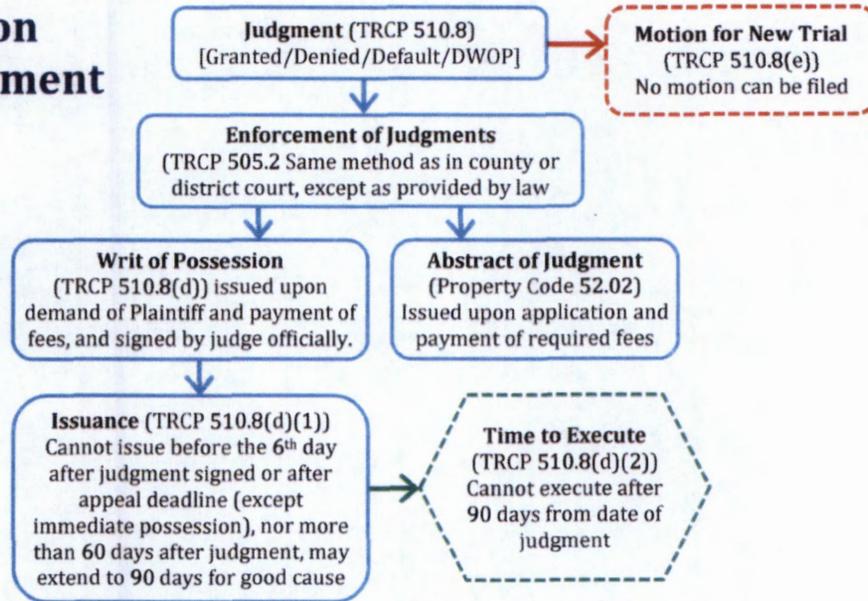
Immediate Possession Bond



This chart should be used along with Eviction Flow Chart

Eviction Flow Chart (Post-Judgment)

Eviction Post Judgment



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.***