# Steps in the Eviction Process

This chart is intended to help you visualize the eviction process. It is not intended to provide legal advice or recommendations in any particular case. Different situations are best handled individually.

The eviction process is primarily governed by state statutes and the Texas Supreme Court's Rules of Civil Procedure. For more information, please visit www.taaredbookonline.org. Changes to the law are in the red boxes.

TAA's notice forms are designed to help members make a business decision about which pre-suit notice form to use. Guidance is summarized below and in TAA's FAQs on the eviction process. Owners with specific questions should consult legal counsel.

### **DEFAULT OF LEASE**

Monetary or Nonmonetary

# IMMEDIATE POSSESSION BOND (OPTIONAL)

- Bond may be filed at any time prior to final judgment.
- Allows the writ to be requested one day after trial if the resident fails to appear at trial, as long as the resident has received 7 days' notice before the possession bond is served.
- Allows the resident to file a counter bond.

# FILE EVICTION PETITION IN JP COURT

- When: After the pre-suit notice period expires.
- Where: Precinct and place know the judge
- Payment: Pay the appropriate filing and service fees.

### **PRE-SUIT NOTICE**

(either a "Notice to Pay Rent or Vacate" or "Notice to Vacate")

- Choosing the Correct Form:
   Owners must decide whether to use a
   Notice to Vacate or a Notice to Pay
   Rent or Vacate based on the default.
  - The Notice to Pay Rent or Vacate <u>must</u> be used if:
    - The resident's default is solely for non-payment of rent (as defined in the lease – monthly base rent plus recurring fixed charges): and
    - The resident has not previously been late or delinquent in paying rent.
  - The **Notice to Vacate** <u>may</u> be used if
    - Any non-rent items (such as utilities or other charges) are included in the balance owed; or
    - The resident has been late or delinquent in paying rent to the owner before.

#### • Timing:

- The statutory period for a pre-suit notice is 3 days according to statute, unless modified by the lease.
- TAA's lease and notice forms give owners the option to define the notice period or default to a oneday notice.
- If a federal law or rule requires an owner to give a longer period of time than provided in the notice, no writ of possession may be served until that longer period expires.

Note: If a Notice to Pay Rent or Vacate is delivered, the resident may stay in possession by paying all rent before the end of the notice period, and the owner

Resident served with petition within 5 business days.

would not move ahead with filing.

## DELIVERY OF PRE-SUIT NOTICE

- Simplified Delivery Options:
  - Mail, including first-class mail, registered mail, certified mail, or delivery service.
  - Delivery to the inside of the unit in a conspicuous place.
  - Hand delivery to any resident of the unit who is 16 years or older; or
  - If the parties have agreed in writing, electronic communication, including e-mail or other electronic means.
- Proof of Receipt:
  - The law specifies permissible delivery methods, but they do not apply if the resident actually receives the notice.

### **WRIT OF POSSESSION**

 If no appeal, writ is available 6 days after judgment.

Service of writ within 5 business days.

## TRIAL

- When: 10 to 21 days after the petition is
- filed.

  What to Do: Appear and be prepared.
- Witnesses with personal knowledge of the default and delivery of notice should

attend trial and present facts.

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## WRIT OF POSSESSION

- Available on the day stated in the county court judgment.
- 10 days is typical because resident can stay enforcement of a judgment by filing a supersedeas bond within 10 days of the judgment.

Service of writ within 5 business days.

## **APPEAL**

- Appeal deadline is within 5 days of judgment.
- Extended by weekends and holidays.

## TRIAL DE NOVO AT COUNTY COURT

- Brand new trial.
- Rules of Evidence apply.
- Within 21 days after court receives appeal papers.

## PAYMENT INTO

- Resident must pay rent into the court's registry within 5 days of the appeal and then also as rent becomes due during the appeal process.
- If resident fails to make the appropriate payment, a writ can be requested from either the JP court or the county court, as applicable and will be issued immediately.

## **RECOVERY OF RENT**

- Justice court or county court, as applicable, shall disburse rent paid into the court registry on request at any time during or after the pendency of the
- Contact the court to recover payment made into the court registry.

