

Notice to Vacate Chart

Type of Tenancy	Time Period
Tenancy for a Fixed Term	3 days' written notice unless lease provides otherwise Prop Code 24.005(a)
Tenancy at Will <i>without Rental Payment</i> (no fixed term, such as boyfriend/girlfriend or parent/adult child)	3 days' written notice Prop Code 24.005(b)
Tenancy at Will <i>with Fixed Rental Payments</i> (such as month-to-month agreements)	3 days' written notice unless lease specifies otherwise. If no breach of lease, must first give termination notice of at least one rental period unless lease specifies otherwise Prop Code 24.005(b); 91.001
Tenancy by Sufferance (such as an owner who was foreclosed upon)	3 days' written notice Prop Code 24.005(b)
Residential Tenant of an Owner Who Was Foreclosed Upon	<i>If requirements of bona fide tenant met</i> (see Evictions Deskbook Chapter 3 for details), tenant can finish lease unless purchaser will live in property as primary residence, in which case 90 days' written notice Permanently Protecting Tenants at Foreclosure Act of 2018, 12 U.S.C. 5201
Commercial Tenant of an Owner Who Was Foreclosed Upon	30 days' written notice Prop Code 24.005(b)
Squatter (person who entered without legal authority or by force)	Immediate notice, which can be oral Prop Code 24.005(d)
Tenant of a Squatter	3 days' written notice Prop Code 24.005(c)

Eviction Law Comparison – Filed Before vs. On or After Jan. 1, 2026

Topic	Filed Before 1/1/2026	Filed On or After 1/1/2026
Notice to Pay or Vacate	May be given at landlord's option	If tenant has never been delinquent in rent, must give a "notice to pay or vacate" rather than a "notice to vacate"
Method of NTV Delivery	Mail; delivery in person; or posting on outside of door in certain situations with restrictions	Mail; delivery to the inside of the premises in a conspicuous place; hand delivery to any tenant at least 16 years of age; electronically if the parties have agreed in writing
Calculation of NTV Period	Day notice is given is Day 0, then count all days	Day notice is given is Day 0, if day ends on any weekend or state or federal holiday, extends to the next day that isn't a weekend or holiday
Effect of Actual Receipt of NTV	None	If shown that defendant received notice, delivery method doesn't matter, notice is valid
Application of Other Rules	If the judge determines is necessary	May not apply Rules of Evidence or other Rules of Civil Procedure in eviction cases
Petition Contents	Needed to say how and when presuit notice was given	Now must contain information about whether presuit notice was an NTV or a notice to pay or vacate, as well as if the tenant had been delinquent in rent before
Who May Serve Citation	Constable or sheriff	If not served within 5 business days, plaintiff may ask another LEO trained in civil process to serve
Days Before Trial for Service	At least six	At least four
Summary Disposition in Squatter Cases	Doesn't exist	May make a sworn motion, only if defendant is squatter, to receive judgment without trial if defendant doesn't file a response within 4 days disputing facts. Citation must warn defendant.
Immediate Possession Bonds	Only change the time for a writ in event of default.	Plaintiff may get writ 7 days after service of notice of the possession bond as long as defendant was either at trial or served with j/m by plaintiff and has not appealed. Citation must warn defendant.
Fair Trial Venue Change	Must be made at least 7 days before trial, unless good cause shown	Must be made at least 3 days before trial or 3 days after service, whichever is later, unless good cause shown
Jury Request	Must be made at least 3 days before trial	Must be made at least 3 days before trial or 3 days after service, whichever is later
Amount of Appeal Bond in Judgment	Only in nonpayment of rent cases	In all residential eviction cases
Rent Must Be Paid Into Registry	Only in nonpayment of rent cases appealed by appeal bond or Statement of Inability	In all residential eviction cases, regardless of method of appeal

Eviction Law Comparison – Filed Before vs. On or After Jan. 1, 2026

Counting Days for Filing w/Court or Paying Rent Into Registry	Extends to next day if court closes before 5	Extends to next day if final day is a holiday (even if court open) or court closes for all or part of the day.
Determining Amount of Rent Paid Into Registry	Rental agreement	Rental agreement, or if there isn't one, greater of \$250 or fair market value
Tenant Affirmation to Appeal	None	Must swear a good faith belief in a meritorious defense and that is not for purpose of delay (court does not determine if this is true or not)
When to Transmit Case to County Court	Law is silent	As soon as rent is paid into registry, or if not paid then no earlier than 4p on the 6 th day and no later than 4p on the 10 th day after appeal
Pay County Court Filing Fees on Appeal	Within 20 days of notification by county clerk	Within 7 days of notification by county clerk
Plenary Power to Modify/Vacate Judgment	Law is silent	Until an appeal is perfected or the day after the appeal is due.
Who May Execute Writ of Possession	Constable or sheriff	If not served within 5 business days, plaintiff may ask another LEO trained in civil process to serve

This is a summary of changes made by SB 38, and the changes to the Texas Rules of Civil Procedure, which go into effect for eviction suits filed on or after January 1, 2026. This is just a summary, for full information please review the updated Evictions Deskbook, the TJCTC legislative update materials at www.tjctc.org/legislative, and the text of SB 38 and the Rules of Civil Procedure.

2. Pre-Suit Notice and Demand for Possession

Before an eviction can be filed, the landlord must first deliver a pre-suit notice which demands that the person vacate the premises and surrender possession back to the landlord. Depending on circumstances, this notice must either be a **notice to vacate** or a **notice to pay or vacate**.

A landlord may **not** file an eviction suit until **after**:

- a proper notice has been given;
- the time period in the notice has expired; **and**
- the premises have not been vacated.

Property Code § 24.005.

Note that Section 24.005(c-1) of the Property Code indicates that, for cases filed on or after January 1, 2026, the plaintiff can file an eviction suit once the state pre-suit notice period expires, even if a federal notice period has not yet expired.

However, a party may not file an eviction suit until they are entitled to possession, which requires that the pre-suit notice period runs out first. Be aware that an argument may be made that only the notice period required by state law must expire, but this may raise significant due process concerns, despite the provision in Section 24.005(c-1). Additionally, the writ of possession may **never** be served on the tenant unless the federal notice period has expired.

Computing Time in Pre-Suit Notice Periods

To compute **any** period of time in an eviction case filed on or after January 1, 2026, **including pre-suit notice periods**, you should:

- exclude the day of the event that triggers the period;
- count every day, including Saturdays, Sundays, and legal holidays; **and**
- include the last day of the period, **but**

What if the Case is Filed Before the Notice Expires?

If a suit is filed before the time has run out on the pre-suit notice, the court would enter a judgment for the defendant because the defendant had not yet committed the “forcible detainer” when the case was filed. The landlord would not need to deliver a new notice but could re-file the case based off the original notice.



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- if the last day is a Saturday, Sunday, or any state or federal holiday (including holidays that the court is open), the time period is extended to the next day that is not a Saturday, Sunday, or legal holiday.

Property Code § 24.0042, Rule 510.4(a).

Delivery of the notice would be the day that triggers the period. For delivery by mail, the court should attempt to determine the date it was received, either by using a signature date if it exists, or by applying the 3-day delivery presumption for other mail.

Notice of Proposed Eviction

If the lease or any applicable state or federal law or rule requires a landlord to give a tenant an opportunity to respond to a notice of proposed eviction before filing an eviction suit:

- the notice period in a pre-suit notice described below may, at the landlord's discretion, run concurrently with the period provided for the tenant to respond to the notice of proposed eviction; **and**
- the notice to pay rent or vacate or notice to vacate may include the required opportunity to respond to the notice of proposed eviction.

Property Code § 24.005(e).

See [page 77](#) for an example of how this applies in manufactured home community evictions.

a. Notice to Vacate vs. Notice to Pay or Vacate

Generally, the pre-suit notice that must be given is a notice to vacate, which simply sets the period of time in which the tenant or occupant must surrender possession, and if they don't do so, the landlord may file an eviction suit. However, **for an eviction suit filed on or after January 1, 2026**, if the only grounds for eviction are nonpayment of rent, and the tenant has not previously been delinquent in rent, the landlord is required to give the tenant a "notice to pay or vacate." *Property Code § 24.005(a).*



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The time period would be the same as discussed otherwise for a notice to vacate, the only difference is that if the tenant pays all of the delinquent rent during the time period in the notice, the landlord **may not** file an eviction suit if the tenant does not vacate.

Can the Landlord File an Eviction if the Tenant Pays After Getting a Notice to Vacate?

Yes. If a regular notice to vacate is delivered because the tenant has been previously delinquent, the landlord can file the eviction even if the tenant subsequently pays the delinquent rent during the notice period. Obviously, they would not be able to recover the rent amount that was already paid during the eviction suit.

What Does “Previously Been Delinquent in Rent” Mean?

Section 24.005 of the Property Code doesn’t give explicit guidance. There was legislative testimony that the provision was intended to mean during the current rental agreement. TJCTC believes that is a very reasonable interpretation, but it is not binding on courts and ultimately each court must determine what that section means and apply that interpretation consistently.



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What if the Tenant Owes Rent and Late Fees?

If the only grounds for eviction are delinquent rent and late fees resulting from that delinquent rent, the landlord should still give a “pay or vacate” notice if the tenant has not previously been delinquent. If there are other amounts, such as utility payments or other amounts not defined as rent or late fees directly arising from the failure to pay rent, the landlord may deliver a notice to vacate instead.

The tenant would only need to pay the rent itself, not the late fees, to satisfy a “pay or vacate” notice.

However, be aware that some leases provide that all amounts paid go first to other outstanding amounts, and only after those are paid, then to rent. If such a clause exists, and a tenant owes, for example, a \$100 late fee and \$1,000 in rent, and they give the landlord \$1,000, their lease indicates that they have paid the \$100 late fee and \$900 of the rent, leaving \$100 of rent unpaid. This would mean the landlord could recover the \$100, since it is rent and not a late fee. Without such a clause in the lease, however, the court would have to determine what the tenant intended to pay with the \$1,000 check.

Can a Landlord Give a “Pay or Vacate” Notice Even if the Tenant Has Been Delinquent?

Yes. It would be up to the landlord to decide which pre-suit notice to give. Some landlords may feel that the “pay or vacate” notice enhances the chance that the tenant will pay the delinquent rent, and they are more interested in securing payment than obtaining possession.

How Does the Court Know Which Notice Was Delivered and Which Was Appropriate?

For suits filed on or after January 1, 2026, Rules 510.6(a)(9) and (11) expressly require the plaintiff to include in the petition “a description of when and how pre-suit notice was given and whether it was a notice to vacate or a notice to pay or vacate” as well as, in evictions for delinquent rent, “whether the tenant was late or delinquent in paying rent before the month in which notice was given.”

If the defendant does not answer or appear, the court must take the sworn petition as true. If the defendant does answer or appear, the plaintiff should offer testimony and evidence, and the court should develop the facts of the case to determine what notice was given and if it was the correct type of pre-suit notice.

b. Notice to Vacate vs. Notice of Termination

As discussed on [page 10](#), tenancies at will where rent is paid on a periodic basis, such as month-to-month tenancies, require a notice of termination if either party wishes to discontinue the lease agreement for any reason other than due to breach of the lease.

A termination notice is required if either:

- the tenant has a written lease that they did not breach, and that lease does not have a set end date; **or**
- the parties do not have a written lease, but there is an agreement that the tenant must pay rent.

The termination notice is a written notice telling the tenant the day that their lease now ends. This notice must be at least one rental payment period. *Property Code § 91.001.*

Most agreements without set end dates are “month-to-month” agreements, so the termination notice would need to give at least one month’s notice. For example, the



landlord could give a termination notice on January 27th informing the tenant that the lease is terminated effective February 28th. Similarly, the tenant would need to give the landlord a termination notice to end their obligation to continue paying rent.

Is a Notice to Vacate Still Required after a Notice of Termination?

If the tenant does not vacate the premises once the time period stated in the termination notice has expired, they are now a “tenant by sufferance” ([see page 11](#)), and the landlord would need to give a three-day notice to vacate prior to filing the eviction, unless the parties agreed to a different notice to vacate time in the lease.

Is a Notice of Termination Required if the Tenant Breached the Lease or Doesn’t Pay Rent?

If the tenant breached the lease, or there is no written lease and no agreement to pay rent ([see page 9 for more discussion on tenants at will](#)), then no termination notice is needed, and the landlord can simply deliver a notice to vacate or notice to pay or vacate, as appropriate ([see page 20](#)).

c. How Much Notice Is Required?

The proper amount and form of pre-suit notice depends on the circumstances of the case, and any written lease agreement. The court normally does not have sufficient information to know the correct notice period before the case is filed. This, in addition to the prohibition on giving legal advice, explains why courts or constables **should not** advise how or for how long a landlord should give pre-suit notice to a tenant.

As always, parties can be referred to www.tjctc.org/SRL for forms and information packets, as well as low- and no-cost attorney contact information.

A Tenant Under a Written or Oral Lease

The landlord must give a tenant who defaults (breaches a lease term, including not paying rent) or holds over after the end of the rental term or renewal period at least **three days written notice** to vacate (or pay or vacate, if appropriate), **unless** the parties have contracted for a shorter or longer notice period in a written lease or agreement. *Property Code § 24.005(a)*.



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A Tenant at Will or Tenant by Sufferance

The landlord must give the tenant at least **three days written notice** to vacate, **unless** the parties have contracted for a shorter or longer period in a written lease or agreement.

Property Code § 24.005(b).

A Tenant of a Squatter

The landlord must give the person at least **three days written notice** to vacate. *Property Code § 24.005(c).*

Squatters

The person entitled to possession must give the occupant **oral or written notice** to vacate, but the notice may be to vacate **immediately** or by a **specified deadline**. An eviction suit may be filed immediately upon giving notice in this situation. *Property Code § 24.005(d).*

See page 7 for more information on squatters and their tenants.

A Residential Tenant of a Building That is Foreclosed Upon

If 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 at least 90 days' written notice to vacate** if the purchaser chooses not to continue the lease and **will occupy** the building as their primary residence.

If the purchaser will **not occupy** the building as their primary residence, the tenant is entitled to complete the term of the existing lease, as long as the tenant continues to timely pay rent to the new owner. *Permanently Protecting Tenants at Foreclosure Act of 2018, 12 U.S.C. 5220.*

A tenant is considered to have timely paid the rent 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**
- foreclosing lienholder or purchaser at foreclosure not later than the fifth day after receipt of a written notice of the name and address of a purchaser who requests payment.

Property Code § 24.005(b).



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For more information on procedures and notices in post-foreclosure eviction cases, [see page 13](#).

d. Delivery or Receipt of the Pre-Suit Notice



In order to receive an eviction judgment in a case filed on or after January 1, 2026, a plaintiff must prove **either** that the defendant received the pre-suit notice **or** that the notice was delivered as prescribed by Property Code Section 24.005(f-3). *Property Code § 24.005(f-4)*. Remember that this proof may be made by evidence and testimony at trial, or by taking the information in the sworn petition as true if the defendant does not answer or appear.

The pre-suit notice, unless it is proven that the defendant actually received it, must be delivered by at least one of the following methods:

- Mail, including first class mail, registered mail, certified mail, or a delivery service;
- Delivery to the inside of the premises in a **conspicuous** (noticeable or prominent) place;
- Hand delivery to any tenant of the premises who is at least 16 years of age; **or**
- If the parties have agreed in writing, electronic communication, including email or other electronic means.

Property Code § 24.005(f-3).

If it is established that the defendant actually received the notice, the method of how it was delivered no longer matters. *Property Code § 24.005(f-4)*.

What If There Is No Proper Pre-Suit Notice?

If a landlord does not prove that there was a proper pre-suit notice, then the court may **not** grant a judgment of possession to the landlord.

This is because one of the elements of an eviction case that the landlord needs to prove is that there was a demand for possession and the tenant refused to leave in the required timeframe. The landlord cannot prove this and should lose the eviction suit if:

- The landlord failed to serve a pre-suit notice at all;
- The landlord served a pre-suit notice, but filed the eviction suit before the date by which the tenant was required to move out (see [page 19](#) for more information regarding federal law deadlines);
- The landlord was required to serve a notice to pay or vacate and instead simply served a notice to vacate; **or**
- The landlord served a notice which had an improper timeframe for the tenant to vacate.

McDonald v. Claremore Apartment Homes; Goggins v. Leo; AMC Mortg. Services, Inc. v. Shields; Gore v. Homecoming Financial Networks, Inc.

e. Pre-Suit Notice Chart

[Click Here to Open the Pre-Suit Notice Chart](#)

3. Filing the Eviction Suit

An eviction suit is initiated when the plaintiff or the plaintiff's authorized agent files a written **sworn** petition with the justice of the peace in the precinct where the premises are located. *Property Code § 24.00505; Rule 510.6(a).*



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If the petition is filed in a precinct other than the one where the premises are located, the judge **must** dismiss the case and 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. *Rule 510.6(c).*

See [page 4](#) for a discussion of how the court can handle an eviction suit that the landlord is attempting to file in the wrong precinct. If an eviction suit is filed in the wrong precinct, the court should dismiss the case on its own motion without waiting for a motion to dismiss by the defendant.