Residential Evictions (TX)

A Lexis Practice Advisor® Practice Note by Ian Ghrist, Ghrist Law Firm PLLC

Ian Ghrist
Ghrist Law Firm PLLC

This practice note explains the residential eviction process in Texas from pre-suit requirements through judgment, execution, and appeal. Although eviction is necessarily a landlord-driven process, the considerations discussed in this practice note are also relevant to the tenant and its counsel.

For further guidance on residential leasing in Texas, see Eviction Resource Kit (TX) and Residential Lease Agreements (TX).

Overview and Relevant Law

Eviction suits in Texas (formally known as "forcible entry and detainer suits") are governed by Rule 510 of the Texas Rules of Civil Procedure and Tex. Prop. Code § 24.001. Most of the important laws governing eviction suits exist in either Tex. R. Civ. P. 510 or Tex. Prop. Code §§ 24.001–24.011. The Texas legislature enacted these rules "to provide a speedy and inexpensive remedy for the determination of who is entitled to possession of property." Johnson v. Fellowship Baptist Church, 627 S.W.2d 203, 204 (Tex. App. Corpus Christi 1981).

There is no need to file an eviction suit after a delinquent property tax sale. Under Section 33.51 of the Texas Tax Code, the tax sale buyer can simply order a writ of possession from the tax sale court.

Justice of the Peace Court

In Texas, the local Justice of the Peace Court (JP court) (also frequently referred to as "justice court," the "people's court," or "small claims court") has exclusive jurisdiction over eviction suits. In layman's terms, this means that Texans must file their eviction suits at the local JP court. Usually, the district and county courts are located downtown in the largest city in a county, while there will be several JP court subcourthouses spread throughout the county, often sharing office space with the local city hall or the local branch of the tax collector's office. In 2013, the Texas legislature abolished small claims courts and gave jurisdiction over small claims cases to the JP courts. See 2011 Tex. ALS 3, 2011 Tex. Gen. Laws 3, 2011 Tex. Ch 3, 2011 Tex. HB 79, 2011 Tex. ALS 3, 2011 Tex. Gen. Laws 3, 2011 Tex. Ch 3, 2011 Tex. HB 79 (repealing former Tex. Gov't Code ch. 28, governing small claims courts, effective May 1, 2013); 2013 Tex. ALS 2, 2013 Tex. Gen. Laws 2, 2013 Tex. Ch 2, 2013 Tex. HB 1263, 2013 Tex. ALS 2, 2013 Tex. Gen. Laws 2, 2013 Tex. Ch 2, 2013 Tex. HB 1263 (delaying abolition of small claims courts until August 31, 2013). So, the JP courts also function as small claims courts in Texas for claims of under $10,000 in monetary damages.

Because the Texas Rules of Civil Procedure and the Texas Rules of Evidence do not apply in JP court (see Tex. R. Civ. P. 500.3(e)), Texans are presumed capable of adequately representing themselves without the help of a licensed attorney in these courts and they frequently do so. Consequently, many, if not most, eviction suits are filed at the local JP court subcourthouse without the help of an attorney and using forms that are available on a courthouse's website or in folders at the court clerk's window. See, for example, the website for the Justice of the Peace Court 1 of Tarrant County, Texas.

Pre-suit Notice to Vacate

Common grounds for eviction in Texas include (1) unpaid rent, (2) holdover after expiration of the lease term or termination of a month-to-month tenancy, and (3) lease violations. Before an eviction action can be brought, the landlord must provide the tenant with the appropriate notice to vacate. The form and content of the notice to vacate are generally the same regardless of the grounds for eviction.

A 3-day notice to vacate must be sent to the tenant before an eviction suit is filed, unless the parties contracted for a shorter or longer notice period in writing. The notice period is calculated from the day on which the notice is delivered. If the eviction suit is against a holdover tenant after a rental term expired, the landlord also needs to comply with the tenancy termination requirements of Tex. Prop. Code § 91.001. Tex. Prop. Code § 24.005. Generally, the landlord must give one-month notice of termination in order to terminate a month-to-month tenancy. Tex. Prop. Code § 91.001.

If the landlord seeks attorney's fees from the tenant, the landlord must serve the tenant with a 10-day notice to vacate, unless a written lease entitles the landlord to attorney's fees. The 10-day notice should 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." Tex. Prop. Code § 24.006.

For forms, see 3-Day Notice to Vacate (Residential Eviction) (TX), 10-Day Notice to Vacate (Residential Eviction) (TX), and Termination of Month-to-Month Tenancy Notice (Residential Eviction) (TX).

Service of the Notice to Vacate

The notice to vacate may be served personally or through the mail. If served by mail, some JP courts and county courts at law in Texas apply the "mailbox rule" of Tex. R. Civ. P. 21a. If the court applies this rule, the notice is presumed to be delivered within three days from the date that it was deposited in the mail. Onabajo v. Household Fin. Corp. III, No. 03-15-00251-CV, 2016 Tex. App. LEXIS 7454, at *13–14 (Tex. App. Austin July 14, 2016); Tex. R. Civ. P. 21a(e). Under Tex. R. Civ. P. 21a(c), when mail is used as a delivery method, "three days shall be added to the prescribed period," whatever period that might be. Accordingly, when mail is used to deliver the notice, the best practice for landlords is to always consider the notice to vacate to be a 6-day notice to vacate rather than a 3-day notice to vacate.

As noted above, the notice to vacate may also be delivered personally, which means 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." Tex. Prop. Code § 24.005(f). If the landlord or property management company does not want to wait six days before filing the eviction suit, one of these personal delivery methods may be employed. However, quite understandably, a landlord who is involved in a dispute with a tenant, or even a squatter, will not want to risk opening the resident's front door to affix the notice "inside the main entry door," as required by Tex. Prop. Code § 24.005(f). (Texas has "castle doctrine," which means that if someone enters your habitation, you can, generally and subject to some exceptions, use deadly force against them. Tex. Penal Code §§ 9.31–9.32.) Thus, this requirement to post notice to vacate on the inside of the main entry door is considered by many to be unsafe.

Tex. Prop. Code § 24.005(f-1) provides an alternative to posting notice on the inside of the front door if the "landlord reasonably believes that harm to any person would result from . . . affixing the notice to the inside of the main entry door," but the procedure is rarely used, probably because the majority of evictions are handled without the assistance of an attorney and most landlords find it difficult to understand the procedure or perform it correctly. Whoever delivers the notice under subsection (f-1) needs to appear at the eviction trial and testify about why he or she reasonably believed that harm 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. The person who testifies should not merely allege that they did not want to open the door, but rather should point out a condition on the property, like a dangerous animal, that made the normal methods of service unsafe. Service of a notice to vacate under subsection (f-1) should not be used if the person that delivered the notice to vacate cannot testify at the trial.

Additionally, under subsection (f-1), the landlord's notice must contain "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," the landlord must deposit "in the mail in the same county in which the premises in question is located a copy of the notice to the tenant . . . ." Interestingly, subsection (f-1) service requires mail delivery in addition to personal delivery. Mail delivery is also a permissible method of service under subsection (f). Accordingly, the only purpose of subsection (f-1), given that mail service is already permissible, seems to be the shortening of the period in which the notice is deemed delivered by operation of subsection (f-2).

Proof of Delivery

At the eviction hearing, the judge will ask for proof that the notice to vacate was given. Many landowners deliver the notice to vacate by mail or by affixing it to (rather than inside of) the front door of the property. The former of these methods is potentially ineffective while the latter does not comply with law. Even if the notice to vacate is sent by certified and regular mail, the tenant can claim not to have received it and, unless the landowner has the signed green return card, the judge may or may not agree that the notice was effective. Gore v. Homecomings Fin. Network, No. 05-06-01701-CV, 2008 Tex. App. LEXIS 640, at *6 (Tex. App. Jan. 31, 2008) (mem. op., not designed for publication) (notice to vacate sent by regular and certified mail, but both envelopes had notations indicating that they were returned unclaimed—court ruled in favor of the tenant on the grounds that the evidence did not establish that the tenant received the notice); Brittingham v. Fed. Home Loan Mortg. Corp., No. 02-12-00416-CV, 2013 Tex. App. LEXIS 10624, at *6 (Tex. App. Aug. 22, 2013) (court ruled in favor of landowner even though the main distinctions from the Gore case were that there was a business records affidavit to go along with the regular and certified letters and that only the certified letter was marked unclaimed).

The notice to vacate does not need to be received by any particular person, but instead must be sent "to the premises." Trimble v. Fannie Mae, No. 01-15-00921-CV, 2016 Tex. App. LEXIS 13482, at *13 (Tex. App. 2016). "When a letter containing notice is properly addressed and mailed with prepaid postage, a presumption exists that the notice was received by the addressee. Thomas v. Ray, 889 S.W.2d 237, 238 (Tex. 1994)." Trimble, 2016 Tex. App. LEXIS 13482, at *11. Addressing the notice to "all occupants" and mailing it is sufficient to raise the presumption that the notice was delivered to the property. Id. In at least one case, the court held that whether the tenant "received the notice is not determinative of whether notice was given." U.S. Bank, N.A. v. Khan, No. 05-14-00903-CV, 2015 Tex. App. LEXIS 8388, at *6 (Tex. App. Aug. 11, 2015). If the tenant testifies that the tenant did not receive the notice, then the court is not required to accept the tenant's testimony. Kaldis v. U.S. Bank Nat'l Ass'n, 2012 Tex. App. LEXIS 6609, at *9 (Tex. App. Aug. 9, 2012, pet. dism'd w.o.j.) (mem. op.).

Most of the time, regular or certified mail works just fine, and the landlord does not lose the case due to the tenant claiming not to have received the notice to vacate. However, going through a JP court eviction trial and then a county court de novo trial on appeal, just to find out that the landlord's suit is dismissed due to insufficient evidence of tenant's receipt of a notice (even though the tenant is obviously aware of the eviction suit) is, of course, frustrating. To make it worse, since most landlords handle the JP eviction suit without an attorney, an attorney who becomes involved at the county court appeal level is not able to go back and correct any deficiencies in the manner of delivery of the notice to vacate. Unfortunately for landlords, there is no opportunity to cure any defects in the notice to vacate before the county court appeal trial occurs.

Misnomer Rule

Because many eviction suits occur in JP court without an attorney, the parties often fail to recognize the misnomer rule. The misnomer rule provides that misspellings or even incorrect names do not matter as long as the defendant is not mislead regarding who was sued or the intention to sue the defendant who was actually served with citation was apparent from the pleadings and process. Dezso v. Harwood, 926 S.W.2d 371, 374 (Tex. App. 1996). Eviction suits are generally made out against a particular defendant "and all occupants." Pinnacle Premier Props. v. Breton, 447 S.W.3d 558, 561 (Tex. App. 2014). Because the notice to vacate rules allow for service upon the property itself, the "all occupants" language can effectively evict anyone occupying the property as long as the notice and citation are served pursuant to the rules. Tex. Prop. Code § 24.005. The big exception to the use of "all occupants" language is Tex. R. Civ. P. 510.3(c), which provides that any tenants listed on a written lease must be named and served with a citation. (The citation is similar to a summons and is served on the defendants with the eviction petition.)

Eviction Petition

After the notice to vacate has been properly served on the tenant and the tenant fails to vacate within time required, the next step is for the landlord to file the eviction petition. As noted above, common grounds for eviction include (1) unpaid rent, (2) holdover, and (3) lease violations. The petition should allege each ground that may apply. The petition should typically allege unpaid rent as an alternative or contingent ground for recovery. Often, the rent is current when an eviction suit for holdover or lease violations is filed, however, by the time the eviction suit goes up on appeal, the rent may have become delinquent. In such case, the appellate county court at law judge may not allow the pleadings to be amended or the petitioner may forget to amend the petition to include unpaid rent as a ground for eviction. In these instances, the county court at law judge on appeal may refuse to hear evidence of unpaid rent. In addition, unpaid rent is typically the easiest ground for eviction to prove and should always be the primary ground for eviction if rent remains unpaid.

The grounds for eviction in the petition must be "sworn to by the plaintiff." Tex. R. Civ. P. 510.3(a). However, an agent or attorney for the plaintiff can verify the petition. Norvelle v. PNC Mortg., 472 S.W.3d 444, 446–49 (Tex. App. 2015, no pet.); Jimenez v. McGeary, 542 S.W.3d 810, 814 (Tex. App. 2018, pet. denied).

Recovery of Rent and Other Monetary Damages

The only issue in an eviction suit is the right to immediate possession of the property. Tex. R. Civ. P. 510.3(e). A limited exception to this rule exists, under Tex. R. Civ. P. 510.3(d), for a claim of entitlement to back rent, but only if the claim is "within the justice court's jurisdiction." Because JP courts have small claims jurisdiction, the JP court has no jurisdiction over suits where the amount in controversy is over $10,000. Tex. Gov't Code § 26.042(a). Therefore, back rent claims can be no more than $10,000. Also, Tex. R. Civ. P. 500.3(d) makes clear that "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, excluding statutory interest and court costs, but including attorney's fees, if any."

Many landlords filing eviction cases do not know two critical rules: (1) if you ask for more than $10,000 in back rent, or if the court thinks that more than $10,000 in back rent is actually owed, then the JP court will likely refuse to award anything at all for back rent; and (2) the landlord can only ask for back rent, nothing else—no late fees, no penalties, no fines for unauthorized pets or parking in the wrong spot, etc., only back rent. There is an exception in some instances where amounts owed that are not quite rent may be recoverable if they are "within the nature of rent." Carlson's Hill Country Bev., L.C. v. Westinghouse Rd. Joint Venture, 957 S.W.2d 951, 955 (Tex. App. 1997). Courts differ on what constitutes within the nature of rent, and so, in some JP courts, late fees or unauthorized pet fines may be recoverable, but for the most part, those types of monetary obligations cannot be recovered.

On appeal, however, the rules change, and you can amend your pleadings to ask the court for any damages relating to possession of the property during the pendency of the appeal, and those damages may exceed $10,000. However, the damages must arise between the date of the JP court judgment and the county court trial date in order to be recoverable in excess of $10,000.

The county courts normally have jurisdiction up to $200,000, unless the Texas Government Code provides something different for that particular county. Tex. Gov't Code § 25.0003. Under Tex. R. Civ. P. 510.11, the landlord can seek damages in a county court eviction appeal for anything "suffered for withholding or defending possession of the premises during the pendency of the appeal." Courts have construed this broadly to allow damages that are in any way related to maintaining and obtaining possession of the subject property during the pendency of the appeal. See Serrano v. Ramos, 2015 Tex. App. LEXIS 6139, at *7–9 (Tex. App. June 18, 2015); Hanks v. Lake Towne Apartments, 812 S.W.2d 625, 626 (Tex. App. 1991, writ denied); Krull v. Somoza, 879 S.W.2d 320, 322 (Tex. App. 1994, writ denied).

Consolidating the foregoing rules, the rule for monetary damages in an eviction suit in Texas is that the landlord can obtain back rent from the JP court as long as less than $10,000 is owed at the time of the filing of the petition. If additional rent that comes due before trial brings the total rent owed to more than $10,000, then the JP court does not lose jurisdiction because the damages for additional rent accrued "because of the passage of time." Continental Coffee Prods. Co. v. Cazarez, 937 S.W.2d 444, 449 (Tex. 1996). For liquidated claims, the plaintiff cannot arbitrarily reduce the amount of the claim to bring it within the jurisdictional limits of the court. Failing v. Equity Management Corp., 674 S.W.2d 906, 909 (Tex. App. 1984). For unliquidated claims, the plaintiff can reduce the damages to an amount within the court's jurisdictional limit if the plaintiff pleads in good faith. French v. Moore, 169 S.W.3d 1, 8 (Tex. App. 2004). Rent will most likely be considered a liquidated claim, and consequently, the landlord probably cannot arbitrarily lower the amount of rent due in order to avoid filing a separate suit in county or district court for the rent owed.

If the judge in JP court finds the amount in controversy to be in excess of $10,000, the proper remedy is to sever the forcible detainer cause of action and dismiss the cause of action for rent. It's the Berrys, LLC v. Edom Corner, LLC, 271 S.W.3d 765, 772 (Tex. App. 2008). In other words, if more than $10,000 in back rent is owed when the eviction suit is filed, then the landlord gets zero monetary damages. But, pursuant to Tex. R. Civ. P. 510.3(e), any claims not asserted because they cannot be brought "can be brought in a separate suit in a court of proper jurisdiction." Rent arises out of the same transaction, or subject matter, as possession of the premises and so, normally, a landlord who sued for possession only would be barred by res judicata or collateral estoppel from bringing a separate suit for the unpaid rent. See Barr v. Resolution Trust Corp., 837 S.W.2d 627, 631 (Tex. 1992) (claims arising out of the same transaction or subject matter as claims previously litigated are barred by res judicata; Texas has adopted the transactional approach to res judicata law). However, if back rent owed is more than $10,000 at the time of the filing of the eviction suit or if the court finds that it lacks jurisdiction over the rent, then

the landlord must bring a separate suit for the rent. So, the landlord must bring one suit in JP court for possession of the property and another, separate suit in county or district court for rent if the landlord wants to recover judgment for the rent due.

Eviction Trial

Eviction cases in the JP court must proceed to trial very quickly. The citation in an eviction suit 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. 510.4(a)(10). Under Tex. R. Civ. P. 510.7, "trial in an eviction case must not be postponed for more than 7 days total unless both parties agree in writing." At the trial, the petitioner must prove that (1) the notice to vacate was properly sent and (2) the petitioner is entitled to immediate possession of the real property.

Typically, all eviction trials on the JP court's docket will be docketed at the same date and time because of the short window after the filing of the petition in which the trial must occur. As a result, the courtroom will be full of landlords and tenants waiting for their case to be called. Generally, the parties check in with the court clerk prior to entering the courtroom and wait for the judge. Once the judge enters the courtroom, the judge will typically first call the cases where neither party checked in or only the tenant checked in. These will be dismissed for want of prosecution. Then, the judge will call the cases where the landlord appeared but the tenant failed to appear. These typically result in a default judgment after a brief prove-up hearing.

Finally, the judge will call the contested cases where both parties appeared. The trials generally take no more than 5 to 20 minutes due to the rule against counterclaims. The only issue in an eviction suit is the right to immediate possession of the property. No counterclaims can be raised, and no third parties can be joined. Because of this rule, the compulsory counterclaim rule generally does not apply to eviction suits. Tex. R. Civ. P. 510.3(e). Typically, any claims that the tenant may have against the landlord must be raised by the tenant in a separate lawsuit.

Tenant Defenses and Remedies

Retaliatory Eviction

Subchapter H of Chapter 92 of Title 8 of the Texas Property Code governs retaliation by landlords against tenants. Retaliation is a defense to an eviction suit. Tex. Prop. Code § 92.335. The retaliation defense is often raised and rarely successful. The tenant actions that the landlord is prohibited from retaliating against are listed in Tex. Prop. Code § 92.331(a). The landlord cannot retaliate by filing an eviction within six months after the date of the tenant's protected action. Tex. Prop. Code § 92.331(b). But, when an eviction is filed for any reason set forth in Section 92.332(b) of the Texas Property Code, then that eviction suit cannot be considered retaliation. Section 92.332(b) lists the most common reasons for eviction, thus most eviction suits that are filed in good faith will not be barred by a retaliation defense. Additionally, retaliation is only a defense if the landlord's retaliatory action was made "for purposes of retaliation." Tex. Prop. Code § 92.332(a).

Wrongful Foreclosure Is Generally Not a Valid Tenant Defense

Claiming that a foreclosure was wrongful due to defects in the foreclosure process, regardless of whether those claims are filed in a separate district court lawsuit, typically does not constitute a sufficient defense to a post-foreclosure eviction suit. Pinnacle Premier Props. v. Breton, 447 S.W.3d 558, 565 (Tex. App. 2014); Home Sav. Asso. v. Ramirez, 600 S.W.2d 911, 914 (Tex. Civ. App. 1980). Generally, a claim of wrongful foreclosure, and a request to rescind the foreclosure sale and restore ownership of the property to the borrower, may be considered a title dispute. But, it is not a title dispute that deprives the JP court of jurisdiction because the issue of immediate right to possession of the premises is not dependent on the outcome of the title dispute. Id. If the deed of trust and substitute trustee's deed do not contain a tenancy-at-sufferance clause and there is no other basis for a landlord-tenant relationship, then a wrongful foreclosure suit claim may constitute a title dispute sufficient to deprive the JP court of jurisdiction over the eviction. Chinyere v. Wells Fargo Bank, N.A., 440 S.W.3d 80, 85 (Tex. App. 2012).

In a situation, as in the Chinyere case, where the JP court lacks jurisdiction over the eviction, the foreclosure sale purchaser would need to:

- File suit in district court and either obtain a trial setting as soon as possible (which will probably be at least five times longer than it would take to get a trial setting in JP court) or set an injunction hearing
- Prove an imminent, irreparable injury for which no adequate remedy at law exists (i.e., monetary damages inadequate)
- Prove a provable right of recovery and likelihood of success on the merits -and-
- Post an injunction bond

Repair and Deduct

Residential tenants in Texas can repair a condition that materially affects the physical health or safety of an ordinary tenant and deduct the cost of repair from rent, but only in very specific statutory circumstances. Tex. Prop. Code § 92.056 (rules governing the tenant's obligation to notify the landlord to repair or remedy conditions); Tex. Prop. Code § 92.0561 (rules governing whether and when a repair can be deducted from rent). The rules governing whether and when a repair can be deducted from rent are complex and detailed. Tenants cannot, generally, make the repair themselves, through their company, or through a family member. Tex. Prop. Code § 92.0561(f). The tenant must save both a "copy of the repair bill" and "the receipt for its payment" and furnish those to the landlord. Tex. Prop. Code § 92.0561(j). The tenant cannot repair and deduct from rent unless the tenant has previously given a notice of intent to repair or remedy the condition that contains a reasonable description of the intended repair or remedy and such notice complies with Tex. Prop. Code § 92.056(b)(1) and, if required, Section 92.056(b)(3). Tex. Prop. Code § 92.0561(d)(2). The total repairs for the month cannot exceed the greater of $500 or one month's rent. Tex. Prop. Code § 92.0561(c). These are just a few of the rules. The full rules governing repair and deduct remedies are lengthy and rarely followed. As a result, few tenants even attempt to offer sufficiently detailed proof to the JP court that the statutory procedures were followed.

Judgment

Default Judgment for the Landlord

If the tenant does not file a written answer in the JP court, he or she must file a written answer within eight days of the transcript being filed in the county court. Failure to do so entitles the landlord to a default judgment. Tex. R. Civ. P. 510.12. A pauper's affidavit qualifies as a written answer. Hughes v. Habitat Apartments, 860 S.W.2d 872, 872–73 (Tex. 1993). In other words, if the defendant files a pauper's affidavit, the affidavit constitutes an appearance, and the defendant is entitled to receive notice of a default judgment hearing. Hughes, 860 S.W.2d at 873. Accordingly, when the landlord moves for default judgment or for possession due to failure to remit rent payments to the court's registry, both of those motions should be set for hearing with notice to the defendant, even if the motions are set for hearing contemporaneously with a trial on the merits set by the court.

Judgment for the Tenant

If the tenant prevails and retains possession of the premises, the landlord can, for the most part, simply file the suit again and start the process from scratch. Res judicata does not generally apply to eviction suits in Texas.Puentes v. Fannie Mae, 350 S.W.3d 732, 738–39 (Tex. App. 2011, pet. dism'd) Tex. App. 2011, pet. dism'd); Fed. Home Loan Mortg. Corp. v. Pham, 449 S.W.3d 230, 235–38 (Tex. App. 2014, no pet.). The landlord can even have multiple eviction cases pending against the tenant at the same time since the issue to be determined is the right to possession as of the time of the suit, which may change as time goes on. Id; In re Victor Enters., 308 S.W.3d 455 (Tex. App. 2010).

Appeals

Appeal Process

The losing party may appeal to the county court at law. Because JP courts do not employ court reporters to keep a record of their proceedings and because the Texas rules of procedure and evidence do not apply (see Tex. R. Civ. P. 500.3(e)), no record exists for the county court to review on appeal. Consequently, the county court conducts a trial de novo. Whatever evidence the landlord or tenant offered in the JP court case is gone and irrelevant. In fact, the judge of the county court will know nothing about what happened in the JP court other than the outcome as expressed in the final order signed by the JP court judge. The county court judge must decide the new case based solely on the new trial, and so most, if not all, county court judges are not concerned with what happened in the JP court.

In a county court at law, the landlord/plaintiff generally needs an attorney because the rules of evidence and procedure apply in full regardless of whether the landlord knows and understands them. The landlord who wins in JP court can easily lose in county court on some technicality that the landlord did not understand. Generally, a corporation or other business entity must have an attorney to represent it in county court on appeal in an eviction suit. McClane v. New Caney Oaks Apts, 416 S.W.3d 115, 120–21 (Tex. App. 2013, no pet.). Thus, if the landlord is a corporation, the landlord's suit will be dismissed if the landlord appears for the county court appeal trial without a licensed attorney. See Wuxi Taihu Tractor Co. v. York Grp., Inc., No. 01-13-00016-CV, 2014 Tex. App. LEXIS 12888, at *21 (Tex. App. Dec. 2, 2014). However, there is a statutory exception for sworn motions for dismissal or eviction due to nonpayment of rent during appeal. Tex. Prop. Code § 24.0054(e). Additionally, as of September 1, 2017, H.B. No. 3879 85(R) amended Section 24.011 of the Texas Property Code to provide that "in an appeal of an eviction suit for nonpayment of rent in a county or district court, an owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the

entity, who need not be an attorney." This exception to the general rule against nonlawyer representation applies only to multifamily residential properties.

If the property is residential, then appeal can be taken from the county court at law, and the supersedeas bond to stop the eviction should take "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." Tex. Prop. Code § 24.007. Note, however, that if the property is commercial, the issue of possession is non-appealable after disposition of an appeal to the county court at law. Tex. Prop. Code § 24.007; 2015 Bill Text TX HB 3364 (84th Legislature, As Reported by Committee May 1, 2015); Volume Millwork, Inc. v. W. Hous. Airport Corp., 218 S.W.3d 722, 726 (Tex. App. 2006). Accordingly, a writ of possession should be issued after a county court at law commercial eviction trial, regardless of whether a supersedeas bond is posted.

Payment of Rent into Court Registry during Appeal

The tenant must pay rent into the court's registry during the appeal. The tenant can appeal to avoid this requirement by filing an appeal bond within five days after the date that the judgment is signed. Tex. R. Civ. P 510.9(a), (b). The tenant can also appeal by filing a pauper's affidavit within the same time period. Tex. R. Civ. P. 510.9(a), (c)(1), (f); Tex. Prop. Code § 24.0052. The tenant must pay one month of rent into the court's registry within five days of the filing of the pauper's affidavit. Tex. Prop. Code §§ 24.0053(a-2), 24.0054. If the rent is not paid timely, then the landlord can obtain a writ of possession from the JP court. Tex. Prop. Code §§ 24.0053(a-2), 24.0054(a), (a-2); Tex. R. Civ. P. 510.9(c)(5)(B)(i). In addition, on a sworn motion and hearing, the landlord may obtain a writ of possession from the county court if the tenant fails to pay rent into the court's registry during the pendency of the appeal. Tex. R. Civ. P. 510.9(c)(5)(B)(iv); Tex. Prop. Code § 24.0054(a-4), (b), (c).

Execution Following Judgment for the Landlord

If the landlord wins the trial and obtains judgment awarding it possession of the property, the landlord must order a writ of possession. Ordering the writ is a simple matter of filing a form at a clerk's office and in some counties can be done by an attorney online. A writ of possession is a command from the court directing the sheriff or any constable of the county to deliver possession of the premises to the landlord. Once the constable receives the writ, the constable knows that he/she has been duly authorized to use reasonable force, if necessary, to remove the occupant from the property.

A constable that receives a writ of possession typically assigns the writ to one of his/her deputies. The landlord or the landlord's attorney will receive a phone call from the deputy to schedule a time to conduct the eviction. The deputy will physically remove the occupant from the property and monitor the eviction process to prevent any breach of the peace. The deputy will not put the occupant's personal property on the curb and typically requires that the landlord bring three to five able-bodied persons to do so. Most cities will remove items left on the curb, if necessary, but may assess a bulk pickup penalty if the volume of the pickup is substantial.

The landlord should not delay in ordering and executing a writ of possession. No writ of possession may be "executed after the 90th day after a judgment for possession is signed." Tex. R. Civ. P. 510.8(d)(2). Further, a "writ of possession may not issue more than 60 days after a judgment for possession is signed." Tex. R. Civ. P. 510.8(d)(1).

Alternative Actions When Forcible Entry and Detainer Is Not Available

Although most disputes over the right to possession of real estate in Texas happen in the local JP court, there are other causes of action over the right to possession of real estate that can be filed in a county or district court (usually district court for jurisdictional reasons).

Title Disputes between Landlords and Tenants

A title dispute between a landlord and tenant can deprive the JP court of jurisdiction over the eviction case. However, the title dispute must be "genuine," and a genuine title dispute requires "specific evidence of a title dispute." Padilla v. NCJ Dev., Inc., 218 S.W.3d 811, 815 (Tex. App. 2007) (receipt without material elements of transaction and unsigned sales contract are not enough to raise a genuine title dispute).

If eviction is necessary, but the JP court lacks jurisdiction because of a title issue, the landowner may need to file a trespass to try title suit in district court seeking eviction of the occupant as opposed to a forcible entry and detainer suit in JP court. Trespass to try title is a possessory cause of action where the relief sought (just like in a forcible entry and detainer case) is eviction of the property's occupant(s). It's the Berrys, LLC v. Edom Corner, LLC, 271 S.W.3d 765, 770 (Tex. App. 2008).

Title suits generally need to be filed in a Texas district court, and not a county court or JP court. Escobar v. Garcia, 2014 Tex. App. LEXIS 5157, at *9 (Tex. App. May 15, 2014) (county courts generally have no subject matter jurisdiction over title disputes); but see Tex. Gov't Code § 25.0592 (county courts in Dallas County have concurrent jurisdiction with the district court in civil cases regardless of the amount in controversy and subject matter jurisdictional problems can be cured by retroactive assignment to district court). However, "the appellate jurisdiction of a statutory county court is confined to the jurisdictional limits of the justice court, and the county court has no jurisdiction over an appeal unless the justice court had jurisdiction." Aguilar v. Weber, 72 S.W.3d 729, 731 (Tex. App. 2002). So, even if the county court at law is one of the few in the state of Texas that shares jurisdiction with the district courts over title disputes, that county court still probably lacks jurisdiction over the title dispute if the county court is hearing the case on appeal from a justice of the peace court.

As an example, a landowner who seeks to evict a squatter whose right to occupancy depends on a wild deed and an adverse possession claim should probably file a trespass to try title action in district court rather than a forcible entry and detainer suit in JP court.

Contract for Deed Actions

Generally, the JP court does not have jurisdiction over a contract for deed case (also known as an executory contract for conveyance governed by the extensive regulations of subchapter D of Chapter 5 of the Texas Property Code), but if the contract for deed expressly states that it creates a landlord-tenant relationship, the JP court might have jurisdiction. Ward v. Malone, 115 S.W.3d 267, 271 (Tex. App. 2003); Aguilar v. Weber, 72 S.W.3d 729, 735 (Tex. App. 2002) (JP court lacked jurisdiction over contract for deed, among other reasons, "because no landlord-tenant relationship was set forth in the contract . . . ."). So, based on the caselaw, if there was an express landlord-tenant relationship in the contract, then JP court jurisdiction may exist. However, if there is a contract for deed and the purchaser/tenant has paid "40 percent or more of the amount due or the equivalent of 48 monthly payments," or if the contract is recorded (which is actually required by Tex. Prop. Code § 5.076, though, the damages for violation are only $500 per year), the seller must perform a foreclosure on the property just as if the transaction were a "deed with a vendor's lien." Tex. Prop. Code §§ 5.079, 5.066.

Ian D. Ghrist, Managing Attorney, Ghrist Law Firm PLLC

Ian practices general civil litigation, primarily in the areas of Debtor/Creditor, Real Estate, and Mineral Rights. Ian has handled cases involving deed restrictions, mechanic's liens, mortgages, lien subrogation, class actions, the Texas Mineral Interest Pooling Act, title disputes, fraud, deceptive trade practices, evictions, foreclosures, lift stay motions and bankruptcy-related matters, post-judgment collections, breach of contract, insurance claims, cases under the Uniform Fraudulent Transfer Act, contract-for-deed litigation, etc.

Before law school, Ian spent about four years as a banker for J.P. Morgan Chase where he held a Series 7 license and served as both a stockbroker and a loan officer.