

# Step by Step Residential Eviction Procedure

Hon Mandy L. Hays  
Justice of the Peace – Pct. 3, Wise County  
940-433-2969  
mandy.hays@co.wise.tx.us

1

**Funded by a Grant from the Texas Court of Criminal Appeals**

© Copyright 2020. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd; Suite 530, Austin, TX, 78744.

2

Evictions Deskbook

- [www.tjctc.org/tjctc-resources/Deskbooks.html](http://www.tjctc.org/tjctc-resources/Deskbooks.html)

TJCTC Website: Forms, Charts, SRL Packets, Webinars, Legal Board, etc.

- [www.tjctc.org/tjctc-resources.html](http://www.tjctc.org/tjctc-resources.html)

Property Code CH. 24, 92-94

- [statutes.capitol.texas.gov](http://statutes.capitol.texas.gov)

Rules 500-507 and 510, Texas Rules of Civil Procedure

- [www.txcourts.gov/rules-forms/rules-standards/](http://www.txcourts.gov/rules-forms/rules-standards/)

## Resources

3

Step by step process for a standard eviction case.

From filing through issuance of a writ of possession.

We will NOT cover appeals – this is covered in a different webinar.

## Agenda

4

- This webinar does not include any information regarding the Supreme Court and Court of Criminal Appeals emergency orders, OCA guidance, or other information related to the Coronavirus epidemic.
- That information can be found by visiting TJCTC's Coronavirus Updates, Information, and Resources webpage: <https://www.tjctc.org/coronavirus.html>

5

## Fill In The Blanks As We Go Along

On some slides in your handout, there will be a blank that you need to fill in.

The word that you need to put in the blank will be **bold and teal** in the presentation slide.

Example:

- Handout will look like this:  
Step by Step \_\_\_\_\_ Procedure
- Presentation will look like this:  
Step by Step **Eviction** Procedure

6

## What is an Eviction Case?

7

### What is an Eviction Case

- An eviction case is a lawsuit to recover possession of real property from someone who is occupying it.
- If a person is \_\_\_\_\_, they no longer have a right to remain on that property.

8

## What is an Eviction Case

- The most common eviction case is filed by a landlord to remove a tenant from the landlord's property
  - Rule 500.3(d)
- Landlord = the person who owns the property
- Tenant = the person renting the property
- Real Property = land and buildings (like a house)

9

## What laws and rules apply?

- Chapter 24 & 92-94 of the Property Code
  - These are laws enacted by the Legislature
- Rule 510 of the Texas Rules of Civil Procedure
  - This is a rule from the Texas Supreme Court that deals specifically with eviction cases
  - Rules 500-507 (the general rules in civil cases also apply in eviction cases but if there is any conflict, follow Rule 510)

10

## When Can Someone be Evicted?

11

A landlord can pursue eviction of a tenant at any point if they decide they don't want the tenant living on their property anymore.

- A.True
- B.False

12

- Most Evictions happen when a tenant breaches (that is \_\_\_\_\_ a term of the lease)
  - Tenant fails to pay their rent.
  - Tenant has pets but lease prohibits this.
  - Tenant has loud parties late at night but lease prohibits it.

## Breach of Lease

13

- An eviction may also occur when a tenant's lease or right to stay on the property has ended but they don't leave.
- For example:
  - The lease is for six months. At the end of the six months, the landlord does not renew and the tenant refuses to move out.

## End of Lease

14

- Sometimes a tenant has the landlord's permission to live there but there is no set period for how long. This is called a **tenancy at will**.
  - Ex: month-to-month leases, a person allowing a significant other or adult child to live with them.
- If the landlord tells a tenant at will that they need to move out and the tenant refuses, an eviction suit may be brought.
  - In a month to month lease, the landlord has to give a month's notice that the tenancy is being terminated.
  - No set time for notice of termination of other types of tenancies at will.

---

## No Fixed Lease

15

- When someone stops paying their mortgage, the bank holding the mortgage may
- **foreclose** on their property.
  - When this happens the house may get sold at a foreclosure sale to a new owner.
  - The new owner has a right to occupy the house and may bring an eviction suit against the former owner.
  - If someone was renting the house from the former owner, they have additional rights, since they probably weren't aware of the foreclosure.

---

## Foreclosure

16

- What if someone never had permission to be on the property in the first place?
  - For example: Someone moves into a hunting cabin. They never had a right to be there; they just started living there and refuse to leave.
- This person is a \_\_\_\_\_ and the owner may bring an eviction suit to remove them.

## Squatter

17

What Do You Say When They Ask  
You?

18

## Do I Have a Good Case?"

---

Sometimes someone will ask you: "Should I file an eviction suit?" Or "Can I kick them out for this?"

---

These are not questions you can answer for them because you are not allowed to give legal advice.

---

***How do you think you should respond to questions like these?***

***Any resources you can refer them to?***

19

## "Is This The Right Precinct?"

---

You may tell them that an eviction case must be filed in the precinct where the property is located.

---

If they ask if they are in the right precinct, you can ask them what the address of the property is and you can then look up that address with them and tell them whether or not it is in your precinct.

20

## Notice to Vacate

21

## “What is a Notice to Vacate?”

- A notice to vacate is a notice the landlord has to give a tenant saying they have to leave or an eviction suit will be filed.
  - Property Code §24.005
- The notice has to give the tenant a deadline (ex: three days) to move out and the landlord may not file the eviction suit until that deadline is up.
- A notice to \_\_\_\_\_ is different from a notice of \_\_\_\_\_.
- \_\_\_\_\_
  - A notice to terminate merely sets a date on which the lease will end. If a notice to terminate is given and the tenant does not move out by the lease end date, the landlord still also has to give a proper notice to vacate before filing an eviction suit.

22

## Must Wait to File Suit?

- The landlord has to prove that they gave this notice to the tenant and gave the tenant a chance to move out before they filed the suit.
- For example, the landlord may not hand a three-day notice to vacate to a tenant and file the eviction suit the same day “in case” the tenant fails to leave.
- If the landlord “jumps the gun,” they are not entitled to a judgment for possession.

23

## How Much Notice?

- How much notice does the tenant get?
- In most cases a tenant gets three days' written notice to vacate.
- But the lease might have a shorter or longer period.
- For example, it might say the landlord only has to give one day's notice to vacate.

-- Property Code §24.005(a)

24

# How Much Notice? --- Foreclosure

- A tenant of a person who gets foreclosed on gets a 90-day notice to vacate under the Protecting Tenants at Foreclosure Act.
- For example:
  - Suppose Bronson owns a house and rents it to Rebecca.
  - Bronson signed a mortgage when he bought the house but he fails to make his mortgage payments.
  - The bank forecloses on the house and sells it at a foreclosure sale to a new owner, Thea.
  - Thea has to give Rebecca a 90-day notice to vacate!

25

# How Much Notice? --- Foreclosure

- However – if Rebecca has a written lease with a fixed term, then she gets to stay in the house through the end of the lease term, unless Thea is going to use the house as her primary \_\_\_\_\_.
- But only if Rebecca's lease is a "bona fide" lease – meaning she isn't the mortgagor, or the child, spouse, or parent of the mortgagor; the lease agreement was an arms-length transaction before the property was sold; and the rent amount is fair market.
- But if Thea is going to use the house as her primary residence, or if Rebecca does not have a written lease, or the lease may be terminated at will by either party, then Rebecca gets the 90-day notice to vacate.

26

## How Much Notice?

## --- Squatter

- A squatter gets a notice to vacate but it can be immediate and oral.

- For example:
  - “Git off my property right now!”

--Property Code §24.005(d)

27

A landlord gives you an eviction petition to file. You notice that the petition does not include any information about whether there was a proper notice to vacate. You should:

- A. Reject the filing.
- B. Tell the landlord that he needs to include information about the notice to vacate in the petition.
- C. Accept the filing and flag the potential issue for your judge.
- D. Accept the filing and don't say anything to your judge.

28

## Filing an Eviction Suit

29

- An evictions suit starts when the plaintiff files a petition asking the court to evict a person occupying their property.
- In an Eviction case:
  - The landlord or owner of the property is the plaintiff
  - The tenant or person who is occupying the property is the defendant

**“How Does an Eviction Suit Get Filed?”**

30

- When the landlord files a petition, they must also pay filing and service fees or file a Statement of Inability to Afford Payment of Court Costs
- The filing fee in most counties is \$46.
- A clerk must make the Statement of Inability form available for free to anyone without the person having to \_\_\_\_\_ the form. – Rule 502.3
  - Example: Displayed on counter. Also a good idea to put on website.

## Filing and Service Fees

31

- Service fees (which cover the cost of having the Constable serve the case on the defendant(s)) are set by your Commissioners Court.
- Each defendant must be served and a separate service fee paid for each one.
- It is important to verify how many defendants are listed on the petition.

## Filing and Service Fees

32

A petition in an eviction case must be sworn.

This means the plaintiff signs it in front of a notary, the clerk or the judge.

That person also signs the petition, not to say it is true, but to confirm that they saw the plaintiff sign it.

- -- Rule 510.3(a)

33

## What Does the Petition Have to Include?

### The petition must contain:

- A description (including the address, if any) of the premises that the plaintiff seeks possession of;
- A statement of the facts and the grounds for eviction;
- A description of when and how the notice to vacate was delivered;
- The total amount of rent due and unpaid at the time of filing, if any; and
- A statement that attorney fees are being sought, if applicable.

-- Rule 510.3(a)

34

## Where is the Petition Filed?

- The petition must be filed in the precinct where the property is located.
  - This is because the court only has \_\_\_\_\_ over an eviction suit when the property is located in that court's precinct.
  - If a case is filed and the property is not in the precinct, the judge should immediately dismiss the case for lack of jurisdiction (no motion needed).

35

## Citation & Service

36

## Issuance of Citation

- When a petition is filed and filing fees paid or Statement of Inability filed, the court must immediately issue citation directed to each defendant.
  - This means each person named as a defendant has to be served with a citation so they are notified that they have been sued.
  - It is up to the plaintiff to decide whom to file the case against.

37

## What Does the Citation Include?

- The citation must:
  - Be signed by the clerk under seal of court or by the judge.
- State the plaintiff's cause of action and relief sought.
  - For example, this is an eviction suit seeking possession of the premises, back rent, attorney's fees and court costs.

38

## What Does the Citation Include?

- State the date of the trial (not less than 10 days nor more than 21 days after the petition is filed).
- State that if the defendant fails to appear for trial, a default judgment may be taken against them.
- Have a copy of the petition and any other documents filed with the petition attached.
  - Including a Statement of Inability if applicable.

39

## How Does the Tenant Get the Citation?

- In an eviction case, only a \_\_\_\_\_ or \_\_\_\_\_ may serve a citation unless the court authorizes someone else to in a written order.
  - It is usually the constable so we will just refer to the constable in this discussion; but the sheriff also has authority to do this.

-- Rule 510.4(b)

40

What if the plaintiff asks the court to authorize the plaintiff to serve the defendant? Should this be allowed?

A. Yes.

B. No.

C. Only if the plaintiff is also a private process server.

41

How Does  
the  
Constable  
Serve the  
Citation?

- The constable:
  - Must deliver the citation and petition to the tenant in person (this can be done anywhere the tenant can be found) ; or
  - Leave a copy of the citation and petition with a person other than the plaintiff, over the age of 16, at the defendant's usual place of residence.

42

## What if the Constable is Not Able to Serve the Tenant?

- The constable may ask the court to allow Alternative Service if:
  - The petition lists all home and work addresses of the defendant that are known to the plaintiff and states that they know of no others in the county; and
  - The constable files a sworn statement saying they tried to serve the citation at least twice at all of the addresses of the defendant in the county and stating the time and place of those attempts.

43

## Alternative Service

- The judge reviews the sworn statement and decides whether the citation may be served by alternative service.
- Once the judge authorizes service this way, the constable must:
  - Deliver the citation and petition to the premises by placing it through a door mail chute or slipping it under the front door; or if they can't do that, then they may attach the citation to the front door; and
  - Mail a copy of the citation and petition to the tenant at the \_\_\_\_\_ by first class mail.

-- Rule 510.4(c)(1)

44

## When Does the Tenant Have to be Served?

- The tenant has to be served at least 6 days before the day set for trial.

-- Rule 510.4(b)

- The Return of Service has to be filed at least one day before the day set for trial.

-- Rule 510.4(b)

45

## How Do You Set an Eviction Case for Trial?

46

- The trial date must be:
  - NO LESS than 10 days after the date the petition was filed; and
  - NO MORE than 21 days from the date the petition was filed.

## Setting the Trial Date

47

- You exclude the day the petition was filed and start counting on the next day.
- You count every day, including Saturdays, Sundays, and legal holidays.
- You include the last day of the period.
- If the last day is a Saturday, Sunday, or legal holiday, you go to the next day that is not one of those things.

-- Rule 500.5

## How Do You Count the Time to Set the Trial Date?

48

**Setting Trial Date Example**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	<b>(Day 0) Case Filed</b>	<b>(Day 1) Independence Day Holiday</b>	(Day 2)	(Day 3)	(Day 4)	(Day 5)
(Day 6)	(Day 7)	(Day 8)	(Day 9)	<b>(Day 10) First day trial can be set</b>	(Day 11)	(Day 12)
(Day 13)	(Day 14)	(Day 15)	(Day 16)	(Day 17)	(Day 18)	(Day 19)
(Day 20)	<b>(Day 21) Last day to set trial</b>					
30	31					

49

**Use the calendar to calculate the trial date range:**

The case was filed on the 2nd.

The 12<sup>th</sup> and 23<sup>rd</sup> are holidays.

***When is the first day trial can be set?***

***When is the last day trial can be set?***

50

## Notice of the Trial Date

- The Rules do not state how notice of a trial date is to be given to the \_\_\_\_\_, but some suggestions are:
  - Give the plaintiff a copy of the citation with the trial date;
  - Have the plaintiff contact the court to find out the trial date;
  - Mail, email or fax notice of the trial date to the plaintiff; or
  - Give the plaintiff written notice of a tentative date upon filing the case.
    - For example, write the court date and time on the receipt.

51

- The tenant must show up for trial on the day and time set in the citation.
- They are not required to file an answer, but they may do so if they wish either before or on the trial date.

What Does the Tenant Have to Do Once They are Served?

52

# Default Judgment

53

## What is a Default Judgment?

Often a tenant who was served with the citation does not show up for trial

Sometimes this is because they have moved out already.



If the defendant does not show and the landlord wants to continue with the case, the court should enter a default judgment (meaning landlord wins) after verifying some things.

54

## Requirements for Granting Default Judgment When No Answer Has Been Filed

There is proof of proper service of the citation – Served in an allowed manner at least 6 days before and return filed at least 1 day before.

The petition is sworn to by the landlord and includes all of the required information.

- If something missing, may be amended orally and evidence provided through testimony if amendment will not operate as a surprise to the defendant.
- If nothing missing – no evidence needed.

A Servicemembers Civil Relief Act affidavit has been filed and the defendant is not in the military.

55

## Civil Relief Act – If Defendant Is In Military or It Is Uncertain

If defendant is in military service:

- The court may not enter a judgment until after the court \_\_\_\_\_ an attorney to represent the defendant and follows certain procedures.

If the court is unable to determine whether the defendant is in military service:

- The court can proceed with a default judgment and may– but does not have to – require the plaintiff to post a bond in an amount approved by the court to protect the defendant if it turns out that he is in military service.

For more info, see p. 26-29 of the Evictions Deskbook.

56

## Requirements for Granting Default Judgment When an Answer Has Been Filed

Service has to have been completed at least 6 days before and the return filed at least 1 day before

The plaintiff must put on testimony under oath and provide all necessary evidence to prove their case.

- Even if all the info is in the petition.
- (This is different from when no answer has been filed!)

57

## Notice of Default Judgment

A default judgment must be in writing and signed by the judge.

The clerk must immediately mail written notice of the judgment by first class mail to the defendant at the address of the premises  
-- Rule 510.6(c)

58

What if the defendant is not present when the court calls the case, but appears before a default judgment has been entered. What should the court do?

- A. Proceed with the default judgment.
- B. Proceed with the trial and hear evidence from both parties.
- C. Dismiss the case.

59

Trial

60

## Proceeding with the Trial

- If both parties appear, the case proceeds to trial.
    - If the landlord doesn't appear, the case can be \_\_\_\_\_ or re-set.
  - The trial must be reset if it is less than 6 days after service of the citation on the tenant or less than 1 day after the return of service has been filed.
    - Unless both parties say they want to go ahead and proceed – and no one can be pressured to do so.
- Rule 510.7(a)

61

## Presenting Evidence

- At the trial the landlord goes first and presents evidence showing why the tenant should be evicted.
  - For example, the tenant has not paid rent.
- When the landlord is finished the tenant is allowed to present evidence showing why they should not be evicted.
  - For example, the tenant tried to pay the rent but the landlord refused to take it.

62

## Preponderance of the Evidence

- If the landlord proves their case (for example, that the tenant breached the lease) “by a preponderance of the evidence,” then the landlord wins.
  - Preponderance of the evidence just means that it is **more likely than not** that the tenant breached the lease.
  - If the evidence is 50/50 as to whether or not the tenant breached the lease, then the landlord did not prove their case by a preponderance of the evidence and the tenant wins.

63

## Jury Trial

- Any party can make a written request for a jury at least 3 days before the trial date.
- They must pay a \$22 jury fee or file a Sworn Statement of Inability to Afford Payment of Court Costs (discussed above).
- If demanded, the case must be heard by a jury.
- If no jury is demanded, the case will be heard by the judge.

-- Rule 510.7(b)

64

## Postponement

- The trial must not be postponed more than \_\_\_\_\_ total unless both parties agree in writing.  
-- Rule 510.7(c)
- Circumstances beyond the control of the court or the parties may require some flexibility in applying this rule.
  - For example: Unexpected court closings.
- Original trial date rescheduled due to citation being served less than six days before trial.

65

## No Motion for New Trial

- A motion for a new trial is a request by the losing party for a “do over” – a whole new trial.
- NO motion for new trial may be filed in an eviction case.

-- Rule 510.8(e)

66

# Judgment

67

- A judge may announce the judgment orally in court from the bench following a trial.
- But the judgment must then be put in writing and signed by the judge with the date of the judgment.

# Written Judgment

68

- If the landlord wins, the judge must enter a judgment for possession of the property, and also award as part of that judgment:
    - court costs;
    - back rent (if any) as of the date of the judgment; and
    - attorney’s fees (if the landlord is entitled to recover them).
    - See p. 33-34 of the Evictions Deskbook for when this is allowed.
  - Nothing else can be sought in an eviction case!
- Rule 510.8(b)

## Judgment for Landlord

69

So what happens if the landlord has other issues they want to address, like wanting to be compensated for damages to the premises?

- A. They would have to file a separate small claims case to address any other issues.
- B. They would have to file a case in a different court to address any other issues.
- C. There is no remedy available for this under the law.

70

- An \_\_\_\_\_ is someone who is living at the residence but who is not obligated under a lease with the landlord.
  - For example, a temporary guest of the tenant or the tenant's minor children.
- Since "occupants" are not on the lease, the landlord may not know who they are and so he doesn't have to name them.
  - He can evict the "occupants" of the tenant along with the tenant.
  - The occupants' right to be there is based solely on the tenant's right to be there.

## "And All Occupants"

71

- But what if one of the "occupants" is really a tenant who signed the lease?
  - For example, the wife is a tenant on the lease and the landlord just sues the husband "and all occupants."
- The landlord cannot evict the wife who is a tenant just by suing her husband and "all occupants."

## "And All Occupants"

72

- A judgment or writ of possession may NOT be issued or executed against a tenant obligated under a lease who is not named in the petition and served with a citation.

-- Rule 510.3(c).

## “And All Occupants”

73

- If the tenant wins, the judge must enter a judgment for the tenant and award as part of that judgment:
  - court costs (for example, the \$22 jury fee if the tenant requested a jury); and
  - attorney’s fees (if the tenant is entitled to recover them).
    - See p. 33-34 of the Evictions Deskbook for when this is allowed.
- No counterclaims allowed in eviction cases – so nothing else a tenant could get!
  - If tenant has a claim (ex: relating to landlord not making repairs), it would have to be brought as a separate small claims or repair and remedy case.

-- Rules 510.3(e), 510.8(c)

## Judgment for Tenant

74

- If an eviction was for nonpayment of rent, the judgment must state the amount of the \_\_\_\_\_.
  - If an eviction was for nonpayment of rent and the landlord won, the judgment must also note the amount of rent to be paid each rental pay period during the pendency of any appeal
    - Judge determines this based on the rental agreement and any applicable laws.
- Property Code § 24.00511(a), 24.0053(a)

## Judgment for Nonpayment of Rent Eviction

75

- An appeal bond is a guarantee by the losing party to pay what the appeal costs the winning party if the losing party doesn't pursue the appeal, and to pay any judgment and costs awarded against the losing party if they also lose on appeal.
    - In other words, the party that won the case in justice court may rely on the bond to recover any damages they have due to the appeal being filed and to recover the amount they are owed if they win on appeal.
- Rule 510.9(b)

## What is an Appeal Bond?

76

- The judge must set the amount of the appeal bond or cash deposit so that it covers what it will cost the party who won while the appeal is being decided.
  - This may include the loss of rent to the landlord during the appeal, court costs, and attorney’s fees in both the justice and county courts (if they are recoverable).
  - The judge must also take into consideration any money required to be paid into the court registry (the amount of rent to be paid each rental pay period).

-- Rule 510.11

## How Much is the Appeal Bond?

77

Grab your Eviction Pre-Judgment Flowchart

(This is one of the “additional handouts” for this webinar)

78

Use your Eviction Pre-Judgment Flowchart to answer the question: What rule in the Texas Rules of Civil Procedure talks about the notice of default judgment that the clerk must mail to the defendant?

A.510.6(b)

B.510.6(c)

C.510.7(a)

D.510.8

79

Writ of Possession

80

## What is a Writ of Possession?

- A writ of possession is an order from the court to a constable ordering them to move the tenant out (if necessary) and turn the property back over to the landlord.
- A constable may use \_\_\_\_\_ force to do this.

81

## How Does a Landlord Get a Writ of Possession?

- If the court decides the case in favor of the landlord and signs a judgment for possession, the court has to issue a writ of possession if:
  - the landlord requests one after waiting the required amount of time; and
  - pays the fee for having the constable serve the writ of possession on the tenant.

82

## When May the Court Issue a Writ of Possession?

- The court may not issue a writ of possession until 6 days after the judgment for possession was signed or the day after the appeal deadline (5 days) -- whichever is later.
  - An exception to this is when an immediate possession bond has been issued.
  - See the Evictions Deskbook at pages 23 – 24 for more info on immediate possession bonds.

83

## How Do you Count the Time?

- You exclude the day the judgment was signed and start counting on the next day.
- You count every day, including Saturdays, Sundays, and legal holidays.
- You include the last day of the period.
- If the last day is a Saturday, Sunday, legal holiday, or a day where the court closes before 5, you go to the next day.

-- Rule 500.5

84

<b>Example of Timeline for Issuing Writ of Possession</b>						
Sunday	Mon	Tues	Wed	Thur	Fri	Sat
					1	2
3		4	5	6	7	8
		<b>Judgement f or Possession Signed</b>	(Day 1)	(Day 2)	(Day 3)	(Day 4)
10		11	12	13	14	15
<b>(Day 5) Fifth day ends on a Sunday; therefore, defendant has until next day that is not a Saturday, Sunday, or legal holiday to file an appeal</b>	<b>(Day 6) Defendant must file appeal if court does not close before 5:00 p.m.</b>	<b>(Day 7) First day a writ of possession may issue</b>				
17		18	19	20	21	22
24		25	26	27	28	29

85

<b>Example of Timeline for Issuing Writ of Possession</b>						
Sun	Mon	Tues	Wed	Thur	Fri	Sat
					1	2
3		4	5	6	7	8
		<b>Judgement for Possession Signed</b>	(Day 1)	(Day 2)	(Day 3)	(Day 4)
10		11	12	13	14	15
<b>(Day 5) Fifth day ends on a Sunday; therefore, defendant has until next day that is not a Saturday, Sunday, or legal holiday to file an appeal</b>	<b>(Day 6) Court closes before 5:00 p.m.; therefore, defendant has until the next day to file appeal</b>	<b>(Day 7) Defendant must file appeal</b>	<b>(Day 8) First day a writ of possession may issue</b>			
17		18	19	20	21	22
24		25	26	27	28	29

86

**Use the calendar to calculate the first day a writ of possession may issue:**

The judgment for Possession was signed on the 10<sup>th</sup>

The 13<sup>th</sup> is a holiday

The court closes at 4:30 every day

87

**What is the Last Day That a Court May Issue a Writ of Possession?**

- The court may not normally issue a writ of possession more than \_\_\_\_\_ after the judgment for possession was signed.
- But the judge may extend this deadline up to \_\_\_\_\_ if the court finds there is good cause for extending the time.

88

## What if the Tenant Appeals?

- The court **must not** issue a writ of possession if an appeal has been perfected.
  - Rule 510.8(d)
- **Unless** the tenant was required to pay rent into the registry of the court and failed to do so AND the case has not yet been sent up to the county court.
  - (More info on this requirement in the appeals webinar and p. 45 of the Evictions Deskbook)

89

## How Long is the Writ of Possession Good For?

- A writ of possession cannot be executed (meaning used to remove the tenant from the property) more than 90 days after the date the judgment for possession was signed.
    - In other words, the last day the writ of possession could be executed is Day 90; the writ cannot be executed on Day 91.
- Rule 510.8(d)

90

Grab your Eviction Post Judgment Flowchart

(This is one of the “additional handouts” for this webinar)

91

Use your Eviction Post Judgment Flowchart to answer the question:  
Who signs the writ of possession?

- A. The clerk.
- B. The judge.
- C. The constable.
- D. Whoever executes the writ.

92

Thank You!