



INSTRUCTIONS AND INFORMATION FOR FILING A REPAIR AND REMEDY SUIT

Repair and Remedy case: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000.00, excluding statutory interest and court costs but including attorney fees, if any. Repair and Remedy cases are governed by Rules 500-507 and 509 of Part V of the Rules of Civil Procedure. To the extent of any conflict between Rule 509 and the rest of Part V, Rule 509 applies.

Rules 500-510 of the Rules of Civil Procedure, which govern the rules of practice in justice courts, can be accessed at **banderacounty.org** by selecting any of the Justice of the Peace links and they are available for examination at any of the Justice of the Peace offices during normal business hours.

As in all suits you have a right to represent yourself or be represented by an attorney. See Rule 500.4, Rules of Civil Procedure. It is always advisable to contact an attorney for legal advice. **Neither the Court nor court staff CAN advise you.**

It is your burden as a plaintiff to sue the defendant in their proper legal capacity.

- a. **Personally:** Where an individual is responsible to you for damage he/she may have caused you as an individual.
- b. **Proprietor or partnership:** A business that is not incorporated, but does have on file with the County Clerk an assumed name, e.g. John Smith dba/Greenhouse Supplies. To determine whether or not this person has filed an assumed name, you would contact the Bandera County Clerk in the main courthouse.
- c. **Corporation:** Any incorporated business, including a limited liability company must be served through their registered agent for service of process. Registered agent information is available through the office of Secretary of State.

FILING FEES

The filing fee for Repair and Remedy Cases is \$_____ plus cost of service. **All fees must be paid before a document can be processed.** If you are unable to pay the fee, you may file a Statement of Inability to Pay under Rule 502.3, Rules of Civil Procedure.

Once your petition is received and the filing fee paid, the case will proceed. Rule 502.3, Rules of Civil Procedure. Each petition filed should have the *Justice Court Civil Case Information Sheet* attached to the Petition. This document is available at the Court office or on line at **Banderacounty.org**. Rule 502.2 (b), Rules of Civil Procedure.

Generally the defendant has the right to be sued in the county and precinct in which he/she resides. There are some exceptions to this rule. The exceptions can be found in Rule 502.4, Rules of Civil Procedure. Should you file suit in an improper venue, there may be a motion by the defendant to transfer venue (a request that this suit be transferred to some other county and/or precinct). Rule 502.4, Rules of Civil Procedure.

The petition must contain certain information. Rule 509.2, Rules of Civil Procedure. A sample Petition is attached hereto.

Once your petition is filed with the court, a citation will be issued and served on the defendant. All parties will be notified of the time and date of trial. Be certain the court has all your contact information. Rule 509.3, Rules of Civil Procedure.

The landlord may, but is not required to, file a written answer on or before the appearance date.

In order to develop the facts and reach an equitable and legally correct decision, the judge may ask questions during any hearing or at trial in accordance with Rule 509.5, Rules of Civil Procedure. **However, the judge will not present your case for you or defend a case against you. It is the responsibility of each party to present his/her case.**

If the tenant appears at trial and the landlord has been duly served and fails to appear at trial, the judge may proceed to hear evidence. If the tenant establishes that the tenant is entitled to recover, the judge must render a judgment against the landlord in accordance with the evidence. If the tenant fails to appear for trial, the judge may dismiss the lawsuit. Rule 509.5(b)(1)(2), Rules of Civil Procedure.

A judgment may be rendered against the landlord for failure to repair or remedy a condition at the residential rental property if the total judgment does not exceed \$10,000.00, excluding interest and court costs but including attorney's fees. Any party who prevails in a lawsuit brought under these rules may recover the party's court costs and reasonable

attorney's fees. The form, content of a judgment and failure to comply are found in Rule 509.6, Rules of Civil Procedure.

Counterclaims and the joinder of suits against third parties are not permitted in suits under these rules. Compulsory and counter claims may be brought in a separate suit. Any potential causes of action, including compulsory counterclaims, are not asserted because of this rule are not precluded. Rule 509.7, Rules of Civil Procedure.

Each party has a right to appeal. Rule 509.8, Rules of Civil Procedure.

If a judgment for the landlord for possession of the residential rental property becomes final, any order to repair or remedy a condition is vacated and unenforceable. Rule 509.9, Rules of Civil Procedure.

THESE INSTRUCTIONS AND INFORMATION IS A BRIEF SUMMARY OF THE LAWS AND PROCEDURES THAT APPLY TO A REPAIR AND REMEDY SUIT IN JUSTICE COURT. THEY ARE NOT INTENDED TO BE EXHAUSTIVE AND ANY QUESTIONS OR INTERPRETATION SHOULD BE BASED UPON YOUR OWN RESEARCH AND/OR THE ADVICE OF YOUR ATTORNEY.

Attachments:

Standing Discovery Order
Justice Court Civil Information Sheet
Out of County Service Information Sheet



BANDERA COUNTY JUSTICE OF THE PEACE COURTS STANDING DISCOVERY POLICY

Discovery in Justice Courts is governed by Rule 500.9 of the Rules of Civil Procedure, Part V. Pretrial Discovery is limited to that which the judge considers **reasonable and necessary**. Pretrial Discovery must be approved by the Court. Discovery may include but is not limited to the following:

- Interrogatories
- Requests for Production of Documents and Things
- Requests for Admissions
- Dispositions (the number and amount of time for each disposition may be limited)

Requests for Admissions **may not** be imbedded in the petitions. A party who violates Rule 500.9, Rules of Civil Procedure or this Standing Order may not rely on alleged Deemed Admission for any purpose, including connection with a Motion for Default Judgment or Summary Disposition.

The parties may apply for a modification of this Standing Discovery Order at any time for good cause shown.

JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

CAUSE NUMBER (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

<p>1. Contact information for person completing case information sheet:</p> <p>Name: _____ Telephone: _____</p> <p>Address: _____ Fax: _____</p> <p>City/State/Zip: _____ State Bar No: _____</p> <p>Email: _____</p> <p>Signature: _____</p>	<p>2. Names of parties in case:</p> <p>Plaintiff(s): _____</p> <p>_____</p> <p>Defendant(s): _____</p> <p>_____</p> <p>_____</p> <p>[Attach additional page as necessary to list all parties]</p>
<p>3. Indicate case type, or identify the most important issue in the case (select only 1):</p>	
<p><input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>
<p><input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>	<p><input type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.</p>



OUT OF COUNTY SERVICE INFORMATION

If the person(s)/business you are suing, resides in another County it is your responsibility to provide the court with the necessary information so the Citation may be served.

Name of person you want served: _____

Address: _____

City: _____ State: _____

Phone Number: _____

If you desire your Citation to be served in another county in Texas, you must also provide the additional following information:

Name of person to serve Citation (Sheriff Dept./Constable or other):

Address: _____

City: _____ State: _____

Phone Number: _____

Service fee the department or person serving will charge for service: _____

This information to be submitted with your petition.