

# TEXAS RULES OF CIVIL PROCEDURE

## **RULE 740. COMPLAINANT MAY HAVE POSSESSION**

The party aggrieved may, at the time of filing his complaint, or thereafter prior to final judgment in the justice court, execute and file a possession bond to be approved by the justice in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to defendant in the event that the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against plaintiff.

The defendant shall be notified by the justice court that plaintiff has filed a possession bond. Such notice shall be served in the same manner as service of citation and shall inform the defendant of all of the following rules and procedures:

(a) Defendant may remain in possession if defendant executes and files a counterbond prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's bond. Said counterbond shall be approved by the justice and shall be in such amount as the justice may fix as the probable amount of costs of suit and damages which may result to plaintiff in the event possession has been improperly withheld by defendant;

(b) Defendant is entitled to demand and he shall be granted a trial to be held prior to the expiration of six days from the date defendant is served with notice of the filing of plaintiff's possession bond;

(c) If defendant does not file a counterbond and if defendant does not demand that trial be held prior to the expiration of said six-day period, the constable of the precinct or the sheriff of the county where the property is situated, shall place the plaintiff in possession of the property promptly after the expiration of six days from the date defendant is served with notice of the filing of plaintiff's possession bond; and

(d) If, in lieu of a counterbond, defendant demands trial within said six-day period, and if the justice of the peace rules after trial that plaintiff is entitled to possession of the property, the constable or sheriff shall place the plaintiff in possession of the property five days after such determination by the justice of the peace