

**Information or instructions: Plea in abatement & Special exceptions**

**PREVIEW**

1. The purpose of a plea in abatement is to dismiss Plaintiff's cause of action or abate it for any one or more of the following reasons: lack of jurisdiction, running of the statute of limitations, failure to state a cause of action, filing in the wrong court, or suit against defendant in an incorrect legal capacity.
2. See the following Texas Rules of Civil Procedure for rules applicable to plea in abatements:

Rule 85-Hearing in district court;

Rule 358-Successor in office, vacation in office;

Rule 150-Death of party in a suit;

Rule 159-Statement of injury resulting in death;

Rule 156-Between verdict and judgment;

Rule 369A-Cause remanded to courts of civil appeals;

Rule 155-Continuance of suit by surviving parties;

Rule 152-Defendant;

Rule 153-Executor or administrator;

Rule 151-Appearance;

Rule 159-Injuries resulting in death;

Rule 158-Party suing for use of another;

Rule 160-Dissolution of a corporation;

Rule 358-Injunctions;

Rule 175-Determination of plea in abatement;

Rule 330-Hearing

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**Information or instructions: Special exceptions**

1. Defendants may file special exceptions to object to statements or allegations contained in the Plaintiff's petition. Special exceptions are also filed if the defendant seeks additional factual information on which the Plaintiff has based the cause of action, or if the Plaintiff has included in the petition information or allegations that are not properly allowed by law.

2. See the following Texas Rules of Civil Procedure regarding Exceptions:

Rule 85-Hearing in district court;

Rule 91-Pleading.

**THANK YOU**

**Information or instructions: Defendant's plea in abatement, special exceptions, and original answer**

1. The form that follows is an answer in the form of a general denial, containing a plea in abatement for lack of jurisdiction because an indispensable and necessary party was not joined, as well as special exceptions to the Plaintiff's pleadings.

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2. The form also includes an affirmative defense based on the statute of limitations.

**PREVIEW**

**Form: Defendant's plea in abatement, special exceptions and original answer**

**CAUSE NUMBER \_\_\_\_\_**

**[Name],  
PLAINTIFF**

**IN THE [Type of Court] COURT**

**[Court number]**

**vs.**

**[Name],  
DEFENDANT**

**OF [NAME], COUNTY, TEXAS**

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DEFENDANT'S PLEA IN ABATEMENT,  
SPECIAL EXCEPTIONS, AND ORIGINAL ANSWER

[Name], who has been named as a Defendant in the above styled cause, and in answer to the Plaintiff's Original Petition filed therein would respectfully show the Court and jury the following:

**1. PLEA IN ABATEMENT**

1.1 In answer to Plaintiff's Original Petition, Defendant would show the Court that [Name of necessary party] does not appear in Plaintiff's Original Petition as a party to this suit, and that that person in that capacity is a necessary and indispensable party to this action, without whom a just adjudication cannot be made. For nonjoinder of the necessary party this Defendant moves for abatement of this suit.

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**2. SPECIAL EXCEPTIONS**

2.1 Defendant specially excepts to the following allegations of Plaintiff's Original Petition [list the paragraphs that the Defendant takes exception to] and moves to strike them on the grounds set forth below: [set forth grounds].

**THANK YOU**

**3. GENERAL DENIAL**

3.1 Subject to the above special exceptions and Plea in Abatement and without waiving the same, in answer to Plaintiff's Petition the defendant exercises his statutory right to require Plaintiff to

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prove all material allegations contained in the Plaintiff's Original Petition and for this purpose, he generally denies them all.

# PREVIEW

## 4. AFFIRMATIVE DEFENSE

4.1 Defendant would show the Court that Plaintiff's Cause of Action accrued more than four (4) years before the date of the filing of Plaintiff's Original Petition and of the commencement of this suit, and that the suit is thus barred by Civil Practice & Remedies Code Section 16.051.

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PRAYER

Defendant respectfully prays for judgment of the Court on [his or her] Plea in Abatement, and that Defendant be dismissed with [his or her] costs; or, in the alternative, Defendant respectfully prays that the Court strike the portions of Plaintiff's Original Petition specially excepted to herein and prays for judgment of the Court that the Plaintiff take nothing by this suit, for costs, and for such other and further relief to which Defendant may be justly entitled, either at law or in equity.

# THIS DOCUMENT

Respectfully Submitted,

\_\_\_\_\_  
[Law Firm Name]

By \_\_\_\_\_

\_\_\_\_\_  
[Attorney's Name]

# THANK YOU

Attorney for Defendant

[Attorney's Address]

[Telephone Number]

[Facsimile Number]

[Bar Card Number]

## AFFIDAVIT

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State of Texas  
County of \_\_\_\_\_

# PREVIEW

BEFORE ME, a notary public in and for [State] County, [County], Texas, on this day personally appeared [Name], to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who being first sworn upon oath, says that [he or she] is [party designation] in the above-referenced case, and has the authority to make this affidavit. Affiant further states that [he or she] has read the foregoing and that the pleading is in every statement and allegation true and correct.

[Include any other facts to support the affidavit]

\_\_\_\_\_  
Affiant

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Subscribed and sworn to before me on \_\_\_\_\_ by \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Notary's typed or printed name

My commission expires: \_\_\_\_\_  
**THIS DOCUMENT**

[or Notary's Stamp]

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading or document has been served upon all attorneys of record and any parties who are not represented by an attorney on \_\_\_\_\_.

Attorney for: [Other attorney's client's name]  
Attorney's name: [Other attorney's name]  
Attorney's address: [Other attorney's address]

# THANK YOU

Type of Service:

\_\_\_ U.S. Mail, Certified Return Receipt Request No. \_\_\_\_\_.

\_\_\_ U.S. Mail, First Class.

\_\_\_ Hand delivery by [name of delivery service]: \_\_\_\_\_.

\_\_\_ Facsimile transmission to \_\_\_\_\_ [fax number] before 5 p.m.

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**PREVIEW**  
[Attorney's signature]

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**THANK YOU**

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