

**Information or instructions: Temporary restraining orders**

**PREVIEW**

1. A Temporary Restraining Order is an extraordinary remedy that allows a Plaintiff to obtain temporary injunctive relief against the Defendant prior to notice and/or hearing of an action for an injunction.
2. A Temporary Restraining Order is frequently the only remedy that a litigant has at law to prevent the immediate destruction, damage, harm or injury to his or her person or property.
3. In order to obtain a Temporary Restraining Order, the following documents should be prepared:
  - a. The Petition or Complaint, this document should set forth the complaint and the reasons justifying the relief sought;
  - b. The Temporary Restraining Order, this is the document that grants the relief requested;
  - c. The Restraining Order Bond.
4. The facts should be obtained from the client, and any supporting documents necessary to justify the granting of the Temporary Restraining Order should be assembled. The necessary fees should be obtained from the client.
5. The practitioner should arrange with the Sheriff's or Constable's Office to secure service of the Restraining Order, if and when it is signed by the Judge/In the defendant.
6. After ascertaining the availability of a Judge to hear the request for a Temporary Restraining Order, it is possible to present the application for the Temporary Restraining Order to the Judge prior to filing the Petition with the District Clerk, pursuant to the Texas Rules of Civil Procedure 685.
  - a. This is especially useful on weekends and after hours.
  - b. The hearing can therefore be arranged with the Judge prior to the filing of the pleadings with the Clerk.
  - c. This is true because the Clerk does not issue a Citation or Writ until the Order has been signed by the Judge and a bond posted.
7. After contacting the Judge and determining his or her availability, the practitioner should prepare the necessary papers, meet with the Judge, review the Petition with the Judge, and present the necessary evidence at the hearing to justify the granting of the Temporary Restraining Order.

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8. The bond should be prepared and posted before the issuance of the Temporary Restraining Order. If you intend to post a corporate surety bond by and through a bonding company or insurance agent, have the appropriate bond and power of attorney signed so that it may be filed with the Clerk.

9. The Petition should contain the names of the parties, the factual allegations, and the relief requested. It should be accompanied by an Affidavit setting forth the specific facts that justify granting the Temporary Restraining Order. It must be signed by a person who has personal knowledge of the facts stated in it.

10. The Temporary Restraining Order must set forth all of the facts that justify the granting of the Temporary Restraining Order. It must show and allege that money damages are an insufficient remedy at law to compensate the Plaintiff for the impending destruction or removal of the property in question, and should identify the injury and how it has been caused.

11 It should contain the following:

- a. A specific statement of why the injury is irreparable, and should not state conclusions of law, since they are not sufficient to grant relief.
- b. A statement of why the Order was granted without notice.
- c. Provision for the posting of a bond.
- d. A statement of the act or actions from which the defendant is being enjoined and prohibited.
- e. A statement that the Order is binding on the parties, their officers, agents, servants, employees, attorneys, contractors, independent contractors, and all other persons in active concert with those who receive actual notice of the Order by personal service or otherwise.

12. Once the Temporary Restraining Order has been granted and bond filed, have the Sheriff or Constable's Office serve the Defendant with the Order immediately.

13. A hearing for a temporary injunction should be set for a time within fourteen (14) days from the date that the Temporary Restraining Order is granted so that the Temporary Restraining Order may be converted into a Temporary Injunction.

14. See the following applicable Rules of Texas Civil Procedure.

- a. Rule 680-Temporary Restraining Order;
- b. Rule 681-Temporary Injunction;

c. Rule 682-The Petition Must Be Sworn.

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d. Rule 683-The Form and Scope of the Injunction or Restraining Order;

e. Rule 684-The Applicant's Bond;

f. Rule 685-Filing and Docketing of the Restraining Order;

g. Rule 686-Citation;

h. Rule 687-Requisites of the Writ;

i. Rule 688-Clerk to Issue the Writ;

j. Rule 689-Service and Return of the Writ;

k. Rule 690-Defendant's Answer;

l. Rule 691-Bond;

m. Rule 692-Disobedience of an Injunction;

n. Rule 693-Principles of Equity Applicable;

o. For divorce situations, see Rule 693a.

#### Information or instructions: Temporary Injunctions

1. A Temporary Injunction is an extraordinary remedy issued by a court order under the Rules of Texas Civil Procedure to protect personal or property rights of an applicant.

2. Temporary Injunctions often but not always follow a Temporary Restraining Order.

3. A Temporary Injunction prohibits the defendant from doing certain acts from the date it is signed until the conclusion of the underlying lawsuit.

4. Thereafter, if the Applicant is successful, a permanent injunction may be granted.

5. Permanent injunction prohibits the defendant in engaging in the acts or actions permanently, notwithstanding the fact that the case is no longer being actively litigated in court.

6. The principal purpose of Temporary Restraining Orders and Temporary Injunctions is to preserve the status quo of the subject matter pending a final trial of the case on its merits.

7. In order to obtain relief by Temporary Injunction, Plaintiff must show why the status quo should be preserved, including but not limited to:

a. Proving that he or she will probably recover the relief requested in the Petition;

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b. proving that a harm or injury will ensue if the injunction is not issued and that the harm or injury is not compensable by money damages; and

c. that he or she has no other adequate remedy at law.

4. The procedure for obtaining a Temporary Injunction is similar to the procedure for obtaining a Temporary Restraining Order, with the notable exception that a Temporary Injunction requires notice and hearing prior to its issuance. Accordingly, a show cause order setting forth the date, time, and place of the hearing should be attached to a Petition containing a request for Temporary Injunction.

5. At the hearing, evidence, which may be oral or written, will be heard by the court. The evidence must be adequate to justify the granting of the relief prayed for in the petition.

6. The Petition in the form that follows assumes that plaintiff is suing defendant to recover items of business property, which plaintiff contends were converted by defendant. The Petition asks for a hearing on the request for a Temporary Injunction and damages for the defendant's alleged wrongful conduct.

7. The Texas Rules of Civil Procedure require signatory pleadings to state the attorney's facsimile ( Fax ) number, if the firm has a facsimile machine, as well as the attorney's telephone number.

**Information or instructions:** Plaintiff's original petition and application for temporary injunction

1. The following petition and application for injunction form may be customized to fit a client's specific factual background.

2. The following petition and application for injunction form have been revised to include a request for a discovery control plan.

3. For an injunction alone, the request may not be necessary.

4. It may be good practice to include a request for a discovery plan when the injunction is coupled with a petition since the matter may be expected to be litigated.

**Form:** Plaintiff's original petition and application for temporary injunction

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

[Name],  
**PLAINTIFF**

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

vs.

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[Court number]

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

# PREVIEW

## PLAINTIFF'S ORIGINAL PETITION FOR [STATE THE NATURE OF THE CLAIM I.E. WRONGFUL REPOSSESSION AND CONVERSION] AND APPLICATION FOR TEMPORARY INJUNCTION

### 1. DISCOVERY CONTROL PLAN

1.1 Plaintiff requests a Level [1, 2 or 3] discovery plan.

### 2. PARTIES

2.1 Plaintiff is [Name], an [individual who resides in (for state the type of entity, such as corporation etc. who does business in) [city], County, Texas.

2.2 Defendant, [select the appropriate clause]

#### Individual Defendant:

[Name], is an individual who resides in [city], County, Texas and may be served with Citation at [his or her] residence, located at [Address], or at [his or her] business, located at [Address].

#### Texas Corporate Defendant:

Defendant [Name] is a Texas corporation purportedly duly organized under the laws of Texas, and may be served with process by serving its registered agent, [Name], at the corporation's registered address, [Address].

#### Foreign Corporation Defendant- Long Arm Statute Service

Defendant [Name] is a foreign corporation, nonresident of Texas, which has no Certificate of Authority for doing business in the state of Texas.

Although [Name] engages in business in Texas, no agent has been designated for service of citation, and it has no regular place of business in Texas.

As set forth in this petition, [Name] [described business done in Texas]. Because this lawsuit arises out of [Name]'s purposeful acts in Texas, the assumption of jurisdiction by this Court does not

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offend traditional notions of fair play and substantial justice. Pursuant to Tex. Rev. Civ. Stat Ann. art.17.44(a) & (b) (Vernon 1987), service of citation on [Name] may be accomplished by serving the Secretary of State of Texas who will forward such citation by certified mail, return receipt requested, to [Name] at [ Name's mailing address use registered agent at home state].

#### **Foreign Individual Defendant- Long Arm Statute Service**

Defendant [Name] is a nonresident who engages in business in Texas. This defendant does not maintain a regular place of business in Texas or a designated agent for service of process.

This lawsuit, in which [Name] is a party, arises out of the business done by [Name] in Texas. For these reasons, citation should be served on the Secretary of State of Texas under Tex. Civ. Prac. & Rem Code §17.44(b) (Vernon 1987).

A copy of the citation and petition should be mailed by the Secretary of State to this defendant at [Name's mailing address].

#### **Limited Partnership Defendant**

Defendant [Name] is a limited partnership chartered and existing under the laws of [state: i.e. Texas], and may be served with process by serving one of its general partners, [Name] at [Address] and may be served by serving another general partner, [Name] at [Address].

### **3. VENUE**

3.1 At all times material to the cause of action detailed below, both Plaintiff and Defendant resided in [city], County, Texas. Furthermore, the actions complained of below arose in whole or in part in [city], County, Texas.

### **4. FACTUAL BACKGROUND**

4.1 [State the facts]

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5.1 [State the cause of actions]

## PREVIEW

### 6. DEMAND

6.1 Plaintiff made demand on Defendant and presented his or her claims for [state the claims] to Defendant on or about [Date].

6.2 Defendant has refused to resolve this matter despite Plaintiff's numerous attempts to resolve this dispute.

### 7. DAMAGES

7.1 As a result of Defendant's actions complained of in this Petition, Plaintiff suffered the following damages: [Describe and List the nature and amount of the damages requested].

### 8. ATTORNEY FEES

8.1 As a result of Defendant's actions complained of in this Petition, Plaintiff was required to engage the services of the law firm of [Name of firm].

(a) Plaintiff therefore seeks reimbursement of reasonable attorney's fees, inasmuch as Plaintiff has been required to employ the undersigned attorneys to file and prosecute this suit.

(b) Plaintiff has agreed to pay the undersigned attorneys a reasonable fee for their services.

8.2 Plaintiff requests that Defendant pay to Plaintiff [his or her] legal fees incurred in the preparation and prosecution of this lawsuit in the amount of \$[Amount], or such higher sum as proved at trial, together with:

(a) legal fees in the amount of \$[Amount], if the case is appealed to the Court of Civil Appeals, and

(b) legal fees in the amount of \$[Amount], if the case is appealed to the Supreme Court of Texas, and

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8.3 Plaintiff reserves the right to plead and prove its legal fees and costs of court at the time of trial.

**PREVIEW**

## **9. APPLICATION FOR TEMPORARY INJUNCTION**

9.1 Plaintiff would show that [state the basis for the injunction and value of the claim, for instance: the business equipment converted by Defendant during the month of has an estimated value of \$ .]

[Continue with more supporting facts such as:

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(a) The equipment is highly mobile and easy to remove, sell, or dispose of.

(b) Plaintiff has need of the equipment in [his or her] business, and without the equipment is unable to earn a living for [himself or herself] and for [his or her] family.

(c) Without the use of the equipment, Plaintiff will be unable to perform all of the demands for service of [his or her] customers and will lose an incalculable amount of present and future business.

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(d) The equipment may have little or no value to third parties but has substantial value to Plaintiff.

9.2 Plaintiff accordingly prays for a temporary injunction to require Defendant to [ state the remedy i.e. return the following equipment to Plaintiff: [describe equipment].

9.3 If the injunction is not granted, Plaintiff will suffer great and irreparable losses since [he or she] will be forced to reject work that could otherwise have been performed with the use of the equipment described above. Accordingly, money damages are an insufficient remedy at law to reimburse Plaintiff for the losses complained of in this Petition.

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9.4 After notice and hearing, Plaintiff requests the court order Defendant to [state the necessary facts, i.e. return to Plaintiff the following described piece of equipment: That one certain [describe equipment] that Defendant took from Plaintiff at the leased premises described above.]

#### 10. ADDITIONAL RELIEF REQUESTED

In addition to its request for a temporary injunction, Plaintiff requests the Court to hold that:

10.1 [state any other relief requested, for instance Defendant is guilty of conversion and wrongful repossession and breach of the Texas Property Code by attempting to claim a lien on property that is exempt under the Texas Property Code.]

[If appropriate add:]

10.2 Defendant's actions constitute conversion and breach of the Agreement referred to in Exhibit "A" to this Petition. Despite demand, Defendant has refused to return the business equipment to Plaintiff; that refusal subjects Defendant to damages for conversion.

10.3 Defendant's actions were not the result of mistake or a bona fide error, but were intentional, knowing, and malicious. The Court should therefore enter a finding that Defendant's acts were intentional.

#### 11. REMEDIES REQUESTED

11.1 Based on the above, Plaintiff requests the Court to award Plaintiff the following remedies:

[state the requested remedies: i.e.]

- (a) Return of the property described above.
- (b) Exemplary damages in the amount of \$[Amount], or such higher sum as the jury and

Judge may award for Defendant's willful and wanton conduct in the conversion of Plaintiff's equipment.

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(c) Damages for loss of Plaintiff's profit and wages because of the inability to use the equipment for production of business income, in the amount of \$[Amount], per day from [Date] until the equipment referred to above is returned to Plaintiff.

(d) Attorney fees in the amount of \$[Amount], or such higher sum as the Court may allow.

### PRAYER

Plaintiff prays that Defendant be cited to appear and answer the allegations contained in this Petition and that after notice and hearing Defendant be temporarily enjoined and restrained from using in any manner whatsoever for commercial or personal use, damaging, destroying, losing, leasing, selling, transferring, or otherwise disposing of any of the following property: [describe equipment and other property].

Plaintiff further prays that Defendant be cited to show cause why this Court should not issue its writ temporarily enjoining Defendant from any of the foregoing activities until all wrongful repossessed or converted items are returned to Plaintiff and that Plaintiff have and recover from Defendant the following:

[add as appropriate:]

(a) That one certain which Defendant took from Plaintiff;

(b) Exemplary damages in the amount of \$[Amount], or such higher sum as the Judge and jury may award;

(c) lost profits and business income in the amount of \$[Amount], per day from [Date] until such date as the equipment described above is returned to Plaintiff;

(d) attorney fees in the amount of \$ ; and the further sum of \$[Amount], for each appeal if the case is appealed to higher court.

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- (e) pre-judgment and post-judgment interest at the maximum rate allowed by law; and
- (f) any and all other just relief, at law or in equity, to which Plaintiff is duly entitled,

including costs of court expended in Plaintiff's behalf.

Respectfully Submitted,

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

By \_\_\_\_\_

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

Attorney for Plaintiff  
[Attorney's Address]  
[Telephone Number]  
[Facsimile Number]  
[Bar Card Number]

**AFFIDAVIT**

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

**THIS DOCUMENT**

BEFORE ME, the undersigned authority, on this date personally appeared [Name], known to me, who being by me first duly sworn on [his or her] oath to tell the truth stated and depose that [he or she] is the Plaintiff in the above entitled and numbered cause, and that in that capacity [he or she] has full authority to make this affidavit and is fully competent to make the same, that [he or she] has read the foregoing Petition and Application for Temporary Injunction; that [he or she] is familiar with the matter and facts therein stated; and that the same are of [his or her] personal knowledge true and correct.

[Include specific facts that justifies the granting of an injunction and support the affidavit]

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

**THANK YOU**

\_\_\_\_\_  
[Name].

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\_\_\_\_\_  
Signature of Officer

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

# PREVIEW

[My commission expires: \_\_\_\_\_]

[or Notary's Stamp]

[If the pleading is an amended petition insert a Certificate of Service]

## Information or instructions: Order to show cause

1. The Show Cause Order must be attached to the Petition and Application for Temporary Injunction.
2. The Court Clerk will set a date for the Show Cause hearing, and the date, time, and place of the hearing should be shown in the Show Cause Order.
3. The Petition and the Show Cause Order should both be served on the defendant.

## Form: Order to show cause

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

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME] COUNTY, TEXAS

# THIS DOCUMENT

## ORDER TO SHOW CAUSE

On \_\_\_\_\_, the court considered the verified Petition of [Movant's name], Plaintiff, praying for the issuance of a notice to show cause directed to [Movant's name], Defendant in the above entitled and numbered cause, to be and appear before this Court at a definite time and place, when and where [he or she] will show cause, if any can be shown, why [he or she] should not be temporarily enjoined and restrained as prayed for in Plaintiff's Original Petition. The Court, after considering the Petition and being fully advised in the premises, is of the opinion that the Order to Show Cause should issue; it is, therefore,

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## JUDGE PRESIDING

[Law Firm's or Attorney's Name]  
Attorney for Plaintiff  
[Address]  
[Telephone & facsimile numbers]  
Texas Bar no. [Number]

# THIS DOCUMENT

[Law Firm's or Attorney's Name]  
Attorney for Defendant  
[Address]  
[Telephone & facsimile numbers]  
Texas Bar no. [Number]

# THANK YOU

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

**VS.**

OF [NAME], COUNTY, TEXAS

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INJUNCTION BOND  
**PREVIEW**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

WHEREAS, in the above-mentioned cause pending in the above-mentioned District Court of \_\_\_\_\_ County, Texas, the Honorable Court did on [Date], sign an order granting a temporary restraining order against Defendant [Name] and requiring Plaintiff to make, execute, and file an injunction bond in the sum of \$\_\_\_\_\_, payable to the adverse party before issuance of the writ of injunction; therefore:

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Know all men by these presents, that we, the undersigned, \_\_\_\_\_ as principal, and \_\_\_\_\_ and \_\_\_\_\_, as sureties, acknowledge ourselves bound to pay to [Defendant's name] the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), conditioned that \_\_\_\_\_ will abide by the decision that may be made in the aforesaid cause, and that they will pay all sums of money and costs that may be adjudged against them if the temporary restraining order issued on \_\_\_\_\_, in the aforesaid cause, restraining Defendants, shall be dissolved in whole or in part.

**THIS DOCUMENT**

WITNESS our hand this [Date] \_\_\_\_\_.

\_\_\_\_\_  
Surety  
**THANK YOU**

Approved by \_\_\_\_\_, District Clerk of \_\_\_\_\_ County, Texas.

Dated: **LegalFormsForTexas.Com**

# PREVIEW

## Information or instructions: Temporary injunction order

1. The form that follows may be used after the Temporary Injunction hearing has been held.
2. The Order may be adapted either to a hearing in which the defendant, although served, did not appear, or to a hearing in which the defendant appeared.
3. The court grants plaintiff the relief prayed for.

Form: Temporary injunction order, defendant not appearing

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1. Verify that TRCP 683 has been complied with.

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

[Name],  
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],  
DEFENDANT

OF [NAME], COUNTY, TEXAS

# THIS DOCUMENT

TEMPORARY INJUNCTION ORDER

On \_\_\_\_\_, the court considered the Plaintiff's application for a temporary injunction. Plaintiff appeared in person and by and through [his or her] attorney of record and Defendant, [Name], [either although duly cited and served with Citation, failed to appear and wholly made default [or also appeared in person and by and through (his or her) attorney of record].

# THANK YOU

The Court, after reviewing the pleadings on file, the exhibits, and the evidence submitted at the temporary injunction hearing, is of the opinion that Plaintiff will suffer an immediate and irreparable harm and injury if a temporary injunction is not granted against Defendant and that Plaintiff has no other adequate remedy at law.

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**PREVIEW**

It is ORDERED, that Defendant surrender within [Number of Days] days from the date of this Order the following personal property to Plaintiff, [describe property to be returned].

It is further ORDERED that Defendant shall deliver the aforesaid item of personal property to Plaintiff's attorneys, the Law Firm of [Name of firm] at [Address] on or before [Date] at p.m.

Signed on \_\_\_\_\_.

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**JUDGE PRESIDING**

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
[Law Firm's or Attorney's Name]  
Attorney for Plaintiff  
[Address]  
[Telephone & facsimile numbers]  
Texas Bar no. [Number]

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
[Law Firm's or Attorney's Name]  
Attorney for Defendant  
[Address]  
[Telephone & facsimile numbers]  
Texas Bar no. [Number]

**THIS DOCUMENT**

**THANK YOU**

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