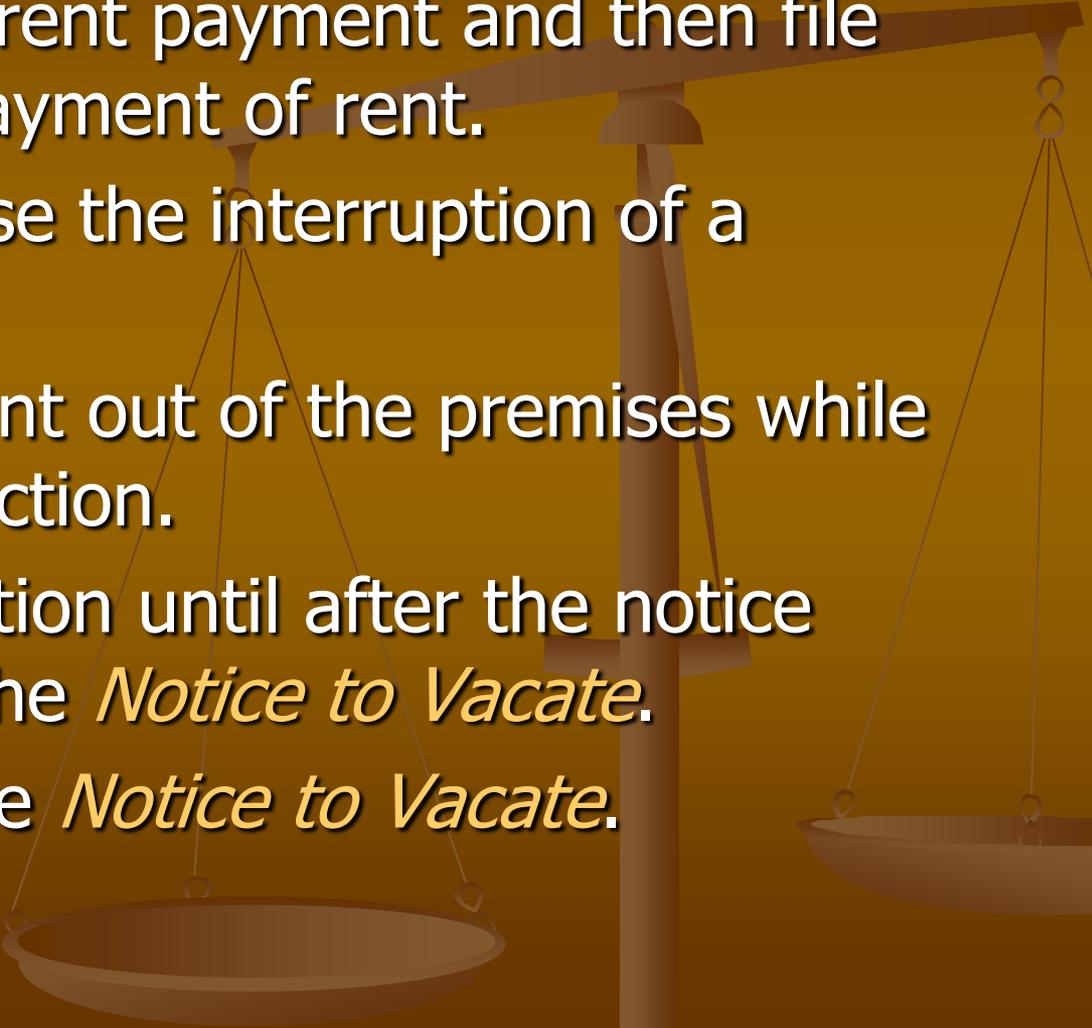


Landlord-Tenant Issues in JP Court



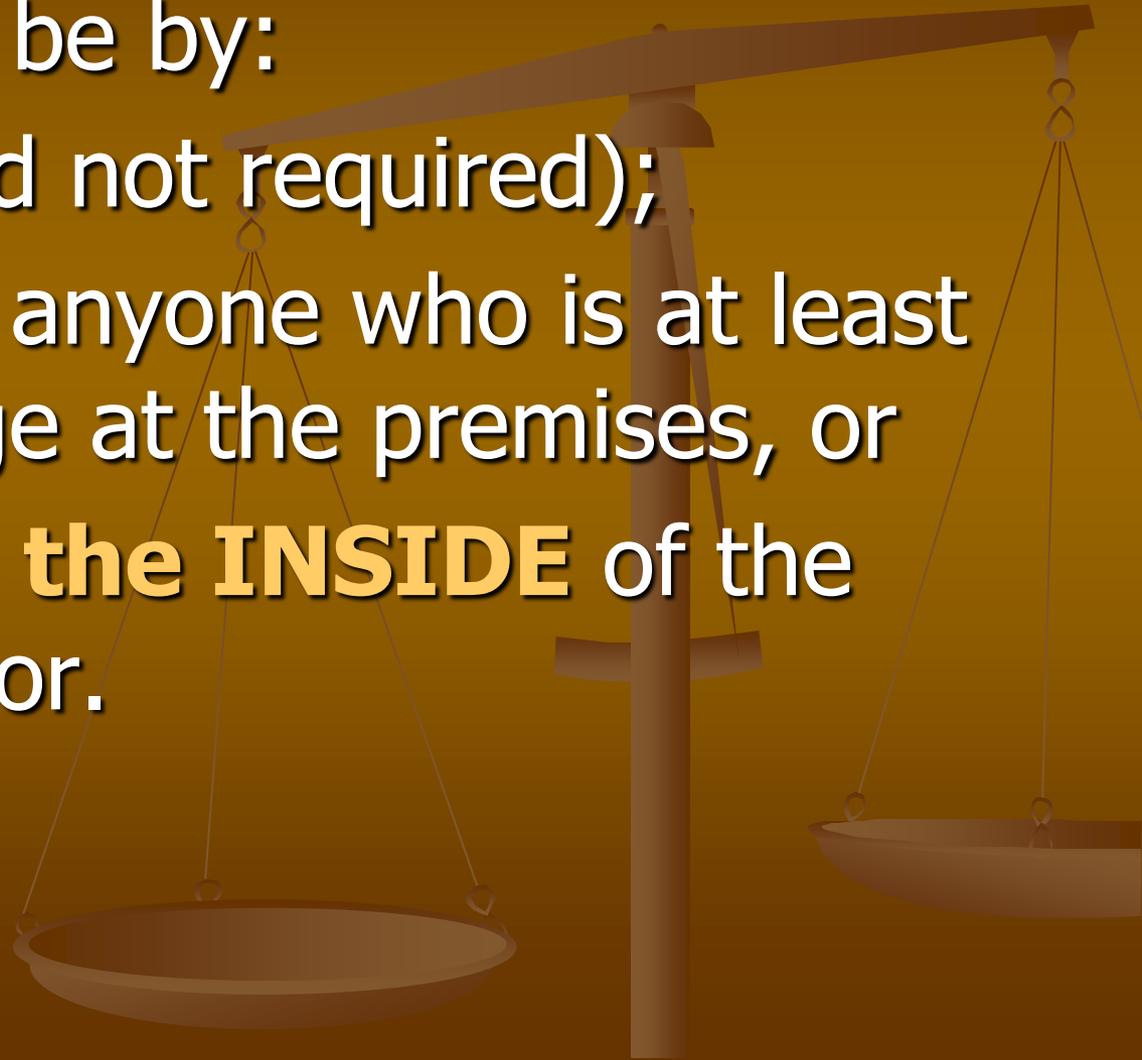
Presented by:
Judge Al Cercone
Precinct 3-1, Dallas County
acercone@dallascounty.org

Keep “*Clean Hands*”

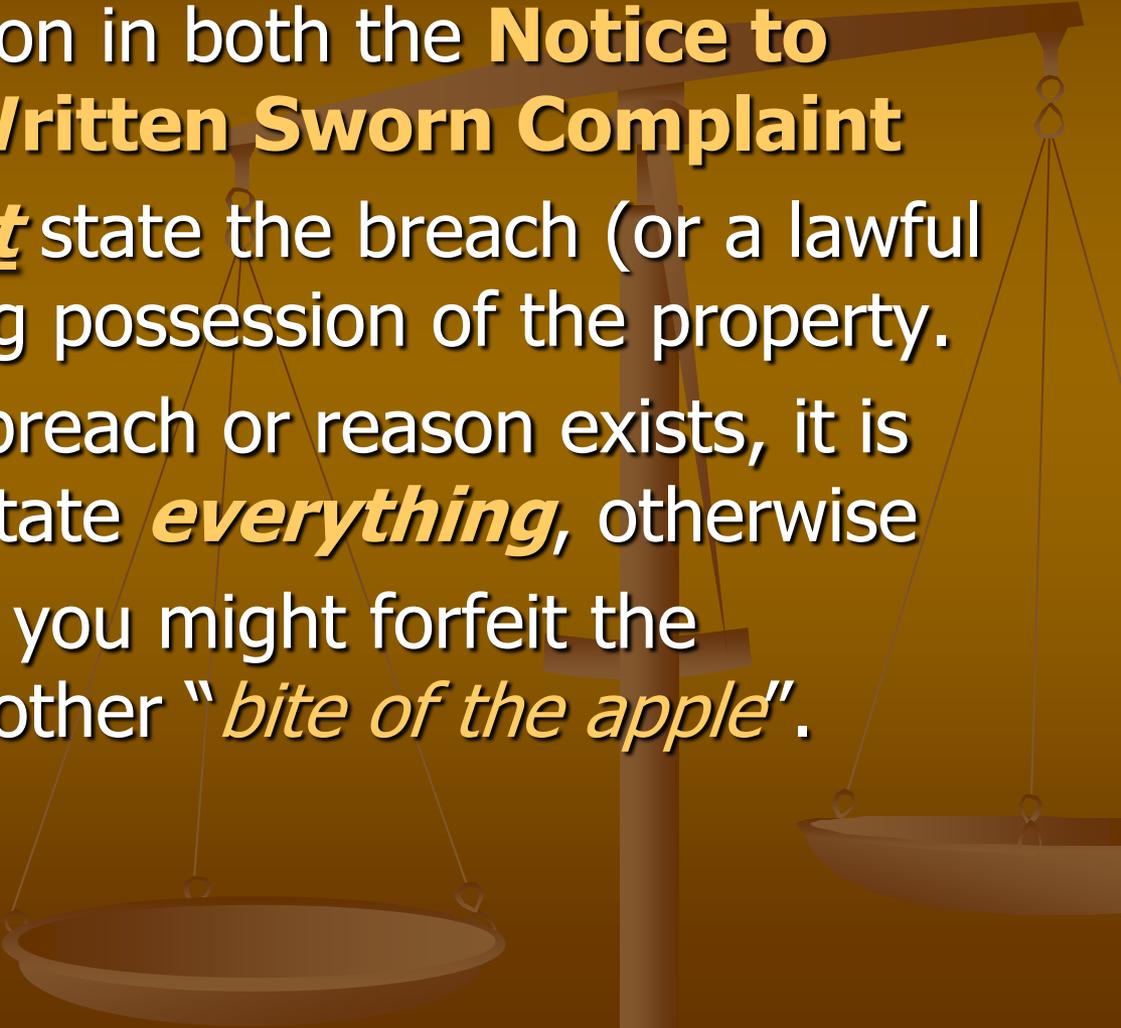
- Do not refuse the rent payment and then file eviction for non-payment of rent.
 - Do nothing to cause the interruption of a tenant’s utilities.
 - Do not lock a tenant out of the premises while prosecuting an eviction.
 - Do not file an eviction until after the notice period expires in the *Notice to Vacate*.
 - Properly deliver the *Notice to Vacate*.
- 

Delivery of the *Notice to Vacate*

- Delivery must be by:
 - **Mail**, (certified not required);
 - **In person** to anyone who is at least 16 years of age at the premises, or
 - **Attaching to the INSIDE** of the main entry door.

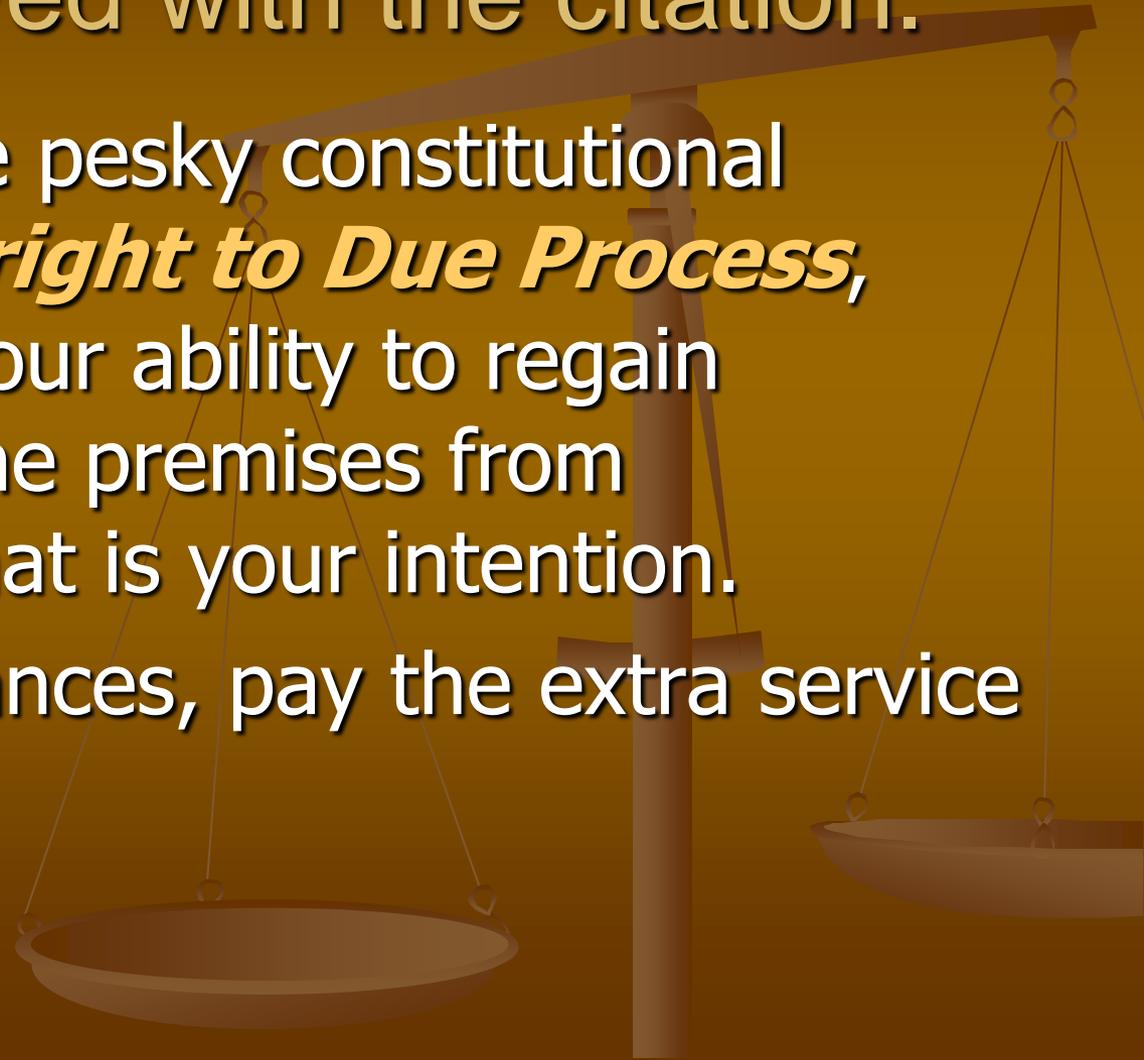


“Why am I being evicted?”

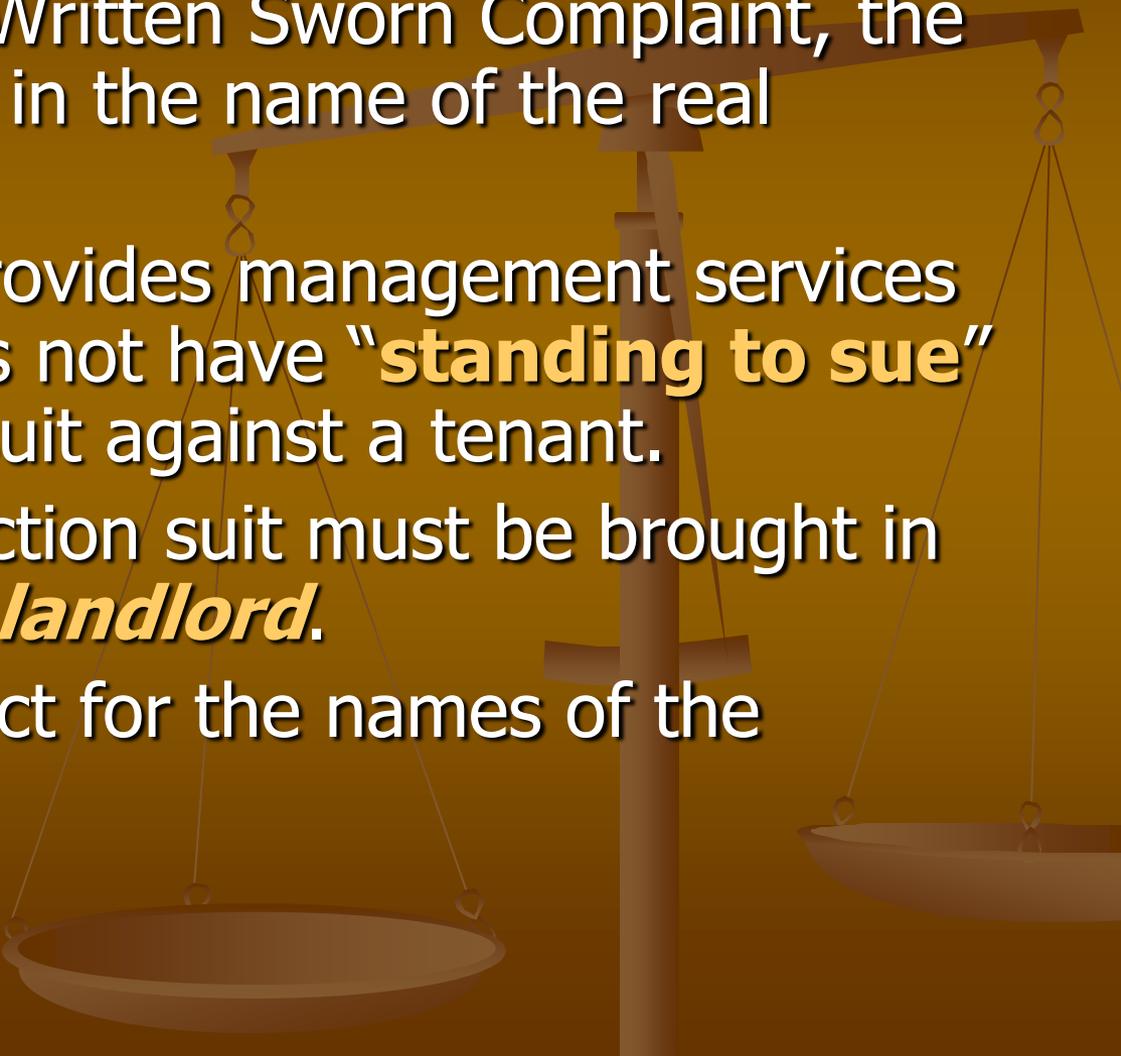
- Answer this question in both the **Notice to Vacate** and the **Written Sworn Complaint**
 - The landlord ***must*** state the breach (or a lawful reason) for seeking possession of the property.
 - If more than one breach or reason exists, it is not necessary to state ***everything***, otherwise
 - if you should lose, you might forfeit the opportunity for another “***bite of the apple***”.
- 

Name each person, pay the service fee, and have everyone you desire to evict served with the citation.

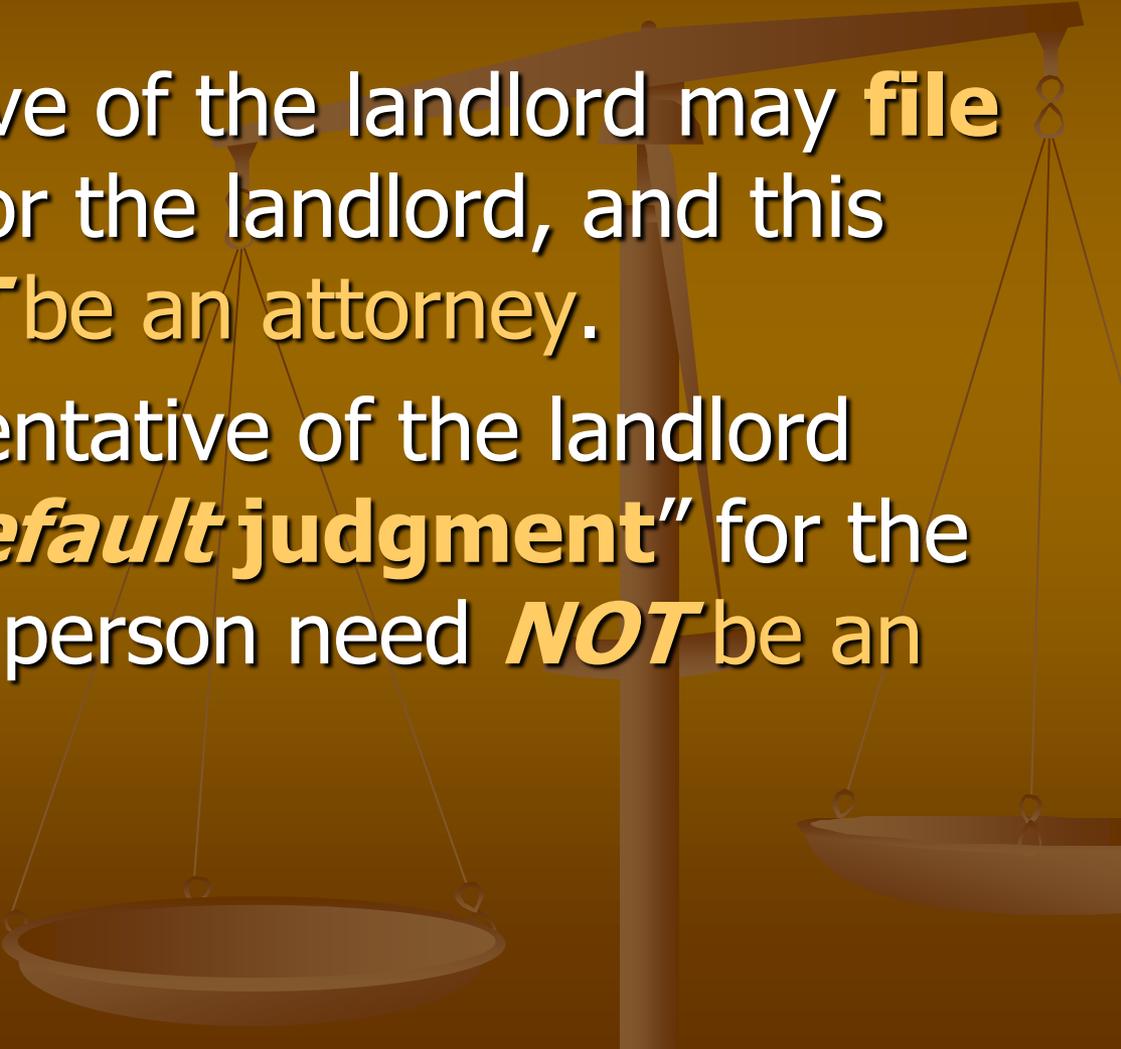
- Do not let those pesky constitutional rights, like the *right to Due Process*, interfere with your ability to regain possession of the premises from **everyone**, if that is your intention.
- Do not take chances, pay the extra service fees.



The plaintiff is the **Landlord**, not a **Management Company**.

- When writing the Written Sworn Complaint, the “**plaintiff**” must be in the name of the real **Landlord**.
 - A company that provides management services for a landlord does not have “**standing to sue**” in an eviction lawsuit against a tenant.
 - Therefore, the eviction suit must be brought in the ***name of the landlord***.
 - Look to the contract for the names of the parties.
- 

Who can legally represent the Landlord for Evictions?

- Any representative of the landlord may **file** the eviction suit for the landlord, and this person need **NOT** be an attorney.
 - Also, any representative of the landlord may receive a “**default judgment**” for the landlord, and this person need **NOT** be an attorney.
 - *But...*
- 

Who can legally represent the Landlord for Evictions?

- after the tenant is served with eviction papers from the court, the tenant's "**answer date**" is coincidental with the **date of trial**.
- If the tenant fails to appear, the allegations in the *written sworn complaint* may be taken as **true** and the court can award judgment to the landlord, *or*
- if the tenant appears and **admits** to the allegations in the plaintiff's written sworn complaint the court can award a judgment to the landlord, *but*
- there are some restrictions on **who** can legally represent the Landlord for a **contested** eviction **trial**.

Who can legally represent the Landlord for Evictions?

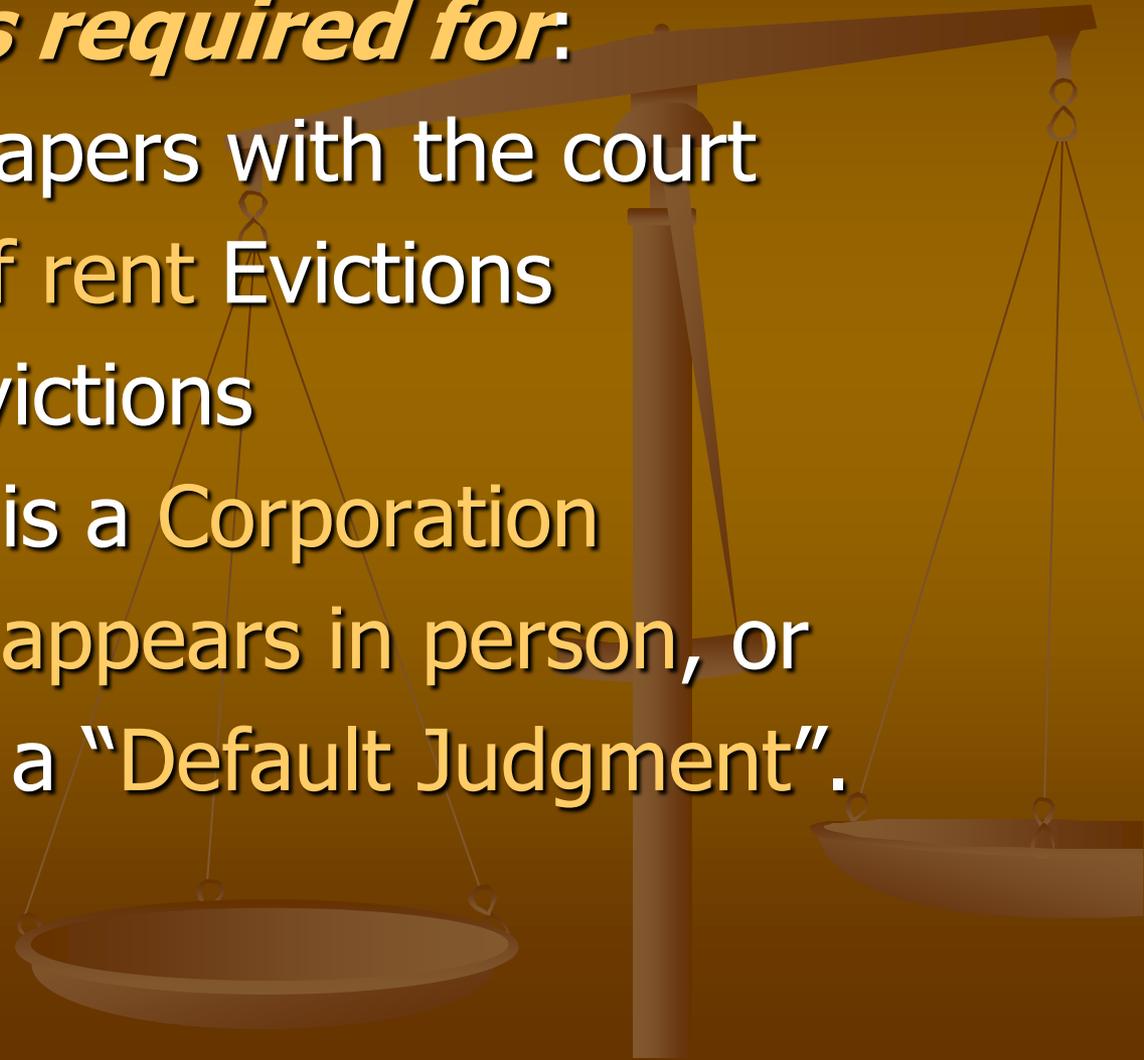
- If the tenant appears and contests the allegations in the landlord's written sworn complaint, there must be a trial on the merits.
- If the eviction suit is for "***Non-payment of rent***" or "***Holding over***", the landlord may be represented by his authorized agent who ***need not be an attorney, and...***
- If the landlord is a **corporation**, the landlord may be represented by his authorized agent who ***need not be an attorney, but...***

Who can legally represent the Landlord for Evictions?

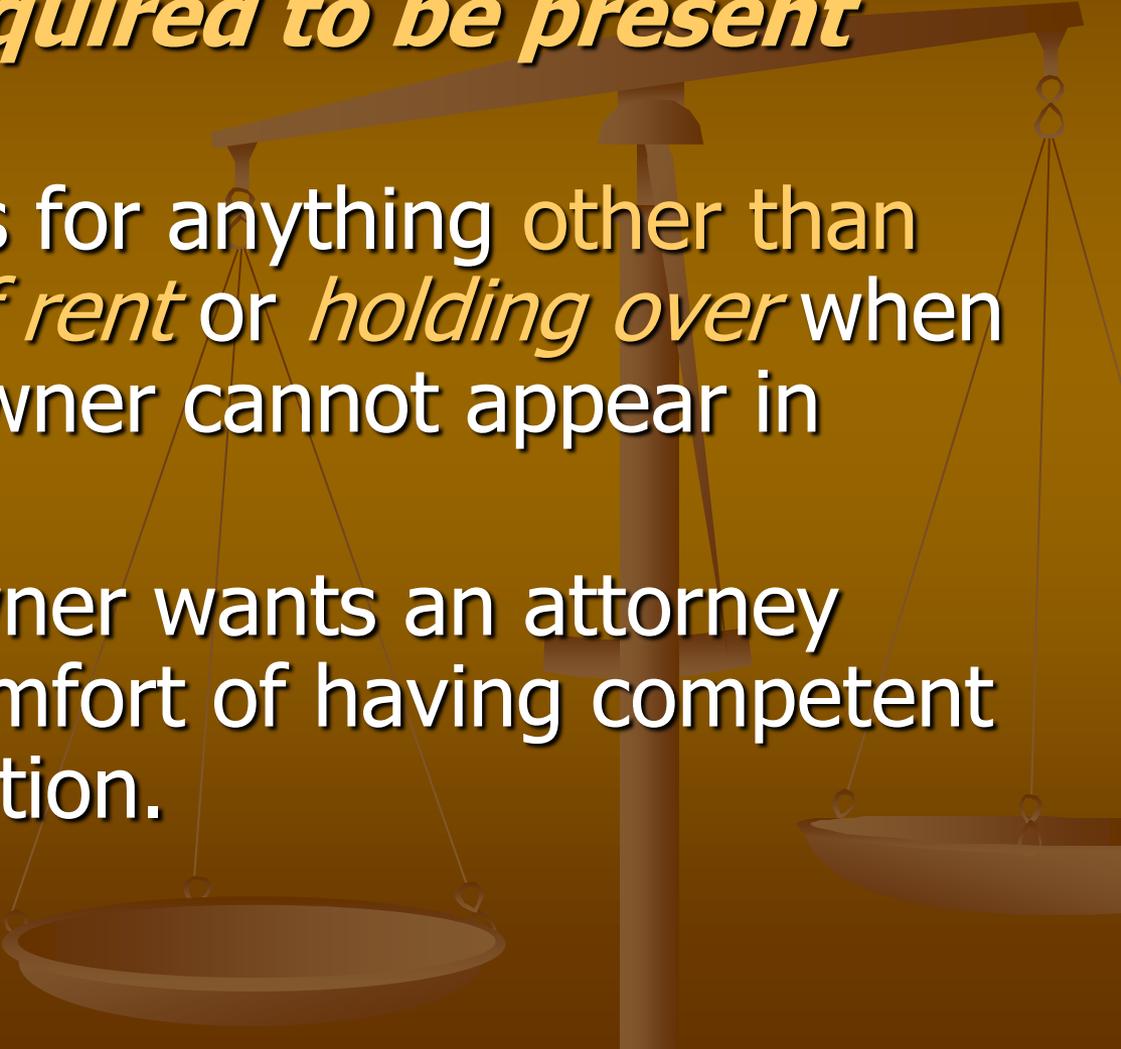
- if the landlord is an individual or other business entity other than a corporation, and
- if the eviction suit is for anything other than *non-payment of rent* or *holding over*, then
- the landlord must appear in person or be represented by a licensed attorney, and
- (never someone who claims to have a signed **“Power of Attorney”**.)

To sum up...

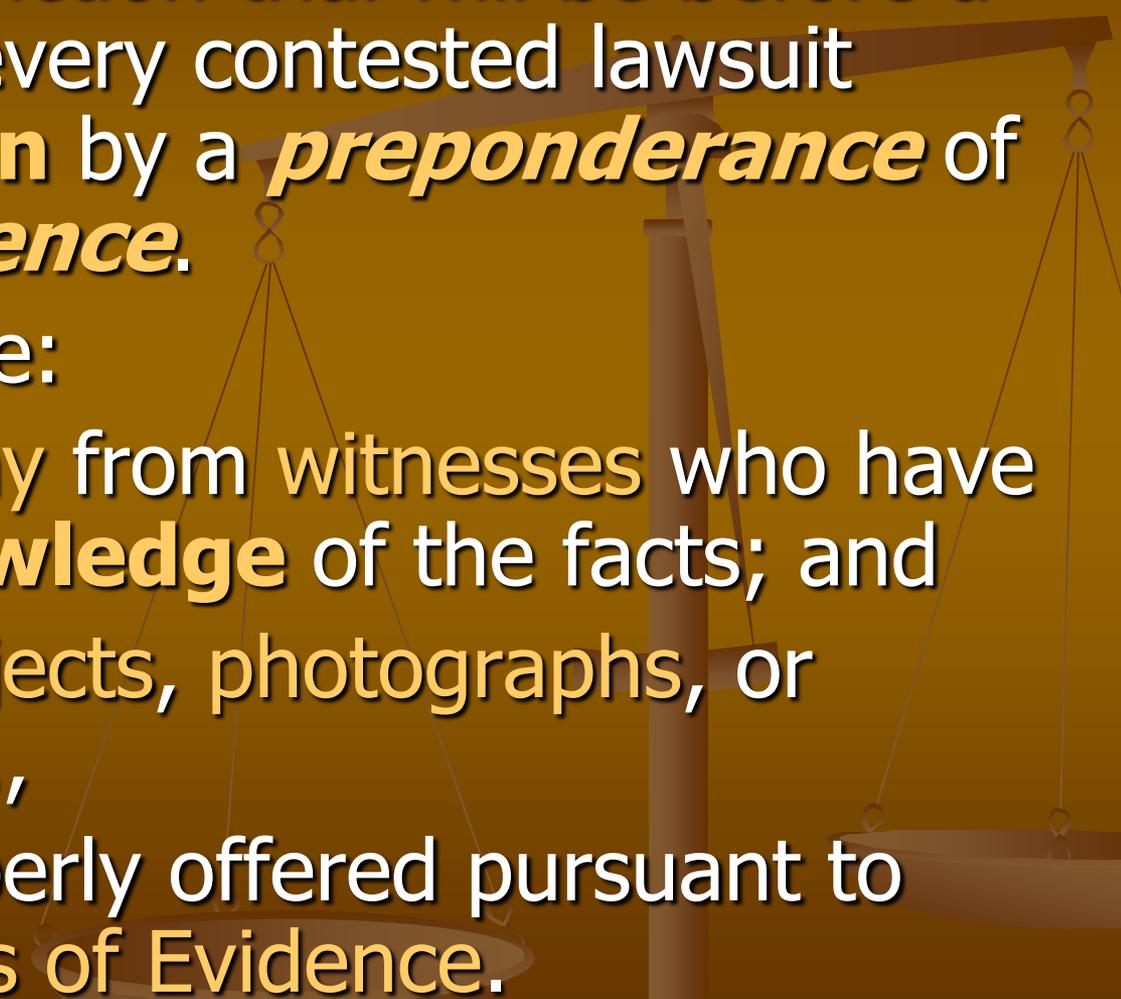
- ***No attorney is required for:***
- Filing eviction papers with the court
- Non-payment of rent Evictions
- Holding Over Evictions
- When Landlord is a Corporation
- When Landlord appears in person, or
- When receiving a “Default Judgment”.



To sum up...

- ***Attorney is required to be present for:***
 - All Eviction trials for anything other than *non-payment of rent* or *holding over* when the individual owner cannot appear in person, or
 - any time the owner wants an attorney there for the comfort of having competent legal representation.
- 

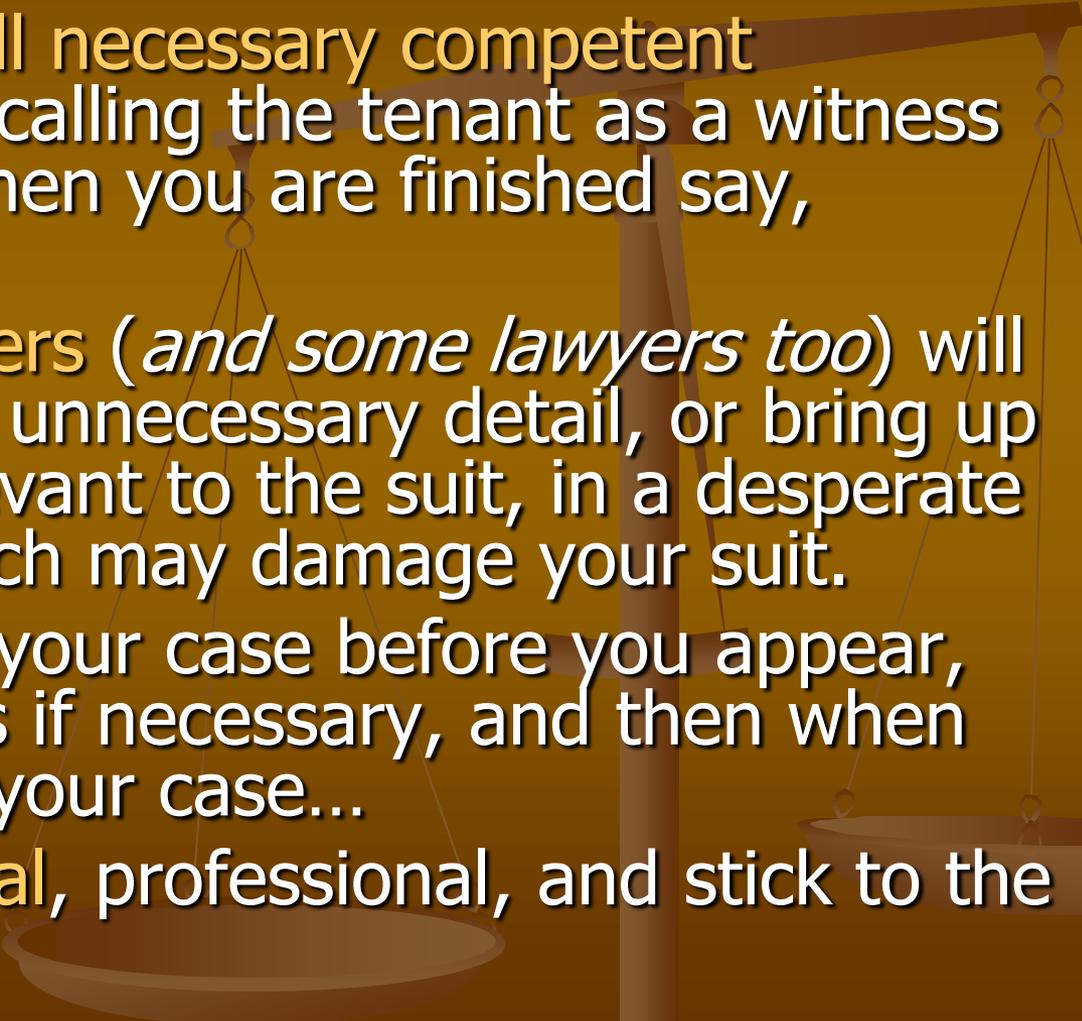
Bring Evidence?

- Whether the eviction trial will be before a judge or jury, every contested lawsuit must be **proven** by a ***preponderance of credible evidence***.
 - Evidence can be:
 - verbal testimony from witnesses who have **personal knowledge** of the facts; and
 - documents, objects, photographs, or recordings, etc.,
 - if they are properly offered pursuant to the Texas Rules of Evidence.
- 

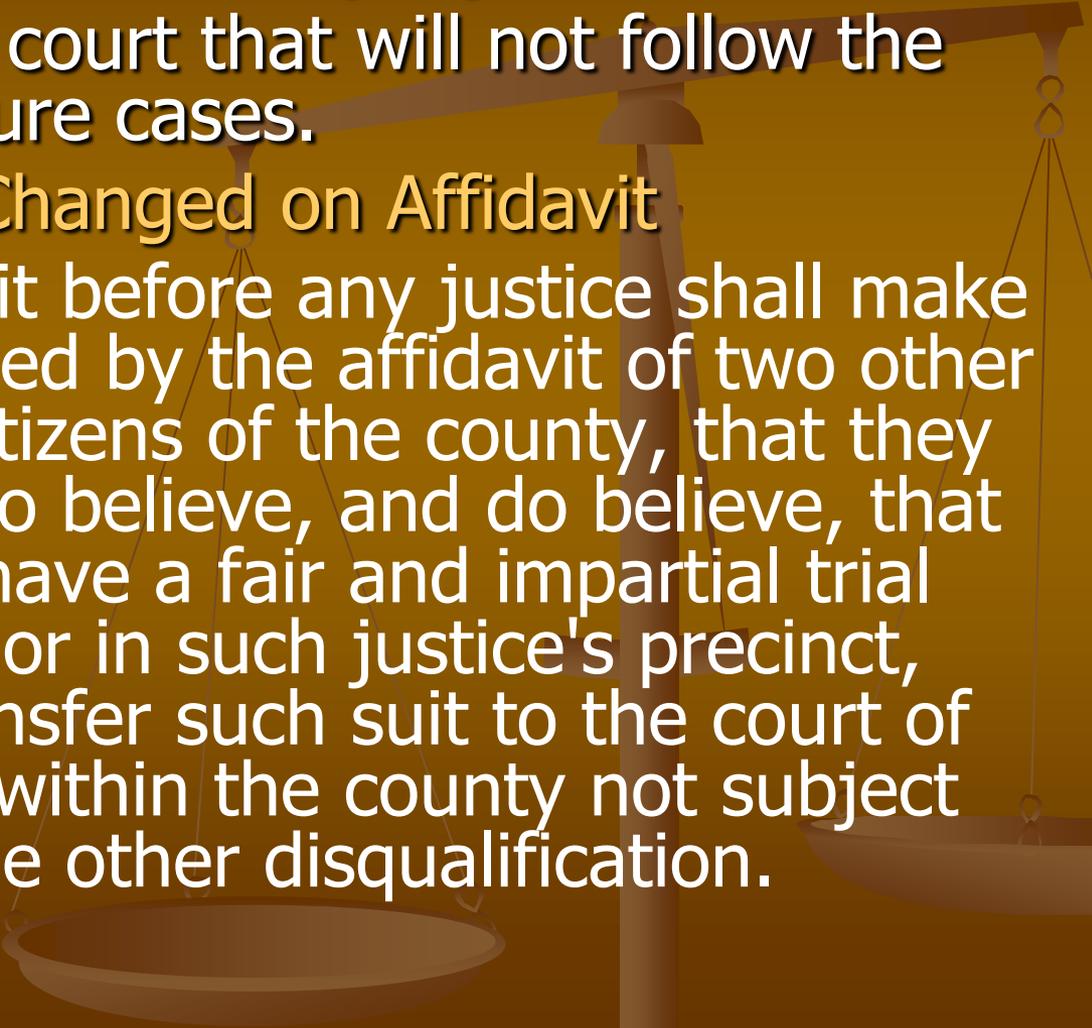
Enforce the Written Contract

- There are many provisions to the contract, and most are there to protect the parties.
- The contract literally states that there can be no modifications unless in writing, therefore
- make it a strict company policy that there will be **no agreements** for *anything* unless it is in writing, otherwise...
- a tenant may testify to an oral *side agreement* you are not prepared to address at trial, which may hurt your chances of winning the suit.
- For example: *"I had an agreement with Barbara, the leasing agent, to pay on the 15th, which I did, so how can I be evicted for not paying?"*

Do not over present your case.

- To make the "*sale*"...
 - Bring and present all necessary competent evidence, including calling the tenant as a witness if necessary, and when you are finished say, "plaintiff rests".
 - Too often *non-lawyers* (*and some lawyers too*) will offer way too much unnecessary detail, or bring up issues not even relevant to the suit, in a desperate attempt to win, which may damage your suit.
 - Practice presenting your case before you appear, make and use notes if necessary, and then when actually presenting your case...
 - be brief, unemotional, professional, and stick to the point.
- 

“Bad” Judge ?



- It is difficult to repair a “bad” judge, but
- if you experience a court that will not follow the law, transfer all future cases.
- Rule 528 – Venue Changed on Affidavit
- If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

Questions?

- Remember, you may always email questions to me - anytime!
 - acercone@dallascounty.org

