



Venue in Texas State Courts		Venue is the county of suit. Although the plaintiff chooses the venue where the lawsuit is filed, there may be a strategic advantage to seeking a transfer to another venue. This chart is generally applicable to lawsuits filed in Texas state court after September 1, 2009.
Procedural Methods for Transferring Venue	1. Content	Upon written consent of all parties, the trial court may transfer a lawsuit to another venue.
	2. Bias Motion	The trial court may order a change of venue upon written motion by any party that an impartial trial cannot be had in the county where the suit is pending, due to some public prejudice against that party or some public partiality to the opposing party. The motion must be supported by the moving party's affidavit, and by the affidavits of three credible county residents. The parties may conduct "reasonable" discovery regarding the issues of partiality or prejudice, and the opposing party may use that discovery to challenge the motion. If the motion is properly supported by four credible affidavits and is not controverted, the court must transfer the case to another venue. If the affidavits are controverted, the decision is left to the court's discretion based on the witnesses' credibility. Under case authority, such a motion may be made at any time before the beginning of trial.
	3. Improper Venue Motion	The most common way to seek a venue transfer is via a statutorily-created order of venue preferences, and several procedural rules addressing the order and manner of raising an issue of improper venue. There are three groups of rules that set venue: (a) the general venue rule; (b) mandatory venue rules; and c) permissive venue rules.
"Proper" Venue	3a. General Venue Rule	Unless a mandatory or permissive venue provision applies, a Texas lawsuit may be brought in one of four venues: (i) In the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; (ii) if defendant is an individual, in the county of defendant's residence at the time the cause of action accrued; (iii) if the defendant is a company, in the county of the defendant's principal office in this state; or (iv) if subdivision (i), (ii), and (iii) do not apply, in the county in which the plaintiff resided at the time the cause of action accrued.
	3b. Mandatory Venue Rules	There are several mandatory venue provisions contained in the various Texas Codes. The following are a sampling of types of lawsuits that have mandatory venue provisions: (i) suits involving title to real estate; (ii) suits between a landlord and a tenant arising under a lease; (iii) suits for damages for libel, slander, or invasion of privacy; (iv) suits brought under the Federal Employer's Liability Act or the Jones Act; (v) large contracts containing a venue provision; (vi) suits involving governmental agencies, political subdivision, and government officials are often required to be brought in Travis County; and (vii) certain legal issues affecting public universities, public hospitals, state government officials, and family law issues, such as divorce or adoption.
	3c. Permissive Venue Rules	If no mandatory venue provision controls, the permissive venue provisions allow certain defendants the privilege of being sued in a particular county, if the defendant timely objects to the plaintiff's choice of venue. If there are two counties of permissive venue, the plaintiff's choice controls. The following are a sampling of the most commonly-invoked permissive provisions: (i) suits against an estate; (ii) suits on an insurance policy against an insurer; and (iii) suits for breach of warranty by a manufacturer of consumer goods.
Considerations When Raising an Improper Venue Challenge	Initial Venue Factors	<ul style="list-style-type: none"> <li>All questions concerning venue are decided by the trial court, based on the facts existing at the time the cause of action accrued.</li> <li>All venue facts properly pled in the plaintiff's original petition are presumed to be true, unless specifically denied by another party.</li> <li>Once the plaintiff has established proper venue against one defendant, the court also has venue over all defendants in all claims arising out of the same occurrence. As a matter of strategy, if there is a reason to want to change venue, it is worthwhile to determine if another defendant has a basis to bring a venue challenge, and to help that party do so.</li> <li>A motion objecting to improper venue must be made before or simultaneously with the first document filed in the case, including the defendant's original answer, or the objection is waived. The usual procedure is to file a motion to transfer venue and, subject thereto, the defendant's original answer.</li> <li>The motion must either allege: (1) that the county where the lawsuit is pending is not a proper venue; or (2) another county is statutorily-designated as a mandatory venue for the lawsuit. The party moving to transfer has the burden of proof to establish that venue is maintainable in the county to which transfer is sought.</li> </ul>
	Discovery Not Stayed	Discovery is not stayed or abated while a motion to transfer venue is pending, and participation in discovery subject to the motion does not waive any right to a transfer. Written discovery and depositions will move forward while the transfer motion is pending, and these may serve as evidence on the propriety of venue, if incorporated into an affidavit and made part of the motion or response.
	Appellate Review	<ul style="list-style-type: none"> <li>A venue decision may not be reviewed by an interlocutory appeal. But, if the trial court refuses to enforce a mandatory venue provision, it is possible to seek mandamus relief compelling the trial court to transfer the case, within certain time requirements. The trial court's decision is reviewed to determine whether there is any basis in law to support the decision, based on the facts known to the court at the time of the transfer motion.</li> <li>If an appellate court later determines venue is improper due to a mandatory venue provision, this is <u>always</u> reversible error.</li> <li>But, if the trial court's decision was based on a permissive venue provision and made either for the convenience of the parties or in the interest of justice, that decision is <u>never</u> reversible error, and is not grounds for appeal or for mandamus.</li> </ul>

The information provided is intended to serve as a guide only and may change or vary depending on the specific fact, allegations and circumstances of each case and/or changes in the law by Texas state and federal courts and the legislature. The content of this guide is intended as an example only and should not be construed as or relied upon as legal advice. ©2010 Macdonald Devin, P.C.