

# Introduction to Non-Eviction Landlord-Tenant Actions

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## Resources

- [www.txcourts.gov](http://www.txcourts.gov)
  - Texas Rules of Civil Procedure (TRCP)
- [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
  - All statutes other than the Rules of Civil Procedure
- TJCTC website ([www.tjctc.org](http://www.tjctc.org))
  - Texas Civil Process Field Guide
  - Deskbooks
  - Legal Question Board
  - Forms
  - Webinar archive

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## Topics

- Common Requirements for Service & Action Process
- Safety When Serving
- Writs of Retrieval
- Writs of Re-Entry
- Writs of Restoration
- Distress Warrants
- Records and Fees
- Liability
- Practice Questions

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Get your Civil  
Process Guide  
out!

• It can be found at:

<https://www.tjtc.org/tjtc-resources/Deskbooks.html>

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## Common Requirements for Service & Action Process

*Look at Part III of your Civil Process Field Guide!*

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## Method of Service

- Must be served by:
  - Sheriff,
  - **Constable, or**
  - **Their deputies.**
- The writs may be served anywhere in the state.
- All served via personal service.

*TRCP Rules 103 & 501.2(a)*

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## Date and Time of Service

- Monday – Saturday (any time)
- Sunday service **only** for injunction, attachment, garnishment, sequestration, or distress proceedings.
- Time computation for Saturdays, Sundays, and legal holidays
  - Count **all** days
  - District or County Courts: If the time period to serve is 5 days or less, don't include Sat, Sun, and holidays.
- If the last day to serve is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day that ends at 5:00.
- The court has discretion to extend service period.

*TRCP Rules 4-6, 500.5, 621*

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## Expiration of Service

- Not enforcing a judgment: no expiration on service, unless specifically indicated.
- Writs enforcing a judgment: 30, 60, or 90 days as specified in the writ unless stated otherwise.

*TRCP Rules 4-6, 500.5, 621*

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## Common Return Duties & Requirements

- Once the writ is executed, the officer must complete a return of service.
  - The return of service can be attached to the writ, or it can be a separate document.
- The officer must sign the return and file it with the clerk of the proper court.
  - May be returned in person, electronically, or by fax.
  - Shall be filed by 10:00 AM on the Monday after the expiration of 20 days from the date of service, unless otherwise stated.

*TRCP Rules 16, 107, & 501.3*

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## Contents of Return

- Cause number & case name;
- Name of the court and county where the case was filed;
- Description of what was served;
- Date and time the process was received for service;
- Person and/or entity served;
- Date & address of service;
- Signed officially by the deputy; and
- Any other information required by rule or law.

*TRCP Rules 16, 107, & 501.3*

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## Preemption of Local Ordinances

Any local rules/ordinances are not valid if they conflict with state laws.

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## Officer Safety

- ◆ Run CCH's on people before you serve them
- ◆ Don't go alone if you don't have to
- ◆ Be aware of your surroundings
- ◆ Wear your vest
- ◆ Don't get complacent
- ◆ Just because the papers you're serving are civil doesn't mean the people you're serving are.

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## Writs of Retrieval

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## What is a Writ of Retrieval?

- A writ authorizing entry and retrieval of necessary personal property for a person or their dependent, because the current occupant is denying the person entry to their current or former residence.

*Property Code § 24A.002*

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## Who Issues a Writ of Retrieval?

- A justice of the peace or associate judge, except that if property subject to a divorce or annulment suit is sought, only the judge presiding over the divorce/annulment may issue the writ.

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## Required Findings for Writ of Retrieval

The Court must find the following:

- The applicant has been unable to enter due to the current occupant not allowing access to retrieve the applicant's (or dependent's) personal property;
- The applicant is not the subject of a current protective order or is not otherwise prohibited from entering the residence;
- There is a risk of personal harm to the applicant or dependent if the items aren't received soon;
- Applicant is currently or was formerly authorized to occupy the residence; and
- The current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application (unless ex parte due to family violence).

*Property Code §§ 24A.002, 24A.0021*

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## Requirements of Writ of Retrieval

- Authorizes the applicant to enter the residence, accompanied by a sheriff/constable/deputy, and retrieve ONLY the property listed in the application.
- Contains the list of property to be retrieved.

*Property Code §§ 24A.002, 24A.0021*

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## Can ONLY Retrieve the Following Types of Items!

- ◆ Medical records
- ◆ Medicine and medical supplies
- ◆ Clothing
- ◆ Child-care items
- ◆ Legal or financial documents
- ◆ Checks or bank or credit cards in the name of the applicant
- ◆ Employment records
- ◆ Personal identification documents
- ◆ Copies of electronic records containing legal or financial documents

*And the new categories added by the legislature in 2021!  
(next slide)*

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## New Items Added to the List in 2021

- ◆ **Assistance animals or service animals**, as defined by Human Resources Code Section 121.002, used by the applicant or applicant's dependent.
- ◆ **Wireless communications devices**, as defined by Transportation Code Section 545.425(a), of the applicant or applicant's dependent.
- ◆ **Tools, equipment, books, and apparatus** used by the applicant in the applicant's **trade or profession**.

Property Code § 24A.002(b)(3)

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## What if they want something else??

◆ If the property that the applicant wishes to retrieve does not fall within one of these categories, the person may be able to obtain it by filing a small claims case for the recovery of personal property, but NOT by filing an application for a Writ of Retrieval.

◆ *You can give them the Small Claims SRL packet or send them to the TJCTC Self-Represented Litigant Page for more information on how to do that*

*Rule 505.2*

◆ If they have a divorce or family violence case pending, they should talk to their lawyer or the court about options for retrieving their property

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## Writ of Retrieval Discussion Question #1

1. What if the writ explicitly lists something that is not on the list of allowed items? What do you do?
2. What if the applicant wants something that is included on the list of allowed items, but isn't listed on their writ? Can you let them take that?
3. What are the possible consequences for allowing wrongful property retrieval?

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## Writ of Retrieval Execution

**OFFICER SAFETY!** These situations WILL be EMOTIONAL and can be VIOLENT.

Always have at least 2 officers present at the time of execution

Be aware of your surroundings (people, weapons, hazards)

Set a time limit for the applicant – about 20 minutes to gather the items

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## Writ of Retrieval Execution & Return

- The officer must accompany and assist the applicant in making authorized entry and retrieving the items of personal property listed in the writ.
- The writ is served on the occupant of the residence (if they are present).
- Create an inventory of the property removed.
  - Make a copy for the applicant, the current occupant, and **the writ return.**
  - If the current occupant is not present, leave the copy in a conspicuous place.

*Property Code §§ 24A.002-24A.005*

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## Reasonable Force – Writ of Retrieval

- Reasonable force may be used in executing a writ of retrieval.
  - If used, make sure to note it in your return or in a report of some sort.
- No black and white definition of reasonable force.
  - Based on the specific facts and circumstances of each incident.
- Remember this is a **civil** situation.
  - Err on the side of caution.

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## Interference is Class B Misdemeanor

- A person who interferes with the retrieval of personal property pursuant to a court order commits a Class B Misdemeanor.
- This could be the Applicant, if they insist on retrieving items not listed in the writ.

(50070001 INTERFERE W/PERSONAL PROPERTY RETREIVAL)

*Property Code § 24A.005.*

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## Writ of Retrieval Discussion Question #2

1. Have you done one of these?
2. How long did it take?
3. Any tips to share?

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## Writs of Re-entry

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## What is a Writ of Re-entry?

- It is a writ that allows a **residential** or **commercial** tenant to:
  - Immediately, but temporarily,
  - Regain possession of leased premises,
  - After an unlawful lockout by the landlord,
  - Pending the outcome of a final hearing (if requested).

*Property Code §§ 92.009 & 93.003*

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## Issuance of the Writ of Re-entry

- Issued by the justice of the peace in the precinct where the property is located.

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### Requirements: Writ of Re-entry

- Styled “The State of Texas.”
- Directed to the sheriff or any constable in Texas.
- Identifies the person who is to receive service of process.
- Includes the name and county of the court where the case is filed.
- Includes the cause number.
- Identifies all parties in the case.

*TRCP Rule 15, Property Code §§ 92.009 & 93.003*

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### Requirements: Writ of Re-entry (*continued*)

- Includes the following:
  - Date of issuance.
  - Address of the lockout.
  - The right of landlord to request a hearing within 7 days of service, which then must be held not earlier than the 1st day or later than the 7th day after the date of the request.
  - County and court name.
  - Signature of the clerk of the court or the judge.
  - Court’s seal.

*TRCP Rule 15, Property Code §§ 92.009 & 93.003*

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Sample Form  
Available on  
[www.tjctc.org](http://www.tjctc.org)

CAUSE NO. \_\_\_\_\_

APPLICANT \_\_\_\_\_ § 1 IN THE JUSTICE COURT

§ 2 PRECINCT NO. \_\_\_\_\_

§ 3 \_\_\_\_\_ COUNTY, TEXAS

**WRIT OF RE-ENTRY**

**WHEREAS**, the above-named Applicant has made his/her sworn Application for a Writ of Re-Entry regarding the following location ("Residence") \_\_\_\_\_ and recited under oath as to the facts of the incident, and

**WHEREAS**, the Court finds that \_\_\_\_\_ has substantially denied the Applicant access to the Residence in violation of Property Code Sec. 92.002E.

**THEREFORE, IT IS ORDERED** that the above-named Applicant is entitled to immediate possession of the above-named Residence.

**IT IS FURTHER ORDERED** that a Constable or Sheriff or their deputy serve this writ on \_\_\_\_\_ who may be found at \_\_\_\_\_ alternatively it may be served on their agent, management company, on-premises manager, or rent collector \_\_\_\_\_ who may be found at \_\_\_\_\_

**NOTICE OF RIGHT TO A HEARING**: The individual who is alleged to have excluded the Applicant is notified of a hearing on this matter. To request a hearing, a written request must be filed with the above court within eight days of the service of this order. The hearing will be held one to seven days after the court receives the request. Failure to request a hearing may result in a judgment against the individual excluding the Applicant for the Applicant's costs in obtaining this order.

**ISSUED AND SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_ COUNTY, TX

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## Expiration of Writ of Re-entry

- A writ of re-entry expires on the hearing date if a hearing is requested.
- If no hearing is requested, it expires when the deadline to request a hearing has passed and the court is able to enter a judgment for costs against the landlord (whether or not the court actually issues the judgment).

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### Pop Quiz!

- All of these writs **must** be served by whom?
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
- These writs may be served anywhere in the state, true or false? \_\_\_\_\_

*TRCP Rules 103 & 501.2(a)*

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### Methods of Service: Writs of Re-entry

- Writs of re-entry are served as soon as possible by personal service.
- The writ may be served on the:
  - Landlord.
  - Landlord's management company.
  - Landlord's on-premises manager.
  - Landlord's rent collector.

*Property Code §§ 92.009, & 93.003*

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## Service Duties & Requirements: Writs of Re-entry

- The officer must:
- Enter the writ into their record keeping system.
- Note the date and time received.
- Proceed without delay.
- Execute as directed in the writ.
- Place the tenant back in possession of the property.

*TRCP Rules 17, 126, & Property Code §§ 92.009, 93.003*

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## Service Duties and Requirements (continued)

- Instruct the landlord to release possession to the tenant.
- Explain the writ clearly to the landlord, emphasizing that the tenant has been placed back into the premises until there is a hearing before the court (if requested).
- Inform the landlord that failure to comply with the writ could result in the landlord being held in contempt with punishment including a fine, confinement in jail, or both.
- Give the defendant a copy of the writ.
- Keep copies of all documents in accordance with established record retention schedules.

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## Reasonable Force – Writ of Re-Entry

- Reasonable force may be used in executing a writ of re-entry.
  - If force is used, make sure to note it on your return or in a report of some sort.
- No black and white definition of “reasonable force.”
  - Based on the specific facts and circumstances of each incident.
- Remember this is a **civil** situation.
  - Err on the side of caution.
  - If the person doesn’t do what the writ orders, that person can be held in contempt by the judge.

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## Failure to Comply with Writ of Re-Entry

- A landlord cannot be arrested for failing to comply.
  - Landlord may be held in contempt of court.
  - Note the failure to comply on the return.

*Property Code §§ 92.009 & 93.003*

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## Writ of Possession Supersedes Writ of Re-Entry

- A writ of possession supersedes a writ of re-entry.
  - Notate on the return for the writ of re-entry that the writ was not executed due to a writ of possession issuing.
  - Notate on the return for the writ of possession that a writ of re-entry had been issued by the court but was not executed due to the writ of possession.

*Property Code §§ 92.009 & 93.003*

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## Writ of Re-entry Return Contents

### **Fill in the blanks on your handout!**

- The return must include:
  - Case name and \_\_\_\_\_.
  - Name and county of the court where the case is filed.
  - Date and time the writ was received.
  - Name of the person served.
  - \_\_\_\_\_.

TRCP Rules 15, 16, 107, & 501.3

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## Writ of Re-entry Return Contents (continued)

- The return must include:
  - Date and time served.
  - Serving officer's name.
  - Any other information required by rule or law.
  - Any additional information specific to the execution that should be noted in the file.
  - Give a detailed description of how the tenant was placed back in possession of the property.
- *TRCP Rules 15, 16, 107, & 501.3; Property Code §§ 92.009 & 93.003*

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## Writ of Re-Entry Discussion Question

1. Have you done one of these?
2. Did the landlord comply? How did you handle it if not?
3. Any tips to share about the process?

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## Writs of Restoration

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### What is a Writ of Restoration?

- It is a writ that provides a **residential** tenant with:
  - Immediate, but temporary,
  - Restoration of disconnected utility services,
  - That were unlawfully disconnected by a landlord,
  - Pending the outcome of a final hearing (if requested).

*Property Code § 92.0091*

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## Issuance of the Writ of Restoration

- Issued by the justice of the peace in the precinct where the property is located.

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## Requirements: Writ of Restoration

- Styled "The State of Texas."
- Directed to the sheriff or any constable in Texas.
- Identifies the person who is to receive service of process.
- Includes the name and county of the court where the case is filed.
- Includes the case name and cause number.
- Identifies all parties in the case.
- Includes the date of issuance.

*TRCP Rule 15 & Property Code § 92.0091*

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## Requirements: Writ of Restoration (continued)

- Includes the address of the premises where utility services have been disconnected.
- Describes the utility services to be restored.
- Includes the right of landlord to request a hearing within 7 days of service, which then must be held not earlier than the 1st day or later than the 7th day after the date of the request.
- Identifies which court the citation is returnable to.
- Is signed by the judge or clerk of the court.
- Contains the court's seal.

TRCP Rule 15 & Property Code § 92.0091

Sample Form  
Available on  
[www.tjctc.org](http://www.tjctc.org)

CAUSE NO. \_\_\_\_\_

APPLICANT \_\_\_\_\_ § IN THE JUSTICE COURT  
§ PRECINCT NO. \_\_\_\_\_  
§ \_\_\_\_\_ COUNTY, TEXAS

**WRIT OF RESTORATION**

**WHEREAS**, the above-named Applicant has made his/her sworn Application for a Writ of Restitution regarding the following location ("Premises") \_\_\_\_\_ and verified under oath as to the facts of the utility disconnection, and:

**WHEREAS**, the Court finds that \_\_\_\_\_ has unlawfully disconnected the Applicant's utilities in violation of Property Code Sec. 92.006.

**THEREFORE, IT IS ORDERED** that the above-named Applicant is entitled to immediate restoration of the utilities at the above-named Premises.

**IT IS FURTHER ORDERED** that a Constable or Sheriff or their deputy serve this writ on \_\_\_\_\_ who may be found at \_\_\_\_\_ or who may be served by their agent, management company, on premises manager, or mail collector \_\_\_\_\_ who may be found at \_\_\_\_\_.

**NOTICE OF RIGHT TO A HEARING**: The individual who is alleged to have disconnected the Applicant's utilities is entitled to a hearing on this matter. To request a hearing, a written request must be filed with the above court within eight days of the service of this order. The hearing will be held one to seven days after the court receives the request. Failure to request a hearing may result in a judgment against the individual disconnecting the utilities for the Applicant's costs in obtaining this order.

ISSUED AND SIGNED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
COUNTY, TX

## Expiration of Writ of Restoration

- A writ of restoration expires on the hearing date if a hearing is requested.
- If no hearing is requested, it expires when the deadline to request a hearing has passed and the court is able to enter a judgment for costs against the landlord (whether or not the court actually issues the judgment).

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## Methods of Service: Writs of Restoration

- Writs of restoration are served as soon as possible by personal service.
- The writs may be served on the:
  - Landlord.
  - Landlord's management company.
  - Landlord's on-premises manager.
  - Landlord's rent collector.

*Property Code §§ 92.009, 92.0091, & 93.003*

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## Writ of Restoration Service Duties

- The officer must:
  - Enter the writ into their record keeping system.
  - Note the date and time received.
  - Proceed without delay to execute as directed in the writ.
  - Instruct the landlord to resume the tenant's utility services.
  - Inform the landlord that failure to comply with the writ could result in the landlord being held in contempt with punishment including a fine, confinement in jail, or both.
  - Serve the defendant their copy of the writ.
  - Keep copies of all documents in accordance with established record retention schedules.
- *TRCP Rules 17, 126, & Property Code § 92.0091*

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## Failure to Comply with Writ of Restoration

- A landlord cannot be arrested for failing to comply.
  - Landlord may be held in contempt of court.
  - Note the failure to comply on the return.

*Property Code §§ 92.0091*

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## Writ of Possession Supersedes Writ of Restoration

- A writ of possession supersedes a writ of restoration.
  - Notate on the return for the writ of restoration that the writ was not executed due to a writ of possession issuing.
  - Notate on the return for the writ of possession that a writ of restoration had been issued by the court but was not executed due to the writ of possession.

*Property Code §§ 92.0091*

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## Writ of Restoration Return Contents

### Fill in the blanks on your handout!

- The return must include:
- Case name and cause number.
- \_\_\_\_\_ and \_\_\_\_\_ of the court where the case is filed.
- \_\_\_\_\_ and \_\_\_\_\_ the writ was received.
- Name of the person served.
- Address of service.

*TRCP Rules 15, 16, 107, & 501.3*

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## Writ of Restoration Return Contents (continued)

The return must include:

- Date and time served.
- Serving officer's name.
- Any other information required by rule or law.
- Any additional information specific to the execution that should be noted in the file.

*TRCP Rules 15, 16, 107, & 501.3*

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## Writ of Restoration Discussion Question

1. Have you done one of these?
2. What is the worst situation you have seen regarding utility disconnection?
3. Any tips to share about the process?

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## Distress Warrants

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### What is a Distress Warrant?

- A writ authorizing seizure of a **commercial or agricultural** (non-residential) tenant's personal property because the tenant owes back rent.
- Commands a sheriff or constable to attach and hold (subject to further court order) property in the approximate amount set by the justice of the peace, which is found in the officer's county unless that property is exempt by statute or replevied by the defendant.
- Only a JP court can issue a distress warrant, but the officer's return will be filed with the court that has jurisdiction of the lien foreclosure case (which may or may not be the justice court that issued the writ).

*TRCP 610, 612*

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## More Information and Resources

- TJCTC's Evictions Deskbook Ch. 13
- TJCTC's Civil Process Field Guide Part III, Section B
- TRCP Rules 610 – 620

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## Distress Warrants Discussion Question

1. Have you ever executed a distress warrant?
2. What was the property that you seized?
3. Any tips to share about the process?

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## Records & Fees

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### Record Retention Schedules

- Records must be retained and may be destroyed pursuant to established retention schedules.
- Retention of records relating to service of process:
  - Local Schedule PS – Retention Schedule for Records of Public Safety Agencies
    - [www.tsl.state.tx.us/slr/recordspubs/localretention](http://www.tsl.state.tx.us/slr/recordspubs/localretention)
  - TJCTC's Recordkeeping and Reporting Deskbook

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## Fees

- The initial service fee may cover a specific amount of field time.
  - If the officer spends more time in the field executing the writ, an additional fee can sometimes be charged.
- The fee for serving each type of writ, how much field time is covered by that fee, and the additional fee that can be charged per hour vary by county. Fees are set in each county's Fee Schedule.
- All fees for service of civil process:
  - Set by the commissioner's court under Section 118.131, Local Government Code.
  - Listed in the Sheriffs' and Constables' Fees Listing published by the Comptroller's Office: <http://www.tjtc-resources.org/docs/2017-SCFeeManual.pdf>.

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## Fee Collection

- The officer is **not** entitled to demand their service fee in advance of serving the process for a case filed in their county.
  - The officer's fee is to be taxed and collected as other costs in the case.
- **Exception:** A case pending in another county.
  - Then the officer may require payment before serving **unless** a Statement of Inability to Afford Payment of Court Costs has been filed (in which case they are waived).

*TRCP Rule 126*

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# Liability

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## Failure to Execute & Return

- If a constable or deputy fails or refuses to execute and return a process that is lawfully directed and delivered to them, the constable **shall** be fined for contempt on the motion of the person injured by the failure or refusal.
- Fine:
  - \$10 - \$100 plus costs.
  - Paid to the injured person.
  - Constable must be given 10 days notice of the motion.

*Local Government Code § 86.024*

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## Officer Liability

- Liability for an officer involved in the execution of writs is covered in Chapters 7, 34, and 35 of the Civil Practice and Remedies Code.
- Liability will be discussed in depth in other classes.

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## Practice Questions

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### Question 1

Mary loses her job and isn't able to pay rent for the month of July. Rent is due by July 3<sup>rd</sup>. On July 5<sup>th</sup>, Mary's landlord disconnects her water and electricity. Mary files a suit in justice court. What type of writ does she need?

- A. Writ of sequestration
- B. Writ of attachment
- C. Writ of re-entry
- D. Writ of restoration

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### Question 2

What entity is responsible for setting fees for serving each type of writ, how much field time is covered by that fee, and the additional fee that can be charged per hour?

- A. The administrative judge or judges of each county.
- B. The Texas Constitution.
- C. The commissioners court of each county.
- D. The Justices of the Peace and Constables Association.

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### Question 3

Which of the following does **NOT** need to be included in the officer's return?

- A. Cause number.
- B. Name of the person served a copy of the writ.
- C. Name(s) of the attorney(s) who represent the parties.
- D. Date and time the writ was executed.

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### Question 4

Billy has a writ of re-entry. You make contact with Billy's Landlord to schedule a day to return possession of the rental house to Billy. The landlord tells you he doesn't care what the court says, Billy isn't getting possession of the house. What do you do?

- A. Tell Billy he better start looking for a new place to live.
- B. Break down the door and let Billy back into the house.
- C. Arrest the landlord for contempt of court.
- D. Document what the landlord told you and return the writ unexecuted.

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### Question 5

Regarding writs of re-entry and restoration, who is a proper person to be served?

- A. Landlord
- B. Landlord's management company
- C. Landlord's on-premises manager
- D. Landlord's rent collector
- E. All of the above.

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Questions?

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