# The Fantastic Four: Retrieval, Re-Entry, Restoration, and Repair and Remedy

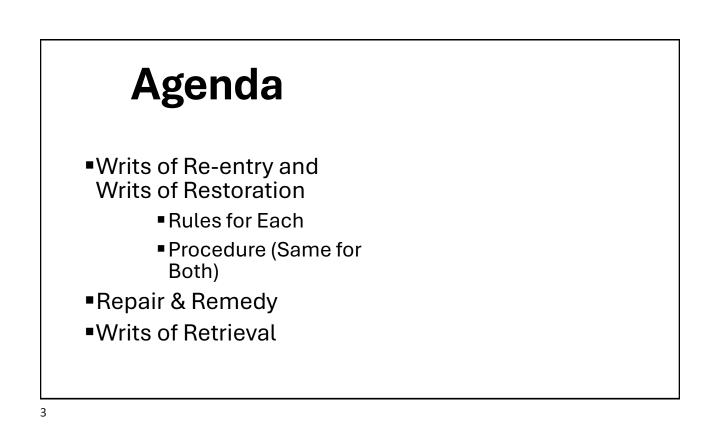
John Lackey Staff Attorney Texas Justice Court Training Center Texas

# Funded by a Grant from the Texas Court of Criminal Appeals

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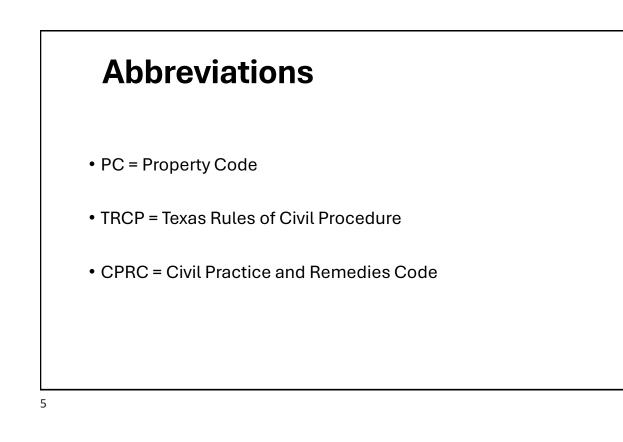
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# Resources

- TJCTC Website: http://www.tjctc.org/tjctcresources/Deskbooks.html
  - Evictions Deskbook (has non-eviction landlord-tenant topics also)
  - Charts and Checklists!
  - Webinars and self-paced modules
  - Forms SRL packets
- Statutes: http://www.statutes.legis.state.tx.us/
- **TRCP**: <u>https://www.txcourts.gov/rules-forms/rules-standards/</u>



# Tenant Has 3 Options if Illegal Disconnection or Lockout Occurs:

- 1) **Terminate** the lease (no need for court involvement, but court could end up having to rule on whether termination was lawful later if landlord sues tenant for breaking the lease).
- 2) **Disconnection**: Seek a **writ of restoration** ordering the landlord to reinstate the utilities (only applies to residential leases).

**Lockout**: Seek a **writ of re-entry** ordering the landlord to allow them back into the premises (residential and commercial).

• 3) **Sue** the landlord for money damages (can do this in addition to either of the other 2 options).

PC 92.008(f); 92.0081(h); 92.009; 92.0091; 93.002(g); 93.003

## Writs of Re-entry

(Getting Back In)

&

## Writs of Restoration

(Getting Utilities Turned Back On)

Property Code Chapters 92 & 93 Evictions Deskbook Chapter 9

# Writs of Re-entry

- Orders a landlord to immediately allow a tenant to be allowed back into their rental property following an **unlawful lockout**.
  - A peace officer may use reasonable force to enforce the order.

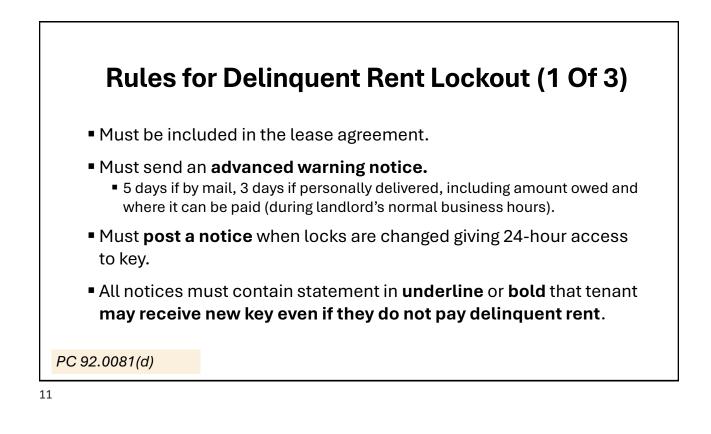
Residential: PC 92.0081 & 92.009 Commercial: PC 93.002 & 93.003

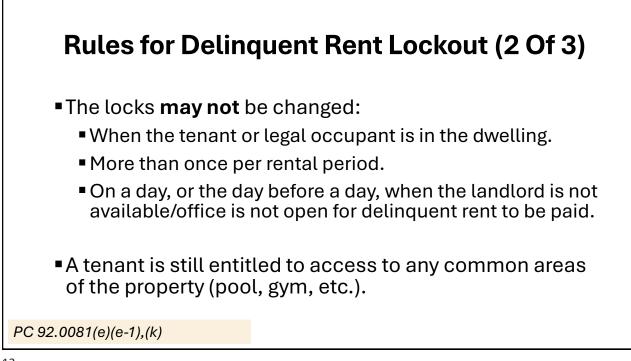
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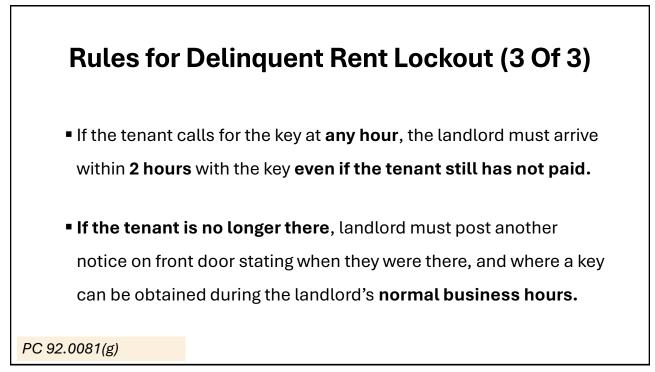
Lockout of Tenant
<ul> <li>A landlord may not intentionally prevent a tenant from entering the leased premises except by an eviction case unless exclusion is for one of the following:</li> </ul>
<ul> <li>Bona fide repairs, construction or an emergency.</li> </ul>
Removing the contents of premises abandoned by a tenant.
<ul> <li>Changing the locks on the door to the individual unit of a tenant who is delinquent in paying at least part of the rent. (See following slides for rules for this option)</li> </ul>
PC 92.0081;

Residential - Rules for Delinquent Rent Lockout

PC 92.0081(d)









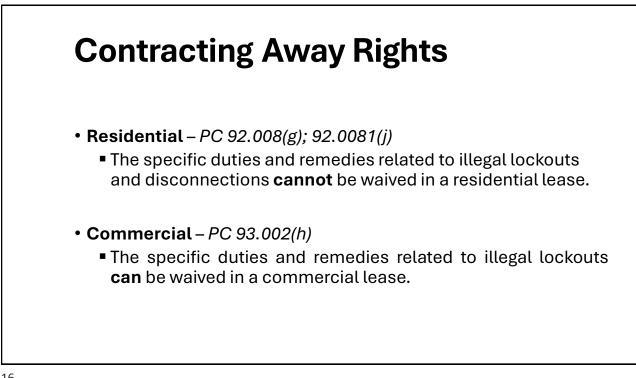
PC 93.002(f)

## Rules for Delinquent Rent Lockout

- Landlord must place a written notice on the tenant's front door stating the name, address, and telephone number of the individual or company where a new key may be obtained.
- The new key is required to be provided only during the tenant's regular business hours and only if the tenant pays all the delinquent rent.

PC 93.002(f)

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	Writs of Restoration
	<ul> <li>Orders a landlord to immediately</li> </ul>
	reconnect utilities that have been
	unlawfully disconnected.
	<ul> <li>Only Applies To Residential</li> </ul>
	Tenancies
	PC 92.008 & 92.0091
7	
	Interruption of Utilities Provided By Landlord
	Landlord cannot interrupt water, sewage, gas or electric even if provided and paid for by landlord other than for:
	<ul> <li>Bona fide repair</li> <li>Construction</li> <li>Emergency</li> </ul>

- Emergency
- Except: Very limited exception where may disconnect electricity only if electric bill specific to tenant's unit and the tenant does not pay bill on time. Lots of requirements that must be met (see PC 92.008(h)-(r)).

PC 92.008(b)

# Interruption of Utilities Paid Directly By Tenant (*Residential & Commercial*)

- Landlord cannot interrupt any utilities paid directly to a utility company unless:
  - bona fide repair
  - construction
  - emergency
- Note: Commercial tenants cannot get a writ of restoration. However, that does not mean they have no other options.

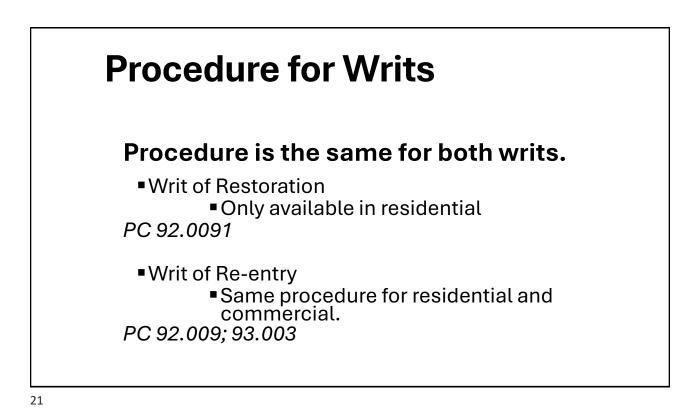
PC 92.008(a),(b); 93.002(a)

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### **Commercial Tenant Options if Utilities Disconnected**

- Terminate the lease (no need for court involvement, but court could end up having to rule on whether termination was lawful later if landlord sues tenant for breaking the lease).
- Sue the landlord for money damages (can do this in addition to terminating)

PC 92.008(f); 92.0081(h); 92.009; 92.0091; 93.002(g); 93.003



# Fees

- **Standard civil filing fee** usually \$54 (check with county auditor if anything in addition to this).
- Notice/Summons standard civil process service fee (varies by county, contact your auditor/constable for info).
- Service of writ the standard service fee for service of a writ of possession (varies by county, contact your auditor/constable for info).

PC 92.009(l); 92.0091(k); 93.003(l)

# Complaint & Testimony• Applicant must file a sworn<br/>complaint (with facts) in the<br/>precinct where the rental premises<br/>are located.• Applicant must orally state the<br/>facts under oath to the judge.PC 92.009(b); 92.0091(b); 93.003(b)

# Ex Parte Writ

- Judge determines (ex parte no notice/hearing for landlord) whether they reasonably believe an unlawful disconnection/lockout likely occurred.
  - If no, then the case is over no appeal of denial.
  - If yes, then writ immediately issues, which must order the landlord to immediately rectify the problem and must tell the landlord of their right to a hearing.

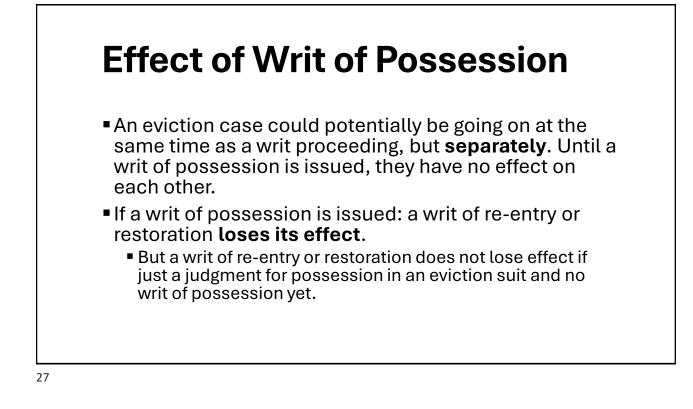
PC 92.009(c); 92.0091(c); 93.003(c)

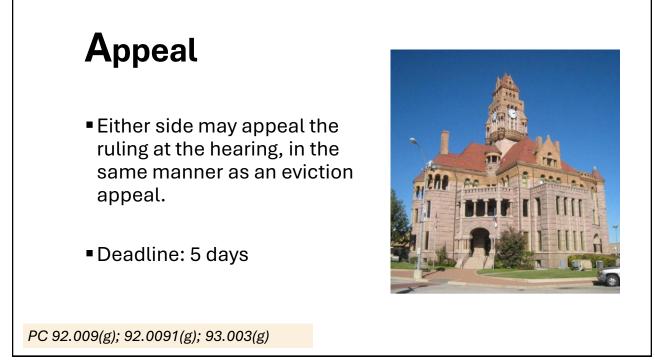
Service on Landlord
After ex parte writ is issued, it must be served on the landlord
or their management company, on-premises manager or rent
collector, in the same manner as a writ of possession.
PC 92.009(d); 92.0091(d); 93.003(d)

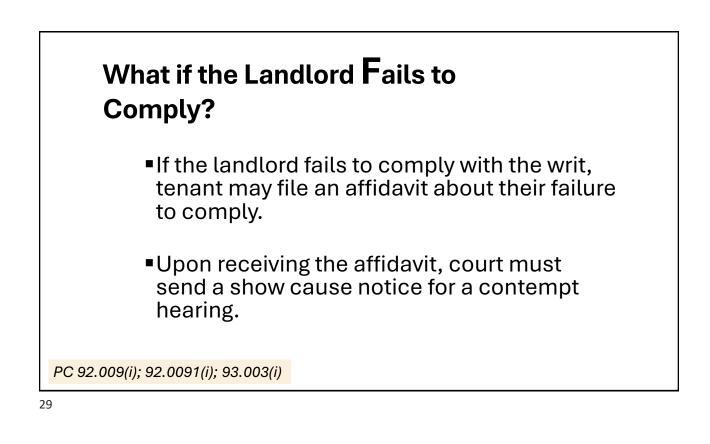
# Hearing

- Landlord has 7 days to request a hearing, and the hearing must be held 1-7 days after the request.
  - If they do not request a hearing or if judge determines at hearing that writ was properly issued, court costs may be assessed against the landlord in a judgment.
  - If hearing is held and judge determines writ was not properly issued, writ should be dissolved.

 $PC \; 92.009(e) \text{-}(f); \; 92.0091(e) \text{-}(f); \; 93.003(e) \text{-}(f)$ 



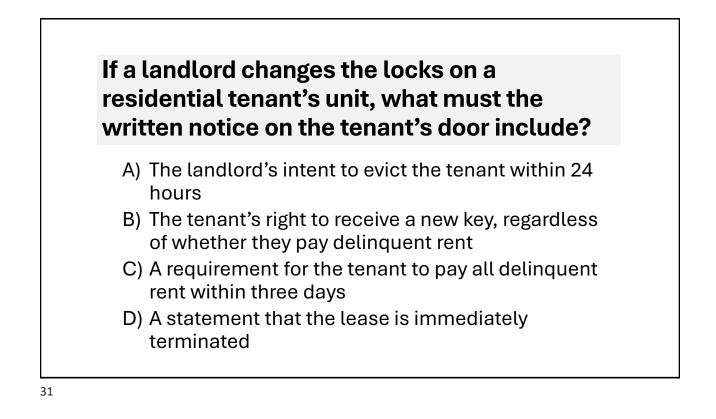




# **At Contempt Hearing**

- If landlord did not comply with writ at first but has now (ex: did not turn utilities back on after being served with the writ but turned them on before the hearing): landlord may be held in contempt and jailed up to 72 hours in jail and/or fined \$100.
- If landlord has still not complied with writ at the time of the show cause hearing (ex: utilities still have not been turned back on): landlord may be held in contempt and jailed until they comply.

PC 92.009(i); 92.0091(i); 93.003(i)



### What is the time frame within which a hearing must be held after a landlord requests one following the issuance of a writ of restoration?

- A) Within 24 hours of the landlord's request
- B) No earlier than the 1<sup>st</sup> day and no later than the 7<sup>th</sup> day after the landlord's request
- C) Within 3 days of the tenant filing a sworn complaint
- D) Exactly 7 days after the writ of re-entry is served

What is the civil penalty if a landlord fails to provide a tenant with a key after changing the locks, even if the tenant does not pay the delinquent rent?

- A) One month's rent plus \$500 in damages
- B) One month's rent plus \$1,000 in damages
- C) Two months' rent plus attorney's fees
- D) Eviction of the landlord from the property
- E) We need more information

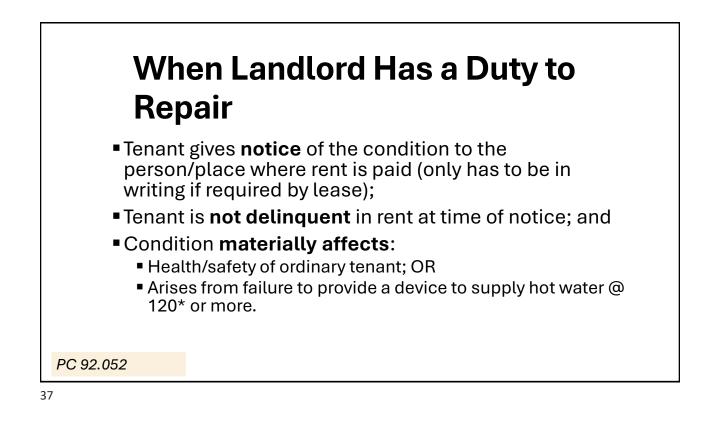
# **Repair & Remedy** (Getting Stuff Fixed)

Property Code Chapter 92 TRCP Rule 509 Evictions Deskbook Chapter 10

### PC Subchapter B (92.051- 92.062); TRCP 509 Only Applies to Residential Tenancies

# What is a Repair & Remedy Case?

- Where a tenant seeks judicial remedies for a landlord failing to make repairs to a condition:
  - which the landlord had a duty to repair, and
  - which materially affects the health or safety of an ordinary tenant.





- Unless caused by normal wear and tear, landlord has no duty to repair if the condition was caused by:
  - Tenant
  - Occupant
  - Tenant's family/guest/invitees



# Notice Requirement & Timeframe Before Landlord Becomes "Liable" If the landlord fails to repair in a reasonable time

- If the landlord fails to repair in a reasonable time after first notice, tenant must give a second written notice (and cannot be delinquent in rent at time of that notice).
  - Second notice is not required if first notice was written and sent certified mail return receipt requested, registered mail, or other trackable mail service or private delivery service.

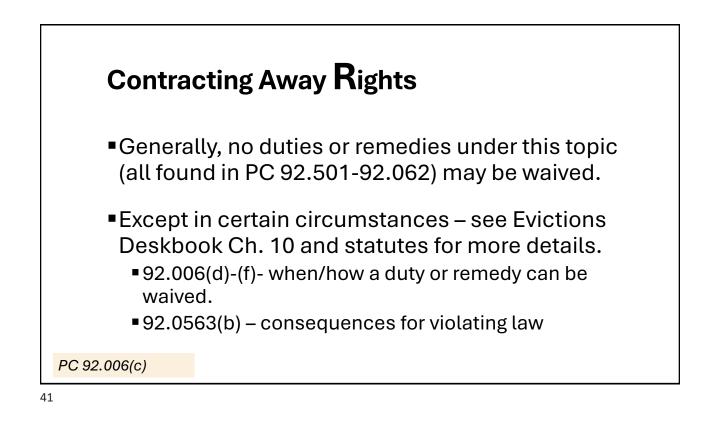
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PC 92.056
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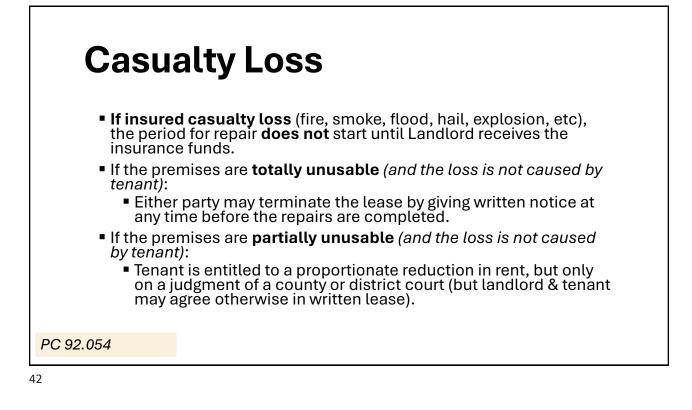
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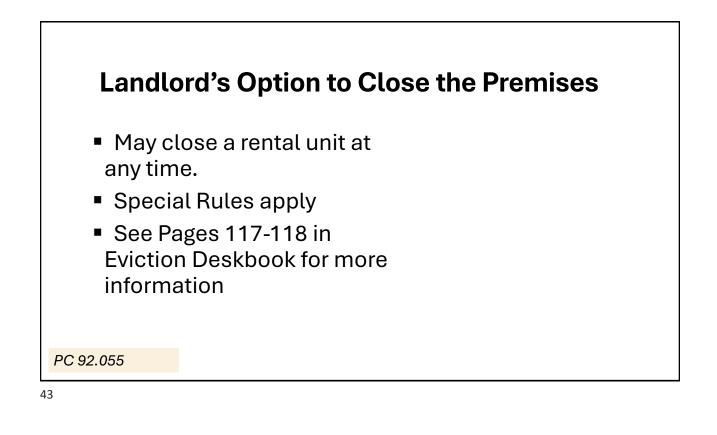
# Notice Requirement & Timeframe Before Landlord Becomes "Liable" (Continued)

- Landlord becomes liable to tenant and tenant is entitled to remedies if landlord fails to make diligent effort to repair or remedy in reasonable time after receiving the required written notice.
  - "Reasonable time" = 7 days unless evidence is provided to show why a different amount of time would be reasonable instead
    - Examples of types of evidence: severity and nature of condition, reasonable availability of materials/labor/utilities.





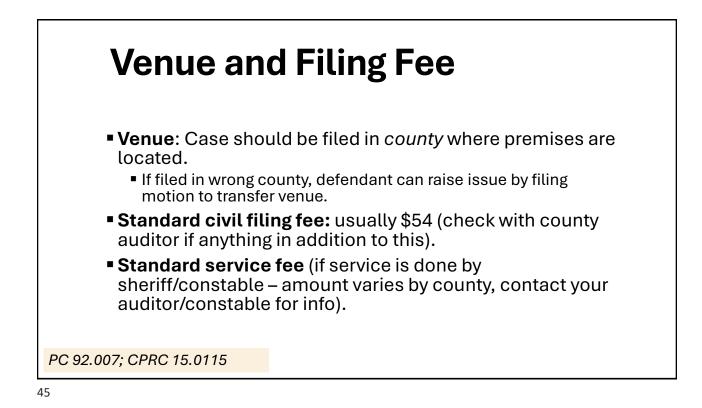


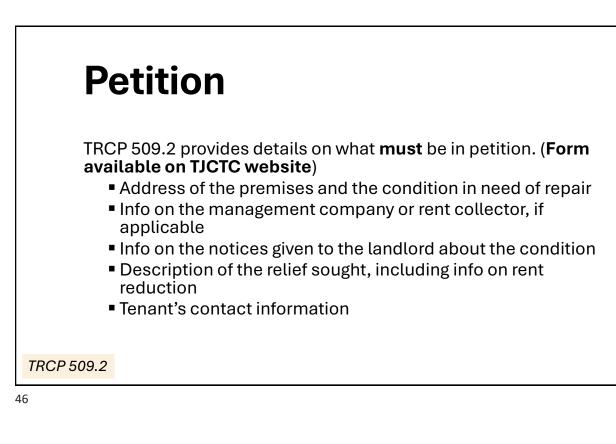


### **Remedies Once Landlord is Liable to Tenant**

- Once a landlord is liable (as described in previous slides), tenant has three options:
  - Terminate the lease
    - No court involvement needed to do this, but court could end up having to rule on whether termination was lawful this but if landlord sues tenant for breaking the lease.
  - Repair and Deduct according to PC 92.0561
    - No court involvement needed to do this but could potentially come up in an eviction case if a tenant is claiming they do not owe rent because they've used this remedy.
    - See Evictions Deskbook Ch. 10 for more info on the procedures that must be followed.
  - File Repair and Remedy case in court.

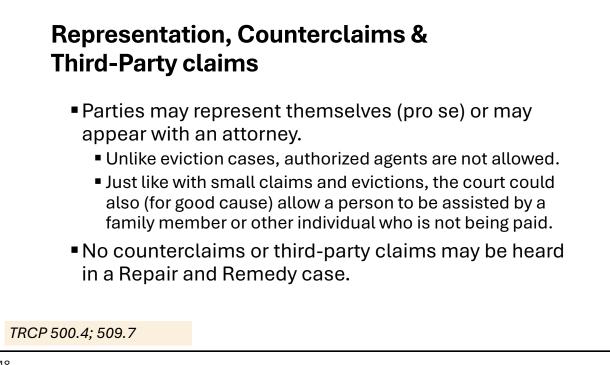
PC 92.056; 92.0563, TRCP 509

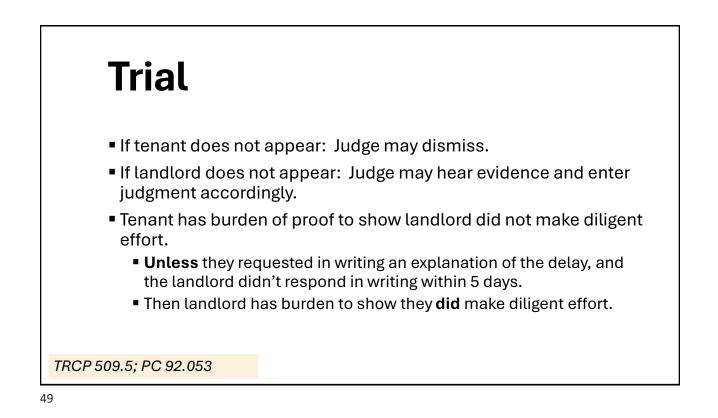


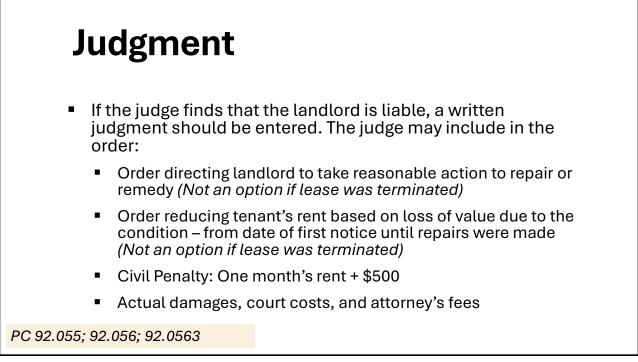


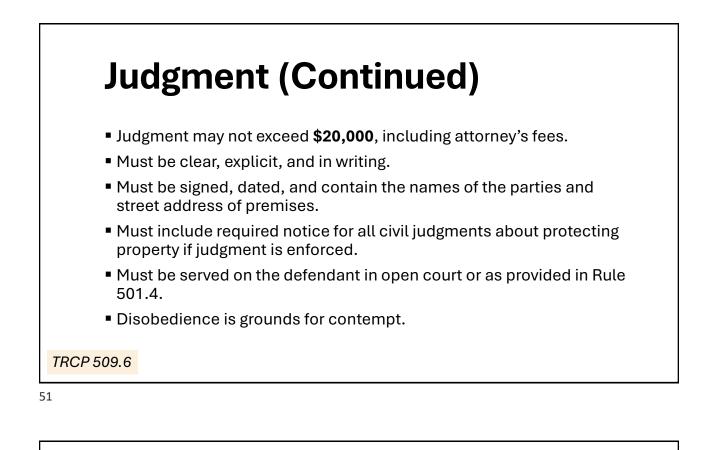
Citation and Service
<ul> <li>Citation: Should immediately issue (form avail. on TJCTC website).</li> <li>Must contain appearance/trial date 10-21 days from the date petition is filed.</li> </ul>
When must be served: At least 6 days prior to appearance date.
<ul> <li>Who may serve: Anyone authorized by 501.2 (sheriff/constable, process servicer, or person authorized by court order who is 18 years of age or older).</li> </ul>
<ul> <li>Return of service: Must be on file no less than 1 day before appearance day.</li> </ul>
<ul> <li>Alternative Service: Available. See Deskbook Ch. 10 &amp; Rule 509.4(b) for info on how/when.</li> </ul>
TRCP 509.3; 509.4

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# Appeal Either party may appeal within 21 days of judgment, modification, or denial of motion for new trial. Only need written Notice of Appeal – no appeal bond. But will need to pay another filing fee (or file a Statement of Inability) Once appeal is perfected, the judgment is vacated and justice court may not do anything further on the case, including enforcing the order.



# Use the **D**eskbook 1!

- •A landlord and tenant have a provision in their lease that says that the tenant agrees to duty to pay for repairs caused by the landlord's negligence.
  - Valid contract provision?
  - Where do you find this in the deskbook?

# **Use the Deskbook 2!**

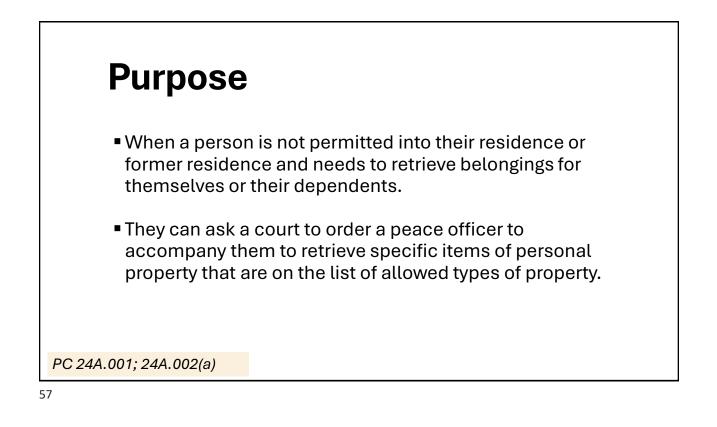
- A landlord and tenant have a provision in their lease that, except for conditions caused by the negligence of the landlord, the tenant must pay for any repairs for damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling; damage to doors, windows, or screens; and damage from windows or doors left open.
  - Is this provision valid?

# Writs of Retrieval

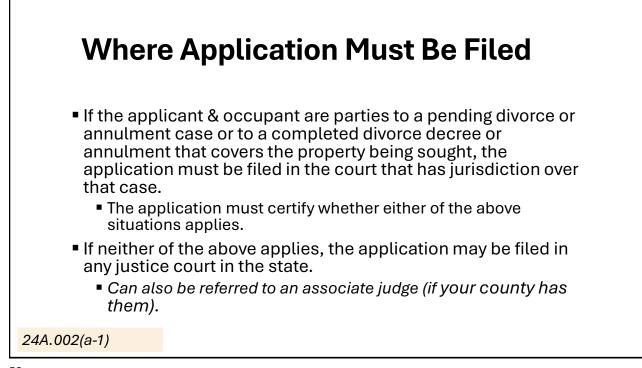
# (Getting Certain Property Out)

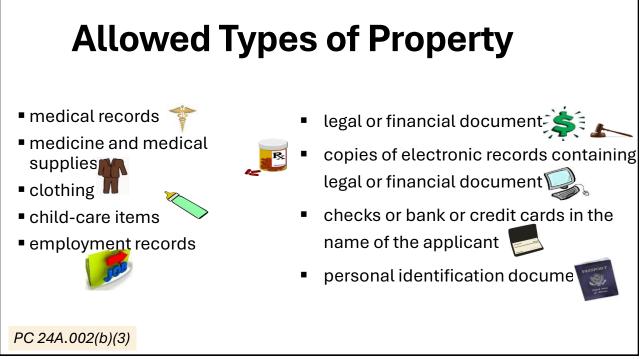
**Only Applies to Residential Tenancies** 

Property Code Chapter 24A Evictions Deskbook Chapter 9



"Peace Officer"	
<ul> <li>Sheriffs, their deputies, constables, and deputy constables.</li> </ul>	
<ul> <li>Those reserve deputy sheriffs and constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.</li> </ul>	
CCP 2.12(1),(2)	





### Allowed Types of Property (Continued)

- Assistance or service animals used by the applicant or their dependent.
  - Defined as a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability (Human Resources Code § 121.002).
- Wireless communication devices belonging to the applicant or their dependent.
  - Defined as a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332 (Transportation Code § 545.425(a)).
- Tools, equipment, books, and apparatus used by the applicant in their trade or profession.

PC 24A.002(b)(3)

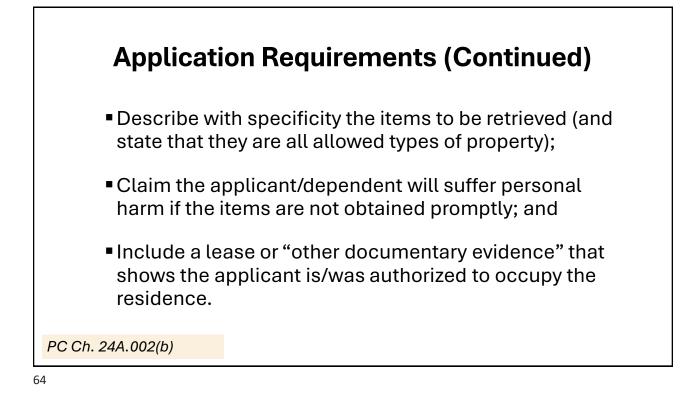
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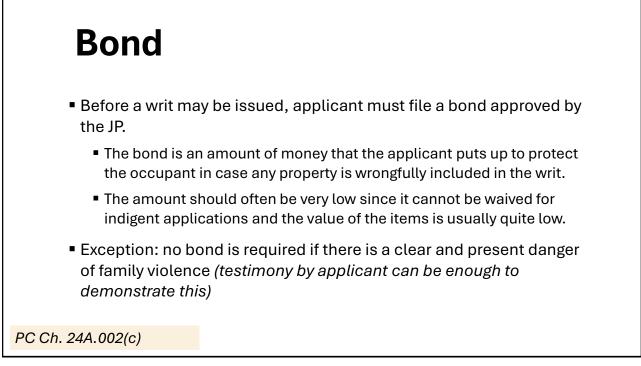
# Fees

- **Standard civil filing fee** usually \$54 (check with county auditor if anything in addition to this).
- **Notice/Summons** standard civil process service fee (varies by county, contact your auditor/constable for info).
- Executing writ whatever has been set by the commissioners court. If nothing specific set for this, can charge "other writ fee."
  - See Local Gov't Code 118.131 for info on fees set by commissioners court.

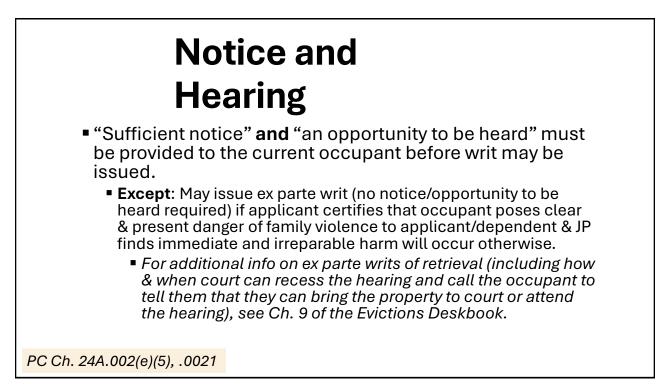
**Remember**: they could also file a Statement of Inability to Pay Court Costs instead of paying the fees.

Application Requirements	
<ul> <li>Certify that the current occupant has denied entry to the applicant or poses a clear and present danger of family violence to applicant/dependent;</li> </ul>	
<ul> <li>Certify no court order prohibiting contact with the current occupant of the residence exists;</li> </ul>	
PC Ch. 24A.002(b)	

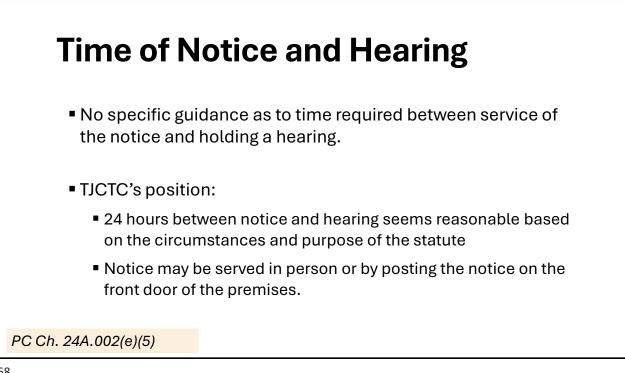




# **Description Description Description**







# **Issue the Writ or Not?**

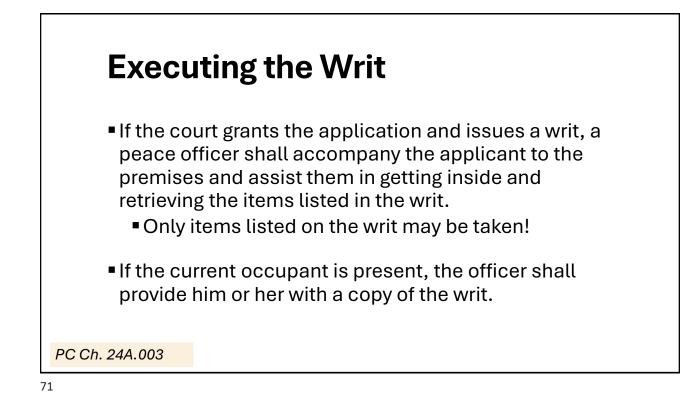
- The writ may be issued (for allowed items) if the application can be filed in justice court, all requirements are met, and the judge finds:
  - Applicant has been denied entry by the occupant or there is a family violence danger;
  - No PO, EPO, or other order prohibiting contact exists;
  - There is sufficient evidence of urgency and potential risk of harm to the applicant or their dependents if the items are not retrieved promptly;
  - Applicant is/was authorized to occupy premises according to a lease or other documentary evidence; and
  - Notice and opportunity for hearing was provided to the current occupant.

PC Ch. 24A.002(e), 24A.002(b)(1)

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# No Appeal

There is no provision for appeal.



<b>Executing the Writ – Inventory</b>
<ul> <li>All property must be inventoried by the officer before removal, and the officer must:</li> </ul>
1) Provide an inventory list to the occupant (but if the occupant is not present, the officer may leave the list in an obvious place); and
2) File the inventory list with the court.
PC Ch. 24A.003

	<b>Consequences for Interfering</b>
	Class B Misdemeanor to interfere with retrieval of personal ty under the writ.
	contempt of court if occupant interferes – order is to the peace officer, not occupant.
	se: if defendant did not receive a copy of the writ or other notice e entry or retrieval of property was authorized.
	e could also be committed by the applicant, although less likely sruptive behavior)
PC Ch. 24A.00	05

