

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

**John Lackey
Staff Attorney
Texas Justice Court Training Center Texas**

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Agenda

- Writs of Re-entry and Writs of Restoration
 - Rules for Each
 - Procedure (Same for Both)
- Repair & Remedy
- Writs of Retrieval

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Resources

- **TJCTC Website:** <http://www.tjctc.org/tjctc-resources/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:** <https://www.txcourts.gov/rules-forms/rules-standards/>

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Abbreviations

- PC = Property Code
- TRCP = Texas Rules of Civil Procedure
- CPRC = Civil Practice and Remedies Code

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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

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Writs of Re-entry *(Getting Back In)*

&

Writs of Restoration *(Getting Utilities Turned Back On)*

Property Code Chapters 92 & 93

Evictions Deskbook Chapter 9

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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

- 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:
 - Bona fide repairs, construction or an emergency.
 - Removing the contents of premises abandoned by a tenant.
 - 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)

PC 92.0081;

92.002

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Residential - Rules for Delinquent Rent Lockout

PC 92.0081(d)

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Rules for Delinquent Rent Lockout (1 Of 3)

- Must be included in the lease agreement.
- Must send an **advanced warning notice**.
 - 5 days if by mail, 3 days if personally delivered, including amount owed and where it can be paid (during landlord's normal business hours).
- Must **post a notice** when locks are changed giving 24-hour access to key.
- All notices must contain statement in **underline** or **bold** that tenant **may receive new key even if they do not pay delinquent rent**.

PC 92.0081(d)

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Rules for Delinquent Rent Lockout (2 Of 3)

- The locks **may not** be changed:
 - When the tenant or legal occupant is in the dwelling.
 - More than once per rental period.
 - On a day, or the day before a day, when the landlord is not available/office is not open for delinquent rent to be paid.
- A tenant is still entitled to access to any common areas of the property (pool, gym, etc.).

PC 92.0081(e)(e-1),(k)

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Rules for Delinquent Rent Lockout (3 Of 3)

- If the tenant calls for the key at **any hour**, the landlord must arrive within **2 hours** with the key **even if the tenant still has not paid**.
- **If the tenant is no longer there**, landlord must post another notice on front door stating when they were there, and where a key can be obtained during the landlord's **normal business hours**.

PC 92.0081(g)

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Commercial - Rules for Delinquent Rent Lockout

PC 93.002(f)

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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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Contracting Away Rights

- **Residential** – *PC 92.008(g); 92.0081(j)*
 - The specific duties and remedies related to illegal lockouts and disconnections **cannot** be waived in a residential lease.
- **Commercial** – *PC 93.002(h)*
 - The specific duties and remedies related to illegal lockouts **can** be waived in a commercial lease.

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Writs of Restoration

- Orders a landlord to immediately reconnect utilities that have been unlawfully disconnected.
- **Only Applies To Residential Tenancies**

PC 92.008 & 92.0091

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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:
 - Bona fide repair
 - Construction
 - 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)

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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

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Procedure for Writs

Procedure is the same for both writs.

- Writ of Restoration
 - Only available in residential*PC 92.0091*
- Writ of Re-entry
 - Same procedure for residential and commercial.*PC 92.009; 93.003*

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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).
- **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)

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Complaint & Testimony

- Applicant must file a sworn complaint (with facts) in the *precinct* where the rental premises are located.
- Applicant must orally state the facts under oath to the judge.

PC 92.009(b); 92.0091(b); 93.003(b)

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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)

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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)

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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)-(f); 92.0091(e)-(f); 93.003(e)-(f)

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Effect of Writ of Possession

- An eviction case could potentially be going on at the same time as a writ proceeding, but **separately**. Until a writ of possession is issued, they have no effect on each other.
- If a writ of possession is issued: a writ of re-entry or restoration **loses its effect**.
 - But a writ of re-entry or restoration does not lose effect if just a judgment for possession in an eviction suit and no writ of possession yet.

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Appeal

- Either side may appeal the ruling at the hearing, in the same manner as an eviction appeal.
- Deadline: 5 days



PC 92.009(g); 92.0091(g); 93.003(g)

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What if the Landlord Fails to Comply?

- If the landlord fails to comply with the writ, tenant may file an affidavit about their failure to comply.
- Upon receiving the affidavit, court must send a show cause notice for a contempt hearing.

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

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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)

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If a landlord changes the locks on a residential tenant's unit, what must the written notice on the tenant's door include?

- A) The landlord's intent to evict the tenant within 24 hours
- B) The tenant's right to receive a new key, regardless of whether they pay delinquent rent
- C) A requirement for the tenant to pay all delinquent rent within three days
- D) A statement that the lease is immediately terminated

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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 1st day and no later than the 7th day after the landlord's request
- C) Within 3 days of the tenant filing a sworn complaint
- D) Exactly 7 days after the writ is served

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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

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Repair & Remedy

(Getting Stuff Fixed)

Property Code Chapter 92

TRCP Rule 509

Evictions Deskbook Chapter 10

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

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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.

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When Landlord Has a Duty to Repair

- Tenant gives **notice** of the condition to the person/place where rent is paid (only has to be in writing if required by lease);
- Tenant is **not delinquent** in rent at time of notice; and
- Condition **materially affects**:
 - Health/safety of ordinary tenant; OR
 - Arises from failure to provide a device to supply hot water @ 120* or more.

PC 92.052

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When Landlord Has a Duty to Repair (Continued)

- 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

PC 92.052

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Notice Requirement & Timeframe Before Landlord Becomes “Liable”

- 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.

PC 92.056

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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.*

PC 92.056

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Contracting Away Rights

- Generally, no duties or remedies under this topic (all found in PC 92.501-92.062) may be waived.
- Except in certain circumstances – see Evictions Deskbook Ch. 10 and statutes for more details.
 - 92.006(d)-(f)- when/how a duty or remedy can be waived.
 - 92.0563(b) – consequences for violating law

PC 92.006(c)

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Casualty Loss

- **If insured casualty loss** (fire, smoke, flood, hail, explosion, etc), the period for repair **does not** start until Landlord receives the insurance funds.
- If the premises are **totally unusable** (*and the loss is not caused by tenant*):
 - Either party may terminate the lease by giving written notice at any time before the repairs are completed.
- If the premises are **partially unusable** (*and the loss is not caused by tenant*):
 - Tenant is entitled to a proportionate reduction in rent, but only on a judgment of a county or district court (but landlord & tenant may agree otherwise in written lease).

PC 92.054

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Landlord's Option to Close the Premises

- May close a rental unit at any time.
- Special Rules apply
- See Pages 117-118 in Eviction Deskbook for more information

PC 92.055

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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

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Venue and Filing Fee

- **Venue:** Case should be filed in *county* where premises are located.
 - If filed in wrong county, defendant can raise issue by filing motion to transfer venue.
- **Standard civil filing fee:** usually \$54 (check with county auditor if anything in addition to this).
- **Standard service fee** (if service is done by sheriff/constable – amount varies by county, contact your auditor/constable for info).

PC 92.007; CPRC 15.0115

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Petition

TRCP 509.2 provides details on what **must** be in petition. (**Form available on TJCTC website**)

- Address of the premises and the condition in need of repair
- Info on the management company or rent collector, if applicable
- Info on the notices given to the landlord about the condition
- Description of the relief sought, including info on rent reduction
- Tenant's contact information

TRCP 509.2

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Citation and Service

- **Citation:** Should immediately issue (form avail. on TJCTC website).
 - Must contain appearance/trial date 10-21 days from the date petition is filed.
- **When must be served:** At least 6 days prior to appearance date.
- **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).
- **Return of service:** Must be on file no less than 1 day before appearance day.
- **Alternative Service:** Available. See Deskbook Ch. 10 & Rule 509.4(b) for info on how/when.

TRCP 509.3; 509.4

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Representation, Counterclaims & Third-Party claims

- Parties may represent themselves (pro se) or may appear with an attorney.
 - Unlike eviction cases, authorized agents are not allowed.
 - Just like with small claims and evictions, the court could also (for good cause) allow a person to be assisted by a family member or other individual who is not being paid.
- No counterclaims or third-party claims may be heard in a Repair and Remedy case.

TRCP 500.4; 509.7

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Trial

- If tenant does not appear: Judge may dismiss.
- If landlord does not appear: Judge may hear evidence and enter judgment accordingly.
- Tenant has burden of proof to show landlord did not make diligent effort.
 - **Unless** they requested in writing an explanation of the delay, and the landlord didn't respond in writing within 5 days.
 - Then landlord has burden to show they **did** make diligent effort.

TRCP 509.5; PC 92.053

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Judgment

- If the judge finds that the landlord is liable, a written judgment should be entered. The judge may include in the order:
 - Order directing landlord to take reasonable action to repair or remedy (*Not an option if lease was terminated*)
 - Order reducing tenant's rent based on loss of value due to the condition – from date of first notice until repairs were made (*Not an option if lease was terminated*)
 - Civil Penalty: One month's rent + \$500
 - Actual damages, court costs, and attorney's fees

PC 92.055; 92.056; 92.0563

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Judgment (Continued)

- Judgment may not exceed **\$20,000**, including attorney's fees.
- Must be clear, explicit, and in writing.
- Must be signed, dated, and contain the names of the parties and street address of premises.
- Must include required notice for all civil judgments about protecting property if judgment is enforced.
- Must be served on the defendant in open court or as provided in Rule 501.4.
- Disobedience is grounds for contempt.

TRCP 509.6

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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.

TRCP 509.8

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What if Landlord Wins an Eviction Case Against Tenant?

- Eviction could potentially be going on separately at the same time.
- If a **final judgment** for possession is entered, it will vacate an order to repair or remedy a condition.
 - Any monetary award will stay in place.
 - Any rent deduction up to the time of the judgment for possession will stay in place.

TRCP 509.9

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Use the Deskbook 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?

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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?

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Writs of Retrieval *(Getting Certain Property Out)*

Only Applies to Residential Tenancies

Property Code Chapter 24A

Evictions Deskbook Chapter 9

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Purpose

- When a person is not permitted into their residence or former residence and needs to retrieve belongings for themselves or their dependents.
- They can ask a court to order a peace officer to accompany them to retrieve specific items of personal property that are on the list of allowed types of property.

PC 24A.001; 24A.002(a)

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“Peace Officer”

- Sheriffs, their deputies, constables, and deputy constables.
- Those reserve deputy sheriffs and constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.

CCP 2.12(1),(2)

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





Where Application Must Be Filed

- If the applicant & occupant are parties to a pending divorce or annulment case or to a completed divorce decree or annulment that covers the property being sought, the application must be filed in the court that has jurisdiction over that case.
 - The application must certify whether either of the above situations applies.
- If neither of the above applies, the application may be filed in any justice court in the state.
 - *Can also be referred to an associate judge (if your county has them).*

24A.002(a-1)

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Allowed Types of Property

- medical records 
- medicine and medical supplies 
- clothing 
- child-care items 
- employment records 
- legal or financial document 
- copies of electronic records containing legal or financial document 
- checks or bank or credit cards in the name of the applicant 
- personal identification document 

PC 24A.002(b)(3)

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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.

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Application Requirements

- Certify that the current occupant has denied entry to the applicant or poses a clear and present danger of family violence to applicant/dependent;
- Certify no court order prohibiting contact with the current occupant of the residence exists;

PC Ch. 24A.002(b)

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Application Requirements (Continued)

- Describe with specificity the items to be retrieved (and state that they are all allowed types of property);
- Claim the applicant/dependent will suffer personal harm if the items are not obtained promptly; and
- Include a lease or “other documentary evidence” that shows the applicant is/was authorized to occupy the residence.

PC Ch. 24A.002(b)

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Bond

- Before a writ may be issued, applicant must file a bond approved by the JP.
 - The bond is an amount of money that the applicant puts up to protect the occupant in case any property is wrongfully included in the writ.
 - The amount should often be very low since it cannot be waived for indigent applications and the value of the items is usually quite low.
- Exception: no bond is required if there is a clear and present danger of family violence (*testimony by applicant can be enough to demonstrate this*)

PC Ch. 24A.002(c)

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Requirements of Bond

- Have 2 or more good and sufficient non-corporate sureties or 1 corporate surety;
- Be payable to the occupant of the residence;
- Be in “an amount required by the justice” (pick an amount that is reasonable and will protect the occupant); and
- Be conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

PC Ch. 24A.002(c)

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Notice and Hearing

- “Sufficient notice” **and** “an opportunity to be heard” must be provided to the current occupant before writ may be issued.
 - **Except:** May issue ex parte writ (no notice/opportunity to be heard required) if applicant certifies that occupant poses clear & present danger of family violence to applicant/dependent & JP finds immediate and irreparable harm will occur otherwise.
 - *For additional info on ex parte writs of retrieval (including how & when court can recess the hearing and call the occupant to tell them that they can bring the property to court or attend the hearing), see Ch. 9 of the Evictions Deskbook.*

PC Ch. 24A.002(e)(5), .0021

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Time of Notice and Hearing

- No specific guidance as to time required between service of the notice and holding a hearing.
- TJCTC’s position:
 - 24 hours between notice and hearing seems reasonable based on the circumstances and purpose of the statute
 - Notice may be served in person or by posting the notice on the front door of the premises.

PC Ch. 24A.002(e)(5)

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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.

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Executing the Writ

- If the court grants the application and issues a writ, a peace officer shall accompany the applicant to the premises and assist them in getting inside and retrieving the items listed in the writ.
 - Only items listed on the writ may be taken!
- If the current occupant is present, the officer shall provide him or her with a copy of the writ.

PC Ch. 24A.003

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Executing the Writ – Inventory

- All property must be inventoried by the officer before removal, and the officer must:
 - 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

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Consequences for Interfering

- It is a Class B Misdemeanor to interfere with retrieval of personal property under the writ.
 - No contempt of court if occupant interferes – order is to the peace officer, not the occupant.
- Defense: if defendant did not receive a copy of the writ or other notice that the entry or retrieval of property was authorized.
- Offense could also be committed by the applicant, although less likely (e.g. disruptive behavior)

PC Ch. 24A.005

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Occupant Complaint

- **Why:** If occupant alleges that applicant took property not belonging to applicant.
- **Deadline:** 10 days after the “date of authorized entry.”
- **Where:** In court that issued writ of retrieval.
- **Hearing:** If complaint filed, court shall “promptly” hold a hearing and rule on ownership of the property.
- **Other options:** Small claims lawsuit or other legal remedies.

PC Ch. 24A.006

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Discussion Question

- Come up with three specific, real-life things that would be appropriate to get with a writ of retrieval.
- Now, come up with one weird one, where the applicant could get it, but would have to explain why?