



# From Lights to Lockouts: Understanding Writs of Restoration and Re-Entry in Texas

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

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# Agenda

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- Writs of Re-entry and Writs of Restoration
  - Rules for Each
  - Procedure (Same for Both)



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# Resources

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**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

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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:

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- 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**

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- 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

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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; 93.002

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## Residential- Rules for Delinquent Rent Lockout

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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

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- 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

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## **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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## Writ 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*)

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- 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

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- **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

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## **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

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**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

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- 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

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- 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

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- 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

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- 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?

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- 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

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- **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 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

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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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## Sorting Game! RR, Retrieval, Re-entry, and Restoration

### Residential

- Re-entry
- Retrieval
- Restoration
- Repair & Remedy

### Commercial

- Re-entry

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Questions?

Thank you!