

Landlord/Tenant 101: Retrieval, Restoration, Re-Entry, Distress Warrants

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Resources

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

Common Requirements for Service & Action Process

Writs of Retrieval

Writs of Re-Entry & Restoration

Distress Warrants

Records and Fees

Liability

Practice Questions

Topics

Common Requirements for Service & Action Process

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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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Day of the Week for Service - POLL

- Monday – Saturday (any time)
- Which type of service cannot be served on Sunday?
 - Injunctions
 - Writs of Attachment
 - Writs of Possession
 - Writs of Garnishment
 - Writs of Sequestration
 - Distress Warrants

TRCP Rules 4-6, 500.5, 621

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Computation of Time of Service

- 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

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*

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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Safety When Serving

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Officer Safety

- Don't go alone if you don't have to.
- Be aware of your surroundings.
- Wear your vest.
- Don't get complacent.
- Research people before serving them.
 - DPS Secure Site: <https://securesite.dps.texas.gov/DpsWebsite/index.aspx>
 - Your county system (follow any policies for use).
 - TLETS: It's possible that this can't be used for civil process (depending on interpretation of "criminal justice purpose" and exact circumstances). Follow the use policy and consult with your county attorney/DPS rep about what is acceptable.

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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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Writ of Retrieval POLL #1

What if the applicant wants something that is not in one of the categories we just went over? What is a good option?

- Allow the applicant to take the item as long as you use your body camera
- Do not allow the applicant to take anything not on the Writ of Retrieval
- Document the item on your return and notify the judge
- Give the applicant advice based on what you've seen work with that specific judge in the precinct and what to file next

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Writ of Retrieval POLL #2

What if the writ explicitly lists something that is not on the list of allowed items? What do you do?

- Talk to the judge that issued the writ and point out the issue so they can amend
- Leave the writ alone and tell Applicant they cannot take that item
- Scratch the item off of the writ, and initial next to it so Applicant knows they cannot take that item
- Let them take the item, the judge must have had a reason

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Writ of Retrieval POLL #3

What if the applicant wants something that is part of an allowed category, but isn't listed on their writ? Can you let them take that?

- Yes, since it's in an approved category
- No, it must be listed on the writ and the inventory must match the writ

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Writ of Retrieval POLL #4

What are the possible consequences for allowing wrongful property retrieval?

- None, you have immunity
- Potential liability for the county, with some constables threatened with official oppression charges
- No issue for the officer, but Applicant could be charged criminally

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Writ of Retrieval Execution

- 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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Writ of Retrieval Execution

- Considering officer safety is especially important when executing these writs.
- These situations can be emotional and can become violent.
- It is a good idea to set a time limit for the applicant to gather the items so that things aren't drawn out.
 - How much will depend on the situation.

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Writ of Retrieval Discussion Question #3

1. What time limits have you set when executing these writs?
2. What kinds of situations would call for more or less time?

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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 or if they start an altercation with the other person.

Property Code § 24A.005.

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Writ of Retrieval Discussion Question #4

1. How many of these have you done?
2. Any tips to share?

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Writs of Re-Entry & Restoration

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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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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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Similar Procedure for Both Writs

- Once the judge determines a writ should issue, the procedures are almost identical.

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Issuance of the Writ

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

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Requirements of the Writ

- Stylized “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 and where the return should be filed.
- Includes the case name and cause number.
- Identifies all parties in the case.
- States the date of issuance.

TRCP Rule 15, Property Code §§ 92.0091, 92.009, & 93.003

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Requirements of the Writ (*continued*)

- Includes the following:
 - Address of the premises in question.
 - If restoration, also describes the utilities to be restored.
 - 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.
 - Signature of the judge.
 - Court’s seal.

TRCP Rule 15, Property Code §§ 92.0091, 92.009, & 93.003

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Expiration of the Writ

- 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! POLL

All of these writs must be served by whom?

- Sheriff, constable, municipal police
- Sheriff, court clerks, deputies
- Sheriff, constable, court clerks
- Sheriff, constable, deputies

TRCP Rules 103 & 501.2(a)

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Pop Quiz! POLL 2

These writs may be served anywhere in the state, true or false?

- True
- False

TRCP Rules 103 & 501.2(a)

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Methods of Service

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, 92.0091, & 93.003

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Service Duties & Requirements

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.
- Place the tenant back in possession of the property or instruct the landlord to resume the tenant's utility services as applicable.
- Explain the writ clearly to the landlord, including the right to a hearing and 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, 92.009, 93.003

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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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Writs of Re-Entry & Restoration Discussion Question #1

1. Have you ever needed to use force when executing a writ of re-entry? What were the circumstances? What type of force was used?
2. If you haven't, can you think of a scenario where you might need to?

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Failure to Comply with Writ

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, 92.009 & 93.003

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Writ of Possession Supersedes Writ of Re-Entry or Restoration

A writ of possession supersedes a writ of re-entry or restoration.

- Notate on the return for the writ of re-entry or 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 re-entry or restoration had been issued by the court but was not executed due to the writ of possession.

Property Code §§ 92.0091, 92.009 & 93.003

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Writ Return Contents

The return must include:

- Case name and _____.
- _____ 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 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.
- If Re-entry, 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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Writs of Re-Entry & Restoration Discussion Question #2

1. What do you do if you are executing a writ of restoration and you realize that it has been issued for a commercial and not residential premises?

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Writs of Re-Entry & Restoration Discussion Question #3

1. What are the differences between a writ of re-entry for a commercial tenant vs. for a residential tenant?

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Writs of Re-Entry & Restoration Discussion Question #4

1. How many of each of these types of writs have you done?
2. Did the landlord comply? How did you handle it if not?
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
 - 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.tjctc-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

- A clerk, sheriff, or other officer who neglects or refuses to perform a duty required under the Texas Rules of Civil Procedure or under a provision of this code derived from those rules is liable for actual damages only in a suit brought by a person injured by the officer's neglect or refusal.
- 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; Civil Practice & Remedies Code § 7.001

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Officer Liability

Liability for an officer involved in the execution of writs is covered in Chapters 7 and 34 of the Civil Practice and Remedies Code and Sec. 86.023 of the Local Government Code.

Liability will be discussed in depth in other classes.

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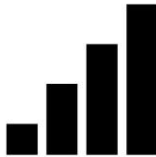
Practice Questions

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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 3rd. On July 5th, 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

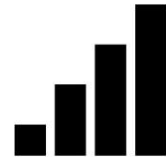


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Question 2

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.

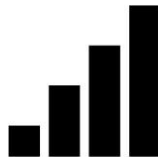


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Question 3

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.

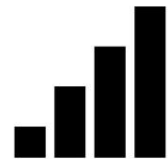


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Question 4

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.

