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STUDY GUIDE

FOR CIVIL PROCESS PROFICIENCY CERTIFICATION EXAM FY2018

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FY2018 Civil Process Proficiency Study Guide

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Disclaimer

The Study Guide for the Civil Proficiency Exam was prepared with every effort to ensure the accuracy of its production. However, it does not take the place of published law, statues, codes or rules of court. It should be viewed as a summary of the law at this particular time.

The Study Guide is not intended to be a representation of the exam or direct answers for the exam.

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Abbreviations

- TRCP – Texas Rules of Civil Procedure
- TCPRC – Texas Civil Practices and Remedies Code
- TPC – Texas Property Code
- FC – Family Code
- TC – Tax Code
- CCP – Code of Criminal Procedure
- PC – Penal Code

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Acknowledgment

Effective August 31, 2013 the following Rules were replaced:

TRCP 523 – 591 and 737 – 755 and Property Code 92.0563(d) and include:

- 534 - JP lawsuits
- 536 - Who may serve & method of service
- 536a - Duty of officer receiving & returning
- 737.4 - Service & return of citation
- 739 - Forcible Entry & Detainer citation
- 742 - Service of citation
- 742a - Service by delivery to premises

They were replaced with Rules 500-510

Citations

- Definition (TRCP 99)
- Official notification to defendant from plaintiff that a lawsuit has been filed. Directs defendant to file written response by certain day.
- TRCP 500.2 (New rule)
Citation is the court issued document required to be served upon a party to inform the party that it has been sued.
- **Who may Issue (TRCP 89 & 501.1a)**
 - Justice, County, or District Court
 - Small Claims Court – Abolished as of 9/1/2013

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Citations

- **Requirements (TRCP 15, 99 & 501.1.b)**
 - Style “The State of Texas”
 - Signed by clerk under seal or by judge
 - Name and location, address of court
 - Date of filing of the petition
 - Date citation was issued
 - File Number
 - Names of all parties
 - Directed to defendant
 - Times the defendant must file and answer with court
 - Name and address of attorney
 - Notify about default judgements

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Citations

- **Written answer must be filed by**

- First Monday following 20 days by 10 a.m. (County & District)
- Due the 14th day after the day you were served (Justice Court)

DISTRICT and COUNTY Court Notice (Rule 99)

- The citation shall include the following notice to the defendant: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

Citation

- JUSTICE Court – Notice (Rule 501.1.c)

"You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation"

Citations

- **Delivery Method**

- **Who can serve (TRCP 103 & 501.2a)**

- Any Sheriff, Constable, person authorized by the Court (18 years of age), authorized by Texas Supreme Court, the clerk of the court, if the citation is served by registered or certified mail

- **When can they be served**

- Any day except Sunday unless issued as set out in TRCP 6 and 501.2.d

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Citations

- **Delivery Method**

- **Personal (TRCP 106 & 501.2b)**

- Personal delivery to defendant

- **Mail (TRCP 106 & 501.2b)**

- Sheriff, Constable, Clerk
 - Registered or certified mail, return receipt requested (restricted delivery, with return receipt or electronic return receipt requested)

Citations

- Alternate Service
- District and County (TRCP 106, 106b)
 - Leaving a copy with anyone over 16 years of age at the location specified
 - Any other manner approved by the court that will be reasonably effective in giving the defendant notice of the suit.
- Justice Court (Rule 501.2.e.1)
 - Mailing a copy of the citation with petition attached by first class mail to the defendant at a specified address, and also leaving a copy of the citation with petition attached at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age

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Citations

- Justice Court (Rule 501.2.e.2) cont.
 - or by mailing a copy of the citation with a copy of the petition attached by first class mail to the defendant at a specified address, and also serving by any other method that the court finds is reasonable likely to provide the defendant with notice of the suit.

Citations

- **Justice Court – Publication**
in the event that service of citation by publication is necessary, the process is governed by the rules in county and district court.
- **Expiration**
 - None for civil suits
 - Tax citations expire in 90 days (TRCP 117a)

Citations

- **Returns (TRCP 16, 105, 107, 501.3b)**
 - Date and time received
 - Date and time delivered
 - Location of delivery
 - To whom delivery was made
 - How delivery was made (personal or alternate)
 - If not delivered, must show diligence used and where defendant can be found, if known
 - Executing officers signature
 - State elected officials name
 - State department name
 - Send original return to issuing court (a copy of return can be sent to attorney if requested)

Citations

- **Returns (501.3b) – Justice Court**

- the case number & case name

- the court in which the case is filed

- a description of what was served

- the date & time the process was received for service

- the person or entity served

- the address served

- the date of service or attempted service

- the manner of delivery or attempted service

- the name of the person who served or attempted service

- if the person above is a process server certified under the Supreme Court, the id number and expiration date

- any other info required by rule or law

Citations

- **Failure to Execute and Return (TLGC 86.024)**

- Fail to make return or makes a false return

- Punishment is fine of \$10 - \$100 with costs

- Officer is liable for all damages sustained

Distress Warrant

- Definition (TPC 54.006 & 54.025)
 - A writ authorizing the seizure of a commercial or agricultural tenant's property for nonpayment of rent
- Issued by (TPC 54.006 & 54.025)
 - Justice Court where property is located
 - Can only be issued by Justice Court even if suit originates in a higher court.

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Distress Warrant

- **Requisites (TRCP 612 & 613)**

- | | |
|--|--|
| <ul style="list-style-type: none"> • Styled "State of Texas" • Directed to any Sheriff or Constable • Signed by the judge officially • Commands the officer to attach and hold, unless replevied, subject to further orders of the court so much of the property, not exempt by statute, | <ul style="list-style-type: none"> • of reasonable value in approximately the amount fixed by the court • Contain the name and location of the court • Date of issuance • File number • Names of parties • Defendants right to replevy |
|--|--|

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Distress Warrant

- **Delivery Method**

- **Who (TRCP 613 & 21a)**

- Officers first duty is to levy on the defendant's property at the commercial or agricultural rental unit.
 - The same manner as prescribed for delivery of a citation
 - The defendant, authorized agent, or attorney of record

- **When (TRCP 6)**

- Any time or day

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Distress Warrant

- **Duties of Officer**

- Date and time received
 - Date and time of levy and/or service to defendant
 - Levy on defendant's property and keep safe
 - Complete an inventory of the property levied on
 - If property seized is perishable, notify the court immediately so that an order of sale can be issued.

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Distress Warrant

- Return (TRCP 16, 105, 106)
 - Date and time received
 - Date and time executed
 - Who was served
 - How was service obtained on the defendant
 - How the warrant was executed
 - The warehouseman's name, address, and phone
 - Inventory of all seized property
 - Replevy

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Injunctions / TRO

- Definition
 - Commands the person(s) to whom it is directed to desist or refrain from the commission or continuance of the act enjoined or to obey and execute such order
- Who May Issue (TCPRC 65.021)
 - District or County Court

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Injunctions / TRO

• Requirements (TRCP 687)

- Styled "State of Texas"
- Directed to the parties enjoined
- Names of the plaintiff and defendant
- Nature of the application
- Command the person or persons to desist or refrain from the act
- State the date and time for the hearing
 - TRO – no more than 14 days
 - Injunction – returnable before 10 a.m. on the first Monday after the expiration of 20 days
- Dated and signed by the clerk and under the seal of the court

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Injunctions / TRO

- Delivery Method
 - Who (TRCP 688)
 - Sheriff, constable, or person authorized by the court
 - When (TRCP 6)
 - Any day or time
 - Service (TRCP 689)
 - Personal Service to the defendant or defendants

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Injunctions / TRO

- **Return (TRCP 16, 105, & 107)**

- Date and time received
- Date and time delivered
- How delivery was made
- Where delivery was made
- What was delivered
- Name and title of the elected official
- Signed in the servers official capacity
- If unexecuted, state diligence used to try to execute and reason(s) for not being executed

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Injunctions / TRO

- Expiration
 - TRO
 - 14 days
 - Can be extended for an additional 14 days
 - Injunction
 - On hearing date stated in order
 - Temporary injunction
 - Monday next after 20 days from service

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Writ of Attachment (Property)

- Definition (TCPRC 61.041)
 - An order to seize a defendant's real property in order to secure the claim of the plaintiff. Only real property subject to seizure under a writ of execution. Real property described in the writ is sizeable because the court has made that determination.
- Who May Issue (TCPRC 61.021)
 - District, County, and Justice Courts

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Writ of Attachment (Property)

• Requirements

- Styled "State of Texas"
- Directed to Sheriff or Constable
- Issuing court
- File number
- Names of parties
- Date of issuance
- Name of defendant
- Seizure amount
- Advise defendant of right to replevy
- Contain name and location of court

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Writ of Attachment (Property)

- Delivery Method
 - Who (TRCP 594)
 - Sheriff or Constable
 - When (TRCP 6)
 - Any day or time
 - How (TCPRC 61.043)
 - Officer shall levy on the property and immediately file a copy with the county clerk

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Writ of Attachment (Property)

- Duty of Officer (TRCP 597)
 - Proceed without delay
 - Levy on enough non-exempt property to cover amount stated in writ
 - Make detailed inventory of the property seized
 - Provide defendant a copy of the writ and inventory
 - Keep property safe
 - Notify court if perishable goods are seized

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Writ of Attachment (Property)

- **Return (TRCP 16, 105, & 107)**

- Date and time received
- Date and time of seizure
- Location of delivery
- Describe actions taken
- Describe seized property
- court
- If replevied, deliver replevy bond to clerk of the court
- Executing officers signature
- State elected officials name
- State department name
- Send to court of issuance

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Writ of Attachment (Property)

- Expiration (TRCP 606)
 - 10 a.m. on the Monday following 15 days from the issue date

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Writ of Sequestration

- Definition
 - The process by which property is removed from the possessor pending the outcome of a dispute in which two or more parties contend for it.
- Who May Issue (TCPRC 62.021)
 - District, County, and Justice Court

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Writ of Sequestration

- Requirements (TRCP 699, TCPRC 62.023)
 - Directed to Sheriff or Constable
 - Command to take possession of the property if found in his county
 - Describe the property
 - Keep the property subject to further order of the court unless replevied
 - Display defendants right to replevy and amount of bond

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Writ of Sequestration

- Delivery Method
 - Who (TRCP 699
 - Sheriff or Constable
 - When (TRCP 6)
 - Any day or time
 - How (TRCP 700a)
 - In person either before or after property is seized

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Writ of Sequestration

- Duty of Officer (TRCP 700a, 710 & TCPRC 62.061)
 - Deliver documents to defendant as soon as practicable following the levy of the property
 - Take possession of and keep property safe until replevied, ordered to sale the property or return property
 - If property is perishable, notify court.

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Writ of Sequestration

- **Return (TRCP 16, 105, & 107)**

- Date and time received
- Date and time of seizure
- Location of delivery
- Describe actions taken
- Describe seized property
- List name, address, and phone of storage facility
- If replevied, deliver replevy bond to clerk of the court
- Executing officers signature
- State elected officials name
- State department name
- Send to issuing Court

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Writ of Sequestration

- Expiration (TRCP 15)
 - Returnable on the first Monday following 20 days from the date of service

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Writ of Garnishment

- Definition
 - A proceeding in which the property, money, or credits of a debtor are in the possession of, or owed by another, called a garnishee, is applied to the debt of the debtor.
- Who May Issue (TRCP 659 & TRCP 63.002)
 - District, County, or Justice Court

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Writ of Garnishment

- Requirements (TRCP 661)
 - Styled "State of Texas"
 - To any Sheriff or Constable
 - Issuing court
 - Case number
 - Dollar amount of indebtedness
 - Command the garnishee not to pay the defendant any debt until further order of the court
 - Signed by the clerk of the court
 - Bear the seal of the court

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Writ of Garnishment

- Delivery Method
 - Who (TRCP 663)
 - Any Sheriff, Constable or process server
 - When (TRCP 6)
 - Any day or time
 - How (TRCP 663 & 663a)
 - Immediate delivery to the garnishee in the same manner as a citation
 - The defendant is served as soon as practicable following the service of the writ on the garnishee

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Writ of Garnishment

• Return (TRCP 16, 105, & 107)

- Date and time received
- Date and time of delivery
- Location of delivery
- Name of garnishee
- To whom the document was delivered
- If not executed, indicate due diligence and why the writ was not delivered
- Executing officers signature
- State elected officials name
- State department name
- Send to issuing Court

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Writ of Garnishment

- Expiration
 - 30, 60, or 90 days.

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Writ of Habeas Corpus

- Definition
 - a court order that commands anyone having a person in custody to produce the person at the time and place named in the writ and to show why that person is being held in custody or under restraint
- Who May Issue (CCP 11.05)
 - Court of Criminal Appeals, District, or County Court

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Writ of Habeas Corpus

• Requirements (CCP 11.02 – 11.04)

- Styled “State of Texas”
- Directed to anyone having command and/or control of a person whose release or return is sought
- Name of person being restrained or in custody
- Fix time and place of return
- Hearing date
- Summary of facts
- Issuing court
- Cause number
- Court clerk signature
- Bear seal of the court

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Writ of Habeas Corpus

- Delivery Method
 - Who (CCP 11.26)
 - Any person competent to testify
 - When (TRCP 6)
 - Any day or time
 - How (CCP 11.27)
 - Personal delivery
 - If he refuses to receive it, he shall be informed verbally
 - If he refuses admittance or conceals himself, a copy of the writ can be affixed in a conspicuous place where he resides or the place where the person is being confined

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Writ of Habeas Corpus

- **Return (CCP 11.27)**

- Date and time received
- Date and time of delivery
- Location of delivery
- Name of defendant
- To whom the document was delivered
- How delivery was made
- If not executed, due diligence used and reasons why writ was not executed
- Signature of executing officer
- Elected officials name
- Department name

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Writ of Certiorari

- Definition
 - A writ that commands a lower court to send all records about a particular case to a higher court
- Who May Issue (TRCP 311, 312)
 - County, District or higher court

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Writ of Certiorari

- Requirements (TRCP 576)
 - Styled "State of Texas"
 - Directed to any Sheriff or Constable
 - Issuing Court
 - Cause number
 - Command justice to immediately make and certify a copy of any and all documents concerning the named case and transmit them to the issuing court
 - Signed by clerk of the court
 - Bear the seal of the court

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Writ of Certiorari

- Delivery Method
 - Who (TRCP 103)
 - Sheriff, Constable, or any person authorized by court
 - When (TRCP 6)
 - Any day or time
 - How (TRCP 106)
 - Personal delivery to the judge named

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Writ of Certiorari

- **Return (TRCP 16, 105, & 107)**

- Date and time received
- Date and time delivered
- Location of delivery
- Name of judge to whom delivered
- How delivery was made
- Executing officers signature
- Elected officials name
- Department name
- Return to issuing court

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Writ of Scire Facias

- Definition
 - A writ requiring the respondent to appear and show cause why some matter of record should not be annulled or vacated or why a dormant judgment against that person should not be revived. (must be filed no later than two years after judgment becomes dormant)
 - A writ to establish control of a suit with the death of a plaintiff
 - A writ to establish responsibility in the event of the death of a defendant
- Who May Issue (TCPRC 31.006)
 - The court having the judgment record

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Writ of Scire Facias

• Requirements

- Style “The State of Texas”
- Signed by clerk under seal
- Name and location of court
- Date of filing of the petition
- Date citation was issued
- File Number
- Both Parties Names
- Directed to defendant
- Name and address of attorney
- Contain a date and time which the defendant may file a written answer with the court
- Address of the Clerk

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Writ of Scire Facias

- Delivery Method
 - How (TRCP 106 & 501.2b)
 - Personal Service
 - Who (TRCP 151)
 - Sheriff, Constable, or any person authorized by court
 - When (TRCP 6 & 154)
 - Any time or day of the week except Sunday
- Expiration (TCPC 31.006)
 - Writ conforms to rule for citation and does not expire.

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Writ of Scire Facias

- **Return (TRCP 16, 105, & 107)**
 - Date and time received
 - Date and time delivered
 - Location of delivery
 - To whom delivery was made
 - How delivery was made (personal or alternate)
 - If not delivered, must show diligence used and where defendant can be found, if known
- Executing officers signature
- State elected officials name
- State department name
- Send original return to issuing court (a copy of return can be sent to attorney if requested)

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Writ of Mandamus

- Definition
 - A writ issued by a court to compel performance of a particular act by a lower court or governmental officer or body, usually to correct a prior action or failure to act.
- Who May Issue
 - Supreme Court (TGC 22.002)
 - Court of Appeals (TGC 22.221)
 - District Court (TGC 21.011)
 - Statutory Courts (TGC 25.004)
 - Probate Courts (TGC 25.0026)
 - County Judge (TGC 26.051)

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Writ of Mandamus

- Requirements
 - Styled "The State of Texas"
 - Directed to the parties enjoined
 - Court of issuance
 - Cause number
 - Seal and signature of court clerk
 - Name of parties, nature of application
 - Command the person to stop performing the act that has been enjoined
 - Hearing date

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Writ of Mandamus

- Delivery Method
 - Who (TRCP 21a)
 - Any Sheriff or Constable, or any person competent to testify
 - When (TRCP 6)
 - Any day of the week except Sunday
 - How (TRCP 21a)
 - Personal delivery or by US Postal Service
- Expiration (TRCP 21)
 - On Hearing Date (documents must be delivered no later than three (3) days prior to hearing)

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Writ of Mandamus

- **Return (TRCP 16, 105, & 107)**

- Date and time received
- Date and time delivered
- How delivery was made
- Where delivery was made
- What was delivered
- Name and title of the elected official
- Signed in the servers official capacity
- If unexecuted, state diligence used to try to execute and reason(s) for not being executed

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Eviction Citation

- **Definition**
- **Eviction** - the process of legally dispossessing a person of land or rental property. (Black's Law)
- **Premises** – the tenant's rental unit, any area or facility the lease authorizes the tenant to use, the appurtenances, grounds and facilities held out for the use of tenant generally. (TPC 92.001)
- **Who may Issue**
- Justice Court in the precinct in which the rental property is located. (TPC 24.004)

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Eviction Citation

Requirements (TRCP 510.4, TPC 24.0051)

- Be styled “the State of Texas”
- Be signed by the clerk under the seal of court or by judge
- Contain the name, location and address of the court
- State the date of filing of the petition
- State the date of issuance of the citation
- State the plaintiff’s cause of action and relief sought
- Be directed to the defendant
- State the name & address of attorney for plaintiff, or the address of the plaintiff

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Eviction Citation

Requirements (TRCP 510.4, TPC 24.0051)

- state the day the defendant must appear in person for trial at the court issuing citation, which must not be less than 10 days nor more than 21 days after the petition is filed
- notify the defendant that if the defendant fails to appear in person for trial, judgment by default may be rendered for the relief demanded in the petition
- inform the defendant that, upon timely request & payment of a jury fee no later than 3 days before the day set for trial, the case will be heard by jury
- contain all warnings required by Chap 24 of the TPC
- include the following statement, “for further information, consult Part V of the TRCP, which is available online & at the court listed on this citation

Eviction Citation

- Requirements

- In bold print, in English and Spanish:
- **THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501.ET SEQ), OR STATE LAW INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE LEGIBLE FOR FREE OR LOW COST LEGAL ASSISTANCE.**

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Eviction Citation

- Delivery by

- By the Sheriff or the Constable and any of their deputies (TRCP 103, 510.4b)

- Expiration

- No expiration; **however, must be served 6 days before trial date. (TRCP 510.4b)**

- Delivery method

- Personal delivery or substitute service to property
- Delivered to the named defendant or any occupant over the age of 16 years at the premises at least 6 days before the day set for trial

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Eviction Citation

- Duties of Officer
 - Endorse the date and time received
 - Collect fees, issue receipt and enter into tracking system
 - Attempt service at all addresses provided in the county, at two attempts at each address
 - Citation and petition must be delivered
 - Alternate service under Rule 510.4c may be granted by the judge when affidavit is submitted
 - On returns, indicate date/time received
 - Record date and time delivered

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Eviction Citation

- Duties of Officer (continued)
 - Where was delivery made
 - How was delivery made, personal service or alternate service
 - If Rule 510.4c is used as service the following statement must be included in return:
 - A copy of the citation and petition were attached to the main entry and a copy of the citation and petition was mailed to the defendant this date.....
 - Deputy's official signature
 - Return to court of issuance

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Eviction Citation

- Comment
 - The defendant is the only person that can be served at any address other than the address shown on the eviction citation.
 - Substitute service can only be accomplished at the designated address for eviction.
 - Rule 510.4c only requires two attempts at each address given for the defendant in the county where the property is located but the judge may require additional attempts for substituted service.

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Eviction Process

- Notice to Vacate
 - 3 day notice- delinquent or back rent due
 - 30 day notice- foreclosure sale or breach of contract
 - 10 day notice- plaintiff uses attorney and wishes to collect those fees
 - Immediately-forcible entry (squatters)
 - Plaintiff files suit in precinct where rental property is located
 - Suit is for possession/back rent only (TRCP 746, 738)

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Eviction Process

- Service must be made in person to the defendant or anyone over the age of 16 years at that address
- Court date must be no less than 9 days and no more than 21 days from the date of service
- Possession bonds may be issued

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Eviction Process

- Notice to Vacate prior to filing eviction (1/1/16)
 - TPC 24.005(f)1 states that a landlord now has alternatives to “how” to post an notice in the cases where it is unsafe or unreasonable to post inside the residence.
 - No mailbox/slot
 - There is a keyless lock
 - Alarm
 - Animal

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Writ of Possession

- Definition

- A writ executed by the Sheriff or Constable that directs the removal of the tenant and his personal property and turn over control of the rental premises to the landlord (TPC 24.0061)

Issued by

- Justice Court
- County Court

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Writ of Possession

- Requirements

- Styled in the name of the State of Texas
- Directed to the tenant and all occupants
- Signed by the judge
- Contains the name of the parties
- Date of judgment
- Date of issuance
- File number
- Must state specifically the proper address that the writ is to be executed on

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Writ of Possession

- Requires the officer to post written warning at least 8 1/2 by 11 inches on the front door notifying the tenant the writ has been issued and will be executed on or after a specific date and time, not sooner than 24 hours after the warning is posted
- The writ is executed when
 - The premises are returned to the landlord
 - Instruct the tenant and all persons claiming under the tenant to leave the premises immediately and, if the person fails to comply, physically remove them

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Writ of Possession

- Instruct the tenant to allow the landlord or his representative to remove all personal property, **acting under the officer's supervision**. Personal property claimed to be owned by the landlord stays pending further court action
- Place the personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting or snowing
- 1/1/16 – A municipality may now provide a “container” to place the items in and the city may dispose of if not claimed in reasonable time.

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Writ of Possession

- The writ authorizes the officer, at his discretion, to engage the services of a bonded OR insured warehouseman to remove and store all or part of the tenant's property at no cost to the landlord or the officer
- The officer may not require the landlord to store the property
- The officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence
- The sheriff or constable may use reasonable force in executing a Writ of Possession

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Writ of Possession

- Expiration (TRCP 510.8d)
 - 90 days from issuance
- Date/time of delivery
- Posting at least 24 hours prior to the execution of the writ
- Officer's duty & return
 - Endorse the date and time of receipt
 - Endorse the date and time the warning was posted
 - Endorse the date and time the writ is to be executed
 - Endorse the date and time the writ was executed

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Writ of Possession

- If personal property was removed to a near by location, specify that location
- If personal property was removed and stored at a warehouse the officer within 72 hours will post a notice as to the name, location and phone number of the warehouse so the tenant may retrieve his property
- Officer's official signature
- Return to the court of issuance

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Writ of Possession

- It is the officers duty to maintain the peace and oversee the removal of the tenant's personal property.
- The landlord is required to provide the moving crew sufficient to accomplish the removal of the property
- Placement of the property is determined by the officer and the landlord
- No hazardous material, drugs, weapons, etc are to be placed outside where the general public may obtain it

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Possession Notes

- **New Chapter 24A – Access to Residence or Former Residence to Retrieve Personal Property**
 - It is called a “Order Authorizing Entry and Property Retrieval; Peace Officer to accompany” (24A.002)
 - The claimant must appear before a justice court
 - Unable to enter based on denial
 - Applicant can NOT be subject to a active PO
 - Can not be otherwise prohibited
 - Allege the items are REQUIRED

79

Possession Notes

- **New Chapter 24A –....cont....**
 - Must describe with specificity
 - Will cause harm if not retrieved
 - Lease that includes names
 - Execute a bond
- **Duties of Officer (24A.003)**
 - Shall accompany
 - If occupant present, serve copy of order
 - Inventory the items removed
 - Copies of inventory to applicant, occupant, court.
 - Officer may use reasonable force
 - Officer and landlord is not liable (24A.003, 004)
 - ARRESTABLE offense if interference (24A.005)

80

Landlord Updates

- – Landlord Violations has been raised to “the sum of one month’s rent AND \$1000. (TPC 54.046)
- Tenants rights to a jury trial can NOT be waived in a lease. (TPC 92.006)
- Liability for landlord to lease to persons with certain known criminal records (TPC 92.025)
- An existing owner is still liable for deposits until they have transferred those deposits to a new owner. (TPC 92.110)
- A landlord may deduct the cost of re-key (TPC 92.156)

81

Repossession of Aircraft

- Chapter 30 – Writ of Assistance for Repossession of Aircraft
 - Provides a writ to protect the officer and repossession agent (30.02a)
 - Agent to file petition with justice court

82

Writ of Restitution

- **Comment**
 - No longer a valid writ from an appeal to the County Court
 - It should be returned to the issuing court citing TPC 24.0052 and 24.0053

83

Writ of Reentry

- **Definition**
 - A court order issued by a Justice of the Peace to place a tenant back in a rental premises when the tenant has been wrongfully locked out (TPC 92.009(a))
- Issued by
- Justice of the Peace in the precinct where the rental property is located
- Delivered by
- Sheriff, Constable and their deputies

84

Writ of Reentry

- Requirements
 - Styled in the name of the State of Texas
 - Directed to the landlord
 - Names of the both parties
 - The premises the tenant will be placed back into
 - The landlord may request a hearing
 - Request a hearing within the first 8 days from service

85

Writ of Reentry

- File number
- Date of issuance
- Signed by the Justice of the Peace

Method of delivery

- Personal delivery only to the landlord or the landlord representative or as allowed by Rule 21a

86

Writ of Reentry

- Officers duty and return
 - Endorse the date and time receipt
 - Deliver to defendant (landlord) with the date and time of delivery, to whom and where delivered
 - If the landlord complies, fill out return, if not advise the court of his failure
 - Place the tenant back into the rental property
 - Note date and time tenant was placed back into possession of the rental property and how that was accomplished
 - officer's official signature

87

Writ of Restoration – Utility Service

- Definition
 - Allows the tenant to an immediate temporary restoration of disconnected utility service, if unlawfully disconnected by the landlord pending a final hearing on the tenants sworn complaint
- Issued by
 - Justice of the Peace in the precinct where the property is located
- Delivered by
 - Sheriff or Constable and their deputies

88

Writ of Restoration – Utility Service

- Requirements

- Styled in the name of the State of Texas
- Directed to the landlord or his representative
- Signed by the judge
- Date of issuance
- File number
- Names of the parties
- Describe the premises and service to be restored immediately for a temporary period

89

Writ of Restoration – Utility Service

- Expiration

- Time sensitive, will be stated in writ

Delivery

- Personal delivery to landlord, the management company, on site manager, or rent collector

Officers duty and return

- endorse date and time of receipt
- Deliver to landlord or representative
- Date and time of delivery
- To whom the writ was delivered and where

90

Writ of Restoration – Utility Service

- Was utility restored by the landlord or representative
- Date and time of restoration if known
- Officer's official signature

Comment

- Failure to comply will result in a Show Cause Order or attachment for the violator to show why he should not be held in contempt of court
- Writ of Possession supersedes Writ of Restoration

91

Writ of Execution – Post Judgment

- Definition
 - A writ, issued by a court of competent jurisdiction, commanding an officer to levy upon the non-exempt property of a defendant in satisfaction of a previous judgment rendered by the issuing court
 - A judicial enforcement of a money judgment, usually by seizing and selling non-exempt property of the judgment debtor

Issued by

- District, County and Justice Courts

92

Writ of Execution – Post Judgment

- Requirements

- Styled in the name of the State of Texas
- Directed to the Sheriff or Constable
- Signed by the clerk or justice officially
- Bear the seal of the court except for Justice Court
- Requires the officer to collect the judgment amount and cost
- Describes the judgment
- Correct copy of the Bill of Cost shall be attached

93

Writ of Execution – Post Judgment

- Requires the return of the writ to the court of issuance within a 30, 60, or 90 day period

Method of Delivery

- Make demand upon the defendant if he can be found in officer's county
- Levy without delay on non-exempt property if not paid in full
- Present defendant with copy of writ and calculation worksheet
- No longer are required to make multiple levies for cash at same location.
May return after first levy or attempted levy

94

Writ of Execution – Post Judgment

- Officer's duty and return
 - Endorse date and time received, if more than one writ comes in on same defendant on same day, first one in is first one out, execute in a specific order
 - Calculate judgment including all cost (principle amount), interest and fees (attorney, prejudgment interest, etc)
 - Make demand on defendant for payment in full or to point out non-exempt property to levy on
 - Levy on non-exempt property sufficient in amount to satisfy the total judgment. Officer does not have a duty to levy upon property not found in his county

95

Writ of Execution – Post Judgment

- Mortgaged or pledged goods may be levied upon. The officer is selling the judgment debtors interest in that mortgaged good
- Personal property must be taken into custody by the officer and kept safe until the amount is paid or items are sold at auction
- Return the writ to the court of issuance within the 30,60, or 90 day period
- All requirements of an Officer's return apply to this writ

96

Writ of Execution – Post Judgment

- Sale of property
 - Type and prepare sale notice
 - Send copy of sale certified mail to deft/plft
 - Post in 3 public places, including the courthouse and location where property is stored
 - Post for 10 days for personal property
 - Publish for 20 days prior to the first Tuesday of each month for real property
 - Conduct auction style of sale
 - Disburse proceeds accordingly to statues

97

Writ of Execution – Post Judgment

- Prepare Bill of Sale (personal property) or a deed (real property) for highest bidder, purchaser
- Keep records of all sales for 5 years

98

Writ of Execution – Post Judgment

- **Sale of Particular Property**

- A writ issued to enforce a judgment where particular property is to be sold

Issued by

- District, County, Justice courts

Requirements

- Styled in the name of the State of Texas
- Directed to the Sheriff or Constable
- Signed by clerk or justice officially
- It shall describe the judgment
- Requires the officer to execute according to the terms of the writ

99

Writ of Execution – Post Judgment

- Shall particularly describe the property to be sold
- Requirements of an Officer's Return apply here

Method of Delivery

- Levy upon the property, issue sale notice and sale
- Officer's duty and return
- Endorse the date and time received
- Calculate all cost and fees
- Take possession of property and sale the property

100

Writ of Execution – Post Judgment

- On return show the date and time of receipt
- Date and time demand was made and when the property was turned over
- Date and time of the levy
- Date and time of the sale, the location, the amount of the bid by the highest bidder and that bidders name and address
- Officer's official signature
- Return to the court of issuance

101

Writ of Execution – Post Judgment

- Turn Over Order
 - An order from the court commanding judgment debtor to surrender certain property to the judgment creditor or the sheriff or constable.
- Issued by
- District, County, Justice courts
- Requirements
- Styled in the name of the State of Texas
 - Directed to the Sheriff or Constable
 - Order the judgment debtor to turn over property

102

Writ of Execution – Post Judgment

- Describes the property to be surrendered and related documents
 - Cause number
 - Signed by clerk or justice
 - Names the receiver, if one has been appointed
- Expiration
- This order is an aid to execution, so it may expire in the same time frame as the execution

103

Writ of Execution – Post Judgment

- **Officer's duty and return**
 - Endorse the date and time received
 - Make demand on the defendant
 - If a receiver has been appointed, put that person in control of the property
 - If officer is directed to take possession of the property, proceed to seize as in execution and sale
 - If defendant refuses to surrender the property, complete the return, indicating the date, time and location of the demand and that the defendant failed to surrender the property
- Officer's official signature

104

Writ of Execution – Post Judgment

- Order of Sale

- A written direction or command from a court. The order will direct the officer to seize and sell certain property. If the proceeds are insufficient to satisfy judgment, the order may act to seize additional property of the defendant as in an execution.

Issued by

- District, County, Justice courts
- District and County courts for real property

105

Writ of Execution – Post Judgment

- Requirements

- Endorse date and time received
- Call upon defendant, if found in officer's county
- Levy upon the property described in the writ
- Real property-paper levy on writ with date and time
- Personal property-take possession
- Prepare sale notice and post, advertise sale
- Issue Bill of Sale for personal property or a Constables' Deed for real property

106

Writ of Execution – Post Judgment

- If sale proceeds are insufficient to satisfy judgment, levy upon additional property, non-exempt, of the defendant's as in execution
- Endorse the date and time received on the return
- Endorse the date and time of demand and levy
- How was order executed
- Inventory of property seized
- Date, time, location of posting, advertisement, and notifications
- Purchaser information and highest bid amount

107

Writ of Execution – Post Judgment

- Venditioni Exponas
 - “you are to expose for sale”, a writ of execution requiring a sale of particular goods to be made.
 - Used to extend time of a writ only for the purpose of a sale.

108

Writ of Execution – Post Judgment

- Exempt Property
 - Personal property may not exceed an aggregate fair market value of more than \$100,000 (was \$60,000) for a family or \$50,000 (was \$30,000) for a single adult
 - The following is not included in the aggregate amounts
 - Wages for personal services
 - Alimony, support or separate maintenance
 - Unpaid commissions for personal service not to exceed 25% of the aggregate

109

Writ of Execution – Post Judgment

- Personal property exempt
 - Home furnishings, family heirlooms
 - Provisions for consumptions
 - Farming or ranching vehicles and implements
 - Tools, equipment, books and apparatus, including boats and motor vehicles used in a trade or profession
 - Wearing apparel
 - Jewelry not to exceed 25% of the aggregate amounts
 - Two firearms
 - Athletic and sporting equipment, including bicycles

110

Writ of Execution – Post Judgment

- A two wheeled, three wheeled or four wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who relies on another person to operate the vehicle for the benefit of the non-licensed person
- The following animal and forage on hand;
 - Two horses, mules or donkeys and a saddle, blanket and bridle for each
 - 12 head of cattle
 - 60 head of other livestock
 - 120 fowl
 - Household pets

111

Writ of Execution – Post Judgment

- Retirement plans
- Health savings plans
- College savings plan

112

Writ of Execution – Post Judgment

- Homestead
 - Urban Homestead-used for the purpose of an urban home or as both an urban home and a place of business; for a family or single adult shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with improvements.
 - Rural Homestead-if used for the purpose of a rural home for a family, shall consist of:

113

Writ of Execution – Post Judgment

- Not more than 200 acres in one or more parcels, with improvements
 - For a single adult, not more than 100 acres in one or more parcels, with improvements
- Urban defined as a homestead if at the time of the designation is made, the property is:
- located within the limits of a municipality or its ETJ or a platted subdivision and
 - Is served by police protection, paid or volunteered fire protection and

114

Writ of Execution – Post Judgment

- At least 3 of the following services by a municipality or under contract to a municipality:
 - Electric
 - Natural gas
 - Sewer
 - Storm sewer
 - Water