

Issuance of the Writ of Retrieval

Ordinarily, a writ of retrieval may be issued only after notice and an opportunity for a hearing is provided to the occupant. However, in some circumstances a judge may issue an ex parte writ of retrieval without providing notice and a hearing to the occupant. Each situation is discussed below.

Before a judge may issue a writ of retrieval, the applicant must execute a bond:

- in an amount required by the judge;
- payable to the occupant of the residence;
- with two or more “good and sufficient non-corporate sureties” or one corporate surety authorized to issue bonds in Texas; and
- conditioned on the applicant paying all damages and costs ordered against the applicant for wrongful property retrieval. *Property Code § 24A.002(c)*.

The applicant must deliver the bond to the judge issuing the writ for the judge’s approval and the bond must be filed with the justice court. *Property Code § 24A.002(d)*.

Can the Judge Waive the Bond Requirement?

The judge may **only** waive the bond requirement when issuing a temporary ex parte writ of retrieval. *Property Code § 24A.0021(b)*. Issuance of a temporary ex parte writ of retrieval is discussed below.

However, often the monetary value of the items that the applicant needs to retrieve is low, and/or the applicant doesn’t have access to much money. One option in that scenario include setting a very low bond (as low as \$1, if warranted). Additionally, the applicant can make a cash deposit instead of a surety bond if needed.

Temporary ex Parte Writ of Retrieval

A judge may issue a writ of retrieval **without** providing notice and a hearing to the occupant **only if** the judge finds at a hearing on the application that:

- The required conditions for a writ of retrieval are met;
- The current occupant poses a clear and present danger of family violence to the applicant or the applicant’s dependent; **and**
- The personal harm to be suffered by the applicant or the applicant’s dependent will be immediate and irreparable if the application is not granted.

Property Code § 24A.0021(a).

A temporary ex parte writ of retrieval must state the period during which it is valid, which may not be more than five days. *Property Code § 24A.0021(d)*. As noted above, the judge may waive the bond requirement when issuing a temporary ex parte writ of retrieval. *Property Code § 24A.0021(b)*.

Before issuing a temporary ex parte writ of retrieval, the judge may recess the hearing on the application and notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The judge must reconvene the hearing before 5:00 p.m. that day regardless of whether or not the current occupant attends the hearing or brings the personal property to the court. *Property Code § 24A.0021(c)*.

If the requirements are not met for a temporary ex parte writ as described above, a hearing must be held before issuance of a writ of retrieval, including sufficient notice to the current occupant.