Introduction to Writs of Possession

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Topics

- What is a Writ of Possession?
- Who issues a Writ of Possession?
- When can a Writ of Possession be executed?
- Does a Writ of Possession expire?
- Who may serve a Writ of Possession?
- Methods of service
- Duties and requirements of the officer
- Manufactured home evictions
- Liability
- OFFICER SAFETY

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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/Legal Calls
- Forms
- Newsletters and other publications

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DISCLAIMER

Remember, this is an ***Introductory Course.***

ALWAYS FOLLOW THE ADVICE OF YOUR DISTRICT OR COUNTY ATTORNEY!!!!!

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What is a Writ of Possession?

- It is court order that allows a landlord who prevails in an eviction suit to take possession of the premises that were in dispute.
- Applies to residential and commercial property

TRCP 510

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Poll:

A writ of possession is only issued by a justice court.

1. True
2. False

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Who issues a Writ of Possession?

- A Writ of Possession is issued by the JUSTICE COURT in the precinct where the property is located.
- A Writ of Possession could *also* be issued by a County Court judge if the case was appealed.

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Requirements of a Writ of Possession:

The General Rules for all Writs Required to be Served by Law Enforcement (Service & Action)

- Styled "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.
- Includes the cause number.
- Identifies all parties in the case.
- Includes the date of issuance of the writ.
- Identify which court the writ or process is returnable to
- Signed by the clerk or judge
- Contains the Court's seal

TRCP 15

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Requirements of a Writ of Possession:

Rules Specific to Writs of Possession

- States the location of the property where the writ is to be executed.
- Commands the officer to post a written warning.
- Commands the officer to instruct the tenant to remove his or her personal property from the premises.
- Commands the officer to place the tenant's personal property outside the premises.
- Commands the officer to instruct the tenant to leave the premises immediately.
- Contains notice that 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.

Property Code § 24.0061

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*See **Writ of Possession** in forms at https://www.tjctc.org/tjctc-resources/forms.html*

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Poll:

A notice for a writ of possession can be posted any day of the week:

1. True
2. False

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When can a Writ of Possession be executed?

- Writs of Possession may be ***executed*** Monday through Saturday, any time of the day.
- Writs of Possession **CANNOT** be ***executed*** on Sunday
- A notice **MAY** be ***posted*** on Sunday

TRCP 4-6

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Poll:

When does a Writ of Possession Expire?

1. 60 days
2. 30 days
3. 90 days
4. both 1 and 3

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Both 1 and 3

- A Writ of Possession expires **60 days** from the date the judgment is issued by the Justice Court.

- It may be EXTENDED by the court **"for good cause"** an additional 30 days, making the total **90 days**. *This may happen frequently with COVID-19.*

- Make sure you have documentation if it takes a long time to serve

TRCP 500.5, 510.8, & 621

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How do you Compute Time for Service?

- Exclude the day the writ is issued
- Count every day, including Saturdays, Sundays, and legal holidays
- If the last day is Saturday, Sunday, or a legal holiday, the time period runs until the end of the next business day

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Who may serve the Writ of Possession?

- A Writ of Possession **MUST** be served by:
  - Sheriff,
  - **Constable**, or
  - Their **deputies**
- The Writ of Possession may be served anywhere in the state.

TRCP 103 & 501.2(a)

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Methods of Service

- A Writ of Possession is served by **personal service** on the tenant identified in the writ.

- The Warning Notice is **posted** to the front door of the premises indicated in the writ.

Property Code § 24.0061

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Service Duties and Requirements

- Date and Time stamp the writ when it was received

- Enter the writ into your record keeping system
  - ***What system does your office use?***

- Post the written WARNING NOTICE on the entry to the premises indicated in the writ *(at least **24 hours** notice must be given before execution)*

- **PROCEED WITHOUT DELAY!**

TRCP 16 & Property Code § 24.0061

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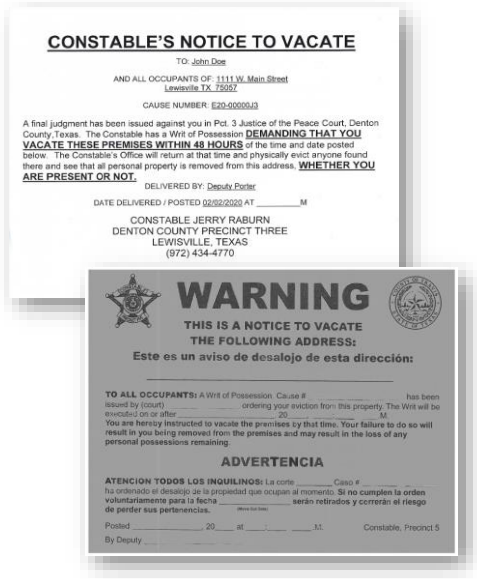
Written Warning



CONSTABLE'S NOTICE TO VACATE

TO: John Doe

AND ALL OCCUPANTS OF: 1111 W. Main Street
Lewisville TX 75057

CAUSE NUMBER: E20-00000J3

A final judgment has been issued against you in Pct. 3 Justice of the Peace Court, Denton County,Texas. The Constable has a Writ of Possession **DEMANDING THAT YOU VACATE THESE PREMISES WITHIN 48 HOURS** of the time and date posted below. The Constable's Office will return at that time and physically evict anyone found there and see that all personal property is removed from this address. **WHETHER YOU ARE PRESENT OR NOT.**

DELIVERED BY: Deputy Porter

DATE DELIVERED / POSTED 02/02/2020 AT _____M

CONSTABLE JERRY RABURN
DENTON COUNTY PRECINCT THREE
LEWISVILLE, TEXAS
(972) 434-4770

WARNING

THIS IS A NOTICE TO VACATE THE FOLLOWING ADDRESS:

Este es un aviso de desalojo de esta dirección:

TO ALL OCCUPANTS: A Writ of Possession, Cause # _____ has been issued by (court) _____ ordering your eviction from this property. The Writ will be executed on or after _____, 20____ at _____ M.
You are hereby instructed to vacate the premises by that time. Your failure to do so will result in you being removed from the premises and may result in the loss of any personal possessions remaining.

ADVERTENCIA

ATENCION TODOS LOS INQUILINOS: La corte _____ Caso # _____ ha ordenado el desalojo de la propiedad que ocupan al momento. **Si no cumplen la orden voluntariamente para la fecha _____ serán retirados y correrán el riesgo de perder sus pertenencias.**

Posted _____, 20____ at ____:____ ____M. Constable, Precinct 5

By Deputy _____

The written warning notifies the tenant that the writ has been issued and will be executed on or after a specific date and time stated in the warning.

Must be on paper at least 8 ½ x 11 inches. Posted to the exterior of the front door of the rental unit.

Time for execution:

Writ issued while the case is pending: writ executed at least 7 days after the date the tenant is served with notice. *(immediate possession)*
Writ issued after final judgment: writ executed at least 24 hours after the warning is posted.

TRCP 510.5, Property Code § 24.0061

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Service Duties and Requirements CONTINUED…

- Coordinate with the landlord to arrange the move out
- A Writ of Possession CANNOT be executed NOT WHEN IT IS RAINING, SNOWING, OR SLEETING. (You may need to check the weather forecast)

Property Code § 24.0061

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Officer Safety During Execution of a Writ

- Gather information on the tenants.
- Talk to the landlord. What is the attitude of the tenants? Are they hostile? What is their mental state?
- Has the landlord seen any weapons in the residence?
- What is the Call History at the location? Have there been disturbances reported? What is the nature of the disturbances?
- Do the tenants have a criminal history?

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More Officer Safety Tips

- Always have **AT LEAST 2 OFFICERS** present when executing a Writ of Possession. Have more officers present if necessary (known drug houses, violent tenants, felons, sovereign citizens)
- Be **aware of your surroundings** (people, weapons, hazards)
- **Protect** the landlord and the representatives – Keep them back at a safe distance **YOU are responsible for THEIR SAFETY!!!**
- Decide **how you will make entry** – Is the door open, unlocked, or locked? Deadbolt engaged? Forced entry?

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Protect Yourself

- ENTER the premises. BE READY!!
- THIS IS A BUILDING SEARCH!
- GET YOUR GUN OUT!!
- GET YOUR FLASHLIGHT OUT!!
- Thoroughly search the ENTIRE premises (search all closets and hiding places)
- EXPECT to find somebody or something! Have the right mindset! NO SURPRISES!!
- SAFETY, SAFETY, SAFETY,

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Continue with the Writ

- When the premises is SECURED and the situation is UNDER CONTROL, you can release the extra officers (if appropriate)
- Execute the Writ of Possession as directed.
- Instruct the tenants to remove, or allow the landlord or representatives, to remove all personal property from the premises other than property owned by the landlord.
- Give the defendant a copy of the writ & inventory.

Property Code § 24.0061

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More Service Duties and Requirements

- Personal property may be placed outside the premises but not blocking a public sidewalk, passageway, street, or driveway. *NOTE: Property must be placed outside the gate of a gated community.*
- If needed, use a bonded or insured warehouseman to remove and store property at no cost to the landlord or the officer (high value items).
- NOTE: *Use your body camera for additional documentation!*

TRCP 16, 510.05, & Property Code §24.0061

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Best Practices for Execution: Writ of Possession

- Reasonable force may be used. What is **REASONABLE** force?
  - If the tenant refuses to leave the premises immediately.
  - If the tenant becomes combative or aggressive.
  - When else?

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Best Practices for Execution: Writ of Possession – *Moving the Property*

- The officer that executes the writ is there to keep the peace and oversee the removal of the tenant's property.
  - Actual removal of property should be done by the tenant, landlord, or landlord's representatives.
  - An officer, at his or her discretion, **CAN** engage the services of a bonded warehouseman or mover.
- A city can provide a portable closed container to place the removed personal property into.
  - Done at no cost to the landlord or officer.
  - The container can be removed from the location and the contents disposed of if the owner (tenant) does not recover the property within a reasonable time.
- Items such as prescription drugs, hazardous materials, guns, etc., should be handled in accordance with office policy and should not be placed or left outside the property.

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Service Duties and Requirements CONTINUED…

- Make a **Property Inventory** of items removed by the landlord and/or the representatives
- Make a **Return of Service to the Court** (attach a copy of the Warning Notice and the Property Inventory)
  - Can be attached to the writ or a separate document
- Keep copies of all documents in accordance with record retention schedules.

TRCP 16, 510.05, & Property Code §24.0061

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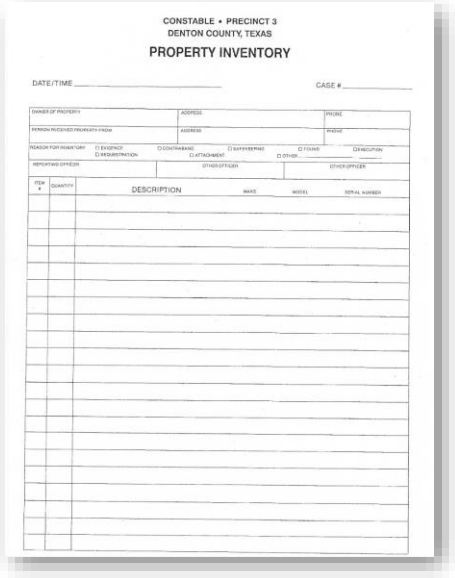
Property Inventory

- Tips for good record keeping:

  Body Cameras
  Photos (if no body cameras)

- What other things do you do in your office?



CONSTABLE • PRECINCT 3
DENTON COUNTY, TEXAS

PROPERTY INVENTORY

DATE/TIME _____ CASE # _____

DESCRIPTION

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Where are the record 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/slrm/recordspubs/localretention

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Requirements of the Return of Service

- Include the cause number.
- Include the case name.
- Include the name and county of the court where the case is filed.
- Indicate the date and time the writ of possession was received for service.
- Include the name of the person served a copy of the writ.
- Indicate the address where the writ was executed.

TRCP 15, 16, 107, & 501.3

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Return of Service: More Details

- The officer must sign the return and file it with the clerk of the proper court.
  - Return may be in person, electronically, or by fax.
  - Unless otherwise stated, the return is to be filed by 10:00 AM on the Monday after the expiration of 20 days from the date of service.

TRCP 15, 16, 107, & 501.3

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Return of Service: More Details

- Don't feel obligated to use, or limited to, the return section printed on the citation.
  - If you need more space, use a separate document.
- The more detail you provide, the better off you are.
  - If proper service becomes a contested issue in court, your return will protect you and help refresh your memory if you have to testify.
- Sample Return
  - On the TJCTC website forms page: https://www.tjctc.org/tjctc-resources/forms.html

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Fees

- The initial service fee covers a specific amount of field time.
  - *If the officer spends more time in the field executing the writ, an additional fee can be charged.*
- The fee for serving a writ of possession, how much field time is covered by that fee, and the additional fee that can be charged per hour vary by county.
- 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: https://comptroller.texas.gov/transparency/local/sheriffs/

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Fee Collection

- The officer is **NOT** entitled to demand his or her fee for service in advance of serving the process.
  - The officer's fee is to be taxed and collected as other costs in the case.

- **EXCEPTION**: if the officer is serving process for 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.

TRCP 17, 126

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Manufactured Homes

- Chapter 94 of the Property Code applies to a landlord who **leases** a **LOT** in a manufactured home community to a tenant for the purpose of putting a manufactured home on the lot.

  - The general procedures and time limits that apply to all eviction cases also apply to manufactured home evictions **EXCEPT** to the extent that Chapter 94 says something different.

  - If a landlord owns a manufactured home and is evicting the tenant from the manufactured home itself, regular eviction rules apply.

Property Code §§ 94.001 & 94.002

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Manufactured Home Evictions

- Manufactured homes include:
  - Mobile homes.
  - HUD-code manufactured homes.

- Recreational vehicles (RVs) are **NOT** manufactured homes.
  - Regular eviction rules apply to evictions from RVs.

There are more advanced course materials about this topic if you handle a large volume of manufactured home evictions. Contact TJCTC for more info.

Property Code §§ 94.001, 94.002, & Occupations Code § 1201.003

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Manufactured Home Evictions: Writ of Possession

- The procedures for posting the warning notice and executing the writ of possession are the same as all other eviction cases.

- It is the **landlord's** responsibility to remove the manufactured home from the lot if the tenant is evicted.
  - It is **NOT** the officer's responsibility.

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Liability

- The officer is **NOT** liable for damages that result from the execution of the Writ of Possession so long as the officer is acting in **good faith** and **uses reasonable diligence and care**.
  - **Good faith**: when the officer shows that a reasonably prudent officer, under the same or similar circumstances, could have believed that the officer's conduct was justified based on the information the officer possessed when the conduct occurred.

Property Code § 24.0061(g), Civil Practice & Remedies Code 7.003

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Failure to Execute & Return

- If a constable fails or refuses to execute and return a process that is lawfully directed and delivered to him or her, the constable **SHALL** be fined for contempt on the motion of the person injured by the failure or refusal.
  - Applies to deputy constables in the same way.
- 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

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Officer Safety

STAY ALERT!

- Evictions and Writs of Possession can be highly emotional and stressful situations!
  - Be aware of your surroundings (people, weapons, hazards)
  - Always have AT LEAST 2 OFFICERS present when executing a Writ of Possession. Have more officers present if necessary (known drug houses, violent tenants, felons, sovereign citizens)
  - Protect the landlord and his representatives

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Professionalism & Respect

- **Keep it civil:**
  - It's bad enough you're removing someone from their home.
  - Don't add guilt or embarrassment to the situation.
  - You're not there to judge or chastise the tenant or to let anyone else do that.

Act is a **PROFESSIONAL** manner and expect the same from others around you. It may help prevent a complaint or lawsuit from being filed against you.

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Evictions ISSUES related to covid-19

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Supreme Court Emergency orders that are in effect

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Writ of Possession breakouts

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Scenario 1

- A writ of possession has been issued by the court. You go to post the notice and see that the tenant has already moved out of the house. What do you do?

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Scenario 2

- You have a writ of possession to execute and you've scheduled it with the landlord. On the day of execution, you show up to the address and only the landlord is present. The house is full of property, the tenants are not there, and the landlord didn't bring anyone to help him.

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Scenario 3

- You're executing a writ of possession on an apartment. In the apartment you find a mattress, a couch, fast food wrappers, a bong, a bottle of prescription medication, porn, an ice chest full of warm beer, a half used can of paint, and .22 caliber rifle. What is done with each item?

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Scenario 4

- You receive a writ of possession to be executed on a section of land that defendant has rented to graze cattle on. There are no buildings on the land, only 6 acres of fenced in land with 20 head of cattle, an old truck, and a John Deere tractor on it.

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QUESTIONS?

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