

Writs of Retrieval, Re-entry & Restoration

Bronson Tucker, Director of Curriculum, TJCTC

© Copyright 2018. All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd; Suite 530, Austin, TX, 78744.

Resources

- TJCTC Deskbook: Evictions
- Property Code Chapter 24A
 - Orders of Retrieval
- Property Code Chapter 92
 - Writs of Re-entry and Restoration

Reminder

- Any of the fees mentioned in this presentation may be waived upon the filing of a Sworn Statement of Inability to Afford Court Costs. See TRCP 502.3.
- This form was created by the Texas Supreme Court, is on the TJCTC website and must be made available without necessity of a request

Writ of Retrieval – What is it?

- An order from your court, allowing a peace officer to accompany a person to their current or former residence to retrieve certain specified items, which are needed urgently.

Writ of Retrieval – Which Court?

- There is no jurisdiction or venue limitation for a writ of retrieval. Any justice court in the state may issue the order.

Writ of Retrieval – How Much?

- Your standard civil filing fee should be charged. In most counties, this is \$46, however verify the proper amount in your county with your auditor.
- If a peace officer serves a summons for a hearing, they can charge their standard civil process service fee.
- If a peace officer accompanies the applicant to retrieve the items, they can charge a fee specific to that action ONLY if one has been set by the commissioners court. See Local Gov't Code 118.131.

Writ of Retrieval

- Basic components of a writ of retrieval case:
 - 1. Person seeking to retrieve property files an application
 - 2. Justice court provides notice to the occupant and holds a hearing*
 - 3. Justice court issues a writ of retrieval (or denies issuance)
 - 4. Applicant provides a bond to protect the occupant if writ issued*
 - 5. Peace officer assists applicant in retrieval of property
 - 6. Peace officer inventories property
 - 7. Occupant may request a hearing if property is wrongfully taken from the residence.
- * - may be waived if clear and present danger of family violence

Writ of Retrieval

An application must:

- Certify that the current occupant has denied entry to the applicant or represents a clear and present danger of family violence;
- Certify no court order prohibiting contact with the current occupant of the residence exists;
- Describe with specificity the items to retrieve;
- Claim the applicant or dependents will suffer personal harm if the items are not obtained promptly; and
- Include a lease or “other documentary evidence” that shows the applicant is/was authorized to occupy the residence.

Writ of Retrieval

- The application must also allege that the items are only of the following types:
 - (A) medical records;
 - (B) medicine and medical supplies;
 - (C) clothing;
 - (D) child-care items;
 - (E) legal or financial documents, including electronic copies;
 - (F) checks or bank or credit cards in the name of the applicant;
 - (G) employment records; or
 - (H) personal identification documents;

Writ of Retrieval

- “Sufficient notice” AND “an opportunity to be heard” must be provided to the current occupant.
- Notice and hearing must occur PRIOR to issuing the order
 - No specific guidance as to time required between service of the notice and holding a hearing.
 - TJCTC’s position: 24 hours between notice and hearing seems reasonable based on the circumstances and purpose of the statute
 - TJCTC’s position: notice may be served in person or by posting the notice on the front door of the premises.

Writ of Retrieval

- A justice court may not issue a writ of retrieval unless:
- 1) The applicant establishes “sufficient evidence of urgency and potential harm to health and safety of any person;” and
- 2) The court finds that:
 - Applicant has been denied entry/danger of family violence
 - No EPO or other order prohibiting contact exists
 - Applicant is/was authorized to occupy premises
 - Notice and ability to contest was provided to the current occupant

Writ of Retrieval

- Before a justice of the peace may issue a writ of retrieval, the applicant must file a bond with the justice court, and the justice of the peace must approve the bond. The bond must:
 - Have two or more good and sufficient non-corporate sureties or one corporate surety;
 - Be payable to the occupant of the residence;
 - Be in “an amount required by the justice;” and
 - Be conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

Writ of Retrieval

- If the court grants the application and issues a writ, a peace officer shall accompany the applicant to premises.
- If the current occupant is present, the officer shall provide him or her with a copy of the writ.
- All property must be inventoried by the officer before removal, and the officer must:
 - 1) Provide an inventory list to the occupant (but if the occupant is not present, the officer may leave the list in a conspicuous place); and
 - 2) File the inventory list with the court

Writ of Retrieval

- A peace officer may use “reasonable force” in providing assistance to the applicant.
- Peace officers are not liable civilly or criminally for acts which occur while providing assistance to the applicant if acting in good faith and with reasonable diligence.
- Landlords and their agents are also not liable for allowing access to the premises to facilitate the writ.

Writ of Retrieval

- In this code, “peace officer” means sheriffs, their deputies, constables, deputy constables, and those reserve deputy sheriffs and constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code

Writ of Retrieval

- It is a Class B Misdemeanor to interfere with retrieval of personal property under the writ.
- It is a defense to prosecution that the actor did not receive a copy of the writ or other notice that the entry or retrieval of property was authorized.
- Nothing prohibits this offense from also being committed by the applicant, although less likely (e.g. disruptive behavior)

Writ of Retrieval

- The occupant has 10 days after the “date of authorized entry” to file a complaint in the court that issued the writ alleging that the applicant has taken property which does not belong to them.
- If a complaint is filed, the court shall “promptly” hold a hearing and rule on ownership of the property.
- The occupant may also choose to file a small claims lawsuit or use other legal remedies to reclaim wrongfully appropriated property.

Scenarios

- Applicant was over at their in-laws' for Thanksgiving dinner. At dinner, an argument broke out over politics and the in-laws kicked applicant out of their home. There are clothes and baby formula still at the in-laws' house.
- Can the applicant get a writ of retrieval to get these items?

Scenarios

- Applicant works as a mechanic. The occupant has excluded them and refuses to allow them to get the tools of their trade. Can the applicant get a writ of retrieval?

Scenarios

- Applicant seeks to retrieve their selection of Guns N' Roses concert T-shirts from the occupant. Can they accomplish this with a writ of retrieval?

Scenarios

- Applicant states that they cannot afford a bond. Can the judge waive the bond?

Scenarios

- Applicant states that her boyfriend kicked her out and has financial documents she needs. She doesn't have a lease and didn't receive bills at that address. How could she prove that she had a residence there?

Writ of Re-entry – What is it?

- An order from your court to a landlord to immediately allow a tenant to be allowed back into their rental property following an unlawful lockout. A peace officer may use reasonable force to enforce the order.

Writ of Restoration – What is it?

- An order from your court compelling a landlord to immediately reconnect utilities that have been unlawfully disconnected.

Writs of Re-Entry & Restoration

- Helpfully, much of the law and procedure governing these processes are the same. Therefore, we will cover them as a pair, with specific mention of any areas where the law is different.

Re-Entry/Restoration – Which Court?

- Applicant must file a sworn statement and also orally state under oath the facts to the judge in the **precinct** where the rental premises are located.

Re-Entry/Restoration – How Much?

- Your standard civil filing fee should be charged. In most counties, this is \$46, however verify the proper amount in your county with your auditor.
- If a peace officer serves a writ, they can charge the standard service fee for service of a writ of possession (varies by county, contact your auditor/constable for info)
- If a peace officer serves a writ, they can charge their standard civil process service fee (varies by county, contact your auditor/constable for info)

Restoration – Illegal Disconnection

- Property Code 92.008
- If tenant pays directly to the utility company, landlord may not disconnect or cause disconnection of any utilities
- If the landlord provides utilities, the landlord may not disconnect water, wastewater, gas or electric services
- Other than for bona fide construction repair or emergency

Restoration – Illegal Disconnection

- Property Code 92.008(h) provides a very limited exception when the landlord provides a tenant with an electric bill specific to their unit and the tenant does not pay timely
 - Must be included in written lease
 - Must be at least 12 days after bill issuance
 - Must issue a disconnection warning notice of at least 5 days
 - Can't occur in certain weather conditions or if will endanger tenant
 - Must be available for payment and must reconnect within 2 hours of payment
 - May not evict within two days of disconnection

Illegal Disconnection - Remedies

- If the landlord unlawfully disconnects the utilities, the tenant may:
 - Terminate the lease (our court is not involved in this process), or
 - Apply for a writ of restoration
- Additionally, the tenant may sue the landlord for actual damages, one month's rent, a \$1000 penalty, attorney's fees and court costs
 - Separate small claims suit NOT part of the writ of restoration

Re-Entry – Illegal Lockout

- Property Code 92.0081
- Landlord may not remove doors, windows, furniture or fixtures unless for bona fide repair or replacement
- Landlord may not exclude the tenant from the premises unless exclusion is:
 - Removing property of tenant who abandoned premises
 - Due to bona fide construction, repair, or emergency
 - Locking out tenant who is delinquent in rent*

Re-Entry – Illegal Lockout

- Property Code 92.0081 provides explicit detail on when a landlord may lock out a tenant who is delinquent in rent.
 - Must be included in written lease that landlord may lock out
 - Must mail a notice of proposed lockout at least 5 days prior or hand deliver notice at least 3 days prior, including amount owed and location where rent can be paid
 - Must post a notice when locks are changed giving 24 hour access to a key
 - All notices must contain statement in underline or **bold** that tenant may receive new key even if they do not pay delinquent rent

Re-Entry – Illegal Lockout

- Additional Requirements:
 - Locks may not be changed on a day, or day before a day, that the rental office is closed or person unavailable to take rent.
 - Tenant may not be excluded from common areas (pool, etc.)
 - Locks may not be changed with the tenant in the premises.
 - Locks may not be changed more than once per rental period.
- Tenant **MUST** be provided with a key, even if they do not pay the delinquent rent.
 - So why change the locks?

Illegal Lockout - Remedies

- If the landlord unlawfully excludes the tenant, the tenant may:
 - Terminate the lease (our court is not involved in this process), or
 - Apply for a writ of re-entry
- Additionally, the tenant may sue the landlord for actual damages, one month's rent, a \$1000 penalty, attorney's fees and court costs
 - May recover an additional one month's rent if denied a key
 - Separate small claims suit NOT part of the writ of restoration

Restoration/Re-Entry - Procedure

- After the tenant files a sworn statement and orally states the facts to the judge, determine whether to issue writ
- If no, then the case is over – no appeal of denial
- If yes, then writ immediately issues, which must order the landlord to immediately rectify the problem, and must tell the landlord of their right to a hearing

Restoration/Re-Entry - Procedure

- Writ is served on the landlord or their agent
- They have 7 days to request a hearing and the hearing must be held 1-7 days after their request
- If they don't request a hearing, court costs may be assessed against the landlord in a judgment
- Either side may appeal the ruling at the hearing, same manner as eviction appeal (5 days)

Restoration/Re-Entry - Procedure

- What if the landlord fails to comply?
 - If they initially fail to comply, tenant may file affidavit
 - Upon affidavit, court sends show cause notice for contempt hearing
 - At contempt hearing, if the landlord initially disobeyed, but now is in compliance, may be held in contempt
 - Up to 72 hours in jail, up to \$100 fine
 - At hearing, if landlord is still not in compliance, may be jailed until they comply

Effect of Writ of Possession

- If a writ of possession is issued, a writ of re-entry or restoration loses its effect
- However, a writ of re-entry or restoration does not lose effect just on a judgment for possession in an eviction suit. Why not?