

Advanced Landlord/Tenant Issues

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Resources

- Texas Statutes - <https://statutes.capitol.texas.gov/>
- Texas Rules of Civil Procedure - <https://www.txcourts.gov/rules-forms/rules-standards/>
- TJCTC Deskbooks – <https://www.tjctc.org/tjctc-resources/Deskbooks.html>

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The Landlord-Tenant Relationship

Why is it important to Constables?

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What is a Landlord-Tenant Relationship?

- Two parties have a lease agreement (written or oral)

OR

- Occupant is deemed a tenant at will or sufferance due to certain circumstances

OR

- Squatters (not always LL-T relationship, but can still file eviction)

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Tenant at Will

- The tenant has the owner/landlord's consent to occupy the premises, but there is no set time for how long the tenancy will last
- Example:
 - Month-to-month apartment lease with no agreement as to how many months
 - Allowing a friend to move in without talking about how long the friend will stay
- Notice to terminate: the same as one rental period

Property Code § 91.001(e)

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Tenant by Sufferance

- A person was once in lawful possession of property, but wrongfully remains as a holdover after his/her right of possession has expired
- Example:
 - New owner purchases property and current tenant who has no written lease agreement won't leave
 - Adult child who has worn out his/her welcome

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Tenant vs. Lodger

- Spending the night at a hotel doesn't make you a tenant
- Fact dependent
- Sometimes law enforcement will tell owner to file and eviction suit in this case, and the court may hear the case and decide right to possession even though no landlord-tenant relationship

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Criminal Trespass vs. Civil Trespass

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Who is a Trespasser?

A person who is on the property of another without the owner's consent

Two types of trespass:

| | |
|----------|-------|
| Criminal | Civil |
|----------|-------|

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Criminal Trespass

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Criminal Trespass

- State vs Defendant
 - Concerned with punishing the defendant
- Focus is on defendant's actions
 - Defendant intentionally or knowingly entered property of another without consent and defendant had notice entry was forbidden
 - Mere presence on someone's property is sufficient, don't have to be told to leave

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Criminal Trespass – Notice

- ❖ **criminal trespass warning issued by law enforcement,**
- ❖ oral or written communication by the owner,
- ❖ fencing or other enclosure designed to exclude intruders,
- ❖ posted signage,
- ❖ vertical purple paint marks on trees or posts,
- ❖ etc.

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Criminal Trespass

- Remedy: Prosecution
 - Class B misdemeanor
- **Penal Code Sec. 30.05. CRIMINAL TRESPASS.** (a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:
 - (1) had notice that the entry was forbidden; or
 - (2) received notice to depart but failed to do so.

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Criminal Trespass

- You can have a criminal trespass without a civil trespass
- No claim of possession to the property, clear criminal offense = arrest for criminal trespass

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“This is a civil matter”

Civil Trespass

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Civil Trespass

Plaintiff vs Defendant

- Concerned with disputes between individuals

Focus is on who has the right to be on the property

- Trespasser has been told to leave and they refuse
- **Trespasser and owner are both claiming a right to possession of the property**

Remedy: **Eviction**

- Court decides who has the right to possession

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Civil or Criminal, You Decide!

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Developer Drama

Scenario 1

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Basic Facts

- A developer lets a prospective homeowner move in prior to closing,
- Closing was delayed,
- Developer files eviction case,
- Judgment for developer & writ of possession issue,
- Defendant provides proof of bankruptcy.

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Call for Family Violence.

Scenario 2

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Breakout:

- Officer arrives, and both parties want him to criminally trespass the other, but both say there was no violence.
- **What questions should officer ask to determine what to do?**

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Parents get a Writ of Possession for
Their Adult Daughter

Scenario 3

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Tricky Situation:

- 30-year-old daughter has been living at home with parents after her divorce.
- She doesn't have a job, and parents finally went through the process to evict her.
- Officer arrives and she has locked herself in her room and won't come out.
- **What would you say as the officer?**

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Roommate Lockout

Scenario 4

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What do you do?

- ❖ Both people have the address on their DL.
- ❖ No allegation of violence & situation is now calm.
- ❖ Both receive mail there.
- ❖ Dan had locksmith come and change the locks, so Ned couldn't get in when he got home.

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When
Trespass is
Criminal &
Civil

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When Trespass is Criminal & Civil

- **Eviction is the best course of action**
 - Fight is over who has the right to possession – court has to hear evidence and decide
 - Person ***could be*** arrested for criminal trespass, but the facts are too gray
- **Squatters claiming ownership by Adverse Possession**
 - Clearly, they don't own the property, **BUT** how long have they been there?

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Remember:

Landlord/tenant relationships create rights and responsibilities for each party

Have they followed the proper procedure?

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The Gray Area of Evictions

- Eviction is a procedure not an immediate remedy
- No magic number (amount of days) that transforms a guest into a tenant
- Repeat customers
- The “Toothbrush Law”

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Best Practices For Dealing With Trespassers

- If it's clear they are trespassing - arrest them
- If it's not clear & you think they may have possession rights - tell the parties to pursue eviction and/or get an attorney

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What are Some Tricky Situations When you had to
Determine if it was a Civil vs. Criminal Trespass?

What did you do?

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How Does Bankruptcy Effect a
Writ of Possession?

Scenario 1

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Question: What happens when the defendant files for bankruptcy in an eviction case?

Answer:

- If the bankruptcy petition was filed **before** the judgment for possession was entered, then the case is automatically stayed, and it is up to the landlord to go to the bankruptcy court and get the stay lifted. *11 U.S.C. § 362*.
- If the bankruptcy petition was filed **after** the judgment for possession was entered, then the eviction case is not stayed by the bankruptcy filing and a writ of possession may be issued and executed. *11 U.S.C. § 362(b)(22)*.

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Recent Developments

- Several recent bankruptcy court cases have created a little confusion by holding that a judgment for possession in an eviction case is not “final” until the appeal period has expired. *In re Nitzsky*, 516 B.R. 846 (Bankr. W.D. N.C. 2014); *In re Alberts*, 381 B.R. 171 (Bankr. W.D. Penn. 2008); *In Re Tatum*, 2015 WL 1061673 (Bankr. S.D. Miss. March 6, 2015).
- Under these recent decisions, a tenant could file a bankruptcy petition after a judgment for possession has been signed but before the five-day appeal period has expired, and the case would be stayed automatically by the bankruptcy court until the landlord obtains a lifting of the stay.
- **This scenario is not likely to arise often but could occur.**

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Key for Constables:

ALWAYS contact the Court & Plaintiff if you receive notice of a bankruptcy filing. They will determine what further action needs to be taken on the case.

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Squatters

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Adverse Possession

- Gaining ownership of real property that belongs to someone else through the use of that land by a trespasser
- A trespasser's possession must be:
 - **Hostile** – against the right of the true owner and without permission
 - **Actual** – exercising control over the property
 - **Exclusive** – in the possession of the trespasser alone
 - **Open & Notorious** – using the property as the real owner would, without hiding his or her occupancy, and
 - **Continuous** for the statutory period

Civil Practices & Remedies Code §16.021(1)

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Statutory Periods

- There are different time periods for the length of time that a person has to remain on property to adversely possess it.
- For example, the owner of property has 10 years to reclaim property (through legal process) from a trespasser who has used, cultivated, and enjoyed their property and met all the elements of adverse possession (previous slide) before they can claim ownership.
- These periods can be found in Civil Practice and Remedies Code Ch. 16.

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Adverse Possession

No claims against government land

- Land held by state, municipal, or federal government entities are generally immune from adverse possession actions
- A squatter living in a tent in a public park will never gain ownership of that land.
 - They're always going to be a trespasser!

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Who has Dealt With Squatters in Their County?

Tell us a little bit about that experience...

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Law Enforcement and Enforcement of Civil Judgments

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Execution of a Writ of Possession

- Reasonable force may be used in executing
- When tenant's personal property is removed, it must not block a sidewalk or street and shouldn't be left out in inclement weather
- Writ gives an officer the authority to engage the services of a bonded or insured warehouseman to remove and store part or all of tenant's property at no cost to the landlord or officer.
- Landlord cannot be required to store the property

Property Code § 24.0061(d)-(h)

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Writs of Retrieval

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Writ of Retrieval

- Order from a justice court authorizing a person to enter their residence or former residence, accompanied by a peace officer, to retrieve **specific items** of personal property when the current occupant is denying the person entry.

Property Code § 24A.002(a)

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Writ of Retrieval: Application Requirements

- An application for a Writ of Retrieval **must**:
- Certify the applicant **has been denied access** by the current occupant or there is a clear and present danger of family violence to the applicant
- Certify the applicant is **not subject to Protective Order** or is otherwise prohibited from entering the residence
- Certify the applicant and occupant are **not subject to divorce proceedings**
- Certify the applicant **will suffer harm** if the items are NOT retrieved

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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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What if they want something else??

- If the property that the applicant wishes to retrieve does not fall within one of these categories, the person may be able to obtain it by filing a small claims case for the recovery of personal property, but NOT by filing an application for a Writ of Retrieval.
- *You can give them the Small Claims SRL packet or send them to the TJCTC Self-Represented Litigant Page for more information on how to do that*

Rule 505.2

- If they have a divorce or family violence case pending, they should talk to their lawyer or the court about options for retrieving their property

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Writ of Retrieval Execution

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Writ of Retrieval Execution: Step-by-Step

1. Accompany and assist the applicant in making entry and retrieving the items listed in the application.
2. Serve occupant with a copy of the Writ of Retrieval, *if present*
3. Create an inventory of the property removed from the residence and give a copy to the applicant and occupant (or leave a copy for the occupant if not present)

Property Code § 24A.003

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Writ of Retrieval: Filing Your Return of Service

File the Property Inventory with the Return of Service.

Be sure to make a detailed Return of Service should the case be contested in the future - *How was entry made? Was occupant present? Was occupant compliant? Was a listed item NOT retrieved and why?*

A person who interferes with the retrieval of personal property pursuant to a court order commits a **Class B Misdemeanor**.

Property Code §§ 24A.003 – 24A.005

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Writs of Re-Entry

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Writ of Re-Entry

Orders a landlord to allow a tenant back into their rental property following an unlawful lockout.

- Allows for **immediate**, but **temporary**, possession of the property until a hearing can occur
- Applies to **residential and commercial** property
- Failure to comply could result in the landlord being held in **CONTEMPT**; including jail time until they comply
- A peace officer may use **reasonable force** to get the tenant back into possession of the property

Property Code § 92.009(c), (d), & (i)

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Writ of Re-Entry: Requirements of the Writ

Must specify the address of the premises where lockout occurred

MUST include the **hearing date**

Deliver to:

- *Landlord, Management Company, On-Premises Manager, or Rent Collector*

Property Code §92.009, 93.003

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Writ of Re-Entry: Execution Step-by-Step

1. Enter premises and place tenant back in possession of property
2. Instruct landlord to release possession to the tenant
3. Advise the landlord the tenant has possession of the property until the hearing

Failure to comply could result in the landlord being held in CONTEMPT; including jail time until they comply

Property Code §§ 92.009, 93.003

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Writs of Restoration

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Writ of Restoration

Orders the **immediate**, but **temporary**, restoration of disconnected utility services that were unlawfully disconnected by a landlord pending a final hearing.

Property Code § 92.0091

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Writ of Restoration: Requirements of the Writ

- Must include the **address of the premises** where the utility services have been disconnected
- Must describe the **utility services to be restored** (electricity, water, gas, etc.)
- Must include the **hearing date**

DELIVER TO:

Landlord, Management Company, On-Premises Manager, or Rent Collector

Property Code § 92.0091

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Writ of Restoration: Execution Step-by-Step

1. Instruct the landlord to resume the tenant's utility services
2. Provide them a copy of the writ

Failure to comply could result in the landlord being held in CONTEMPT; including jail time until they comply

Property Code § 92.0091

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Reasonable Force

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Reasonable Force

- Allowed by law enforcement in enforcing:
 - Writs of re-entry and retrieval (served on the landlord), and
 - Writs of possession (served on the tenant)
- No black and white definition of reasonable force
 - Based on the specific facts and circumstances of each incident
 - What are factors to consider?

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Reasonable Force

- 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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Reasonable Force

- Ways to minimize the use of force:
 - Explain the consequences
 - Be polite and respectful
 - Don't flex your muscle unless you have to
- On your return, make sure to note:
 - How entry into the home was made
 - If you had to force entry, why and how
 - Any other important details in case you have to testify later

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Reasonable Force

Is this reasonable?

1. Calling a locksmith out to a house to get them to open the door
2. Breaking the door so tenant can move back in when landlord refuses to give them the keys
3. Detaining the landlord, driving them to the property, and forcing them to unlock the door

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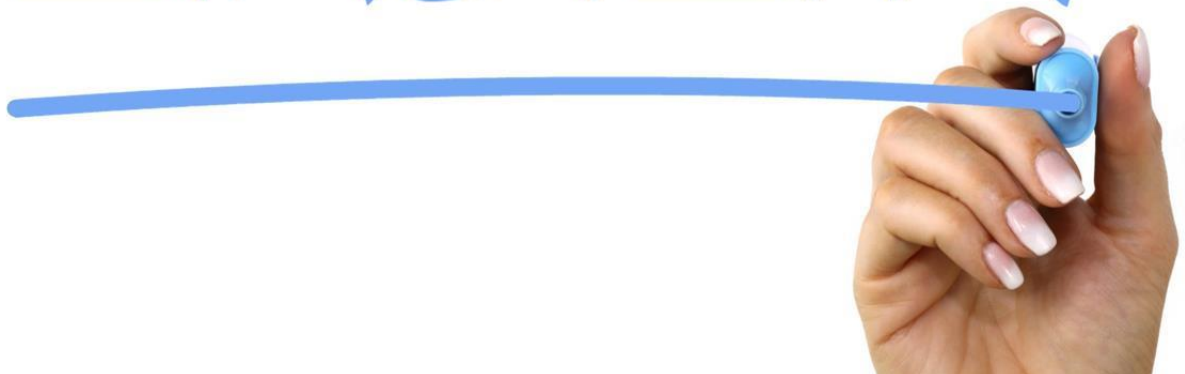
Key for Constables:

Create and office policy for use of force and follow it.

Work with your County Attorney and other elected officials

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LIABILITY



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Officer Liability

- An officer is **not liable for damages** resulting from the execution of a writ **if the officer executes** or attempts to execute the writ **in good faith**
- 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.
- Duties and liabilities of the executing officer
 - Civil Practice and Remedies Code Chapter 34, Subchapter D

Civil Practice & Remedies Code §7.003

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Detailed Reports

- Allows the officer to document the incident while it's still fresh in his/her mind
 - Be as specific as possible
 - Use as much detail as possible
- Can be referred to at trial if the officer is subpoenaed to testify regarding:
 - The officer's actions
 - A party to the case's actions
 - A collateral criminal or civil case

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Detailed Reports Continued...

- Reports should be done anytime something out of the ordinary occurs or when a situation gets complicated
 - If you know criminal charges have been filed or could be coming, be proactive and pass on your report

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How Could My Report Help?

Pending CPS case for neglect

- Constable has court order to take children
- Constable goes to get the kids and mom makes a statement that “CPS shouldn’t be involved because her husband only hits the kids when he’s on drugs and he’s been clean for 2 weeks now”
- District Attorney decides to file charges on dad for child abuse
- Mom tells prosecutor her husband would never hurt his kids and she doesn’t know anything about it
- Statement made by mom to the constable can be used at trial

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Body Cameras

- If you have them, use them
- If you don't have them, think about getting them
- Same reasoning as why writing reports is important
 - Document exactly what happened
 - Use to defend yourself in the event of a complaint or lawsuit
 - Use in court for a case against the person
- Lots of grants out there to help you get them if you need financial help

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Safety When Serving

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Sovereign Citizens

- Sovereign citizens believe they are exempt from federal and state laws such as paying taxes, traffic laws, and evictions
- They will file false liens on properties for exorbitant amounts or file false deeds on properties they do not own

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Sovereign Citizens Continued...

- ◊ Can be very dangerous and can pose problems when serving process
 - ◊ Are confrontational, especially verbally
 - ◊ Live on compounds where it's easy to ambush police
 - ◊ Aggressive especially when their authority is challenged or their property is being taken away

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Officer Safety

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Officer Safety

- Run CCH's on people before you serve them
- Don't go alone if you don't have to
- Be aware of your surroundings
- Wear your vest
- Don't get complacent
- Just because the papers you're serving are civil doesn't mean the people you're serving are.

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Questions?