

Introduction to Enforcement action writs: Service & Action!

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Hood County

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Topics

- Writ of Sequestration, Writ of Attachment, Writ of Re-entry, Writ of Restoration, Writ of Retrieval, Capias, Distress Warrants.
 - Writ requirements
 - Dates & Times for service
 - Expiration for service
 - Who may serve
 - Methods of service
 - Service duties and requirements of the officer
 - Liability
 - Return duties and requirements of the officer

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
 - Forms
 - Newsletters and other publications
 - Webinar archive



Get Your civil process guide out!

- It can be found at:

<https://www.tjctc.org/tjctc-resources/Deskbooks.html>

First, some things that all “**Service & Action**” Process have in common

Look at pages 51-52 of your Civil Process Field Guide!

What do all of these writs have in common?

- Writs of sequestration, attachment, re-entry, restoration, and retrieval **MUST** be served by:
 - Sheriff,
 - **Constable, or**
 - **Their deputies.**
- The writs may be served anywhere in the state.
- All served via personal service.
- Writs of retrieval, capias, distress warrants may be served by any peace officer.

TRCP Rules 103 & 501.2(a)

More in Common

- **Date and time of service**

- Monday – Saturday (any time)
- Sunday service only for injunction, attachment, garnishment, sequestration, or distress proceedings
- Time Computation for Saturdays, Sundays, and legal holidays
 - Count **all** days
 - District or County Courts: If the time period to serve is 5 days or less, don't include Sat, Sun, and holidays
- If the last day to serve is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day that ends at 5:00
- The court has discretion to extend service period

TRCP Rules 4-6, 500.5, 621



Continued...

- **Expiration of service**

- Not enforcing a judgment: no expiration on service, unless specifically indicated; or
- Enforcing a judgment: 30, 60, or 90 days as specified in the writ

TRCP Rules 4-6, 500.5, 621

Activity: Using your Civil Process Field Guide, answer the following questions in the chat.

- What day of the week and time can a Writ of Attachment be executed?
- When does a writ of attachment for property expire? What time?
- When does a writ of attachment for a person expire?

answers

- A writ of attachment may be executed any day of the week, at any time of day. Service (execution) is allowed on Sunday.

TRCP Rule 6

- A writ of attachment for property expires at 10:00 AM on the Monday following the expiration of 15 days from the date of issuance. A writ of attachment for a person expires on the hearing date stated in the writ.

TRCP Rules 606, 692, & CCP Art. 24.11

Common Return Duties & Requirements

- Once the writ is executed, the officer must complete a return of service.
 - The return of service can be attached to the writ, OR it can be a separate document.
- The officer must sign the return and file it with the clerk of the proper court.
 - May be returned in person, electronically, or by fax.
 - Shall be filed by 10:00 AM on the Monday after the expiration of 20 days from the date of service, unless otherwise stated .

TRCP Rules 16, 107, & 501.3

Common Return of service requirements

Continued...

- Include the following:
 - Cause number & case name;
 - Name of the court and county where the case was filed;
 - Description of what was served;
 - Date and time the process was received for service;
 - Person and/or entity served;

TRCP Rules 16, 107, & 501.3

Common Return of service requirements continued...

- Date & address of service;
- Signed officially by the deputy; and
- Any other information required by rule or law.

TRCP Rules 16, 107, & 501.3

Now, Details on each
type of process

Writ of sequestration



What is a Writ of Sequestration?

- It is a **pre-judgment** court order that allows for the **temporary** seizure or setting aside of specific property while a case is pending.
 - Deputy can seize only the property described in the writ, nothing else.
 - Peaceful entry, but reasonable force to exit, as necessary.
- It lets a party protect and preserve the property, pending the outcome of the case.
- Issued by District, County or Justice Court

Civil Practice and Remedies Code §62.002

Requirements: Writ of Sequestration

- Styled “The State of Texas.”
- Directed to any Sheriff or any Constable in Texas.
- Identifies:
 - Person who is to be served.
 - Name of county & court where the case is filed.
 - Cause number.
 - All parties in the case.
 - Date of issuance.
- **Contains findings of fact to support that grounds exist for the issuance of the writ.**
- **Describe the property to be sequestered with such certainty that it may be identified and distinguished from similar property of like kind.**

TRCP Rules 15, 696, 699, & 700a

Requirements:

Writ of Sequestration CONTINUED....

- **State the value of each article of property.**
- **State the county in which each article of property is located.**
- **Specify the plaintiff's bond amount.**
- **Commands that the sequestered property be kept subject to further orders of the court.**
- **Advise the defendant of their right to replevy (statutory notice).**
- **State the amount of defendant's replevy bond.**
- Identifies which court the writ is returnable to.
- Signed by the clerk of the court or the judge.
- Contains the court's official seal.

TRCP Rules 15, 696, 699, & 700aa

Statutory Notice to the Defendant:

- The following statement must be included in the writ in 10-point type:

"You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

CPRC § 62.023, TRCP Rules 699 & 700a

Sample Form
Available on
www.tjctc.org

New forms
are coming
early 2021!!

WRIT OF SEQUESTRATION
Cause No. _____

THE STATE OF TEXAS
TO ANY SHERIFF OR CONSTABLE WITHIN THE STATE OF TEXAS

Greetings:
_____(Defendant)

WHEREAS, in a certain suit, cause number _____, now pending in this, the County Court at Law No. ___ of _____ County, Texas, wherein _____ VS. _____, Said Plaintiff filed an Application for Writ of Sequestration on _____, and a bond in the amount of _____ as required by law, as a prerequisite to, and for the purpose of applying, and in due course of law has applied for a Writ of Sequestration against the above named Defendant.

THEREFORE, you are hereby commanded to take into your possession the following described personal property, valued in Plaintiff's Application at the sum of _____, to wit:

If it be found in your county, and to keep the same subject to the further order of this court, which issued the Writ, unless, the same is replevied according to law.

HEREIN, fail not but have you this Writ, with your return thereon showing how you have executed the same, before the County Court at Law No. ___ of _____ County, Texas, to be held in the Courthouse thereof in the City of _____.

NOTICE TO DEFENDANT:

You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A "REPLEVY" BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.

AMOUNT OF REPLEVY BOND: _____

Witness my official hand and seal of office on this the ____ day of _____, 20____.

_____, District Clerk
_____ County, Texas

By: _____
Deputy District Clerk

OFFICER'S RETURN

_____ VS _____
Cause No: _____

Came to hand on the ____ day of _____, 20____, at _____,M., and executed on the ____ day of _____, 20____, at _____,M., at _____

Fees - Levying and Returning Writ, _____
Care of property _____
Taking Bond _____
Total _____

By Deputy: _____
Sheriff/Constable _____
_____ County, Texas

I do hereby certify that I delivered to _____ on the ____ day of _____, 20____, at _____,M. a copy of this instrument.

_____ Sheriff or Constable
_____ County, Texas

By _____ Deputy

Dates & Times for Service: Writ of Sequestration

- Service / execution is allowed:
 - Any day of the week.
 - **Any time of day.**
 - ***Even on Sunday.***

TRCP Rule 6

Expiration for Service: Writ of Sequestration

- **No expiration for purposes of serving / executing.**
- **The writ should be executed as quickly as possible and without delay. ***A Rush paper.**

TRCP Rule 105

Methods of Service: Writ of Sequestration

- Sequestering is conducted wherever in the county the property is located.
 - Service on the defendant can be done at a separate time / location.
- The defendant, or their authorized agent or attorney, may be served by:
 - Personal service.
 - U.S. mail.
 - Commercial delivery service.
 - Fax.
 - Email.
 - Any other manner the court directs.

TRCP Rules 21a, & 700a

Service Duties & Requirements: Writ of Sequestration

- When the writ is received, the officer must:
 - Enter the writ into their record keeping system.
 - Note the date and time received on it.
 - Proceed without delay.
 - Execute as directed within the body of the writ.
 - Take possession of the property.
 - Hold or dispose of the property as ordered by the court.
 - Care for and manage the property in a prudent manner.
 - Serve the defendant.
 - Keep copies of all documents in accordance with established record retention schedules.

TRCP Rules 17, 126, 706, 710, & CPROC § 62.061

Return Requirements: Writ of Sequestration

- Include a description of the property that was sequestered.
- Include a description of how and where the property was stored or disposed.
- If the property was sold, return the order of sale within 5 days.

TRCP Rules 706 & 712

Writs of Attachment (for people & property)



What is a Writ of Attachment?

- For **PROPERTY**:

- A pre-judgment writ issued while a case is pending that allows seizure of property in defendant's possession, because the plaintiff will probably lose their debt unless issued.
 - Defendant will probably dispose of assets to avoid having to turnover property or pay the plaintiff.

Civil Practice and Remedies Code §§61.001 & 61.041.

- For a **PERSON**:

- It is a writ commanding a peace officer to take a person immediately, or on a date specified in the writ, before the court that issued the writ or to some other stated place.
- Handled like a *capias*.

CCP Arts. 16.10 & 24.11, TRCP Rule 692.

Issuance: Writ of Attachment

- Both types of writs of attachment can be issued by:
 - District court.
 - County court.
 - Justice court.

Requirements of the Writ of Attachment for Property

- Styled “The State of Texas.”
- Directed to the sheriff or any constable in Texas.
- Includes:
 - Name of the person to be served.
 - Name and county of the issuing court.
 - Cause number.
 - Names of all parties in the case.
 - Date of issuance of the writ.
 - Facts to support that grounds exist for issuance.
 - Maximum value of property to be attached.

Requirements: Writ of Attachment for Property

Continued...

- Specifies the plaintiff's bond amount.
- Commands that the attached property be kept safe and preserved subject to further orders of the court.
- Advises the defendant of their right to replevy.
- States the amount of replevy bond.
- Contains statutory notice to the defendant.
- Identifies which court the citation is returnable to.
- Is signed by the court clerk or judge.
- Contains the court's official seal.

TRCP Rules 15 & 592

Statutory Notice to the Defendant (attachment for property)

- The following statement must be included in the writ in 10-point type:

"You are hereby notified that certain properties alleged to be claimed by you have been attached. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

Writ of Attachment for a Person

- **Adult attachment:**
 - Orders an officer to take an individual into custody and take them before the court or somewhere else.
 - It can order that the person be held in jail until court is in session.
 - Used in contempt of court cases or issued for a witness who has been summoned for court who fails to appear.
- **Child attachment:**
 - Orders an officer to take a child from a parent or guardian and deliver the child to a person named by the court.
 - Can be issued either pre or post-judgment.

Requirements: Writ of Attachment for a Person

- Styled “The State of Texas.”
- Directed to any peace officer.
- 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.

TRCP Rules 15, 692 & Code of Criminal Procedure Art. 24.11


Requirements: Writ of Attachment for a Person Continued...

- **Names the person who is to be taken by the officer, or if unknown, describes the person.**
- **Identifies where the person is to be taken.**
- **Identifies when the person is to be taken there.**
- Identifies which court the writ is returnable to.
- Is signed by the court clerk or judge.
- Contains the court's official seal.

TRCP Rules 15, 692 & Code of Criminal Procedure Art. 24.11

Methods of Service: Writ of Attachment for Property

- Attachment of property is carried out where the property is located.
 - Service upon defendant does not have to happen at the same time as attachment.
- The defendant, or their duly authorized agent or attorney may be served by:
 - Personal service.
 - Mail.
 - Commercial delivery service.
 - **What other three ways?**



What other three ways can you serve the defendant (or their agent/attorney)?

- Fax.
- Email.
- Any other manner the court directs

TRCP Rules 21a, & 598a

Methods of Service: Writ of Attachment **for a Person**

- Attachment of a person is carried out wherever the person is found.

TRCP Rule 692 & CCP Art. 24.11

Service Duties & Requirements: Writ of Attachment For Property

- When receiving the writ, the officer must:
 - Enter it into their record keeping system.
 - Note the date and time received on it.
 - Proceed without delay.
 - Execute as directed in the writ.
 - Levy on:
 - Specific property as designated and described in the writ, or
 - On non-exempt property in a quantity to cover the amount stated in the writ.
- Retain the property until final judgment, unless property is replevied, sold, or claimed by a third party after a trial to right of property.

TRCP Rules 17, 126, 600, 606, & CPRC §§61.042, 61.043

Service Duties & Requirements: Writ of Attachment for Property

- The officer must:
 - Keep property safe and in the same condition as when it was seized.
 - To attach real property, the officer must immediately file a copy of the writ and the applicable part of the return with the county clerk where the property is located.
 - Notify the court immediately if seized property is perishable so it can be sold.
 - Serve the defendant.
 - If property is replevied, deliver the replevy bond to the clerk of the court.
 - Keep copies of all documents in accordance with established record retention schedules.

TRCP Rules 17, 126, 600, 606, & CPRC §§ 61.042, 61.043

Keeping Property Safe

- Document seized property by video or photo to prove the property was kept in the same condition as when it was seized.
 - Video/photo the item(s) when are were taken and when they re returned.
 - If visual documentation isn't possible, write a description of the property so you at least have some type of documentation.
- This protects:
 - The property.
 - All parties.
 - Especially **YOU!**

Writ of Attachment – Exempt Property

- A writ of attachment for property can only be for property that is subject to levy under a writ of execution:
 - Must be non-exempt property.
 - *Please see the TJCTC Exempt Property Benchcard included in your materials.*
- However, if *specific property* is identified in the writ to be levied on, then it doesn't matter if the property is exempt or non-exempt.

Service Duties & Requirements: Writ of Attachment **FOR** a Person

- The officer must:
 - Enter the writ into their record keeping system.
 - Note the date and time received on it.
 - Proceed without delay.
 - Execute as directed in the writ.
 - Detain the person identified in the writ.
 - Take the person immediately before the judge stated in the writ.
 - Serve the person a copy of the writ.
 - Keep copies of all documents in accordance with established record retention schedules.

TRCP Rules 17, 126, 692, & CCP Art. 24.11

Return Duties & Requirements of Officer: Writs of Attachment

- Complete a return of service.
 - The return can be attached to the writ **OR** be a separate document.
- Sign the return and file it with the clerk of the court.
 - Return may be made 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 Rules 15, 16, 107, & 501.3

Requirements of the Return: Writ of attachment

- Returns should Include:
 - Case name and number.
 - Court name and county where case was filed.
 - Note the _____ & _____.
 - Person or entity served.
 - Address where executed.

TRCP Rules 15, 16, 107, & 501.3

Requirements of the Return: Writ of Attachment Continued ...

- Returns should include:
 - Date and time executed.
 - Signature of the _____.
- Any other information required by rule or law.
- Any additional information specific to the execution that should be noted in the file.

TRCP Rules 15, 16, 107, & 501.3

Additional Return Requirements: Writ of Attachment for Property

- Detailed, specific property description.
- Date & time the property was attached.
- State whether the officer still has possession of the property, and if not, how the property was disposed of.
- If the property was replevied, state when it was released, to whom, and the condition of the property when it was replevied.
 - If replevy occurs after the original return is filed, file an amended return.
- The return is to be filed by 10:00 AM on the Monday after the expiration of 15 days from the date of issuance.

TRCP Rule 606

Writs of Re-entry



What is a Writ of Re-entry?

- It is a writ that allows a **residential** or **commercial** tenant to:
 - Immediately, but temporarily,
 - Regain possession of leased premises,
 - After an unlawful lockout by the landlord,
 - Pending the outcome of a final hearing.

Property Code §§ 92.009 & 93.003

Issuance of the Writ of Re-entry

- Issued by the justice of the peace in the precinct where the property is located.

Requirements: Writ of Re-entry

- 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.

TRCP Rule 15, Property Code §§ 92.009 & 93.003

Requirements: Writ of Re-entry Continued...

- Includes the following:
 - Date of issuance.
 - Address of the lockout.
 - Hearing date range.
 - County and court name.
 - Signature of the clerk of the court or the judge.
 - Court's seal.

TRCP Rule 15, Property Code §§ 92.009 & 93.003

Dates & Times for Service: Writ of Re-entry

- A writ of re-entry may be executed Monday through Saturday, any time of the day.

TRCP Rule 6

Expiration for Service: Writ of Re-entry

- A writ of re-entry expires on the calculated hearing date, as per directions stated in the writ.

Property Code §§ 92.009 & 93.003

Pop Quiz!

- Writs of sequestration, attachment, re-entry, and restoration **MUST** be served by who?
 - _____
 - _____
 - _____
- These writs may be served anywhere in the state.

TRCP Rules 103 & 501.2(a)

Methods of Service: Writs of Re-entry

- Writs of re-entry are served by personal service.
- The writ may be served on the:
 - Landlord.
 - Landlord's management company.
 - Landlord's on-premises manager.
 - Landlord's rent collector.

Property Code §§ 92.009, & 93.003

Service Duties & Requirements: Writ of Re-entry

- The officer must:
 - Enter the writ into their record keeping system.
 - Note the date and time received.
 - Proceed without delay.
 - Execute as directed in the writ.
 - Place the tenant back in possession of the property.

TRCP Rules 17, 126, & Property Code §§ 92.009, 93.003

Service Duties & Requirements: Writ of Re-entry

- The officer must:
 - Instruct the landlord to release possession to the tenant.
 - Explain the writ clearly to the landlord, emphasizing that the tenant has been placed back into the premises until there is a hearing before the court.
 - Inform the landlord that failure to comply with the writ could result in the landlord being held in contempt with punishment including a fine, confinement in jail, or both.
 - Give the defendant a copy of the writ.
 - Keep copies of all documents in accordance with established record retention schedules.

TRCP Rules 17, 126, & Property Code §§ 92.009, 93.003

Writ of Re-entry: Reasonable Force

- Reasonable force may be used in executing a writ of re-entry.
 - If force is used, make sure to note it on your return or in a report of some sort.
- No black and white definition of “reasonable force.”
 - Based on the specific facts and circumstances of each incident.
- 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.

Writs of Re-entry

- A landlord CANNOT be arrested for failing to comply.
 - Landlord may be held in contempt of court.
 - Note the failure to comply on the return.
- A writ of possession supersedes a writ of re-entry and/or a writ of restoration.
 - Notate on the return for the writ of re-entry or writ of restoration that the writ was not executed due to a writ of possession issuing.
 - Notate on the return for the writ of possession that a writ of re-entry or writ of restoration had been issued by the court but was not executed due to the writ of possession.

TRCP 509.9, Property Code §§ 92.009 & 93.003

Return Duties & Requirements: Writ of Re-entry

- Once the writ is executed, the officer must complete a return of service.
 - Return can be attached **OR** be a separate document.
- The officer must sign the return and file it with the clerk of the court.
 - Return may be filed 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 Rules 15, 16, 107, & 501.3

Requirements of the Return: Writ of Re-entry

- The return must include:
 - Case name and _____.
 - Name and county of the court where the case is filed.
 - Date and time the writ was received.
 - Name of the person served.
 - _____.

TRCP Rules 15, 16, 107, & 501.3

Requirements of the Return Continued ...

- The return must Include:
 - Date and time served.
 - Serving officer's name.
 - Any other information required by rule or law.
 - Any additional information specific to the execution that should be noted in the file.

TRCP Rules 15, 16, 107, & 501.3

Additional Return Requirements: Writ of Re-entry

- Give a detailed description of how the tenant was placed back in possession of the property.

Property Code §§ 92.009 & 93.003

Writs of Restoration



What is a Writ of Restoration?

- It is a writ that provides a residential tenant with:
 - Immediate, but temporary,
 - Restoration of disconnected utility services,
 - That were unlawfully disconnected by a landlord,
 - Pending the outcome of a final hearing.

Property Code § 92.0091

Issuance of the Writ of Restoration

- Issued by the justice of the peace in the precinct where the property is located.

Requirements: Writ of Restoration

- 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 case name and cause number.
- Identifies all parties in the case.
- Includes the date of issuance.

TRCP Rule 15 & Property Code § 92.0091

Requirements: Writ of Restoration Continued...

- Includes the address of the premises where utility services have been disconnected.
- Describes the utility services to be restored.
- Includes the hearing date.
- Identifies which court the citation is returnable to.
- Is signed by the judge or clerk of the court.
- Contains the court's seal.

TRCP Rule 15 & Property Code § 92.0091

Sample Form
Available on
www.tjctc.org

**New forms
are coming
early 2021!!**

CAUSE NO. _____

APPLICANT

§ IN THE JUSTICE COURT
§
§ PRECINCT NO. _____
§
§ _____ COUNTY, TEXAS

WRIT OF RESTORATION

WHEREAS, the above-named Applicant has made his/her sworn Application for a Writ of Restoration regarding the following location ("Residence"): _____; and testified under oath as to the facts of the utility disconnection, and;

WHEREAS, the Court finds that: _____ has unlawfully disconnected the Applicant's utilities in violation of Property Code Sec. 92.008.

THEREFORE, IT IS ORDERED that the above-named Applicant is entitled to immediate reconnection of the utilities at the above-named Residence.

IT IS FURTHER ORDERED that a Constable or Sheriff or their deputy serve this writ on _____ who may be found at _____, or who may be served on their agent, management company, on-premises manager, or rent collector _____, who may be found at _____.

NOTICE OF RIGHT TO A HEARING: The individual who is alleged to have disconnected the Applicant's utilities is entitled to a hearing on this matter. To request a hearing, a written request must be filed with the above court within eight days of the service of this order. The hearing will be held one to seven days after the court receives the request. Failure to request a hearing may result in a judgment against the individual disconnecting the utilities for the Applicant's costs in obtaining this order.

ISSUED AND SIGNED this ____ day of _____, 20__.

JUSTICE OF THE PEACE, PRECINCT _____

COUNTY, TX

Dates & Times for Service: Writ of Restoration

- A writ of restoration may be executed Monday through Saturday, any time of the day.

TRCP Rule 6

Expiration for Service: Writ of Restoration

- A writ of restoration expires on the hearing date stated in the writ.

Property Code § 92.0091

Methods of Service: Writs of Re-entry & Restoration

- Writs of re-entry and restoration are served by personal service.
- The writs may be served on the:
 - Landlord.
 - Landlord's management company.
 - Landlord's on-premises manager.
 - Landlord's rent collector.

Property Code §§ 92.009, 92.0091, & 93.003

Writs of Re-entry

- A landlord CANNOT be arrested for failing to comply with the writ.
 - Landlord may be held in contempt of court.
 - Note any failure to comply on the return.
- A writ of possession supersedes a writ of re-entry and/or a writ of restoration.
 - Note in the return for the writ of re-entry or writ of restoration that the writ was not executed due to a writ of possession issuing.
 - Note in the return for the writ of possession that a writ of re-entry or writ of restoration had been issued by the court but was not executed due to the writ of possession.

Property Code §§ 92.009, 92.091

Service Duties & Requirements: Writ of Restoration

- The officer must:
 - Enter the writ into their record keeping system.
 - Note the date and time received.
 - Proceed without delay.
 - Execute as directed in the writ.
 - Instruct the landlord to resume the tenant's utility services.
 - Inform the landlord that failure to comply with the writ could result in the landlord being held in contempt with punishment including a fine, confinement in jail, or both.
 - Serve the defendant their copy of the writ.
 - Keep copies of all documents in accordance with established record retention schedules.

TRCP Rules 17, 126, & Property Code § 92.0091

Return Duties & Requirements: Writ of Restoration

- The officer must complete a return of service.
 - The return can be attached to the writ OR be a separate document.
- Sign the return and file it with the court clerk.
 - Return may be filed 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 Rules 15, 16, 107, & 501.3

Requirements of the Return: Writ of Restoration

- The return must include:
 - Case name and _____.
 - Name and _____.
 - Date and time of service.
 - Name of person served.
 - Address of service.

TRCP Rules 15, 16, 107, & 501.3

Requirements of the Return: Writ of Restoration Continued ...

- The return must include:
- Name of the serving officer(s).
- Any other information required by rule or law.
- Any additional information specific to the execution that should be noted in the file.

TRCP Rules 15, 16, 107, & 501.3

Writ of retrieval



What is a Writ of retrieval?

- A writ authorizing entry and retrieval of necessary personal property for a person or their dependent, because the current occupant is denying the person entry to their current or former residence.

Property Code § 24A.002



Who issues a Writ of Retrieval?

- **A justice of the peace.**

Property Code § 24A.002

Additional Requirements: writ of retrieval

The Court must find the following, and state in the writ:

- The applicant has been unable to enter due to the current occupant not allowing access to retrieve the applicant's (or dependent's) personal property ;
- The applicant is not the subject of a current protective order or is not otherwise prohibited from entering the residence;
- There is a risk of personal harm to the applicant or dependent if the items aren't received soon; and
- Applicant is currently or was formerly authorized to occupy the residence.

Property Code §§ 24A.002, 24A.0021

Additional Requirements: writ of retrieval

Continued...

- State that the current occupant received notice of the application and was provided an opportunity to appear and contest the application.
 - *The writ can be issued without providing notice if the judge makes family violence findings.*
- Authorizes the applicant to enter the residence, accompanied by a peace officer, and retrieve ONLY the types of property listed in the application.
- Contain the list of property to be retrieved.

Property Code §§ 24A.002, 24A.0021

Service & Return: Writ of Retrieval

- The writ is served on the occupant of the residence.
 - If the occupant is present – serve them a copy of the writ.
- The officer must accompany and assist the applicant in making authorized entry and retrieving the items of personal property listed in the writ.
- Create and inventory of the property removed.
 - Make a copy for the applicant, the current occupant, and the writ return.
 - If the current occupant is not present, leave the copy in a conspicuous place.

Property Code §§ 24A.002-24A.005

Writ of Retrieval: Reasonable Force

- Reasonable force may be used in executing a writ of re-entry.
 - If used, make sure to note it in your return or in a report of some sort.
- No black and white definition of reasonable force.
 - Based on the specific facts and circumstances of each incident.
- 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.

Class B Misdemeanor

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

(50070001 INTERFERE W/PERSONAL PROPERTY RETREIVAL)

Property Code § 24A.005.

Capias



What is a Capias?

- A Writ issued after commitment or bail and before trial, commanding any peace officer to arrest a person accused of an offense and take them to that court immediately, or on a day stated in the writ.
- The term sometimes gets used interchangeably with “arrest warrant.”

Additional requirements: Capias

- “State of Texas”
- Directed to ANY peace officer.
- Name the person whose arrest is ordered, or if unknown, describe him/her.
- Specify the penal offense the defendant is charged with.
- Name the court to which it is returnable; and
- Dated and signed by issuing authority.

CCP Art. 23.02

Issuance & service: Capias

- Service is allowed on Sundays!
- The capias does not expire unless recalled by the issuing court.

- Who can issue??
 - District Court
 - County Court
 - Justice Court

CCP Arts. 23.03, 23.04, FC § 157.066

Additional Service Requirements: Capias

- Arrest Defendant.
- Take defendant immediately before the court that issued the capias.
- If the judge that issued the capias is unavailable or the court date stated in the capias is on a date the defendant is arrested, place the defendant in county jail.

CCP Art. 23.01



Capias

- Does this remind you of any other writs that we have talked about??

Distress Warrant



What is a distress warrant?

- A writ authorizing seizure of a commercial or agricultural (non-residential) tenant's personal property because the tenant owes back rent.

Requirements: Distress Warrant

- Directed to the sheriff or any constable within the State of Texas.
- Contains findings of fact to support that grounds exist for the writ.
- Specify the maximum value of the property that may be seized.
- Specify the plaintiff's bond amount.
- Command officer to attach and hold property to be kept safe and preserved, subject to further court order unless replevied.
- Advise the defendant of their right to replevy.
- State the amount of the replevy bond.
- Accompanied by a citation to be served upon defendant.

TRCP Rules 610, 612 619

Additional Requirements: Distress Warrant

- On the defendant's copy, the following statement in 10 point type:

“You are hereby notified that certain properties alleged to be owned by you have been seized. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WARRANT.”

TRCP Rule 613

SERVICE: DISTRESS WARRANT

- Any time or day. Service is allowed on Sundays.
- The warrant expires on the hearing date. * Time sensitive.
- Defendant shall be served as soon as practicable following the levy.
- What are the additional methods of service?

TRCP 6, 613

Additional Service Duties: Distress Warrant

- Levy on:
 - Specific property if designated and described in the writ, or
 - Non-exempt property in a quantity to cover the amount stated in the writ.
- Retain possession of the property until final judgment unless the property is replevied, sold, or claimed by a third party after trial.
- Keep property safe and in same condition as seized.
 - DOCUMENT!!!!
- Notify the court immediately if the property is perishable.
- To attach on real property, the officer must immediately file a copy of the writ and the applicable part of the return with the county clerk where the property is located.

TRCP 612, Property Code §§ 54.001-54.005

Additional Service Duties: Distress Warrant

- If the property is replevied, deliver the replevy bond to the clerk of the court having jurisdiction.
- Serve defendant the citation that is issued with the warrant, requiring the defendant to answer before the court that has jurisdiction of the case.

TRCP Rule 619

Return Duties: Distress Warrant

- Officer's return is filed with the court that has jurisdiction of the lien foreclosure case, even though the writ was issued by the justice court.
- Describe the attached property with sufficient certainty to identify it.
- State where the property was attached.
- State whether the officer still has possession of the property and if not, how the property was disposed of.
- If property was replevied, state when it was released, to whom, and the condition of property when it was replevied.
 - IF replevy occurs after the original return, file an amended return.

TRCP Rule 610

Records & Fees



Record Retention Schedules

- Records must be retained and may be destroyed pursuant to established 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/slr/recordspubs/localretention
 - Recordkeeping Deskbook

Fees

- The initial service fee may cover 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 each type of writ, how much field time is covered by that fee, and the additional fee that can be charged per hour vary by county. Fees are set in each county's Fee Schedule.
- 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:
 - <http://www.tjctc-resources.org/docs/2017-SCFeeManual.pdf>.

Fee Collection

- The officer is **NOT** entitled to demand their service fee in advance of serving the process for a case filed in their county.
 - The officer's fee is to be taxed and collected as other costs in the case.
- **EXCEPTION**: 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 Rule 126

Liability



Failure to Execute & Return

- If a constable fails or refuses to execute and return a process that is lawfully directed and delivered to them, 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

Officer Liability

- Liability for an officer involved in the execution of writs is covered in Chapters 7, 34, and 35 of the Civil Practice and Remedies Code.
- Liability will be discussed in depth in other classes.

Practice

Question 1

Mary loses her job and isn't able to pay rent for the month of July. Rent is due by July 3rd. On July 5th, Mary's landlord disconnects her water and electricity. Mary files a suit in justice court. What type of writ does she need?

- A. Writ of sequestration
- B. Writ of attachment
- C. Writ of re-entry
- D. Writ of restoration

Question 2

When does a writ of attachment for property expire for purposes of service and return?

- A. On the 15th day after issuance of the writ at 8:00 AM.
- B. At 10:00 AM on the Monday following the expiration of 15 days from the date of issuance.
- C. On the 20th day after issuance of the writ at 8:00 AM.
- D. At 10:00 AM on the Monday following the expiration of 20 days from the date of issuance.

Question 3

Under a writ of _____, if property is sold, the officer must return the order of sale to the court within 5 days.

- A. Writ of sequestration
- B. Writ of attachment
- C. Writ of re-entry
- D. Writ of restoration

Question 4

What entity is responsible for setting fees for serving each type of writ, how much field time is covered by that fee, and the additional fee that can be charged per hour?

- A. The administrative judge or judges of each county.
- B. The Texas Constitution.
- C. The commissioners court of each county.
- D. The Justices of the Peace and Constables Association.

Question 5

Which of the following does **NOT** need to be included in the officer's return?

- A. Cause number.
- B. Name of the person served a copy of the writ.
- C. Name(s) of the attorney(s) who represent the parties.
- D. Date and time the writ was executed.

Question 6

Billy has a writ of re-entry. You make contact with Billy's Landlord to schedule a day to return possession of the rental house to Billy. The landlord tells you he doesn't care what the court says, Billy isn't getting possession of the house. What do you do?

- A. Tell Billy he better start looking for a new place to live.
- B. Break down the door and let Billy back into the house.
- C. Arrest the landlord for contempt of court.
- D. Document what the landlord told you and return the writ unexecuted.

Question 7

Regarding writs of re-entry and restoration, who is a proper person to be served?

- A. Landlord
- B. Landlord's management company.
- C. Landlord's on-premises manager.
- D. Landlord's rent collector
- E. All of the above.

Question 8

You receive a writ of sequestration for a dog. When you execute the writ, the defendant refuses to give you the dog. Can you make entry into the home and take the dog?

- A. Yes.
- B. No.
- C. Depends on the wording in the writ.

Question 9

On Friday, you receive a writ of attachment for Otis Smith who was supposed to be a witness in a criminal trial but he refused to show up. The writ directs you to seize Otis and take him to court on Monday at 8:00 AM. On Saturday, you see Otis Smith at the grocery store. What do you do?

- A. Detain Otis on Saturday, place him in jail, and take him to court on Monday.
- B. Do nothing on Saturday. On Monday you find Otis and take him to court.
- C. Walk up to Otis in the grocery store and tell him that if he isn't in court on Monday by 8:00 AM you're going to come arrest him and throw him in jail.

Question 10

A writ of sequestration is granted after a final judgment has been entered in a case and allows for the permanent seizure of the defendant's property.

- A. True
- B. False

Questions?