

# Introduction to non-eviction landlord-tenant actions

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Brazoria County, Precinct 3

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## Topics

- Writ of Re-entry, Writ of Restoration, Writ of Retrieval, 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

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## Resources

- [www.txcourts.gov](http://www.txcourts.gov)
  - Texas Rules of Civil Procedure (TRCP)
- [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
  - All statutes other than the Rules of Civil Procedure
- TJCTC website ([www.tjctc.org](http://www.tjctc.org))
  - Texas Civil Process Field Guide
  - Deskbooks
  - Legal Question Board
  - Forms
  - Newsletters and other publications
  - Webinar archive

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Get your Civil Process Guide out!

- It can be found at:  
<https://www.tjctc.org/tjctc-resources/Deskbooks.html>

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

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

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What do all of these writs have in common?

- Writs of 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 and distress warrants may be served by any peace officer.

*TRCP Rules 103 & 501.2(a)*

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## More in Common

- **Date and time of service**

- Monday – Saturday (any time)
- Sunday service **only** for 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*

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## Expiration of Service

*TRCP Rules 4-6, 500.5, 621*

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## 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*

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## Common Return of Service Requirements Cont.

### • 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*

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Common Return of Service Requirements Cont.

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

*TRCP Rules 16, 107, & 501.3*

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Now, Details on each type  
of process

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# Writs of Re-entry

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## 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*

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## Issuance of the Writ of Re-entry

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

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## 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*

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## Requirements: Writ of Re-entry Cont.

- Includes the following:
  - Date of issuance.
  - Address of the lockout.
  - The right of landlord to request a hearing within 7 days of service, which then must be held within 7 days of request.
  - 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*

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Sample Form  
Available on  
[www.tjctc.org](http://www.tjctc.org)

**New forms  
posted  
during  
2021!!**

CAUSE NO. \_\_\_\_\_  
 APPLICANT \_\_\_\_\_  
 IN THE JUSTICE COURT  
 PRECINCT NO. \_\_\_\_\_  
 COUNTY, TEXAS

**WRIT OF RE-ENTRY**

WHEREAS, the above-named Applicant has made his/her sworn Application for a Writ of Re-Entry regarding the following location ("premises") \_\_\_\_\_ and recited under oath as to the facts of the lockout, and

WHEREAS, the Court finds that \_\_\_\_\_ has unlawfully denied the Applicant access to the Premises in violation of Property Code Sec. 92.003,

**THEREFORE, IT IS ORDERED** that the above-named Applicant is entitled to immediate possession of the above-named Premises.

**IT IS FURTHER ORDERED** that a Constable or Sheriff or their deputy serve this writ on \_\_\_\_\_ who may be found at \_\_\_\_\_ alternatively it may be served on their agent, management company, co-processor, manager, or rent collector who may be found at \_\_\_\_\_

**NOTICE OF RIGHT TO A HEARING:** The individual who is alleged to have excluded the Applicant 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 excluding the Applicant for the Applicant's costs in obtaining this order.

**ISSUED AND SIGNED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
 COUNTY, TX

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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*

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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*

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## Pop Quiz! Answer in Chat!

- Writs of re-entry and restoration **must** be served by who?

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- These writs may be served anywhere in the state, true or false?

*TRCP Rules 103 & 501.2(a)*

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## 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*

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## Service Duties & Requirements: Writs 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*

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## Service Duties & Requirements Cont.

- 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.

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- **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.

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- 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.
    - Notate on the return for the writ of re-entry 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 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*

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### 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*

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### Return Duties & Requirements Cont.: Writ of Re-entry

Fill in the blanks in the chat!

- 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

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### Return Duties & Requirements: Writ of Re-entry

- 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*

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### 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*

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# Writs of Restoration

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## 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*

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## Issuance of the Writ of Restoration

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

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## 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*

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## Requirements Cont.: Writ of Restoration

- Includes the address of the premises where utility services have been disconnected.
- Describes the utility services to be restored.
- Includes the right of landlord to request a hearing within 7 days of service, which then must be held within 7 days of request.
- 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*

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Sample Form  
Available on  
[www.tjctc.org](http://www.tjctc.org)

**New forms  
posted  
during  
2021!!**

CAUSE NO. \_\_\_\_\_  
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 ("premises") \_\_\_\_\_ and installed 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. 92.006.

**THEREFORE, IT IS ORDERED** that the above-named Applicant is entitled to immediate restoration of the utilities at the above-named location.

**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 at their agent, management company, on-premises manager, or mail 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 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

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### 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*

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### Expiration for Service: Writ of Restoration

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

*Property Code § 92.0091*

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## Methods of Service: Writs of Restoration

- Writs of 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*

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- 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 restoration.
  - Notate on the return for the 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 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*

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## Service Duties & Requirements

- The officer must:
  - Enter the writ into their record keeping system.
  - Note the date and time received.
  - Proceed without delay to 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.

*Property Code § 92.0091*

*TRCP Rules 17, 126, &*

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## Return Duties & Requirements: Writ of Restoration

- 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*

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## Return Duties & Requirements Cont.: Writ of Restoration

Fill in the blanks in the chat!

- The return must Include:
- Case name and cause number.
- \_\_\_\_\_ and \_\_\_\_\_ of the court where the case is filed.
- \_\_\_\_\_ and \_\_\_\_\_ the writ was received.
- Name of the person served.
- Address of service.
- TRCP Rules 15, 16, 107, & 501.3

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## Return Duties & Requirements: Writ of Restoration

- 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*

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# Writ of retrieval

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## 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*

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### Who issues a Writ of Retrieval?

- A justice of the peace, except that if property subject to a divorce or annulment suit is sought, only the judge presiding over the divorce/annulment may issue the writ.

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### 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*

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### Requirements: Writ of Retrieval Cont.

- 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 to the occupant 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*

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### 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*

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- **Reasonable force may be used in executing a writ of retrieval.**
  - 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.

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### Writ of Retrieval: Class B Misdemeanor

- A person who interferes with the retrieval of personal property pursuant to a court order commits a Class B Misdemeanor.
- This could be the Applicant, if they insist on retrieving items not listed in the writ.

(50070001 INTERFERE W/PERSONAL PROPERTY RETREIVAL)

*Property Code § 24A.005.*

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# Distress Warrant

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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.

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## 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.

*TRCP Rules 610, 612 619*

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## Requirements Cont.: Distress Warrant

- Advise the defendant of their right to replevy.
- State the amount of the replevy bond.
- Accompanied by a citation to be served upon defendant.
- 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 Rules 610, 612, 613, 619*

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## Service: Distress Warrant

- Answer in Chat - True or False: 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.
- Answer in Chat - What are the additional methods of service?

*TRCP 6, 613*

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## 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*

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### 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 619*

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### 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*

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## Records & Fees

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## 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/slrn/recordspubs/localretention](http://www.tsl.state.tx.us/slrn/recordspubs/localretention)
  - Recordkeeping and Reporting Deskbook

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## 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.

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## Fees

- 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](http://www.tjctc-resources.org/docs/2017-SCFeeManual.pdf).

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## 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*

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## Liability

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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 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*

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## 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.

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# Practice

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## Question 1

Mary loses her job and isn't able to pay rent for the month of July. Rent is due by July 3<sup>rd</sup>. On July 5<sup>th</sup>, 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

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## Question 2

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.

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## Question 3

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.

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#### Question 4

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.

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#### Question 5

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.

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Questions?