

# Writs From A Clerk's Perspective

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# Resources

[www.tjctc.org](http://www.tjctc.org)

- Deskbooks, Forms, Charts and Checklists
- Recordings, Webinars, and Self-Pace Modules
- Legal Question Board and Legal Calls
- Self-Represented Litigants Packets

[www.txcourts.gov](http://www.txcourts.gov)

- Texas Rules of Civil Procedure (TRCP)

[www.sll.texas.gov/legal-help](http://www.sll.texas.gov/legal-help)

- Property Code and Civil Practice & Remedies Code

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# Types Of Writs

- **Special Writs**
- **Writ of Execution**
- **Writ of Scire Facias (Scary Face)**
- **Writ of Sequestration**
- **Writ of Attachment**
- **Writ of Restoration**
- **Writ of Re-entry**
- **Writ of Retrieval**
- **Writ of Possession**

\*Filing fees for writs can be found in the Fines, Fees, and Costs Deskbook.

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



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# Enforcing Judgment For Personal Property



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## Judgment for Personal Property

- A person may sue someone in justice court to get some item of personal property back (provided it is worth less than \$20,000).
  - For example, someone borrows your lawn mower and refuses to return it.
  - Or an angry ex-girlfriend takes her ex-boyfriend's fancy racing bike.
- A judgment in such a case must order that the plaintiff recover the specific articles of personal property, if they can be found, and if not, then their value as assessed by the judge or jury.

Rule 505.1(e)

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## Special Writ

- When a judgment is for personal property, the court may award a “**Special Writ**” for the seizure and delivery of that property to the plaintiff.

### *Rule 505.2*

- What is a **special writ**?
  - Some courts use a form called “*writ of possession*” – confusing because of eviction cases!
  - Others just use a form called “special writ for seizure and delivery of property.”
  - Still others use a “writ of execution for specific articles.”
  - The title isn’t important as long as the writ directs the constable to do what **Rule 505.2** says.

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## Special Writ Experience?

- How many people have experience with special writs?
- Any specifics?

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# Writ Of Execution

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## What Is Writ Of Execution?

It is an order from the court to a **constable or sheriff** directing them to take property from the judgment debtor (the person who lost) and sell it and give the money to the judgment creditor (the person who won) to satisfy the judgment!

*Rules 505.2 and 621*



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## How Does This Work?

The judgment creditor files an application with the **court** that issued the judgment for a writ of execution.

- Generally, this cannot be requested until 30 days after the judgment.
- There is a \$5 per page writ fee.

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## Next Step?

The writ is returnable to the court in 30, 60, or 90 days as requested by the judgment creditor (plaintiff).

- “Returnable” means that the writ has to be served and a return has to be filed with the court within that period of time.
- Whether it is 30, 60 or 90 days is up to the judgment creditor.
  - Rules 621, 622, 627 and Govt. Code § 101.151(a)(2)(c)

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## Then What?

If the court finds the requirements are met, the court issues the writ.

The **clerk** should attach a copy of the bill of costs (*a list of all the fees and cost the winning party had to pay*).

Now it goes to the **constable's office for them to serve** on the judgment debtor in order to obtain property to satisfy the judgment.

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## Execution Docket

The **clerk** must enter in the docket:

- Time when the writ of execution was issued.
- To whom it was directed and delivered.
- The amount of the debt, damages and costs.
- When the writ is returned, the clerk must note the return in the docket and show the manner in which it was executed.
- Rule 507.3

*For more Information See: Texas Civil Process Field Guide*

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## \*New\* Exempt Property Hearings

- TRCP 679b now provides for a judgment debtor to claim that their seized property is exempt.
- See the Rules & TJCTC website for more information.
- Note: All judgments awarding money will also require new notices about this process and exempt property. (*TJCTC forms are updated!*)

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## How Long Can Judgments Be Enforced?

- A judgment is good for **10 years** after it is issued.
- If the 10-year clock gets down to zero without a writ of execution being issued, the judgment cannot be enforced, and is called a **dormant judgment**.

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## How Long Can Judgments Be Enforced?

When a **writ of execution** is issued, it resets the clock, and the judgment is now good for 10 years from that date.

- The **writ of execution** can be renewed over and over again!

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## How Long Can Judgments Be Enforced?



A dormant judgment can be revived within 2 years of going dormant. The process to revive the dormant judgment is called a **scire facias**.



If the judgment remains dormant for 2 years, it is now **dead** and may not be revived.

**Do not confuse the Writ of Execution with the Abstract of Judgment.**

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# Writ Of Scire Facias

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## Writ of Scire Facias

- A **writ of scire facias**, sometimes called scary faces, is an order by the court for the judgment debtor to come in and show good cause why the judgment should not be revived.
- The court does **not** issue this on its own, only on request by the judgment creditor.

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# Good Cause

“Good cause” **would not** include things like “I can’t afford to pay” or “Wow, this is pretty old!”

The only acceptable reasons to not revive the judgment would be:

- If the **court** determines the judgment was actually dead rather than dormant,
- If the **court** did not have jurisdiction over the judgment, or
- If the judgment debtor provided proof that they had already paid the judgment in full.

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## Judgment Deadline Calculation Exercise 1

A judgment is issued on October 29, 2015.

- If no writ of execution is ever issued, when would it go dormant?
- When would it die?



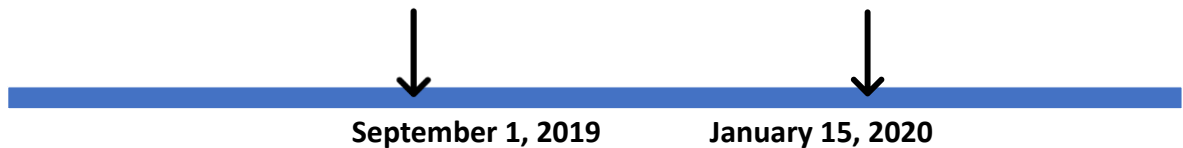
October 29, 2015

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## Judgment Deadline Calculation Exercise 2

A judgment is issued on October 29, 2015.

- Judgment creditor gets a writ of execution on September 1, 2019
- Judgment creditor gets an abstract of judgment on January 15, 2020
- If nothing else happens, when would it go dormant? Die?



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## Writ Of Sequestration

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## Writ of Sequestration

During a pending case for a specific piece of personal property, the plaintiff may ask for a writ of sequestration, which is an order for the **constable or sheriff** to take the property into custody for safekeeping until the judge determines possession.

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## Requirements Of The Writ

- 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 issuance of writ.

*TRCP Rules 15, 696, 699, & 700a*

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## Requirements Of The Writ (Continued)

- Describe the property to be sequestered with such certainty that it may be identified and distinguished from similar property of like kind.
- 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.
- Command sequestered property be kept subject to further court orders.
- Advise the defendant of their right to replevy (statutory notice).
- State the amount of defendant's replevy bond.
- Identify which court the writ is returnable to.
- Signed by court clerk or judge and contains official court seal.

*\*Replevy: An action seeking return of personal property wrongfully taken or held by the opposing party.*

*TRCP Rules 15, 696, 699, & 700aa*

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## 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*

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## Brain Break – Fun Fact

### **The inventor of the Pringles can is now buried in one.**

In 1966, **Fredric Baur** developed the ingenious idea for Procter & Gamble to uniformly stack chips inside a can instead of tossing them in a bag. Baur was so proud of his invention that he wanted to take it to the grave-literally.

His children stopped at Walgreens on the way to the funeral home to buy a can of Pringles. They did have one decision to make, though. "My siblings and I briefly debated what flavor to use, " Baur's eldest son, Larry, told *Time Magazine*. "But I said, look, we need to use the original. Dad was an American classic."



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## Writ Of Attachment

There are two types of  
“Writ Of Attachment”

- 1) for Property
- 2) for Person

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## 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.*

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## What Is A Writ Of Attachment *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*.

*TRCP Rule 692.*

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# Writ Of Attachment For Property

## Sequestration vs. Attachment

Writ of Sequestration is an order to have a **specific** piece of property seized and preserved while a trial is pending related to that piece of property.

Writ of Attachment is an order to have **any** non-exempt property while a trial is pending, and then sold if the defendant doesn't pay the judgment, if and when one is rendered against them.

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## Requirements Of The Writ

- 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.
- *TRCP Rules 15 & 592*

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## Requirements Of The Writ (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*

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## Writ Of Restoration and Writ Of Re-Entry

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## Tenant Has 3 Options if Illegal Disconnection or Lockout Occurs:

**1.) Terminate** the lease (*no need for court involvement, but court could end up having to rule on whether termination was lawful later if landlord sues tenant for breaking the lease*).

**2.) Disconnection:** Seek a **writ of restoration** ordering the landlord to reinstate the utilities (*only applies to residential leases*).

**Lockout:** Seek a **writ of re-entry** ordering the landlord to allow them back into the premises (*residential and commercial*).

**3.) Sue** the landlord for money damages (*can do this in addition to either of the other 2 options*).

PC 92.008(f); 92.0081(h); 92.009; 92.0091; 93.002(g); 93.003

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## Procedure for Writs

- Procedure is exactly the same for both writs.
- Writ of Restoration = PC 92.0091
  - Only available in residential.
- Writ of Re-entry = PC 92.009; 93.003
  - Available for residential and commercial properties.
  - Same procedure for both

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## Complaint & Testimony

- Applicant must file a sworn complaint (with facts) in the **precinct** where the rental premises are located.
- Applicant must orally state the facts under oath to the judge.

PC 92.009(b); 92.0091(b); 93.003(b)

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## Ex Parte Writ

- Judge determines (ex parte – no notice/hearing for landlord) whether they reasonably believe an unlawful disconnection/lockout likely occurred.
  - If no, then the case is over – no appeal of denial.
  - If yes, then writ immediately issues, which must order the landlord to immediately rectify the problem and must tell the landlord of their right to a hearing.

PC 92.009(c); 92.0091(c); 93.003(c)

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## Service on Landlord

- After ex parte writ is issued, it must be served on the landlord or their management company, on-premises manager or rent collector, in the same manner as a writ of possession.

PC 92.009(d); 92.0091(d); 93.003(d)

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## Hearing

- Landlord has 7 days to request a hearing and the hearing must be held 1-7 days after the request.
  - If they don't request a hearing or if judge determines at hearing that writ was properly issued, court costs may be assessed against the landlord in a judgment.
  - If hearing is held and judge determines writ was not properly issued, writ should be dissolved.

PC 92.009(e)-(f); 92.0091(e)-(f); 93.003(e)-(f)

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## Appeal

- Either side may appeal the ruling at the hearing, in the same manner as an eviction appeal.
- Deadline: 5 days

PC 92.009(g); 92.0091(g); 93.003(g)

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## What if the Landlord Fails to Comply?

- If the landlord fails to comply with the writ, tenant may file an affidavit about their failure to comply.
- Upon receiving the affidavit, court must send a show cause notice for a contempt hearing.

PC 92.009(i); 92.0091(i); 93.003(i)

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## At Contempt Hearing

- **If landlord did not comply with writ at first but has now** (*ex: didn't turn utilities back on after being served with the writ but turned them on before the hearing*): landlord may be held in contempt and jailed up to 72 hours in jail and/or fined \$100.
- **If landlord has still not complied with writ at the time of the show cause hearing** (*ex: utilities still have not been turned back on*): landlord may be held in contempt and jailed until they comply.

PC 92.009(i); 92.0091(i); 93.003(i)

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## Non-Compliance Real Life Example

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# Writ Of Retrieval

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## Writ of Retrieval

- When a person is not permitted into their residence or former residence and needs to retrieve belongings for themselves or their dependents.
- They can ask a court to order a **peace officer** to accompany them to retrieve specific items of personal property that are on the list of allowed types of property.

PC 24A.001; 24A.002(a)

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**A Writ of Retrieval may only be used to retrieve certain specific items of personal property listed in the Property Code. The items must fall into one of the following categories:**

- 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.
- 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. or
- Tools, equipment, books, and apparatus used by the applicant in the applicant's trade or profession

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## Issue the Writ or Not?

The writ may be issued (for allowed items) if the application can be filed in justice court, all requirements are met, and the judge finds:

- Applicant has been denied entry by the occupant or there is a family violence danger;
- No PO, EPO, or other order prohibiting contact exists;
- There is sufficient evidence of urgency and potential risk of harm to the applicant or their dependents if the items are not retrieved promptly;
- Applicant is/was authorized to occupy premises according to a lease or other documentary evidence; and
- Notice and opportunity for hearing was provided to the current occupant.

PC Ch. 24A.002(e), 24A.002(b)(1)

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## Application Requirements

- Certify that the current occupant has denied entry to the applicant or poses a clear and present danger of family violence to applicant/dependent;
- Certify no court order prohibiting contact with the current occupant of the residence exists;

PC Ch. 24A.002(b)

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## Application Requirements (Continued)

- Describe with specificity the items to be retrieved (and state that they are all allowed types of property);
- Claim the applicant/dependent will suffer personal harm if the items are not obtained promptly; and
- Include a lease or “other documentary evidence” that shows the applicant is/was authorized to occupy the residence.

PC Ch. 24A.002(b)

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# Bond

- Before a writ may be issued, applicant must file a bond approved by the JP.
  - The bond is an amount of money that the applicant puts up to protect the occupant in case any property is wrongfully included in the writ.
  - The amount should often be very low since it cannot be waived for indigent applications and the value of the items is usually quite low.
- Exception: no bond is required if there is a clear and present danger of family violence (*testimony by applicant can be enough to demonstrate this*)

PC Ch. 24A.002(c)

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# Requirements of Bond

- Have 2 or more good and sufficient non-corporate sureties or 1 corporate surety;
- Be payable to the occupant of the residence;
- Be in “an amount required by the justice” (pick an amount that is reasonable and will protect the occupant); and
- Be conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

PC Ch. 24A.002(c)

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## Notice and Hearing

- “Sufficient notice” **and** “an opportunity to be heard” must be provided to the current occupant before writ may be issued.
  - **Except:** Court may issue ex parte writ (no notice/opportunity to be heard required) if applicant certifies that occupant poses clear & present danger of family violence to applicant/dependent & JP finds immediate and irreparable harm will occur otherwise.
    - *For additional info on ex parte writs of retrieval (including how & when court can recess the hearing and call the occupant to tell them that they can bring the property to court or attend the hearing), see Ch. 9 of the Evictions Deskbook.*

PC Ch. 24A.002(e)(5), .0021

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## Time of Notice and Hearing

- No specific guidance as to time required between service of the notice and holding a hearing.
- TJCTC’s position:
  - **24 hours between notice and hearing** seems reasonable based on the circumstances and purpose of the statute
  - Notice may be served in person or by posting the notice on the front door of the premises.

PC Ch. 24A.002(e)(5)

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## Occupant Complaint

- **Why:** If occupant alleges that applicant took property not belonging to applicant.
- **Deadline:** 10 days after the “date of authorized entry.”
- **Where:** In court that issued writ of retrieval.
- **Hearing:** If complaint filed, court shall “promptly” hold a hearing and rule on ownership of the property.
- **Other options:** Small claims lawsuit or other legal remedies.

PC Ch. 24A.006

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## Summary of a Writ of Retrieval Case

- Person seeking to retrieve property (and who can file in justice court) files an application, pays any fees, and posts a bond (bond waived if danger of family violence).
- Court provides notice to the occupant and holds a hearing (may waive notice and hold ex parte hearing if danger of family violence).
- Court issues a writ of retrieval (or denies issuance).
- Peace officer assists applicant in retrieval of property.
- Peace officer inventories property.
- Occupant may file a complaint and have a hearing if property is wrongfully taken.
- No appeal process.

PC Ch. 24A

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## Brain Break – Fun Fact

### **Supermarket apples can be a year old**

Well Surprise Surprise:

Those fresh apples aren't all that fresh, per say. They're usually picked between August and November, covered in wax, hot-air dried, and sent into cold storage. After six to twelve months, they finally land on your grocery store shelves. But I still love apples!

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## **Writ Of Possession**

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## What Is A Writ Of Possession?

- A writ of possession is an order from the court to a **Constable** ordering them to supervise the move of the tenant and the tenant's possessions off the property, (if necessary), and turn possession of the property back over to the landlord.
- A Constable may use reasonable force to do this.

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## How Does A Landlord Get A Writ Of Possession?

- If the court decides the case in favor of the landlord and signs a judgment for possession, the court must issue a writ of possession if:
  - the landlord requests one; and,
  - pays the fee for having the Constable serve the writ of possession on the tenant.

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## When May The Court Issue A Writ Of Possession?

- The court may not issue a writ of possession until the later of:
  - **6 days** after the judgment for possession was signed; or
  - the **day after** the **deadline** to file for **appeal**.
- An exception to this is when an immediate possession bond was issued; which is covered in the Deskbook Chapter 4B.

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## When May the Court Issue a Writ of Possession?

- The court may issue a writ of possession up to **60 days** after the judgment for possession was signed,
- **Unless** the judge extends this deadline to no more than **90 days** if the court finds there is **good cause** for extending the time.

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## When May the Court Issue A Writ Of Possession?

- For example, suppose after a judgment for possession is signed the landlord is in a traffic accident and not able to get to court within 60 days to ask for a writ of possession; he could ask the court to extend the time to issue a writ of possession for another 30 days.

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## When does The Writ Of Possession Expires?

- A writ of possession cannot be **executed** (meaning used by a **constable** to remove the tenant from the property) more than 90 days after the date the judgment for possession was signed.
  - In other words, the last day the writ of possession could be executed is Day 90; the writ cannot be executed on Day 91.
  - -- Rule 510.8(d)

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- The court **must not** issue a writ of possession if an appeal is perfected.
- -- Rule 510.8(d)

## What If The Tenant Appeals?

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### Unless Tenant Appeals In A Nonpayment Of Rent Case

- If a tenant appeals an eviction suit for nonpayment of rent by filing a Statement of Inability to Afford Payment of Court Costs or by filing an appeal bond, then the court must tell the tenant in writing:
  - that they have to pay one month's rent into the justice court registry;
  - how they have to pay it (cash, cashier's check or money order);
  - the date it has to be paid, which must be within 5 days of the date they filed the Statement of Inability or the appeal bond; and
  - that if they fail to pay by the required date, the court may issue a writ of possession without a hearing.

*Rule 510.9(c)(5)(A); Property Code § 24.0053(a-1)*

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## Notice to Other Parties

- If a party files a Statement of Inability to Afford Payment of Court Costs, the court must also send a notice to all the other parties no later than **the next business day** telling them that a Statement was filed.
- This form is available at [tjctc.org](http://tjctc.org).

*Rule 510.9(d)*

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If Tenant  
Fails To  
Pay Into  
Registry

If the tenant was given the notice but fails to pay the rent into the justice court registry by the date given in the notice, the landlord is entitled (upon request and payment of the applicable fee) **to a writ of possession, which the justice court must issue immediately and without a hearing.**

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## Appeal Still Proceeds

- The court must issue the writ of possession **even though the tenant has perfected an appeal.**\*

*\*If a tenant fails to pay rent into the court's registry, it does not impact whether the appeal is perfected. Instead, it allows the landlord to obtain a writ of possession before the appeal is sent up to county court. Property Code § 24.0053(a-3).*

- So, **the appeal is still sent to the county court**, but the landlord is entitled to a writ of possession due to the tenant not paying their rent to the court.
- This means the tenant may still pursue their appeal, but they do not have rights to possession while their appeal is pending.

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## EXERCISE 1

- 1) Suzy gets a judgment against Tom. She knows Tom has a lake house on Lake Travis. In order to be able to get money from the sale of the lake house to pay the \_\_\_\_\_ judgment, \_\_\_\_\_ Suzy \_\_\_\_\_ needs \_\_\_\_\_ a \_\_\_\_\_.
- 2) Daniel wins a judgment against Jenny for a specific piece of art. In order for that art to be seized and returned to Daniel, he should get a \_\_\_\_\_.
- 3) Madeline files a suit to retrieve her collectable Star Wars memorabilia. The case is currently pending, but she fears her ex-roommate Chip will sell the collection before the case is decided. She should get a \_\_\_\_\_.

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## Exercises and Scenarios For Your Table

### Instructions for Scenario:

- Talk to the people at your table or near you
- Prepare **one good response and one bad response for exercises and scenarios**
- Formulate answers
- Nominate table spokesperson to share answers

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## Scenario 1

- What should a clerk do if a writ has been issued but not executed within the time limit?

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## Scenario 2



What if the tenant appeals by posting a cash deposit (instead of by filing a Statement of Inability or appeal bond)?

What does the court need to do next?

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## Brain Break – Fun Fact

### **It's impossible to hum while holding your nose**

It's true, I tried!!!

Normally, when you hum, the air is able to escape through your nose to create the sound, and of course, it can't do that when you're holding it shut. This is one of the weird facts you can test out for yourself. Go ahead, try it.

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# Questions?

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