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# TEXAS CIVIL PROCESS FIELD GUIDE

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2018 Edition

For  
Constables, Sheriffs, and Court Personnel

Presented by:  
Texas Justice Court Training Center  
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Texas State University

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Address inquiries to:  
Permissions  
Texas Justice Court Training Center  
1701 Directors Blvd. Suite 530  
Austin, TX, 78744

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# PART I: CIVIL PROCESS ANYONE CAN SERVE

- ★ **The writs and process discussed in this section are papers anyone can serve.**
  
- ★ **Items common to civil process that anyone can serve:**
  - Items listed on the pages that describe each individual process are in addition to the information described below and specific to that process.
- 1) **Requirements of Writs & Process:** [TRCP Rules 15, 99, 501.1(b)]
  - Styled “The State of Texas.”
  - Identify the person to whom process is directed.
  - Include the name and county of the court where the case is filed.
  - Include the cause number.
  - Identify all parties in the case.
  - Include the date of issuance of the writ or process.
  - Identify which court the writ or process is returnable to.
  - Signed by the clerk or judge.
  - Contain the court’s seal.
- 2) **Date & Time for Service:** [TRCP Rules 4-6, 500.5, 501.2(d)]
  - May be served Monday through Saturday, any time of day.
  - Computing time for service:
    - Exclude the day the process is issued.
    - Counting Saturdays, Sundays, and legal holidays:
      - *Justice court:* count every day, including Saturdays, Sundays, and legal holidays.
      - *District or county court:* If the time period to serve is 5 days or less, don’t include Saturdays, Sundays or legal holidays.
    - If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day.
  - The court has discretion to extend the time period for service.
- 3) **Who may Serve:** [TRCP Rules 103, 501.2(a)]
  - May be served by:
    - Any sheriff, constable, or their deputies;
    - Any person authorized by law or by court order who is 18 years old or older; or
    - Any process server certified under order of the Supreme Court.
  - No person who is a party to, or interested in the outcome of a suit may serve process in that suit.
  - May be served anywhere in the State.
- 4) **Method of Service:**
  - Personal service on the person identified in the process.
- 5) **Expiration for Service:** [TRCP Rule 105]
  - Unless specifically indicated, process does not expire for purposes of serving.
  - Service of process should be done as soon as possible, without delay.

**6) Service Duties/Requirements of Officer:** [TRCP Rules 17, 126]

- Enter the process or writ into the record keeping system.
- Write/stamp on the process the date and time when the officer received it.
- Serve on the person identified to receive service of process.
- Proceed without delay.
- Attempt service at all addresses provided.
  - Number of attempts required varies by agency but multiple attempts at different times of the day should be made.
- Keep copies of all documents in accordance with established record retention schedules.
- Fee Collection:
  - The officer is not entitled to demand his fee for service in advance of serving the process. His fee is to be taxed and collected as other costs in the case.
  - If an officer is serving process for a case pending in another county, the officer may require payment before serving, unless a Statement of Inability to Afford Payment of Court Costs has been filed.

**7) Return Duties/Requirements of Officer:** [TRCP Rules 15, 16, 107, 501.3]

- Complete a return of service that can, but does not have to be, attached to the process.
- Return of service must include:
  - Cause number.
  - Case name.
  - Name and county of the court where the case is filed.
  - Date and time the process was received for service.
  - The name of the person or entity served.
  - The address served.
  - The date(s) and time(s) of service and/or attempted service.
  - Manner of delivery of service and/or attempted service.
  - Description of what was served.
  - Name of the person(s) who served or attempted service.
  - If the person serving is a process server, his or her identification number and expiration date of his or her certification.
  - Any other information required by rule or law
  - Any additional information specific to the service that should be noted in the file.
  - When service is not successful, the return must show the diligence used by the officer in trying to serve, the reason service was not successful, and where the defendant can be found if known.
- Sign the return.
  - Signature must be sworn to and notarized if signed by someone who is not a constable, sheriff, their deputies, or the court clerk.
- File the return of service with the clerk.
  - Return may be 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.

# Writ of Certiorari

## **Definition:**

- A writ issued by an appellate court directing a lower court to deliver the record(s) in a case for review.
- Issued after a final judgment has been rendered and the losing party is claiming the trial court didn't have jurisdiction to hear the case, or the judgment caused an injustice to the losing party that was not caused by the losing party's negligence.

## **Issued By:** [CPRC 51.002 & 51.011]

- Supreme court.
- Appellate court.
- District court.
- County court.

## **Additional Requirements of the Writ:** [TRCP Rule 506.4(e)]

- Command the trial court to immediately make and certify copies of all records in the case.
- Command the trial court to immediately send all transcripts and records of the case to the court issuing the writ.

## **Comments:** [TRCP Rule 506.4(f).]

- The officer does not take any records from the lower court to the higher court, just delivers the writ.
- The officer serving the writ may also be asked to serve the citation on the adversely affected party.

Supreme Court of Texas

\_\_\_\_\_(Petitioner)

v.

\_\_\_\_\_(Respondent)

On Petition for a Writ of Certiorari  
To the Supreme Court of Texas

No. \_\_\_\_\_. Decided \_\_\_\_\_

The petition for writ of certiorari is granted.

PER CURIAM.

I.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

II.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

III.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

CONCLUSION

The petition for writ of certiorari is granted, the judgment of the 5<sup>th</sup> Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*



# Citations

## Definition:

- Official process by which a defendant is notified he or she is being sued.
- The citation provides notice to the defendant of the opportunity to answer, appear, and defend the suit.

## Issued By:

- District court.
- County court.
- Justice court.

## Additional Requirements of the Citation: [TRCP Rules 99, 501.1(b),(c)]

- Include the date the petition was filed.
- Include the name and address of the plaintiff's attorney, or address of the plaintiff.
- Include how long the defendant has to file a written answer with the clerk who issued the citation.
  - District or county court: answer must be filed on or before Monday at 10:00 am, after the expiration of 20 days from the date of service.
  - Justice court: answer must be filed by the end of the 14<sup>th</sup> day after the date of service. If that day is a Saturday, Sunday, or legal holiday then by the end of the next business day.
- Include the address of the clerk.
- Inform the defendant that a default judgment for the relief requested in the petition may be entered against the defendant if the defendant fails to file an answer.
- Include the notice:
  - *District or county court*: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."
  - *Justice court*: "You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday, or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday, or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

**Additional Dates & Times for Service:** [TRCP Rules 6, 501.2(d)]

- A citation cannot be served on a Sunday except in attachment, garnishment, sequestration, or distress proceedings.
- Service by publication: a citation published on Sunday is valid.

**Additional People Who May Serve:** [TRCP Rules 103 & 501.2(a)(3)]

- Clerk of the court if the citation is served by publication, registered mail, or certified mail.

**Additional Methods of Service:** [TRCP Rules 106, 109, 109a, 116, 119, 501.2]

- *Primary Method:*
  - Personal service on the defendant (preferred method): give defendant a copy of the citation and petition.
  - Mailing, by registered or certified mail with return receipt requested, a copy of the citation and petition.
- *Alternative/Substituted service:*
  - Must be requested from and approved by the court after attempts to serve by personal service or mail are unsuccessful.
    - Plaintiff or anyone authorized to serve process can request alternative/substituted service.
  - Person requesting alternate service must submit a sworn affidavit explaining the attempts made to serve by way of personal service or mail, how they were not successful, and provide the location of defendant's usual place of business, usual place of residence, or other place where the defendant can probably be found.
  - If alternate service is authorized, service is by:
    - Mailing a copy of the citation and petition by first class mail to defendant's address, and leaving a copy of the citation and petition with any person over the age of 16 at the location(s) specified in the affidavit, or
    - Mailing a copy of the citation and petition by first class mail to defendant's address, and by serving a copy in any manner the court determines will be reasonably effective in giving defendant notice of the suit.
- *Service by Publication:*
  - Allowed when plaintiff or plaintiff's attorney makes a sworn statement to the judge that defendant's address is unknown, defendant is transient and can't be located after diligent efforts, or defendant is absent from or a nonresident of Texas, and personal service of the defendant in his or her state of residence has been unsuccessful.
  - If allowed, the citation is published:
    - Once a week for 4 consecutive weeks.
    - With the first publication done at least 28 days before the return day of the citation.
    - If the suit **does not** involve title to land or partition of real estate, publication is in:
      - ❖ The county where the case is pending if that county has a newspaper, or

- ❖ If the county does not have a newspaper, then in an adjoining county that has a newspaper.
- If the suit **does** involve title to land or partition of real estate, publication is in:
  - ❖ The county where the land, or a portion of the land, is located if that county has a newspaper, or
  - ❖ If the county does not have a newspaper, then in an adjoining county that has a newspaper
- Defendant may waive service if done so in writing, signed by the defendant or his attorney, sworn to, and after the case is filed. This waiver, once filed in the case, has the same force and effect as if the citation had been served.

**Expiration for Service:** [TRCP Rule 117a]

- Citations, unless for delinquent *ad valorem* taxes, do not expire.
- Citations for delinquent *ad valorem* taxes expire 90 days from the date of issuance.

**Deliver to:** [TRCP Rules 106, 109a, 501.2(e), CPRC §17.021]

- *Primary Method:* named defendant(s).
- *Alternative/Substituted Service:* any person over the age of 16.
- *If the person being sued is a business:* If the business owner can't be located, isn't a resident of the county, or isn't a resident of Texas, an agent or clerk of the business may be served.
  - CPRC Chapter 17 identifies specific people to serve when a business entity is the defendant.

**Additional Service Duties/Requirements of Officer:** [TRCP Rule 501.2]

- Write date of delivery on the citation before giving to defendant.

**Additional Return Duties/Requirements of Officer:** [TRCP Rules 501.3, 117]

- If citation was served by registered or certified mail, the return must contain the return receipt with the addressee's signature.
- If the citation was served by publication, the return must specify the dates of publication and include a printed copy of the publication.

**Comments:** [TRCP Rules 99, 501.1, 501.2]

- Plaintiff is responsible for obtaining service of the citation and petition on defendant. Plaintiff decides who is going to serve the citation.
- Multiple citations can be issued to the Plaintiff. If done at the district or county court level, copies are made at no additional charge. If done at the justice court level, the plaintiff can be charged a copying cost.
- The plaintiff must pay all fees for service unless they have filed a Statement of Inability to Afford Payment or Court Costs. If that statement is filed, a process server cannot serve the citation, only a sheriff, constable, their deputies, or clerk can.

CAUSE NO. \_\_\_\_\_

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

**CITATION (SMALL CLAIMS OR DEBT CLAIM CASE)**

THE STATE OF TEXAS

TO: \_\_\_\_\_, DEFENDANT in the above-styled and numbered case:

This citation is issued pursuant to a petition filed by the above-named Plaintiff on \_\_\_\_\_, 20\_\_\_. The Plaintiff's attorney's name and address, or the Plaintiff's address, if they have no attorney, are: \_\_\_\_\_  
\_\_\_\_\_. Your answer must be filed with this court, located at \_\_\_\_\_, \_\_\_\_\_, TX \_\_\_\_\_.

**YOU HAVE BEEN SUED. YOU MAY EMPLOY AN ATTORNEY TO HELP YOU IN DEFENDING AGAINST THIS LAWSUIT. BUT YOU ARE NOT REQUIRED TO EMPLOY AN ATTORNEY. YOU OR YOUR ATTORNEY MUST FILE AN ANSWER WITH THE COURT. YOUR ANSWER IS DUE BY THE END OF THE 14<sup>TH</sup> DAY AFTER THE DAY YOU WERE SERVED WITH THESE PAPERS. IF THE 14<sup>TH</sup> DAY IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, YOUR ANSWER IS DUE BY THE END OF THE FIRST DAY FOLLOWING THE 14<sup>TH</sup> DAY THAT IS NOT A SATURDAY, SUNDAY OR LEGAL HOLIDAY. DO NOT IGNORE THESE PAPERS. IF YOU DO NOT FILE AN ANSWER BY THE DUE DATE, A DEFAULT JUDGMENT MAY BE TAKEN AGAINST YOU. FOR FURTHER INFORMATION, CONSULT PART V OF THE TEXAS RULES OF CIVIL PROCEDURE, WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.**

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

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

# Writ of Habeas Corpus

## **Definition:**

- Court order that commands anyone having a person in custody to produce the person at the time and place named in the writ, and to show why that person is being held in custody or under restraint.

## **Issued By:** [CCP Art. 11.05, FC §157.371]

- Court of Criminal Appeals.
- District court.
- County court.

## **Additional Requirements of the Writ:** [CCP Art. 11.02, FC §157.372]

- Addressed to the person having another under restraint or in his custody.
- Include the name of the person being detained.
- Include the date and location of the hearing.
- Instruct that the prisoner be brought before the judge on the hearing date.
- In a case involving the right to possession of a child, the writ may order return of a child.

## **Additional People Who May Serve:** [CCP Art. 11.26]

- Any person competent to testify.

## **Additional Methods of Service:**

- If the person refuses to receive the writ, the officer can read the writ to the person.
- If the person refuses to open the door or hides from the officer serving the writ, the officer can post the writ in a conspicuous part of the house where the person lives or is hiding, or where the prisoner is being confined.

## **Expiration for Service:**

- On the hearing date.

## **Deliver to:** [CCP Art. 11.27]

- Person having command and/or control of the person whose release or return is sought.

## **Additional Return Duties/Requirements of Officer:** [CCP Arts. 11.06, 11.30]

- State whether the person detained is or isn't in the custody of the person the writ was served on.
- State by what authority or for what cause the person detained the prisoner.
- If the prisoner has been transferred to another's custody, state to whom, at what time, and for what reason or by what authority the prisoner was transferred.
- Attach the writ or warrant.

- Where writ is returnable:
  - If the writ is issued prior to indictment, the writ is returnable to any county.
  - If the writ is issued after an indictment, the writ is returnable to the county where the offense was committed.
  - If the writ is issued after a final conviction, the writ is returnable to the Court of Criminal Appeals.
  - The writ is returnable at a time decided upon by the judge and stated in the writ.



**SUPREME COURT OF TEXAS**  
**THE STATE OF TEXAS**

\_\_\_\_\_, 20\_\_\_\_

**TO THE SHERIFF OF \_\_\_\_\_ COUNTY, TEXAS, GREETING:**

**WHEREAS**, \_\_\_\_\_, Relator, has made application to The Honorable Supreme Court of Texas for a Writ of Habeas Corpus, alleging that she is illegally restrained of her liberty by you in said \_\_\_\_\_ County, Texas by virtue of certain process issued out of the \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas and

**WHEREAS**, pursuant to TEX. R. APP. P. 52.8(b)(3), The Honorable Supreme Court of Texas is of the tentative opinion that a serious question concerning the relief requires further consideration, and the Court orders the following:

**CASE NO.** \_\_\_\_\_; **IN RE** \_\_\_\_\_

Relator's petition for writ of habeas corpus filed on \_\_\_\_\_, 20\_\_\_\_, in the above numbered and entitled cause having been duly considered in chambers, it is ordered that Relator be released on bail pending final disposition of this case.

Relator shall be released on her personal bond. She shall not be required to deposit any amount of money to secure her release from your custody.

**NOW THEREFORE**, you are hereby commanded to admit to bail, \_\_\_\_\_, in the terms and conditions of the law, that she will appear and abide by the decision of the Supreme Court of Texas.

THESE ARE THEREFORE TO COMMAND YOU to obey the foregoing and in all things.

HEREIN FAIL NOT under the penalties prescribed by law.

BY ORDER OF THE SUPREME COURT OF THE STATE OF TEXAS

with the Seal thereof annexed at the City of Austin, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, CLERK

SUPREME COURT OF TEXAS

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# Writ of Mandamus

## **Definition:**

- A court order from a higher court to a lower court or to a government official or office commanding that person or entity to perform an act required by law which that entity has refused to do.

**Issued By:** [TRAP Rule 52.1, GC §§22.002, 22.221]

- Supreme court.
- Appellate court.

## **Additional Requirements of the Writ:**

- Command the person to perform an act required by law as set out in the writ.

**Additional Methods of Service:** [TRCP Rule 21a]

- Mail.
- Commercial delivery service.
- Fax.
- Email.
- Any other manner the court directs.

**Deliver to:** [TRCP Rule 21a]

- The person named in the writ.
- The person's duly authorized agent or attorney of record.

IN THE SUPREME COURT OF TEXAS

-----

No. \_\_\_\_\_

-----

IN RE \_\_\_\_\_, REALTORS

-----

On Petition for a Writ of Mandamus

-----

**PER CURIAM**

I.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

II.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

CONCLUSION

The petition for writ of certiorari is granted. \_\_\_\_\_ is directed  
to \_\_\_\_\_

\_\_\_\_\_.

Opinion Delivered: \_\_\_\_\_, 20\_\_\_\_\_.

# Repair & Remedy Citations

## Definition:

- Official process by which a landlord is notified he or she is being sued by a residential tenant to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of the tenant.

## Issued By: [TRCP Rule 509.3]

- Justice court in the precinct where the rental property is located.

## Additional Requirements of the Citation: [TRCP Rule 509.3]

- State the appearance date.
  - The appearance date can't be less than 10 days or more than 21 days after the petition is filed.
  - The appearance date is the trial date.

## Expiration for Service:

- Expires on the hearing date.

## Deliver to: [TRCP Rule 509.4]

- *Primary method:* landlord named in the citation.
- *Secondary method:* if the landlord's name and business address are not included in the petition, or if after making diligent efforts on at least two occasions, the landlord can't be served, the officer can serve:
  - Landlord's management company if the tenant has written notice of that information.
  - Landlord's authorized agent for service which can be the landlord's management company, on-premises manager, or the rent collector serving the property.
- *Alternative Service:*
  - If the primary and secondary methods of service are not successful, the officer must file a sworn statement stating:
    - The officer made diligent efforts to serve the citation on at least two occasions at all available business addresses of the landlord and, to the extent applicable, the landlord's management company, on-premises manager, and rent collector serving the property, and
    - The times, dates, and places of each attempted service.
  - Then the judge can authorize service by:
    - Delivering a copy of the citation and petition to anyone over 16 years old at any business address listed in the petition, or if no one answers the door, putting it through a mail chute or under the door, or by attaching to the main entry door, and
    - Mailing a copy of the citation and petition to the landlord's business address by first class mail within 24 hours.

**Additional Service Duties/Requirements of Officer:** [TRCP Rule 509.4(1)]

- The citation must be delivered at least 6 days before the appearance date.
- If delivery is by alternative service, delivery and mailing must occur at least 6 days before the appearance date.

**Additional Return Duties/Requirements of Officer:** [TRCP Rule 509.4]

- If service is by alternative service, the officer must include in the return the date the petition was delivered and the date of the mailing.
- The return must be filed at least 1 day before the appearance date.

CAUSE NO. \_\_\_\_\_

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

**CITATION (REPAIR & REMEDY CASE)**

THE STATE OF TEXAS

TO: \_\_\_\_\_, DEFENDANT in the above-styled and numbered case:

This citation is issued pursuant to a petition filed by the above-named Plaintiff on \_\_\_\_\_, 20\_\_\_. In addition to repair or remedy of a condition materially affecting the physical health or safety of a tenant, the Plaintiff is seeking the following relief in this case:  reduction of rent;  one month's rent plus \$500;  actual damages;  attorney's fees;  court costs;  other (specify: \_\_\_\_\_).

The Plaintiff's attorney's name and address, or the Plaintiff's address, if they have no attorney, are: \_\_\_\_\_  
\_\_\_\_\_.

You must appear in this court, located at \_\_\_\_\_,  
\_\_\_\_\_, TX \_\_\_\_\_, on the date and time stated below.

**YOU HAVE BEEN SUED FOR FAILING TO REPAIR OR REMEDY A  
CONDITION MATERIALLY AFFECTING THE PHYSICAL HEALTH OR  
SAFETY OF A TENANT. THE ABOVE-NAMED PLAINTIFF SEEKS REPAIR  
OR REMEDY AND THE OTHER RELIEF STATED ABOVE. YOU MUST  
APPEAR IN PERSON FOR TRIAL IN COURT AT THE LOCATION STATED  
ABOVE AT \_\_\_\_\_.M. ON \_\_\_\_\_, 20\_\_.**

**YOU MAY, BUT ARE NOT REQUIRED TO, FILE A WRITTEN ANSWER WITH THE COURT ON OR BEFORE THE DAY SET FOR TRIAL. DO NOT IGNORE THESE PAPERS. FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU. FOR FURTHER INFORMATION, CONSULT PART V. OF THE TEXAS RULES OF CIVIL PROCEDURE, WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.**

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

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

# Writ of Scire Facias

**Definition:** [CPRC §31.006, TRCP Rules 151, 152]

- A writ directing a party to appear and show why a dormant judgment against him should not be revived.
- A writ directing the heirs or the administrator of a deceased party's estate to appear and proceed with the case.

**Issued By:**

- District court.
- County court.
- Justice court.

**Additional Requirements of the Writ:** [TRCP Rule 154]

- If the writ is for revival of a judgment:
  - Include the hearing date.
- If the writ is ordering parties to proceed with a case:
  - Include the date the petition was filed.
  - Include the name and address of the plaintiff's attorney or address of the plaintiff.
  - Include how long the defendant has to file a written answer with the clerk:
    - *District or county court:* answer must be filed on or before Monday at 10:00 am after the expiration of 20 days from the date of service.
    - *Justice court:* answer must be filed by the end of the 14<sup>th</sup> day after the date of service. If that day is a Saturday, Sunday, or legal holiday then by the end of the next business day.
  - Include the address of the clerk.
  - Inform the defendant that a default judgment for the relief requested in the petition may be entered against the defendant if the defendant fails to file an answer.

**Deliver to:**

- Defendant(s) named on the writ.

**Additional Service Duties/Requirements of Officer:**

- Write date of delivery on the writ before giving to defendant.

**Additional Return Duties/Requirements of Officer:**

- If the writ was served by registered or certified mail, the return must contain the return receipt with the addressee's signature.

CAUSE NO. \_\_\_\_\_

_____	§	IN THE JUSTICE COURT
PLAINTIFF (JUDGMENT PLAINTIFF)	§	
	§	
v.	§	PRECINCT NO. _____
	§	
_____	§	
DEFENDANT (JUDGMENT DEBTOR)	§	_____ COUNTY, TEXAS

**WRIT OF SCIRE FACIAS (REVIVAL OF JUDGMENT)**

**THE STATE OF TEXAS**

**To \_\_\_\_\_, DEFENDANT NAMED ABOVE, GREETINGS**

On \_\_\_\_\_, a final judgment was rendered in favor of \_\_\_\_\_ in the above-entitled and numbered cause and against defendant in the sum of \_\_\_\_\_, which included damages of \_\_\_\_\_, prejudgment interest of \_\_\_\_\_, attorneys fees of \_\_\_\_\_, and costs of court. Post-judgment interest at the rate of \_\_\_\_\_ was awarded by the judgment as well.

The judgment has become dormant and \_\_\_\_\_ has filed a petition and applied for a writ of scire facias to revive the judgment.

You are, hereby, commanded to appear before \_\_\_\_\_ of \_\_\_\_\_ County, Texas, at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, to show cause, if any there be, why the judgment rendered in the above-entitled cause should not be revived as requested by \_\_\_\_\_. On your failure to do so, an order and judgment will entered for the relief demanded in the application.

The nature of \_\_\_\_\_'s demand is shown by a true and correct copy of its application accompanying this citation, the original of which is on file in this cause.

If this citation is not served within \_\_\_\_\_ days after the date of its issuance, it shall be returned unserved.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates of this order, and make due return as the law directs.

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

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



CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

§ IN THE \_\_\_\_\_ COURT  
§  
§  
§ \_\_\_\_\_  
§  
§  
§ \_\_\_\_\_ COUNTY, TEXAS

**ORDER DIRECTING CLERK OF COURT TO ISSUE WRIT OF SCIRE FACIAS**

On \_\_\_\_\_, the Court considered the Plaintiff's Application for a Writ of Scire Facias.

After considering the motion, the Court decided that the request should be granted.

It is ORDERED that the Clerk of the Court, pursuant to Rule 152 of the Texas Rules of Civil Procedure, issue a Writ of Scire Facias requiring \_\_\_\_\_, who is the Executor of the Estate of \_\_\_\_\_, and who can be served at the address set forth above, to appear and defend the above and entitled lawsuit.

**SIGNED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

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# Subpoenas

## **Definition:**

- An order commanding a person to appear at a certain time and place to give testimony on a certain matter or to produce certain documents or other tangible items.
- Applies to both civil and criminal cases.

## **Issued By:** [TRCP Rules 176.4, 500.8, CCP Art. 24.01]

- *Civil Cases:*
  - District court.
  - County court.
  - Justice court.
  - An attorney authorized to practice in Texas as an officer of the court.
  - An officer authorized to take depositions.
- *Criminal Cases:*
  - District court.
  - County court.
  - Justice court.

## **Additional Requirements of the Subpoena:** [TRCP Rules 176.1, 500.8, CCP Art. 24.01]

- State the time and place where the subpoenaed person needs to go to comply.
- Command the person to do either or both:
  - Attend and give testimony at a deposition, hearing, or trial.
  - Produce and permit inspection and copying of designated documents or tangible things in the possession, custody, or control of the person.
- *Civil subpoenas:*
  - Identify the party requesting the subpoena and the name of their attorney if there is one.
  - State that failure to comply with the subpoena may be deemed contempt of court and may be punished by fine, confinement, or both.
- *Criminal subpoenas:*
  - State whether the witness(s) is summoned for the State or for the defendant.

## **Expiration for Service:**

- Expires on the hearing date.

## **Additional Methods of Service:** [TRCP Rule 21a]

- *Civil subpoenas:*
  - Commercial delivery service.
  - Fax.
  - Email.

- Any other manner the court directs.
- *Criminal subpoenas*:
  - Reading the subpoena in the hearing of the witness.
  - Emailing the subpoena to the witness, acknowledgment of receipt requested.
  - Faxing the subpoena to the witness, acknowledgment of receipt requested.

**Deliver to:** [TRCP Rules 176.5, 500.8, CCP Art. 24.01]

- Witness or witnesses named in the subpoena.
- *Civil subpoenas*: if the witness is a party to the case and represented by an attorney, the subpoena can be served on the attorney.

**Additional Service Duties/Requirements of Officer:** [TRCP Rules 176.5, 500.8]

- *Civil subpoenas*: Give the witness any fee required by law, if the fee is included with the subpoena.

**Additional Return Duties/Requirements of Officer:** [TRCP Rules 176.5, 500.8]

- In place of a traditional return, the officer may file the witness's signed memorandum attached to the subpoena showing the witness accepted the subpoena.

**Comments:** [TRCP Rule 176.3, CCP Art. 24.11]

- Distance Limitations:
  - *Civil cases*: A person residing more than 150 miles from the court where the case is pending can't be forced to comply with the subpoena, unless it's to compel the person's attendance at a deposition.
  - *Criminal cases*: There are no distance limitations on criminal subpoenas where confinement in jail is a permissible punishment.
- In a criminal case, if a person refuses to comply with a subpoena, a Writ of Attachment may be issued commanding a peace officer to bring the witness to court to testify.
- Subpoenas can be issued for multiple court dates in one subpoena. If the case doesn't get heard on the first date, the subpoena remains in effect until the next date on the subpoena. This continues until the case is heard or all dates on the subpoena have passed.

THE STATE OF TEXAS

WITNESS SUBPOENA/SUBPOENA DUCES TECUM
PURSUANT TO TEXAS RULES OF CIVIL PROCEDURE RULE 176

CAUSE NO. \_\_\_\_\_

IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT OF
\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_.
Plaintiff

vs.

\_\_\_\_\_.
Defendant

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS OR OTHER PERSON
AUTHORIZED TO SERVE AND EXECUTE SUBPOENAS AS PROVIDED IN RULE 176 TRCP

YOU ARE HEREBY COMMANDED TO SUMMON \_\_\_\_\_

\_\_\_\_\_.
Address \_\_\_\_\_

In \_\_\_\_\_ County, Texas, and who is represented to reside within one
hundred fifty miles of the Courthouse of \_\_\_\_\_ County, Texas, in which the above suit is
pending, or who may be found within such distance at the time of the trial, to appear before the
\_\_\_\_\_ Judicial District Court in and for \_\_\_\_\_ County, in \_\_\_\_\_, Texas, on
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_M., to testify as a
witness on behalf of the Plaintiff/Defendant in the above styled Civil Action, to attend from day to
day until lawfully discharged.

SAID ABOVE NAMED WITNESS IS FURTHER COMMANDED to produce at said time and
place above set forth the following books, papers, documents, or other tangible things, to wit: \_\_\_\_\_

\_\_\_\_\_.
\_\_\_\_\_.
\_\_\_\_\_.

DO NOT FAIL to return this writ to said Court, with return thereon, showing the
manner of execution.

ISSUED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_, District Clerk
\_\_\_\_\_ County, Texas

By: \_\_\_\_\_
Deputy District Clerk

Issued at request of Plaintiff/Defendant: \_\_\_\_\_

Phone number: \_\_\_\_\_

Address: \_\_\_\_\_



# Turnover Order

**Definition:** [CPRC §31.002]

- An order instructing a debtor to turn over non-exempt property in the debtor's possession or subject to the debtor's control.

**Issued By:**

- District court.
- County court.
- Justice court.

**Additional Requirements of the Order:** [CPRC §31.002]

- Name a specific sheriff, constable, or court appointed receiver to take control of the property.

**Additional People Who May Serve:**

- The person named in the order to take control of the property.

**Deliver to:**

- The defendant.

**Additional Service Duties/Requirements of Officer:** [CPRC §31.002]

- Make demand for property.
- Take possession of the property.
- Inventory the seized property.
- Sell the property if directed to do so in the order.
- Pay proceeds of the sale to the judgment creditor to the extent required to satisfy the judgment.

**Additional Return Duties/Requirements of Officer:**

- Describe the actions taken regarding the seized property.
- Attach all correspondence, inventory, and property disposition.
- If property was subject to execution but it wasn't executed, describe the diligence used to try and execute and the reason(s) it wasn't executed.

**Comments:** [CPRC §31.002, LGC §86.021(d)]

- The order can direct that the property be turned over to:
  - A designated sheriff or constable.
  - A receiver appointed by the court.
- A sheriff or constable cannot be named as a receiver or be compensated for collecting property pursuant to a turnover order.

- Property seized pursuant to a turnover order cannot be given directly from the defendant to the plaintiff.
- A turnover order cannot be served on a defendant's employer to have them turn over the defendant's wages.
- The property to be turned over does not have to be specifically identified in the order.



CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

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

**TURNOVER ORDER**

On this day came to be considered Judgment Plaintiff's Motion to Appoint a Post Judgment Receiver Pursuant to CPRC 31.002 (limited Receivership). After reviewing the evidence and the Court's file, the Court finds that the Judgment rendered in this case is valid, final, and fully payable. The judgment awarded is \_\_\_\_\_ in damages, \_\_\_\_\_ in pre-judgment interest, \_\_\_\_\_ in attorney's fees and court costs, and post-judgment interest at a rate of \_\_\_\_\_.

The Court finds that the Judgment remains unsatisfied and that Judgment Plaintiff is entitled to aid from this Court to reach non-exempt property of Judgment Defendant in order to obtain satisfaction of the Judgment. At the time of filing this Application for Receivership, the total balance due on this Judgment, less any credits or payments, is \_\_\_\_\_.

The Court further finds that Judgment Debtor should be ordered to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution. Notwithstanding any language to the contrary, this Order does not compel turnover of the homestead, checks for current wages, or other exempt property of Judgment Defendant.

**IT IS THEREFORE ORDERED, that \_\_\_\_\_, Constable for Precinct \_\_\_\_\_, \_\_\_\_\_ County, Texas is hereby designated to take possession of nonexempt property in the debtor's possession or subject to the debtor's control, together with all documents or records related to the property, for execution.**

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

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

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## **PART II: CIVIL PROCESS THAT HAS TO BE SERVED BY LAW ENFORCEMENT; SERVE & FORGET**

- ★ **The writs and process discussed in this section are papers that must be served by law enforcement.**
    - The officer only has to serve the writ or process, no further action is required.
  
  - ★ **Items common to civil process that must be served by law enforcement where nothing is seized:**
    - Items listed on the pages that describe each individual process are in addition to the information described below and specific to that process.
- 1) **Requirements of Writs & Process:** [TRCP Rules 15]
    - Styled “The State of Texas.”
    - Identify the person to whom process is directed.
    - Include the name and county of the court where the case is filed.
    - Include the cause number.
    - Identify all parties in the case
    - Include the date of issuance of the writ or process.
    - Identify which court the writ or process is returnable to.
    - Signed by the clerk or judge.
    - Contain the court’s seal.
  - 2) **Date & Time for Service:** [TRCP Rules 4-6, 500.5]
    - May be served Monday through Saturday, any time of day.
    - Computing time for service:
      - Exclude the day the process is issued.
      - Counting Saturdays, Sundays, and legal holidays:
        - *Justice court:* count every day, including Saturdays, Sundays, and legal holidays.
        - *District or county court:* If the time period to serve is 5 days or less, don’t include Saturdays, Sundays or legal holidays.
      - If the last day is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day.
    - The court has discretion to extend the time period for service.
  - 3) **Who may Serve:** [TRCP Rules 103, 501.2(a)]
    - May be served by any sheriff, constable, or their deputies.
    - May be served anywhere in the State.
  - 4) **Method of Service:** [TRCP Rule 105]
    - Personal service on the person identified in the process.
  - 5) **Expiration for Service:**
    - Unless specifically indicated, process does not expire for purposes of serving.
    - Service of process should be done as soon as possible, without delay.

**6) Service Duties/Requirements of Officer:** [TRCP Rules 17, 126]

- Enter the process or writ into the record keeping system.
- Write/stamp on the process the date and time when the officer received it.
- Serve on the person identified to receive service of process.
- Proceed without delay.
- Attempt service at all addresses provided.
  - Number of attempts required varies by agency but multiple attempts at different times of the day should be made.
- Keep copies of all documents in accordance with established record retention schedules.
- Fee Collection:
  - The officer is not entitled to demand his fee for service in advance of serving the process. His fee is to be taxed and collected as other costs in the case.
  - If an officer is serving process for a case that is pending in another county, the officer may require payment before serving, unless a Statement of Inability to Afford Payment of Court Costs has been filed.

**7) Return Duties/Requirements of Officer:** [TRCP Rules 15, 16, 107, 501.3]

- Complete a return of service that can, but does not have to be, attached to the process.
- Return of service must include:
  - Cause number.
  - Case name.
  - Name and county of the court where the case is filed.
  - Date and time the process was received for service.
  - The name of the person or entity served.
  - The address served.
  - The date(s) and time(s) of service and/or attempted service.
  - Manner of delivery of service and/or attempted service.
  - Description of what was served.
  - Name of the person(s) who served or attempted service.
  - Any other information required by rule or law.
  - Any additional information specific to the service that should be noted in the file.
  - When service is not successful, the return must show the diligence used by the officer in trying to serve, the reason service was not successful, and where the defendant can be found if known.
- Sign the return.
- File the return of service with the clerk.
  - Return may be 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.

# Eviction Citation

## **Definition:**

- Official process by which a tenant (defendant) is notified he or she is being evicted.
- The citation provides notice to the defendant of the opportunity to appear and defend the suit.

## **Issued By:** [PC §24.004]

- Justice court in the precinct where the property is located.

## **Additional Requirements of the Citation:** [TRCP Rule 510.4]

- Include the date the petition was filed.
- State the plaintiff's cause of action and relief sought.
- Include the name and address of the plaintiff's attorney or address of the plaintiff.
- State the date the defendant must appear for trial.
  - Not less than 10 days or more than 21 days after the petition is filed.
- Inform the defendant that a default judgment for the relief requested in the petition may be entered against the defendant if the defendant fails to appear in person for trial.
- Inform defendant that, upon timely request and payment of a jury fee no later than 3 days before trial, the case will be heard by a jury.
- Contain all warnings required by Chapter 24 of the Texas Property Code.
- Include the statement: "For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation."

## **Additional People Who May Serve:** [TRCP Rule 510.4(b)]

- Any person authorized by written court order.

## **Additional Methods of Service:** [TRCP Rule 510.4]

- *Primary Method:*
  - Personal service on the defendant at least 6 days before trial (preferred method): give defendant a copy of the citation and petition.
  - Leave a copy of the citation and petition with any person, other than the plaintiff, 16 years or older at the defendant's usual place of residence at least 6 days before trial.
- *Alternative/Substituted service:*
  - Citation may be served by delivery to the premises if:
    - The serving officer is unsuccessful in serving the citation on the defendant or a person age 16 or older at the defendant's residence,
    - The original petition filed by the plaintiff states all known home and work addresses of the defendant, states the plaintiff knows of no other home or work addresses of the defendant in the county where the premises are located, and

- The serving officer files a sworn statement that he has made diligent efforts to serve the citation on at least 2 occasions to all addresses of the defendant and include the times and places where service was attempted.
- If service to the premises is authorized, the serving officer:
  - At least 6 days before trial,
  - Must deliver a copy of the citation and petition to the premises by placing it through a door mail chute or slipping it under the door and send by first class mail a copy of the citation and petition to the defendant at the premises.
  - If service through a mail chute or under the door is not possible, the serving officer may post the citation and petition to the front door or main entry to the premises and send by first class mail a copy of the citation and petition to the defendant at the premises.
- The plaintiff is not required to request alternative service. The serving officer can request it on their own.

**Expiration for service:** [TRCP Rule 510.4]

- Six days before trial.

**Deliver to:**

- Named defendant.
- Any person over the age of 16 at the defendant's resident.

**Additional Service Duties/Requirements of Officer:**

- Write date of delivery on the citation before giving to defendant.

**Additional Return Duties/Requirements of Officer:** [TRCP Rule 510.4]

- Return must be filed at least 1 day before the trial date.
- If delivery was by alternative service, the return must include the date the citation was delivered to the premises and the date the citation was placed in the mail.

**Comments:**

- The defendant is the only person who can be served at a location other than the eviction address.
- Substitute service can only be done at the designated address for eviction.

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

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

**CITATION (EVICTON CASE)**

THE STATE OF TEXAS

TO: \_\_\_\_\_, DEFENDANT in the above-styled and numbered case:

This citation is issued pursuant to a petition filed by the above-named Plaintiff on \_\_\_\_\_, 20\_\_\_. In addition to possession of the property the Plaintiff is seeking the following relief in this case:  back rent;  attorney's fees;  court costs;  other (specify: \_\_\_\_\_). The Plaintiff's attorney's name and address, or the Plaintiff's address, if they have no attorney, are: \_\_\_\_\_

\_\_\_\_\_. You must appear in this court, located at \_\_\_\_\_, \_\_\_\_\_, TX \_\_\_\_\_, on the date and time stated below.

**YOU HAVE BEEN SUED FOR EVICTION FROM YOUR RESIDENCE. THE ABOVE-NAMED PLAINTIFF SEEKS POSSESSION OF THE PREMISES AND THE OTHER RELIEF STATED ABOVE. YOU MUST APPEAR IN PERSON FOR TRIAL IN COURT AT THE LOCATION STATED ABOVE AT \_\_\_\_\_.M. ON \_\_\_\_\_, 20\_\_. YOU MAY, BUT ARE NOT REQUIRED TO, FILE A WRITTEN ANSWER WITH THE COURT ON OR BEFORE THE DAY SET FOR TRIAL. UPON TIMELY REQUEST AND PAYMENT OF A JURY FEE NO LATER THAN THREE (3) DAYS BEFORE THE DAY SET FOR TRIAL, THE CASE WILL BE HEARD BY A JURY. DO NOT IGNORE THESE PAPERS. FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU. FOR FURTHER INFORMATION, CONSULT PART V. OF THE TEXAS RULES OF CIVIL**

**PROCEDURE, WHICH IS AVAILABLE ONLINE AND ALSO AT THE COURT LISTED ON THIS CITATION.**

**THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ) OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.**

**DEMANDA PARA DESALOJAR**

**ESTA DEMANDA PARA DESALOJAR INVOLUCRA PLAZOS INMEDIATOS. UN INQUILINO QUE ESTA EN SERVICIO MILITAR ACTIVO PUEDE TENER DERECHOS ESPECIALES O SOCORRO EN RELACION CON ESTE TRAJE POR LA LEY FEDERAL, INCLUIDOS LOS MIEMBROS DEL SERVICIO CIVIL RELIEF ACTUAR (50 U.S.C. APP. SECCION 501 Y SS.) O LA LEY DEL ESTADO, INCLUIDA LA SECCION 92.017, TEXAS CODIGO DE LA PROPIEDAD. LLAME AL COLEGIO DE ABOGADOS DE TEXAS (STATE BAR OF TEXAS), LLAMADA GRATUITA AL 1-877-9TEXBAR SI USTED NECESITA AYUDA PARA LOCALIZAR A UN ABOGADO. SI NO ESTÁ A SU ALCANCE CONTRATAR A UN ABOGADO, USTED PUDIERA SER ELEGIBLE PARA ASESORIA LEGAL GRATUITA O DE BAJO COSTO.**

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

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



# Writ of Garnishment

## Definition:

- Writ delivered to a 3<sup>rd</sup> party (garnishee) who is in possession of the debtor's property or money.
- The writ directs the garnishee to give up the debtor's property or money so it can be applied to the judgment of the debtor.

## Issued By: [CPRC §63.002]

- District court.
- County court.
- Justice court.

## Additional Requirements of the Writ: [TRCP Rules 658, 659, CPRC §63.003]

- Include findings of fact that support the need for the writ.
- Specify the maximum value of property that may be garnished.
- State the amount of bond required of defendant to replevy.
- Include the hearing date:
  - *District or county court*: 10:00 am on the Monday following the expiration of 20 days from the date of service.
  - *Justice court*: The Monday following the expiration of 10 days from the date of service.
- Order the garnishee to provide, under oath, information about whether the garnishee is indebted to the defendant, how much he is indebted to the defendant, if he was indebted to the defendant on the date of service, what property of defendant's he has in his possession, what property of defendant's he had in his possession when the writ was served, and the names of any other people he knows who are indebted to the defendant or have property of the defendant in their possession.
- Order the garnishee not to pay any debt to the defendant or deliver to the defendant any of his personal property until further order of the court.
- On 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 garnished. 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."

## Additional Dates & Times for Service: [TRCP Rule 6]

- Service allowed on Sundays.

**Additional Methods of Service:** [TRCP Rule 663a]

- *Garnishee:*
  - Personal service.
- *Defendant:*
  - Personal service.
  - Mail.
  - Commercial delivery service.
  - Fax.
  - Email.
  - Any other manner the court directs.

**Expiration for service:**

- On the hearing date.

**Deliver to:** [TRCP Rules 663, 663a]

- Garnishee.
- Defendant or defendant's authorized agent or attorney of record.

**Additional Service Duties/Requirements of Officer:**

- Serve the defendant with a copy of the writ after the garnishee is served.
- Sell defendant's property if sale is ordered and transfer the property to the purchaser.

**Additional Return Duties/Requirements of Officer:**

- If the garnishee fails or refuses to give the officer the defendant's property that is in his possession, the officer must include that in the return and immediately file the return.
- Document the sale of defendant's property.

CAUSE NO. \_\_\_\_\_

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

**WRIT OF GARNISHMENT**

**THE STATE OF TEXAS**

**To \_\_\_\_\_, GARNISHEE NAMED ABOVE, GREETINGS**

**WHEREAS** the above named Plaintiff filed suit against \_\_\_\_\_, Defendant in the Justice Court, Precinct\_\_\_\_, of \_\_\_\_\_ County, Texas, in cause number \_\_\_\_\_. In that cause, Plaintiff alleges the Defendant owes a debt of \$\_\_\_\_\_. Plaintiff has applied for a writ of garnishment against you, \_\_\_\_\_, as Garnishee; therefore you are hereby

**COMMANDED** to appear before this court at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service of this writ. You are to answer, under oath, if you are indebted to the Defendant and what effects of the Defendant you have in your possession. You also must state if you know any other person or entity that is indebted to the Defendant or have effects belonging to the Defendant in their possession.

**YOU ARE FURTHER COMMANDED** not to pay to Defendant any debt or deliver to Defendant any effects, pending further order of this court.

**HEREIN FAIL NOT**, and timely answer this writ as the law directs.

**To \_\_\_\_\_, DEFENDANT, GREETINGS:**

You are hereby notified that certain properties alleged to be owned by you have been garnished. 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.**

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

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

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# Protective Order

## **Definition:**

- An order directing a respondent to do or refrain from doing specified acts related to family violence.

## **Issued By:**

- District court.
- County court.

## **Additional Requirements of the Order:** [FC §§85.001, 83.001, 85.026]

- State the prohibited acts.
- Identify the protected parties and locations.
- Contain statutory warnings in bold-faced type, capital letters, or underlined that violation of the order is a criminal offense.
- *Temporary ex parte order:*
  - State the date and time of the final hearing.
  - Contain the applicant's affidavit stating the grounds for the order.
  - Contain a finding by the judge that a clear and present danger of family violence exists.
- *Final protective order:*
  - Contain a finding by the judge that family violence has occurred and is likely to occur in the future.
  - Contain the expiration date of the order.

## **Additional Dates & Times for Service:**

- Service allowed on Sundays.

## **Additional Methods of Service:**

- In open court.
- Commercial delivery service.
- Fax.
- Email.
- Any other manner the court directs.

## **Expiration for Service:**

- *Temporary ex parte protective order:*
  - On the hearing date.

## **Deliver to:**

- Person named in the order as the respondent.

**Additional Service Duties/Requirements of Officer:**

- If applicable, inform respondent that he/she has been ordered to vacate the premises.

**Comments:** [FC §83.002]

- Expiration of the order:
  - *Temporary ex parte protective order:*
    - When the judge states, but no more than 20 days after issuance.
    - The order can be extended by the judge's own motion or on the applicant's request for additional 20 day periods.
    - There is no limit on the number of extensions.
  - *Final protective order:*
    - For the period stated in the order, not to exceed two years.
- Violation of a Protective Order is criminally enforceable under Section 25.07 of the Penal Code.

**EXPARTE TEMPORARY PROTECTIVE ORDER**

CAUSE NO: \_\_\_\_\_

**“A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500.00 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.”**

**“NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.”**

**“IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY PENAL CODE SEC. 1.07, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.”**

**“A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.”**

TO: \_\_\_\_\_, **Respondent**

\_\_\_\_\_  
\_\_\_\_\_ “or wherever he may be found.”

Whereas in this suit pending in the County Court at Law \_\_\_\_ in and for \_\_\_\_\_ County, Texas, wherein \_\_\_\_\_ on behalf of herself is Applicant and \_\_\_\_\_ is Respondent, the said **APPLICANT** prayed for and obtained from the Honorable \_\_\_\_\_, Judge of the County Court at Law \_\_\_\_ in \_\_\_\_\_ County, Texas:

**EXPARTE TEMPORARY PROTECTIVE ORDER**

Now, therefore, you the said **Respondent**, is hereby prohibited from:

**PER COURT ORDER**

**A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART THEREOF**

Until the further order of the County Court at Law \_\_\_\_\_ at a hearing to be held within and for the County of \_\_\_\_\_, at \_\_\_\_\_, at \_\_\_\_\_ .M. on \_\_\_\_\_, at which time **Respondent** is ordered to appear before said Court to show cause.

The officer serving this notice shall promptly execute the same according to law and the mandates thereof, and make his return within the time and manor provided for by law.

GIVEN UNDER my hand and seal of said court, at my office in the City of \_\_\_\_\_, State of Texas, on \_\_\_\_\_, 20\_\_\_\_\_.

Issued at the request of:  
\_\_\_\_\_, COUNTY ATTORNEY  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_, CLERK  
\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Deputy

**SHERIFF'S RETURN**

Came to hand the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_M. and executed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_M. at \_\_\_\_\_ by delivering to the within named Respondent a copy of said ExParte Temporary Protective Order and all accompanying documents.

\_\_\_\_\_  
Sheriff/Constable Pct. \_\_\_\_\_  
\_\_\_\_\_ County, Texas

By: \_\_\_\_\_ Deputy



# Restraining Order/Injunction

**Definition:** [TRCP Rule 680, CPRC §65.011]

- Court order commanding a person to stop or refrain from doing a specific act.
- Applicant is claiming that immediate and irreparable injury, loss, or damage will occur if the person isn't stopped from what they're doing.

**Issued By:** [CPRC §65.021]

- District court.
- County court.

**Additional Requirements of the Writ:**

- *Temporary:*
  - Include the hour of issuance.
  - Define the injury, state why the injury is irreparable, and state why the order was granted without notice.
  - Include the hearing date.
  - Command the person to stop or refrain from doing a specific act until a hearing is held.
- *Final:*
  - Define the injury or the nature of the plaintiff's application.
  - Describe in detail the act or acts to be restrained.
  - Command the person to stop or refrain from doing a specific act, or to obey the order.

**Additional Dates & Times for Service:** [TRCP Rule 6]

- Service allowed on Sundays.

**Deliver to:**

- Person named in the order as the respondent.

**Comments:** [TRCP Rules 680, 686]

- When a petition for a temporary restraining order or temporary injunction is filed, the clerk will issue a citation to the defendant as in other civil cases, which will be served and returned in the same way as ordinary citations.
- Expiration of the temporary restraining order or injunction:
  - When the judge states, but no more than 14 days after issuance.
  - The writ can be extended by the judge for 1 additional 14 day period for good cause shown, or longer if the parties agree.
  - There is no limit on the number of extensions if both parties agree to the extensions.

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

§ IN THE COUNTY COURT  
§  
§  
§ AT LAW NUMBER \_\_\_\_\_  
§  
§  
§ \_\_\_\_\_ COUNTY, TEXAS

**ORDER GRANTING PERMANENT RESTRAINING ORDER**

1. Came on for consideration Plaintiff's Original Petition and Application for Permanent Restraining Order. after considering the application, the pleadings, the affidavits, and arguments of counsel, this Court **FINDS** there is evidence that harm is imminent to Plaintiff \_\_\_\_\_, and if the Court does not issue the permanent restraining order, Plaintiff \_\_\_\_\_ will be irreparably injured because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

2. Defendant \_\_\_\_\_ is hereby restrained from \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**SIGNED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

## **PART III: CIVIL PROCESS THAT HAS TO BE SERVED BY LAW ENFORCEMENT; SERVICE & ACTION**

- ★ **The writs and process discussed in this section are papers that must be served by law enforcement and require action on the officer's part.**
  
- ★ **Items common to all civil process that must be served by law enforcement where action is required:**
  - Items listed on the pages that describe each individual process are in addition to the information described below and specific to that process.
- 1) Requirements of Writs & Process: [TRCP Rule 15]**
  - Styled "The State of Texas."
  - Directed to the sheriff or any constable in Texas.
  - Identify the person who is to receive service of process.
  - Include the name and county of the court where the case is filed.
  - Include the cause number.
  - Identify all parties in the case.
  - Include the date of issuance of the writ or process.
  - Identify which court the writ or process is returnable to.
  - Signed by the clerk or judge.
  - Contain the court's seal.
- 2) Date & Time for Service: [TRCP Rules 4-6, 500.5]**
  - May be served Monday through Saturday, any time of day.
  - Computing time for service:
    - Exclude the day the process is issued.
    - Counting Saturdays, Sundays, and legal holidays:
      - *Justice court*: count every day, including Saturdays, Sundays, and legal holidays.
      - *District or county court*: If the time period to serve is 5 days or less, don't include Saturdays, Sundays or legal holidays.
    - If the last day is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day.
  - The court has discretion to extend the time period for service.
- 3) Who may Serve: [TRCP Rules 103, 501.2(a)]**
  - May be served by any sheriff, constable, or their deputies.
  - May be served anywhere in the State.
- 4) Methods of Service:**
  - Personal service on the person identified in the process.
- 5) Expiration for Service: [TRCP Rules 105, 621]**
  - *Writ or order not enforcing a judgment*: Unless specifically indicated, process does not expire for purposes of serving.

- *Writ or order enforcing a judgement*: unless stated otherwise, the writ or order shall expire in 30, 60, or 90 days as specified in the writ.

**6) Service Duties/Requirements of Officer:** [TRCP Rules 17, 126]

- Enter the process or writ into the record keeping system.
- Write/stamp on the process the date and time when the officer received it.
- Serve on the person identified to receive service of process.
- Proceed without delay.
- Attempt service at all addresses provided.
  - Number of attempts required varies by agency but multiple attempts at different times of the day should be made.
- Execute as directed in the writ or order.
- Give defendant a copy of the inventory.
- Keep copies of all documents in accordance with established record retention schedules.
- Fee Collection:
  - The officer is not entitled to demand his fee for service in advance of serving the process. His fee is to be taxed and collected as other costs in the case.
  - If an officer is serving process for a case that is pending in another county, the officer may require payment before serving unless a Statement of Inability to Afford Payment of Court Costs has been filed.

**7) Return Duties/Requirements of Officer:** [TRCP Rules 15, 16, 107, 501.3]

- Complete a return of service that can, but does not have to be, attached to the process.
- Return of service must include:
  - Cause number.
  - Case name.
  - Name and county of the court where the case is filed.
  - Date and time the process was received for service.
  - The name of the person or entity served.
  - The address served.
  - The date(s) and time(s) of service and/or attempted service.
  - Manner of delivery of service and/or attempted service.
  - Description of what was served.
  - Name of the person(s) who served or attempted service.
  - Any other information required by rule or law.
  - Any additional information specific to the service that should be noted in the file
  - When service is not successful, the return must show the diligence used by the officer in trying to serve, the reason service was not successful, and where the defendant can be found if known.
- Sign the return.
- File the return of service with the clerk.
  - Return may be 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.

# Writ of Attachment for Property

**Definition:** [CPRC §§61.001, 61.041]

- Writ issued while a case is pending that allows seizure of defendant's property because the plaintiff will probably lose his/her debt unless the writ is issued.

**Issued By:** [CPRC §61.021]

- District court.
- County court.
- Justice court.

**Additional Requirements of the Writ:** [TRCP Rule 592]

- Contain findings of fact to support that grounds exist for the issuance of the writ.
- Specify the maximum value of property that may be attached.
- Specify the plaintiff's bond amount.
- Command that the attached property be kept safe and preserved subject to further orders of the court.
- Advise the defendant of his/her right to replevy.
- State the amount of bond required of defendant to replevy.
- On 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 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."

**Additional Dates & Times for Service:** [TRCP Rule 6]

- Service allowed on Sundays.

**Additional Methods of Service:** [TRCP Rules 21a, 598a]

- Service of the writ on the defendant does not have to happen at the same time attachment of the property occurs.
- Defendant's copy:
  - Mail.
  - Commercial delivery service.
  - Fax.
  - Email.
  - Any other manner the court directs.

**Expiration for Service:** [TRCP Rule 606]

- 10:00 am on the Monday after the expiration of 15 days from the date of issuance.

**Deliver to:** [TRCP Rule 598a]

- Defendant named in the writ.
- Party's duly authorized agent or attorney of record.

**Additional Service Duties/Requirements of Officer:** [CPRC §§61.042, 61.043, TRCP Rules 600, 606]

- Levy on:
  - Specific property if such is designated and described in the writ, or
  - On 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 a trial to right of property.
- Keep property safe and in the same condition as when it was seized.
  - Document property by video or camera if possible to prove the property was kept in the same condition as when it was seized.
- Notify the court immediately if seized property is perishable so it can be sold.
- 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.
- If property is replevied, deliver the replevy bond to the clerk of the court.

**Additional Return Duties/Requirements of Officer:** [TRCP Rule 606]

- Describe the property attached with sufficient certainty to identify it.
- State when 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 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.

**Comments:**

- A writ of attachment can only be for property that is subject to levy under a writ of execution.
- If specific property is identified in the writ to be levied on, it doesn't matter if the property is exempt or non-exempt.
- A writ of attachment for a person is handled like a *capias* where the person is taken immediately before the court that issued the writ or to some other place stated in the writ.

**WRIT OF ATTACHMENT**  
**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 Attachment 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 Attachment 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 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.**

**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



# Capias

**Definition:** [CCP Art. 23.01]

- Writ commanding a 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.

**Issued By:** [CCP Arts. 23.03, 23.04, FC §157.066]

- District court.
- County court.
- Justice court.

**Additional Requirements of the Writ:** [CCP Art. 23.01]

- Directed to any peace officer.
- Name the person whose arrest is ordered, or if unknown, describe him/her.
- Specify the offense the defendant is charged with.

**Additional Dates & Times for Service:**

- Service allowed on Sunday.

**Expiration for Service:**

- The capias does not expire unless recalled by the issuing court.

**Additional Service Duties/Requirements of Officer:**

- Arrest defendant.
- Take defendant immediately before the judge 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 different than the date the defendant is arrested, place the defendant in county jail.

**Comments:**

- A capias issued under Chapter 157.102 of the Family Code shall be treated as an arrest warrant and shall be entered into the computer records for outstanding warrants and disseminated by the TCIC & NCIC Crime Information Centers.
- A writ of attachment for a person is handled like a capias where the person is taken immediately before the court that issued the writ or to some other place stated in the writ.

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

§ IN THE JUSTICE COURT

v.

§

§ PRECINCT NO. \_\_\_\_\_

§

§ \_\_\_\_\_ COUNTY, TEXAS

**ARREST WARRANT**

**TO ANY PEACE OFFICER OF THE STATE OF TEXAS: GREETINGS**

**WHEREAS**, I find that the verified facts stated by Affiant in the Affidavit show that Affiant has probable cause for the belief expressed therein and establish the existence of proper grounds for the issuance of this Warrant; now, therefore, you are

**COMMANDED** to arrest \_\_\_\_\_, the above-named Defendant, described as follows: \_\_\_\_\_

\_\_\_\_\_ with known address of \_\_\_\_\_

if they are found in your county, and bring Defendant before me, Justice of the Peace, in and for Precinct \_\_\_ of \_\_\_\_\_ County, Texas at my office located at \_\_\_\_\_, \_\_\_\_\_, Texas, instanter, or before another magistrate of the state as provided by Art. 15.16 of the Code of Criminal Procedure, then and there to answer the State of Texas for an offense against the laws of the State: \_\_\_\_\_, of which offense Defendant is accused by the written complaint, under oath of \_\_\_\_\_, filed before me;

**HEREIN FAIL NOT**, but return this Warrant, showing how you have executed the same.

**ISSUED AND SIGNED** at \_\_\_\_\_ .M., on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ to certify which witness my hand this day.

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

# Distress Warrant

## **Definition:**

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

## **Issued By:** [TRCP Rule 610, PC §54.006]

- Justice Court of the precinct where the real property is located.

## **Additional Requirements of the Warrant:** [TRCP Rules 610, 613]

- Contain findings of fact to support that grounds exist for the issuance of the writ.
- Specify the maximum value of property that may be seized.
- Specify the plaintiff's bond amount.
- Command that the seized property be kept safe and preserved subject to further orders of the court.
- Advise the defendant of his/her right to replevy.
- State the amount of bond required of defendant to replevy.
- On 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."

## **Additional Dates & Times for Service:** [TRCP Rule 6]

- Service allowed on Sundays.

## **Expiration of the Warrant:**

- Expires on the hearing date.

## **Additional Methods of Service:** [TRCP Rule 613]

- Service of the writ on the defendant does not have to happen at the same time levying on the property occurs.
- Defendant's copy:
  - Mail.
  - Commercial delivery service.
  - Fax.
  - Email.
  - Any other manner the court directs.

**Deliver to:** [TRCP Rule 613]

- Defendant named in the writ.
- Party's duly authorized agent or attorney of record.

**Additional Service Duties of Officer:** [TRCP Rule 619]

- Levy on:
  - Specific property if such is designated and described in the writ, or
  - On 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 a trial to right of property.
- Keep property safe and in the same condition as when it was seized.
  - Document property by video or camera if possible to prove the property was kept in the same condition as when it was seized.
- Notify the court immediately if seized property is perishable so it can be sold.
- 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.
- If property is replevied, deliver the replevy bond to the clerk of the court.
- Serve defendant with the citation that is issued at the same time the warrant is issued requiring the defendant to answer before the court that has jurisdiction of the case.

**Additional Return Requirements:** [TRCP Rules 610]

- Return of the writ is to the court that has jurisdiction of the lien foreclosure case even though the writ was issued by the justice court.
- Describe the property attached with sufficient certainty to identify it.
- State when 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 reply occurs after the original return is filed, file an amended return.

**DISTRESS WARRANT**  
**Cause No. \_\_\_\_\_**

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

Greetings:  
\_\_\_\_\_(Defendant)  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, in a certain suit, said Plaintiff filed an Application for Distress Warrant 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 Distress Warrant 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 Warrant, unless, the same is replevied according to law.

HEREIN FAIL NOT, but return this Warrant, showing how you have executed the same.

**NOTICE TO DEFENDANT:**

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.**

**AMOUNT OF REPLEVY BOND:** \_\_\_\_\_

**ISSUED AND SIGNED** at \_\_\_\_\_ .M., on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ to certify which witness my hand this day.

\_\_\_\_\_  
**JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_**  
\_\_\_\_\_  
**COUNTY, TEXAS**

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# Writ of Execution

## **Definition:**

- A writ commanding an officer to levy upon the non-exempt property of a defendant in satisfaction of a previous judgment rendered by the issuing court.

## **Issued By:** [TRCP Rule 621]

- District court.
- County court.
- Justice court.

## **Additional Requirements of the Writ:** [TRCP Rules 629-632]

- Require the officer to execute according to the terms of the writ.
- *Writ for payment of money:* the writ must specify the amount to be paid, the rate of interest, and require the officer to satisfy the judgment and costs out of the property of the debtor.
- *Writ for sale of specific property:* the writ must particularly describe the property and direct the officer to sell the property.
- *Writ for delivery of certain property:* the writ must particularly describe the property, designate the party who is awarded possession, and require the officer to deliver the property to the designated person.
- *Writ for recovery of personal property or its value:* the writ must command the officer to levy and collect the value of the judgment from the debtor if the property can't be recovered.

## **Additional Methods of Service:** [TRCP Rule 613]

- Service of the writ on the defendant does not have to happen at the same time levying on the property occurs.
- Defendant's copy:
  - Mail.
  - Commercial delivery service.
  - Fax.
  - Email.
  - Any other manner the court directs.

## **Expiration for Service:** [TRCP Rule 621]

- 30, 60, or 90 days as specified in the writ.

## **Deliver To:** [TRCP Rule 637]

- Named defendant if found, or
- If absent, defendant's agent or attorney within the county.

**Additional Service Duties/Requirements of Officer:** [TRCP Rules 629, 636]

- Execute according to the terms of the writ.
- If more than one execution against the same person is received, number them in the order received.
- Call upon defendant to pay judgment and costs or point out non-exempt property for levy.
- Levy on enough non-exempt property to satisfy judgment and all costs.
  - Make detailed inventory of property levied upon.
- Keep property safely stored until judgment paid or property sold.
- Give notice of and prepare for sale:
  - Send copy of sale notice by certified mail to defendant and plaintiff.
  - Post in three public places within the county including the courthouse door and where personal property is stored, if applicable.
    - *Real property*: publish sale notice in the newspaper once per week for three consecutive weeks prior to the first Tuesday of the month
  - Length of time the notice must be posted:
    - *Personal property*: post for at least 10 days.
    - *Real property*: post for at least 20 days prior to the first Tuesday of the following month.
- Conduct auction-type sale:
  - *Personal property*: at location of storage.
  - *Real property*: at the courthouse door.
- Collect funds from sale.
- Prepare and deliver bill of sale (if personal property) or deed (if real property) to purchaser.
- Disburse funds.
  - Retain the constable's costs.
  - Pay the plaintiff the amount that satisfies the judgment.
  - Pay the defendant if any money is left over.

**Additional Return Duties/Requirements:** [TRCP Rule 654, CPRC §34.072]

- Record date and time of levy.
  - The writ can be returned after one levy, or attempt to levy, if the judgment creditor cannot designate any more executable property currently owned by the judgment debtor at the time of the first levy or first attempted levy.
  - If the officer is unable to locate property belonging to the defendant to levy on, the return is marked "nulla bona," indicating the writ is returned without execution.
- Record date and time of sale.
- Record how much money was collected and a copy of the disbursements to all parties.
- Attach all correspondence, inventory, sale notice, certified mail and bill of sale or deed.



**Comments:** [TRCP Rules 308, 634]

- Exempt property is defined in Texas Property Code §§41.001 - 42.004.
- A writ of supersedeas suspends all further proceedings under an execution previously issued. If this writ is received, stop everything and await further instruction from the court.
- A non-eviction writ of possession may be issued and used to seize personal property that has special value to the plaintiff. The writ commands the officer to return the specific property to the plaintiff instead of selling it.
- If a writ of execution is issued for more than one person or entity, the officer must receive a writ for each person.

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF

v.

\_\_\_\_\_  
DEFENDANT

§  
§  
§  
§  
§  
§

IN THE JUSTICE COURT

PRECINCT NO. \_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**WRIT OF EXECUTION**

**THE STATE OF TEXAS**

**TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS: GREETINGS**

**WHEREAS**, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the Justice Court of Precinct \_\_\_\_\_, \_\_\_\_\_ County, Texas, the Plaintiff in the above styled cause recovered a judgment against Defendant as follows:

Judgment in the amount of \$\_\_\_\_\_.

Costs in the amount of \$\_\_\_\_\_. (A bill of costs is attached)

Interest at \_\_\_\_\_% compounded annually; therefore

**YOU ARE COMMANDED:**

To execute on the Defendant's property to satisfy the judgment amount of \$\_\_\_\_\_, any other costs taxed against the Defendant, and any costs of executing this writ.

**HEREIN FAIL NOT**, and bring the money, together with this writ, showing how you executed the same, to this Court at the Courthouse of \_\_\_\_\_ County, Texas within  30  60  90 days.

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

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

# Order of Sale

## **Definition:** [TC §33.41]

- Writ ordering specific personal or real property be sold in the same manner as in an execution in satisfaction of a civil judgment.
- Writ ordering real property be sold in satisfaction of tax judgment(s) against the property.

## **Issued By:** [TC §33.92]

- *Civil judgment:*
  - District court.
  - County court.
  - Justice court.
- *Tax judgment:*
  - District court in the county where the real property is located.

## **Additional Requirements of the Writ:**

- Include the total judgment amount.
- *Civil judgment:*
  - Require the officer to collect the judgment amount and costs associated with sale.
  - Specifically describe the property and order it to be sold.
- *Tax judgment:*
  - Include a description of the property.
  - Include the market value for the property.

## **Additional Methods of Service:** [TRCP Rule 613, TC §§33.912, 34.01]

- Mail.
- Commercial delivery service.
- Fax.
- Email.
- Any other manner the court directs.

## **Expiration of the Order:** [TRCP Rule 621, TC §33.53]

- *Civil judgment:*
  - 30, 60, or 90 days as specified in the order.
- *Tax judgment:*
  - 180 days from the date of issuance.

## **Deliver to:**

- Named defendant if found, or
- If absent, defendant's agent or attorney within the county.

**Additional Service Duties/Requirements of Officer:** [TRCP Rules 629, 636, TC §§34.01-34.03]

- Levy on specified property as listed in the order of sale.
  - Keep property safely stored until property is sold.
- Calculate the total amount due including all taxes, penalties, interest, any other amount awarded by the judgment, court costs, and costs of the sale.
- Give notice of and prepare for sale:
  - Send copy of the sale notice by certified mail to defendant and plaintiff.
  - Post in three public places within the county including the courthouse door and where personal property is stored, if applicable.
    - *Real property*: publish sale notice in the newspaper once per week for three consecutive weeks prior to the first Tuesday of the month.
  - Length of time the notice must be posted:
    - *Personal property*: post for at least 10 days.
    - *Real property*: post for at least 20 days prior to the first Tuesday of the following month.
- Conduct auction-type sale:
  - *Personal property*: at location of storage.
  - *Real property*: at the courthouse door.
  - *Tax judgment*: compare the judgment amount to the market value of the property. Start bidding for the lesser amount of the two.
- Collect funds from sale.
  - *Tax judgment*: if the property is not sold, strike-off from the sale list and deed the property to the taxing entity requesting sale.
- Prepare and deliver bill of sale (if personal property) or deed (if real property) to purchaser.
- Disburse funds.
  - Retain the constable's costs.
  - Pay the plaintiff the amount that satisfies the judgment.
  - Pay the defendant if any money is left over.

**Additional Return Duties/Requirements of Officer:** [TRCP Rule 654]

- Record date and time of levy.
- Record date and time of sale.
- Record how much money was collected and a copy of the disbursements to all parties.
- Attach all correspondence, inventory, sale notice, certified mail and bill of sale or deed.

**Comments:**

- Exempt property statutes do not apply to property listed in an order of sale.
- Tax judgment: sale of the property must be completed before expiration of the order.
- An officer can request tax statements from the taxing entity in order to compute the correct amounts due. The Tax Code gives officers immunity if statements are utilized.

**Order of Sale**  
**THE STATE OF TEXAS**

Cause No. \_\_\_\_\_

To any sheriff or any Constable within the State of Texas, GREETINGS:

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_, Plaintiff(s), recovered a Judgment against \_\_\_\_\_ in the \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas, for the sum of \_\_\_\_\_ with interest thereon from \_\_\_\_\_ at the rate of \_\_\_\_\_% per cent per annum and costs of suit; and whereas, the said judgment is a foreclosure of a lien on the following described property, to-wit:

(Description of the property)

As said lien existed on \_\_\_\_\_ and it is ordered and decreed by said judgment that said property be sold as under execution in satisfaction of said judgment.

Therefore, you are hereby commanded that you proceed to seize and sell the above described property as under execution, and that you apply the proceeds to the payment and satisfaction of said sum of \_\_\_\_\_ dollars, together with the interest due thereon, and all costs of suit. And if said property shall sell for more than sufficient to pay off and satisfy said sums of money, then you are hereby directed to pay over the excess thereof to the defendant.

If the property cannot be found, or the proceeds of such sale be insufficient to satisfy said judgment, interest and cost of suit and the further cost of executing this writ, then you are to make the money or any balance thereof remaining unpaid out of any other property subject to execution of the defendant, as in case of ordinary execution.

Herein Fail Not, but due return make hereof within \_\_\_\_\_ days, showing how you have executed the same.

Issued and given under my hand and seal of said Court in \_\_\_\_\_, \_\_\_\_\_ County, Texas, on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, Clerk  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Deputy

**OFFICER'S RETURN**

COME TO HAND The \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_\_,  
 \_\_\_\_\_ o'clock, \_\_\_\_\_ m., and executed on the \_\_\_\_\_ day of \_\_\_\_\_,  
 20\_\_\_\_\_, in \_\_\_\_\_ County, Texas by taking into my possession the  
 property described in the foregoing Order of Sale.  
 And afterward, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
 advertised the same for sale at \_\_\_\_\_ on the  
 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by written advertisement posted for ten days  
 successively, one at the courthouse door of said county, and one at \_\_\_\_\_  
 \_\_\_\_\_, the place of sale. And on said \_\_\_\_\_ day of  
 \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_,  
 pursuant to said advertisement, the said property being then and there present and subject to the  
 view of the persons attending the sale, I sold the said property to \_\_\_\_\_  
 to whom the same was struck off for the sum of \_\_\_\_\_ dollars, that being the  
 highest sum bid for the same. And the said \_\_\_\_\_  
 having paid the sum so bid by him, the said property was delivered into his possession. The  
 distance actually traveled in the execution of such process is \_\_\_\_\_ miles.

\_\_\_\_\_ Constable or Sheriff  
 \_\_\_\_\_ County, Texas  
 By \_\_\_\_\_ Deputy

**SHERIFF'S FEES**

Levy . . . . .	\$ _____
Posting Notices. . . . .	\$ _____
Bill of Sale	\$ _____
Commissions . . . . .	\$ _____
Making _____ Deeds @ _____ each . . . . .	\$ _____
Executing Writ of Possession . . . . .	\$ _____
Return of Writ . . . . .	\$ _____
Printer's Fees . . . . .	\$ _____
Total . . . . .	.\$ _____
Original Court Costs . . . . .	.\$ _____
Total Amount of Cost . . . . .	.\$ _____

# Writ of Possession

**Definition:** [TRCP Rule 510]

- A writ that allows a landlord who prevails in an eviction suit to take possession of the premises that were in dispute.

**Issued By:**

- Justice court in the precinct where the property is located.

**Additional Requirements of the Writ:** [PC §24.0061]

- State the location of the property where the writ is to be executed.
- Commands the officer to post a written warning.
- Commands the officer to instruct the tenant to remove his or her personal property from the premises.
- Commands the officer to place the tenant's personal property outside the premises.
- Commands the officer to instruct the tenant to leave the premises immediately.
- Contain notice that the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

**Expiration for Service:** [TRCP Rule 510.8]

- 90 days from the date the judgment is signed.

**Deliver to:** [PC §24.0061]

- Writ delivered to the tenant.
- Warning posted to the front door.

**Additional Service Duties/Responsibilities of Officer:** [TRCP Rule 510.5, PC §24.0061]

- Post written warning, at least 8 1/2" by 11" in size, on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and will be executed on or after a specific date and time stated in the warning.
  - *Writ issued while case is pending:* writ executed at least 7 days after the date the tenant is served with notice.
  - *Writ issued after final judgment:* writ executed at least 24 hours after the warning is posted.
- Coordinate with parties about the time of eviction.
- Enter premises and deliver possession to the landlord.
- Instruct the tenants to remove, or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision, to remove all personal property from the premises other than personal property claimed to be owned by the landlord.

- Place, or have an authorized person place, the removed personal property outside the premises at a nearby location but not blocking a public sidewalk, passageway, or street, and not while it is raining, sleeting, or snowing.
- Do an inventory for any items moved by the officer.
- If needed, engage the services of a bonded or insured warehouseman to remove and store part or all of the property at no cost to the landlord or the officer executing the writ.

**Additional Return Duties/Requirements of Officer:**

- Attach a copy of the inventory if one was done.
- Attach a copy of the written warning.

**Comments:** [PC §24.0061]

- Reasonable force may be used in executing the writ.
- The officer that executes the writ is there to keep the peace and oversee the removal of the tenant's property. The actual removal of property is accomplished by the landlord or landlord's representatives.
- Items such as prescription drugs, hazardous materials, guns, etc., should be handled in accordance with office policy and should not be placed or left outside the property.
- A writ may not be executed while it is raining, sleeting, or snowing. If in the process of executing a writ and it begins to rain, simply stop until the rain ceases.



CAUSE NO. \_\_\_\_\_

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

**WRIT OF POSSESSION**

**THE STATE OF TEXAS  
TO THE SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS, GREETINGS**

**WHEREAS**, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Plaintiff recovered a judgment against Defendant for the possession of the following premises: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ ; therefore

**YOU ARE ORDERED** to deliver possession of the premises to Plaintiff; and

**YOU ARE FURTHER ORDERED** to post a written warning of at least 8 ½" x 11" on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted.

**YOU ARE FURTHER ORDERED** to instruct Defendant to remove or to allow removal of all of the personal property from the premises other than the personal property claimed to be owned by Plaintiff; if Defendant fails to comply, you are authorized to instruct the Plaintiff, the Plaintiff's representatives, or any other person acting under your supervision, to remove such property from the premises; and

**YOU ARE FURTHER ORDERED** to place, or to have an authorized individual place, the removed personal property outside the premises at a nearby location. The property shall not be placed blocking a public sidewalk, passageway, or street nor shall the personal property be placed outside while it is raining, sleeting or snowing.

You are authorized, at your discretion, to engage the services of a bonded warehouseman to remove and store part or all of the property at no cost to the Plaintiff or yourself.

**YOU ARE FURTHER ORDERED** to instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them.

**HEREIN BE NOTIFIED** that Sec. 7.003, Texas Civil Practice & Remedies Code, exempts an officer of the court, who executes said writ in good faith and with reasonable diligence, from liability for damages resulting from the execution of the writ.

**HEREIN FAIL NOT**, and return this writ to the Justice Court of Precinct \_\_\_\_\_, \_\_\_\_\_ County, Texas, showing how the Writ was executed.

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

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

**RETURN**

This Writ **CAME TO HAND** on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_:\_\_.M.  
and was **EXECUTED** in \_\_\_\_\_ County, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_:\_\_.M., by \_\_\_\_\_.

The distance actually traveled by me in the execution of this process was \_\_\_\_ miles and my fees are \$ \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Officer's Name and Title

\_\_\_\_\_  
Officer's Signature

# Writ of Reentry

## **Definition:**

- 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.

## **Issued By:** [PC §§92.009, 93.003]

- Justice of the peace where the property is located.

## **Additional Requirements of the Writ:**

- Include the address of the premises where lockout has occurred.
- Include the hearing date.

## **Expiration for Service:**

- On the hearing date.

## **Deliver to:**

- Landlord.
- Landlord's management company.
- Landlord's on-premises manager.
- Landlord's rent collector.

## **Additional Service Duties/Requirements of Officer:** [PC §§92.009, 93.003]

- Enter premises and place tenant back into possession of the property.
- 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 to jail, or both.

## **Additional Return Duties/Requirements of Officer:**

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

## **Comments:**

- Reasonable force may be used in executing the writ.
- A writ of possession supersedes a writ of reentry.

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 ("Residence"): \_\_\_\_\_; and testified under oath as to the facts of the lockout, and;

**WHEREAS**, the Court finds that: \_\_\_\_\_ has unlawfully denied the Applicant access to the Residence in violation of Property Code Sec. 92.0081.

**THEREFORE, IT IS ORDERED** that the above-named Applicant is entitled to immediate possession of 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 \_\_\_\_\_ . Alternatively, it 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 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

# Writ of Restoration

## **Definition:**

- Writ that provides a residential tenant with immediate, but temporary, restoration of disconnected utility services that were unlawfully disconnected by a landlord pending a final hearing.

## **Issued By:** [PC §92.0091]

- Justice of the peace where the property is located.

## **Additional Requirements of the Writ:** [PC §92.0091]

- Include the address of the premises where utility services have been disconnected.
- Describe the utility services to be restored.
- Include the hearing date.

## **Expiration for Service:**

- On the hearing date.

## **Deliver to:**

- Landlord.
- Landlord's management company.
- Landlord's on-premises manager.
- Landlord's rent collector.

## **Additional Service Duties/Requirements of Officer:** [PC §92.0091]

- 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 to jail, or both.

## **Comment:** [PC §92.0091]

- A writ of possession supersedes a writ or restoration.

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

# Writ of Retrieval

**Definition:** [PC §24A.002]

- 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.

**Issued By:** [PC §24A.002]

- Justice of the Peace.

**Additional Requirements of the Writ:** [PC §§24A.002, 24A.0021]

- Finding that the applicant is unable to enter the residence because the current occupant has denied the applicant access to retrieve the applicant's personal property or the personal property of the applicant's dependent.
- Finding that the applicant is not the subject of an active protective order or is not otherwise prohibited from entering the residence.
- Finding that there is a risk of personal harm to the applicant or applicant's dependent if the items are not retrieved promptly.
- Finding that the applicant is currently or was formerly authorized to occupy the residence.
- State 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.
- Authorize the applicant to enter the residence, accompanied by a peace officer, and retrieve the property listed in the application.
- Contain the list of property to be retrieved.

**Deliver to:**

- Occupant of the residence.

**Additional Service Duties/Requirements of Officer:** [PC §24A.003]

- Accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.
- If the current occupant of the residence is present at the time of the entry, provide the occupant with a copy of the court order authorizing the entry and property retrieval.
- Create an inventory of the property removed from the residence.
- Give a copy of the inventory to:
  - The applicant.
  - The current occupant

- If the current occupant is not present, leave the copy in a conspicuous place in the residence.

**Additional Return Duties/Requirements of Officer:** [PC §24A.003]

- File the inventory.

**Comments:** [PC §§24A.003-24A.005]

- A peace officer may use reasonable force in executing the Writ of Retrieval.
- A peace officer who provides assistance in good faith and with reasonable diligence is not:
  - civilly liable for an act or omission of the officer that arises in connection with providing the assistance; or
  - civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting.
- A person who interferes with the retrieval of personal property pursuant to a court order commits a Class B misdemeanor.



CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
APPLICANT

§ IN THE JUSTICE COURT

§

§ PRECINCT NO. \_\_\_\_\_

§

§ \_\_\_\_\_ COUNTY, TEXAS

**WRIT OF RETRIEVAL**

**WHEREAS**, Applicant has made his/her Application for a Writ of Retrieval regarding the following location ("Residence"): \_\_\_\_\_; and

**WHEREAS**, Applicant has posted an acceptable bond with the Court in such form and amount as approved by the Judge in this matter; and

**WHEREAS**, the Court finds that:

Occupant of the Residence has denied the Applicant access to the Residence to retrieve the Applicant's personal property or the personal property of the Applicant's dependent(s) or poses a clear and present danger of family violence to Applicant or the Applicant's dependent(s);

The Applicant is not the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence or otherwise prohibited by law from entering into the Residence;

There is risk of personal harm to the Applicant or the Applicant's dependent(s) if the items listed in the Application are not retrieved promptly;

The Applicant is currently or was formerly authorized to occupy the Residence according to a lease or other documentary evidence acceptable to the Court; and

The Occupant received notice of the Application and was provided an opportunity to appear before the Court to contest the Application.

**THEREFORE, IT IS ORDERED** that a Writ of Retrieval for the items of personal property only as specifically listed by Applicant in the Application and approved by this Court is hereby **GRANTED**.

**IT IS FURTHER ORDERED** that a Constable or Sheriff or their deputy or permanent reserve deputy holding a permanent peace officer license shall accompany and assist the Applicant in making the authorized entry into the Residence and retrieving items of personal property as specifically listed by Applicant in the Application and approved by this Court.

**IT IS FURTHER ORDERED** that the Applicant shall submit all property retrieved from the Residence to the peace officer to be inventoried by the officer. The officer shall provide a copy of the inventory to the applicant, a copy to the occupant or if the occupant is not present, leave the copy in a conspicuous place in the residence, and shall file the original inventory with this Court.

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

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

# Writ of Sequestration

**Definition:** [CPRC §62.002]

- Writ that allows for the temporary seizure or setting aside of specific property while a case is pending to allow the parties to protect and preserve their property pending the outcome of the case.

**Issued By:**

- District court.
- County court.
- Justice court.

**Additional Requirements of the Writ:** [TRCP Rules 696, 699, 700a]

- Contain findings of fact to support that grounds exist for the issuance of the writ.
- Describe the property to be sequestered with enough detail that the property can be identified and distinguished from similar property.
- State the value of each article of property to be sequestered.
- State the location of each article of property to be sequestered.
- Specify the plaintiff's bond amount.
- Command that the sequestered property be kept subject to further orders of the court.
- Advise the defendant of his/her right to replevy.
- State the amount of bond required of defendant to replevy.
- On defendant's copy, the following statement 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."

**Additional Dates & Times for Service:** [TRCP Rule 6]

- Service allowed on Sundays

**Additional Methods of Service:** [TRCP Rule 700a]

- Service of the writ on the defendant does not have to happen at the same time levying on the property occurs.
- Defendant's copy:
  - Mail.
  - Commercial delivery service.
  - Fax.
  - Email.
  - Any other manner the court directs.

**Deliver to:**

- Named defendant(s).

**Additional Service Duties/Requirements of Officer:** [TRCP Rules 706, 710, CPRC §62.061]

- 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.

**Additional Return Duties/Requirements of Officer:** [TRCP Rules 706, 712]

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

**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

## **LEGAL TERMS AND DEFINITIONS**

**ABSTRACT OF JUDGMENT** – A post-judgment remedy that someone winning a civil lawsuit can obtain from the court. The effect of the abstract is to place a lien on the property of the judgment debtor, so that if they sell the property, the money goes to pay the judgment.

**ACQUITTAL** – When a criminal defendant is found not guilty of the offense they are charged with.

**ADJUDICATION** – A formal determination of a party's rights in a case.

**AFFIANT** - The person who swears to an affidavit or statement.

**AFFIDAVIT** - A written or printed statement or declaration of facts made voluntarily and sworn to or affirmed by an affiant before a person having authority to administer an oath or affirmation, such as a judge, clerk, or notary.

**AFFIRMATIVE DEFENSE** – A claim by a defendant that would defeat a plaintiff's claim in a civil suit or result in an acquittal in a criminal case. The defendant has the burden of proof regarding an affirmative defense.

**ALIAS CITATION** - A citation issued after the original citation usually directed to the sheriff or constable of another county or directed to the defendant under another name.

**ALIAS EXECUTION** - An order of execution issued after the first one was unsuccessful in satisfying the judgment, ordering the sheriff or constable to seize other property.

**AMOUNT IN CONTROVERSY** - In a civil suit the amount sued for; the actual dollar value of the plaintiff's claim

**ANSWER** – A response by a party to a lawsuit. Generally filed by a defendant but can be filed by a plaintiff if the defendant files a counterclaim.

**APPEAL** – A request to have a higher court take a case that has been adjudicated already. Most justice court appeals go to county court for a trial de novo.

**APPEAL BOND** - A bond submitted by a person bringing an appeal which will: (1) assure the person's appearance in the court to which appeal is made, and (2) cover the opponent's costs if the court to which appeal is made determines that the appeal had no merit.

**APPEARANCE** - Coming into court as a party to a suit, as defendant or plaintiff, by actual physical appearance or by filing a pleading; submitting to the court's jurisdiction.

**APPELLANT** - The party initiating the appeal; the party who makes an appeal from one court or jurisdiction to another.

**APPELLEE** - The party in a cause in which the other party has appealed; the party against whom appeal is taken.

**ARRAIGNMENT** - The procedure in which the defendant is brought before the court, identified, informed of the charge, and required to enter a plea.

**ARREST WARRANT** - A written order of the court, issued and signed by a magistrate, commanding a law enforcement officer to arrest a person and bring that person before the magistrate.

**ATTACHMENT** - The seizure of persons or property so that they will come under the custody and control of the court; the process occurs by virtue of a writ, summons or other judicial order. This can be used to secure a person's appearance in court, or in civil suits to keep a defendant from concealing assets to protect them from a pending civil judgment.

**BAIL** - In a criminal case, security (money or property) presented to the court to ensure a defendant's appearance in court on the charge brought against the defendant.

**BAIL BOND** - A surety bond or contract in which a third party guarantees that the defendant will appear in court at the designated times and that it will pay the amount of the bond if the defendant does not appear as directed.

**BEYOND A REASONABLE DOUBT** - The standard of proof necessary in a criminal case or a truant conduct case; the factfinder must be convinced to a moral certainty. A court may not instruct a jury as to the meaning of "beyond a reasonable doubt."

**BILL OF REVIEW** - A remedy which requests the court to reconsider a decision (usually a default judgment) after the time period for appeal or motion for a new trial has passed. A party has four years from the date of judgment to file a bill of review.

**BOND** - A written instrument requiring a party to pay a sum fixed as a penalty if the party does not perform actions specified in the document.

**BOND FORFEITURE** - A suit, initiated in the name of the state, to recover from the defendant or sureties in a criminal case a bond because the defendant violated conditions of the bond.

**BURDEN OF PROOF** - The duty of a specific party to prove facts in dispute in an issue between parties in a suit. Generally, the party bringing the suit has the burden of proof, so the plaintiff in civil cases and the State in criminal cases have the burden of proof. Defendants have the burden of proof for affirmative defenses. In civil cases, the standard is by a preponderance of the evidence, and in criminal cases it is beyond a reasonable doubt.

**CAPIAS** - Similar to an arrest warrant; a judicial writ commanding a peace officer to take a person into custody and bring them before the court to answer specific charges.

**CAPIAS PRO FINE** - An order for a peace officer to arrest someone convicted of a criminal offense who has not satisfied the fine and costs in the judgment. The person must be brought



before the issuing court if available. If not, they may be taken to jail for no more than one business day. A court must then make a determination if the defendant is indigent, and order appropriate disposal of the fine and costs, which may include waiver, community service, payment plan, or issuance of a commitment, ordering the defendant to lay out the judgment in jail.

**CASH BOND** - A type of appearance bond in which the defendant deposits money with the court to guarantee appearance rather than having other parties (sureties) sign a bond.

**CAUSE OF ACTION** - The facts that give a person the right to judicial relief; the basis of a law suit.

**CHALLENGE FOR CAUSE** - A challenge to a juror during voir dire examination raising a matter which disqualifies the person from serving as a juror in a particular case.

**CHANGE OF VENUE** - The transfer of a case to another precinct within the same county or to another county.

**CITATION** - An order or summons commanding the person named in the order to appear in court on a date named in the order. In criminal cases, this is the “ticket” which originally charges the offense in some cases. In civil cases, the court issues a citation which must then be served on the defendant to notify them of the lawsuit.

**COMMISSIONERS COURT** - The governing body of officers of a county charged with a variety of executive duties; the county judge presides over the commissioners court.

**COMPLAINT** - An affidavit or sworn statement made before the court which charges the commission of an offense within the jurisdiction of the court.

**CONTEMPT (CONSTRUCTIVE)** - A willful disregard or disobedience of the court occurring outside the court's presence, (such as disobeying a court order); notice and hearing are required before person is held in constructive contempt.

**CONTEMPT (DIRECT)** - A willful disregard or disobedience of the court committed in the immediate view and presence of the court, or so near the presence of the court as to interrupt the orderly course of proceedings.

**CONTINUANCE** - The adjournment or postponement of an action pending in court, to a later date, usually done upon motion of a party to the action.

**CONVERSION** - The unauthorized act of appropriating personal property of another for the person's own beneficial use and enjoyment.

**CONVICTION** - The result of a criminal trial which ends in a judgment that the person is guilty as charged.

**COUNTERCLAIM** - A claim presented by a defendant against a plaintiff in the same action.

**COUNTY COURT** – The court to which justice court judgments are generally appealed. Every county has a county court, called the constitutional county court. Some counties additionally have statutory county courts, also called county courts-at-law.

**COURT COSTS** - Fees and charges required by law to be paid to the courts or some of the court’s officers, the amount of court costs is fixed by law.

**CROSS-CLAIM** – A claim filed by a defendant in a lawsuit against another defendant in the same suit. John sues Steve and Diana. If Diana also sues Steve in the same suit, that is a cross-claim. This is sometimes also called a “cross-action.”

**DAMAGES** - Compensation in money for injury, loss, or damage to person, property, or rights through the unlawful act, omission or negligence of another.

**DEFAULT JUDGMENT** - A judgment entered by the court upon the failure of a party to answer or appear at the appointed time. A default judgment may not be rendered against a criminal defendant. In most civil cases, a hearing must be held where the plaintiff proves their damages before a default judgment can be rendered.

**DEFENDANT** – The party against whom a civil or criminal case has been filed.

**DEFERRED DISPOSITION** – An option in criminal cases where the defendant is given conditions to comply with by the court. If the defendant complies, the case is dismissed. If they fail to comply, the court convicts the defendant following a show cause hearing.

**DISCOVERY** – The process through which parties obtain information from each other in order to prepare for trial or enforce a judgment.

**DISCRETION** - Power or privilege of the court to act according to the judge’s judgment, in an area not limited by legal rule.

**DISMISSAL** - An order or judgment disposing of a case by sending it out of court, without holding a trial on the issue. A dismissal can be without prejudice, meaning the plaintiff can refile the case, or with prejudice, meaning the merits of the case have been decided and it cannot be refiled. Most dismissals are without prejudice.

**DOCKET** - A formal record of the courts in which all the acts done in court in the conduct of each case are entered in a concise form, from its beginning to its conclusion.

**DORMANT** - Inactive; idle; applies to a judgment that can no longer be enforced. Judgments go dormant 10 years from the date of the judgment, or the date of the last writ of execution, whichever is later.

**DUE PROCESS** - An exercise of the powers of government in an orderly manner so that a person’s individual rights are protected and laws are applied fairly.

**ELEMENTS** – The factors or things that must be proven to establish a person’s criminal culpability or civil liability. Each offense or cause of action has different elements.

**EQUITABLE** - Just, fair, and right.

**EVICTION** - The process of depriving a person of possession of land or rental property which the person has held or leased but no longer has the right to possess.

**EVIDENCE** - Testimony, writings, objects, or other things offered to prove the existence or non-existence of a fact.

**EXAMINING TRIAL** - An examination conducted by a magistrate for the purpose of inquiring into a criminal accusation against a defendant to determine whether there is sufficient evidence of guilt to justify further proceedings against the accused.

**EXCHANGING BENCHES** - The hearing of a matter by a judge in a court, other than the judge's own; often due to the disqualification or recusal of the judge of the court where the matter is filed.

**EXECUTION** – A writ used to enforce civil judgments, where the constable or sheriff seizes exempt property of the judgment debtor and sells it to satisfy the judgment.

**EXEMPT PROPERTY** - Property specified by statute which may not be seized or sold to satisfy an execution or attachment.

**EX PARTE** - On one side only; done for, in behalf of, or on the application of, one party only; to discuss or transact business with one party in the absence of the opposite party to a case. Generally, ex parte conversations are not allowed.

**EXPUNCTION** – The act of erasing or eliminating for the record; to expunge. Some criminal cases may be expunged from court records if the defendant complies with certain requirements.

**FINE** - A monetary penalty; to sentence a person convicted of an offense to pay a penalty in money.

**FORCIBLE DETAINER; FORCIBLE ENTRY AND DETAINER** – Specific causes of action that lead to an eviction case. It is now proper to refer to both types of cases simply as Eviction Cases.

**FORECLOSURE** - The statutory method of enforcing payment of a debt secured by a mortgage or lien on property, by taking and selling the property.

**FORFEITURE OF BOND** - A judgment ordering payment of an obligation covered in a bond due to failure of the person named in the bond (principal) to perform the conditions of the bond.

**GARNISHEE** – Person or entity possessing assets of the judgment debtor, named by a judgment creditor in a garnishment claim.

**GARNISHMENT** – Method of enforcing a civil judgment where a third party who possesses assets belonging to the judgment debtor, or owes a debt to the judgment debtor, is ordered instead to give those assets or pay that debt to the judgment creditor.

**GOOD FAITH** - Honesty of intention; sincerity.

**GUARDIAN AD LITEM** - A person appointed by the court to represent a minor, an incompetent person or any other person entitled to such protection by law.

**GUILTY** - A plea by which a defendant confesses to the crime with which the defendant is charged, or a verdict by which a defendant is convicted of a crime.

**HEARSAY** - Evidence given in court of an out of court statement, attempting to prove the truth of the out of court statement. Written materials may also be hearsay if offered in court by a witness who did not write or otherwise create the instrument.

**HUNG JURY** - A jury so irreconcilably divided in opinion that they cannot agree upon a verdict.

**INDIGENT** – Being unable to afford to retain an attorney to represent the individual, or to be unable to afford to pay fines and court costs, filing fees or appeal bonds.

**INJUNCTION** - A court order prohibiting someone from doing some specific action or requiring that a person take action to undo some wrong. Generally, justice courts cannot issue injunctions without specific legal authority to do so.

**INQUEST** - An investigation conducted by a judge or medical examiner to determine the cause and manner of death and whether anyone is responsible for the death of another.

**INTERLOCUTORY** - Provisional, temporary, not final.

**INTERPLEADER** - A procedure to determine the rights of parties to property held by another party who has no interest in the property, frequently escrowed money.

**INTERROGATORIES** - Written questions propounded by one party and served on the adversary, who must serve written answers to the questions under oath.

**INVOKING “THE RULE”** – On motion from either party or the court, witnesses on both sides are placed under oath, and are removed from the courtroom to a place where they cannot hear the testimony of any other witness. This ensures that their testimony is not affected by the other witnesses.

**JUDGMENT** - The final decision of the court resolving a dispute and determining the rights and obligations of the parties to the dispute; the official decision of the court. The judgment must be reduced to writing and entered in the court record.

**JUDGMENT CREDITOR** - One who has obtained a money judgment against another party.

**JUDGMENT DEBTOR** – One who owes a money judgment to another party.

**JUDGMENT NISI** – Nisi means unless; a judgment which will be made final unless cause is shown to prohibit it. Used in bond forfeiture cases.

**JUDGMENT N.O.V.** - Judgment notwithstanding the verdict; a judgment of the court that is opposite to the verdict reached by the jury because there was insufficient evidence to support the jury’s decision, as a matter of law.

**JUDICIAL NOTICE** - The official recognition of certain facts which a judge may properly take and act upon without hearing evidence because the facts are generally known in the territorial jurisdiction of the court or capable of accurate determination through reliable sources.

**JURISDICTION** - The power of the court to hear and decide the case.

**JURISDICTIONAL AMOUNT** - The money amount involved in the particular case or dispute by which the jurisdiction of the court to determine the case is measured; part of “subject matter” jurisdiction. Justices of the peace currently have a \$10,000 cap on jurisdictional amounts in civil cases.

**JURY** - A certain number of individuals, selected according to law, and sworn to declare the truth upon evidence laid before them.

**JURY CHARGE** - The instructions given to a jury regarding the applicable law in a case which the jurors must apply to the facts of the case, as they determine them, in order to reach a verdict. Justices of the peace do not “charge the jury” in civil cases, but they do in criminal.

**JURY PANEL** - A group of prospective jurors who are summoned to appear on a stated day and from which a jury is chosen. Also called the venire.

**JUVENILE** - A person who has not reached the age at which the person is treated as an adult for the purposes of criminal law. In most cases in Texas, this is any person under 17 years of age and over the age of 10.

**LESSEE** - A person to whom a lease is given.

**LESSOR** - A person who gives a lease.

**LEVY** - To assess; raise; execute; exact; collect; gather; as a tax.

**LIABLE** - Obligated by law or equity.

**LIABILITY** - Being responsible for actual or possible loss.

**MAGISTRATE** - A civil public officer invested with powers and functions which may be judicial, executive, or legislative in nature; a justice of the peace is a magistrate, as are most judges

**MAGISTRATE'S WARNING** - A warning given by the magistrate to an accused informing the accused of the accused’s legal rights.

**MECHANIC'S LIEN** - A claim created by law for the purpose of securing priority of payment of the value of work performed and materials furnished in erecting or repairing buildings or improvements on land, or certain mechanical repairs.

**MENS REA** - A guilty mind; a criminal intent; culpable mental state. Most criminal offenses require a culpable mental state.

**MOTION FOR NEW TRIAL** - A request that the trial judge set aside the judgment and order a new trial because the trial was improper or unfair due to specific prejudicial errors. This is different from an appeal because an appeal goes to another court, where a motion for new trial requests another trial in the same court.

**NEXT FRIEND** - One acting for the benefit of a minor or any other person not able to act on one's own behalf, without being regularly appointed as a guardian.

**NOLO CONTENDERE** - A plea in criminal cases in which the defendant does not contest the charge against the defendant; also called "no contest", this plea has the same legal effect in the criminal court as a guilty plea but can't be used against the defendant in a separate civil suit.

**NOT GUILTY** - A plea in which the defendant denies guilt, or a verdict in which the defendant is acquitted of a criminal offense.

**NOTARY PUBLIC** - A public officer whose function is to administer oaths, certify documents, take affidavits, and attest to the authenticity of signatures; a justice of the peace is an *ex officio* (by virtue of the office) notary public.

**NULLA BONA** – Latin term meaning no goods. Written on the writ of execution return signifying the officer made a diligent search but was unable to find any property of the defendant to levy on to satisfy the judgment.

**NUNC PRO TUNC** – Latin phrase meaning now for then. A judgment nunc pro tunc is issued to correct a clerical error in a court's judgment. The judgment is treated as though it had always been issued correctly.

**OFFICER OF THE COURT** - A term generally used to refer to any person connected with the operation of the court, including bailiffs, clerks, and attorneys.

**OPEN COURT** - A court to which the public has a right to be admitted. A hearing at which the judge is present held in a place designated for holding court.

**PARTY** – A person or entity involved in the case, either suing or being sued.

**PEACE BOND** - A type of bond that must be provided by someone who has threatened to breach the peace. It is conditioned that the person will not act on their threat.

**PEREMPTORY CHALLENGE** - The right to challenge and remove a prospective juror without stating the reason. Parties get three peremptory challenges (also sometimes called "strikes") and may use them for any reason other than race or gender.

**PERSONAL BOND** - The defendant's word or promise to appear in court to answer criminal charges; recognizance bond. Can also be a promise to pay a certain amount if they fail to appear.

**PETITION** – A formal written application stating a party’s claims and requesting relief from the court.

**PLAINTIFF** – A party who files a claim, including a defendant filing a counterclaim (often called a counter-plaintiff).

**PLEA** - The answer which the defendant in a criminal proceeding makes to the complaint alleging the offense.

**PLEADINGS** - Oral or written statements made to the court presenting the claims and defenses of the parties.

**POSTPONEMENT** - A continuance; a delay in proceedings.

**POWER OF ATTORNEY** - An instrument authorizing another to act as one's agent. It does not grant someone the authority to take actions only allowable by attorneys, such as representing a party in a non-eviction suit.

**PREPONDERANCE OF THE EVIDENCE** - The greater weight of the evidence; more likely than not; the standard of proof in civil cases.

**PRESUMPTION** - An inference or conclusion in favor of a particular fact; often a statutory presumption, which may be rebuttable.

**PRESUMPTION OF INNOCENCE** – Constitutional protection stating that in a criminal case a defendant should be acquitted unless the defendant’s guilt is established by evidence beyond a reasonable doubt.

**PROBABLE CAUSE** - A reasonable ground of suspicion supported by facts or circumstance sufficiently strong in themselves to cause a reasonably cautious person to believe that the accused is guilty of the offense with which the accused is charged.

**PRO SE** - For self, on one’s own behalf; one who does not retain a lawyer but, instead, appears on one’s own behalf in court.

**QUASH** - To vacate; to annul; to make void. For example, a defendant may make a motion to quash a complaint.

**REMEDY** - The means by which a right is enforced, or the violation of a right is prevented, redressed, or compensated.

**RENDER** - To pronounce, state, declare, or announce in open court the judgment of the court in a given case.

**REPLEVY BOND** – A bond posted to allow a party to take back or hold property that would otherwise be sequestered, garnished, or attached.

**REQUEST FOR ADMISSION** - A formal method of discovery whereby written statements of fact are served on the opposing party, which they must then admit or deny.

**RES JUDICATA** – The concept of law stating that once the merits of a claim have been decided by a court, they can't be re-litigated (other than legally allowed new trials or appeals).

**RETURN** - The instrument given to the court by a sheriff or constable upon a writ or notice, stating what the officer has done under it and the time and mode of service.

**SCIRE FACIAS** – An order from the court, used in two different ways. One, to substitute parties when a party to a pending case dies. Also, used to revive a judgment which has gone dormant.

**SEARCH WARRANT** - A written order issued by a magistrate and directed to a peace officer commanding the officer to search for specified property at a specified place and to seize it and bring it before the magistrate.

**SENTENCE** - The judgment formally pronounced by the court or judge upon the defendant after conviction in a criminal prosecution, awarding the punishment to be imposed, and ordering that it be carried out.

**SEQUESTRATION** – A writ used to order a thing which is the subject of a controversy in a lawsuit to be held by the constable until the judge can rule on its disposition.

**SERVICE** - The delivery of a writ, notice, injunction, etc., by an authorized person, to a person who is thereby officially notified of some proceeding concerning that person.

**SHALL** - As used in statutes, this word is generally imperative or mandatory, meaning must.

**STATUTE** - A law enacted by the legislature.

**STATUTE OF LIMITATIONS** - A statute declaring that no suit shall be maintained on certain causes of action unless brought within a specified period after the right accrued.

**STIPULATION** - The name given to any agreement made by the attorneys or parties on opposite sides of a cause.

**SUA SPONTE** – Of its own will or notion; voluntarily. Used to describe a motion made or order issued by the court without request from a party.

**SUBPOENA** - Process initiated by a party commanding a witness to appear and give testimony, at a specified place and time to testify for the party.

**SUBPOENA DUCES TECUM** - A subpoena that directs a witness to bring to court and produce certain documents or other things desired as evidence in a judicial proceeding.

**SUMMONS** - An order to a person to appear in court on a specific date to answer a case filed against the person.

**SUPERSEDEAS BOND** – A bond posted which requires a court to stay the proceedings or suspend a judgment or execution. Sometimes an appeal bond is referred to as a supersedeas bond.

**SURETY** - One who promises to answer for the debt or default of another.



**SURETY BOND** - A bond taken out by a surety who agrees to pay a sum of money in the event that the principal fails to perform an act.

**SWORN** – Signed in front of someone authorized to take oaths or signed under penalty of perjury.

**THIRD-PARTY CLAIM** – Claim brought by a party being sued against another person or entity who is not yet a party to the case.

**TORT** - A wrong, an injury, or a violation of a duty imposed by law which results in damage or injury to a person or property.

**TRANSCRIPT** - A copy of the court records in a case.

**TRIAL** - Proceedings in open court during which the ultimate issues in a case are determined, by a factfinder (judge or a jury).

**TRIAL DE NOVO** - A new trial or retrial held in an appellate court in which the whole case is heard as if no trial had ever been held in the trial court originally hearing the case. An appeal from the justice court to a county or district court results in a trial *de novo*.

**VENIRE FACIAS** - A judicial writ, commanding a sheriff or other officer to bring before the court a specific number of individuals to serve on the jury.

**VENUE** - The place where a case is tried.

**VERDICT** - The formal and definitive answer by a jury impaneled and sworn for a trial of the case and reported to the court, upon the matters or issues submitted to the jury during trial.

**VOID** - Having no legal force or binding effect, as a void judgment.

**VOIDABLE** - That which may be declared void; not void in itself but which requires some action to determine the absence of any legal force or binding effect.

**VOIR DIRE** - The preliminary examination of a witness or juror, where the individual's competency, interest, etc., may be questioned.

**WAIVER** - The intentional or voluntary relinquishment of a known right.

**WRIT** – A court order.

**WRIT OF EXECUTION** - A writ authorizing an officer to levy on and to sell certain items of the judgment debtor to satisfy a judgment.

**WRIT OF GARNISHMENT** - A writ directed to one who has possession of money or property belonging to the defendant, ordering the third person not to deliver or pay it to the defendant but to deliver or hold it for the plaintiff.

**WRIT OF HABEAS CORPUS** - A writ which orders that a person be brought before the court in order to test the legality of the person's detention by the person to whom the writ is directed.

**WRIT OF MANDAMUS** - A writ issued from a court of competent jurisdiction to another court to command performance of a specific duty which a person is entitled to have performed.

**WRIT OF POSSESSION** - The writ of execution employed to enforce a judgment to recover possession of land. It commands the sheriff or constable to enter the land and give possession of it to the person entitled under the judgment

# **STATUTE ABBREVIATIONS**

(AS USED IN THIS GUIDE)

CCP: Code of Criminal Procedure

CPRC: Civil Practice and Remedies Code

FC: Family Code

GC: Government Code

LGC: Local Government Code

PC: Property Code

TC: Tax Code

TRAP: Texas Rules of Appellate Procedure

TRCP: Texas Rules of Civil Procedure













