

I NEED MY STUFF

ORDERS OF RETRIEVAL IN JUSTICE COURT

Nelson H. Mock

Texas RioGrande Legal Aid

Texas Justice Court Judges
Association, “10-Hour Civil”
April 11-12, 2016

The Problem

Scenario A:

Mary Girlfriend is going through a rough time with her boyfriend, they recently broke up. She is living with him at his house, but she was never his tenant.

Mary's boyfriend refuses to let her back in the house. Mary doesn't want to live in the house anymore, but she needs her clothes, drivers license, medicine, and credit cards.

The Problem, cont.

Scenario B:

John Tenant has been living in a house. He's no longer living there, but his roommate is.

John still has important possessions in the house, including personal papers, pictures, and prescription medication, and he needs them back. His roommate says no.

Why It Is Now Your Problem:

- Mary Girlfriend and John Tenant have both filled out a sworn complaint for a writ of re-entry. Problem with that:
 - Neither are suing their landlord
 - Neither want to go back to live in their residence, they just want their stuff.

The Law

- New law effective September 1, 2015:
 - ***Texas Property Code (TPC)*** Chapter 24A.
 - Sec. 24A.001. DEFINITION.
 - Sec. 24A.002. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY.
 - Sec. 24A.003. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER.
 - Sec. 24A.004. IMMUNITY FROM LIABILITY.
 - Sec. 24A.006. HEARING; REVIEW.

The Law

- The *Texas Rules of Civil Procedure* do not specifically address an Order of Retrieval.
- So, applicable rules will be combination of procedures outlined in the *Texas Property Code* and (where there is no conflict) the general Justice Court rules.

Writ of Reentry v. Order of Retrieval

Writ of Reentry	Order of Retrieval
To gain occupancy	To retrieve (limited) possessions
Action by current tenant	Action by current or former tenant or occupant
Action against landlord	Action against occupant
Order grants access to occupy	Order grants access to collect specific items
Landlord faces liability	Landlord has immunity when acting in accordance with order
Landlord's faces contempt of court for noncompliance	Occupant faces Class B misdemeanor for interfering with order
Landlord can request hearing after order executed	Occupant receives notice about hearing before execution of order; Occupant can request hearing after order executed.
Appeal to County Court	No provision for appeal

Order of retrieval

If a person is unable to enter **the person's residence or former residence** to retrieve personal **property belonging to the person or the person's dependent** because the **current occupant** is denying the person entry, the person may apply to the justice court for an **order** authorizing the person to enter the residence accompanied by a peace officer **to retrieve specific items of personal property.**

(TPC § 24A.002(a))

Application for Order

Application must:

- Certify that the occupant of the residence is denying entry;
- Include a lease or other documentary evidence that shows that applicant is or was formerly authorized to occupy the residence.

(TPC § 24A.002(b))

Application for Order

Application must:

- Certify that, to best of knowledge, applicant is not subject to:
 - An **active protective order** under Title 4, Family Code
 - Magistrate's **order for emergency protection** under Article 17.292 of the Code of Criminal Procedure, or
 - Another **order prohibiting entry** into the residence, or
 - Otherwise **prohibited by law from entering** the residence.

(TPC § 24A.002(b))

Application for Order

Application must:

- Allege that the applicant or applicant's dependent requires ONLY the following:
 - A. medical records;
 - B. medicine and medical supplies;
 - C. **clothing;**
 - D. **child-care items;**
 - E. legal or financial documents;
 - F. checks or bank or credit cards in the name of the applicant;
 - G. employment records; or
 - H. personal identification documents;
- And describe the items with specificity.

(TPC § 24A.002(b))

Application for Order

Application must:

- Allege that the applicant or applicant's dependent will suffer personal harm if the items listed in the application are not retrieved properly.

(TPC § 24A.002(b))

Application for Order

Applicant must:

- Execute a bond, filed with the Court, that
 - Has two or more noncorporate sureties or one corporate surety authorized to issue bonds in Texas,
 - Is payable to occupant,
 - Is in an amount required by Court,
 - Is conditioned on the applicant paying damages and costs for items wrongly retrieved.

(TPC § 24A.002(c), (d))

Granting Order

Court may grant order upon:

- Sufficient evidence of urgency and potential harm to the health and safety of any person, and
- After sufficient notice to the current occupant and an opportunity to be heard.

(TPC § 24A.002(e))

Granting Order

The Court must find:

- Occupant of the Residence **denied access** to the Residence to retrieve the Applicant's (or Applicant's dependent's) property;
- 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 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.

(TPC § 24A.002(e))

Executing Order

- Peace officer accompanies to assist in the retrieval of the items.
- Before removing property, applicant must first submit all property to the peace officer to be inventoried.
- Peace officer then:
 - Creates inventory
 - Provides a copy of inventory to occupant (or leaves in conspicuous place)
 - Files original inventory to the court that issued the order

(TPC § 24A.003(a)-(c))

Executing Order

- Peace officer can use reasonable force.
- Peace officer acting in good faith with reasonable diligence is
 - not civilly liable for act in connection with providing assistance, and
 - not civilly or criminally liable for wrongful appropriation of personal property

(TPC § 24A.003(d))

Landlord liability

- A landlord or a landlord's agent who permits or facilitates entry into a residence in accordance with a court order issued under this chapter is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry.

(TPC § 24A.004)

Best Not to Interfere...

- A person who interferes with the execution of the order commits a Class B misdemeanor.
- (Unless the person was not given a copy of the order or notice of order).

(TPC § 24A.005)

That Wasn't Her Stuff!

- The occupant may file a complaint with the Court within 10 days after the execution of the order that applicant took items that belonged to the occupant.
- The Court will promptly hold a hearing and rule on the disposition of the property.
- No provision for appeal, but statute does not preclude pursuing other remedies.

(TPC § 24A.006)

Once you learn to choose your belongings properly, you will be left with only the amount that fits perfectly in the space you own.

--Marie Kondo

**LAW OFFICE OF
TEXAS RIOGRANDE LEGAL AID, INC.**

Austin Office
4920 N. I-35
Austin, TX 78751

Nelson H. Mock

nmock@trla.org

Dir: (512) 374-2723

Fax: (512) 447-3940