

Access to Residence to Retrieve Property Accompanied by Peace Officer

Presented by
Russ Ridgway
Justice of the Peace
Precinct 5, Place 1, Harris County, Texas

Texas Justice Court Judges Association
Round Rock, Texas
Professional Development
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How to Apply for Assistance

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 a writ authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

Application to the Court

The Application must:

(1) certify that the Applicant is unable to enter the residence because the current Occupant has denied the Applicant access to the residence or poses a clear and present danger of family violence to the applicant or the applicant's dependent.*

* Family Code Section 71.004 defines family members mental state, former spouse, protective orders, bodily harm from former friend or imminent threat of physical harm or family violence.

(2) certify that, to the best of Applicant's knowledge, the Applicant is not:

- the subject of an active protective order, a magistrate's order for emergency protection, or other court order prohibiting entry to the residence, or
- otherwise prohibited from entering the residence.

Application to the Court (*continued*)

(3) allege that the Applicant or the Applicant's minor dependent requires personal items located in the residence:

- (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
- (I) copies of electronic records containing legal or financial documents.

Application to the Court (*continued*)

(4) describe with specificity the items that the Applicant intends to retrieve;

(5) allege that the Applicant or the Applicant's dependent will suffer personal harm if the items listed are not retrieved promptly;

(6) include a lease or other documentary evidence that shows the Applicant is currently or was formerly authorized to occupy the residence.

Bond Required

The applicant must be prepared to execute a bond:

- in an amount required by the judge,
- with either two or more good and sufficient sureties or one corporate surety authorized to issue bonds in this state,
- payable to the occupant of the residence,
- conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

“The bond must be approved (or can be waived) by the Judge and filed with the Justice Court.”

Notice and Hearing

- The Application must be set for a hearing, and the Occupant notified of the hearing.
- Under SB 1116, effective 9-1-2015, notice may be made by:
 - Mail (includes first class, regular mail with no proof of delivery required, express mail, certified mail, certified mail, return receipt requested, other mail with proof of delivery, delivery by USPS offering signature confirmation, common or contract carrier, including Federal Express or UPS; express mail, or personal service or hand delivery)
 - Electronic mail (includes electronic notice sent through the electronic filing system, e-mail, but does not include fax, IM, Facebook, Twitter, telephone, text, videoconferencing, voice mail or webcam.)

Notice and Hearing (*continued*)

Rule 501.4 allows service of papers other than citation:

- In person
- Courier receipted delivery
- Certified mail
- Fax
- E-mail
- Other manner directed by the court

Notice and Hearing (*continued*)

If the evidence is sufficient, for the application to be granted, the Judge must find that:

- the current Occupant received notice of the Application and was provided the opportunity for a hearing;
- the Applicant is currently authorized, or was formerly authorized to occupy the residence according to a lease or other documentary evidence;
- the Applicant is unable to enter the residence because the current Occupant has denied access to Applicant in order to retrieve Applicant’s personal property or the personal property of the Applicant’s dependent
- the Applicant is not the subject of an active protective order, a magistrate’s order for emergency protection, or another court order prohibiting entry to the residence; or
- the Applicant is not otherwise prohibited by law from entering the residence; and
- “there is a risk of personal harm to the Applicant or the Applicant’s dependent if the items listed in the application are not promptly retrieved.”

Notice and Hearing (*continued*)

If granted, a writ can be issued authorizing the Applicant to enter the residence, accompanied by a Peace Officer, to retrieve the property listed in the Application.

Now that the Writ has
been issued, what
happens?

How the Residence is Accessed and the Property Retrieved

- A peace officer shall accompany the Applicant to enter the Residence and retrieve the Property. (Texas Property Code Section 24A.003 effective 9/1/2017)
- The Writ is valid for a period not to exceed 5 days. (Texas Property Code Section 24A.021 effective 9/1/2017)
- On arriving at the Residence, if the current Occupant is present, the peace officer must give the occupant a copy of the Writ.

How the Residence is Accessed (*continued*)

- Before removing the property listed in the Application from the residence, the Applicant must “submit” all property to the peace officer to be inventoried. The peace officer must create an inventory listing the items taken from the residence.
- When the inventory is complete, the peace officer must deliver a copy of the inventory (i) to the Applicant, (ii) to the current Occupant if present, or if the Occupant is not present, leave a copy of the inventory in a conspicuous place in the Residence, and (iii) file the original inventory with the Court. The property is then “returned” to the Applicant for removal from the Residence.

How the Residence is Accessed (*continued*)

A peace officer is allowed to “use reasonable force” to assist in the access to the Residence and the retrieval of the property.

- If acting in good faith and with reasonable diligence;
 - the peace officer is not civilly liable for an act or omission of the officer that arises in connection with providing the assistance, or
 - is not civilly or criminally liable for the wrongful appropriation of any personal property by the Applicant.

How the Residence is Accessed (*continued*)

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

Offense

- A person commits an offense if the person interferes with an Applicant or a peace officer entering a residence and retrieving personal property under the Court's Writ.
- It is a defense to prosecution that the actor did not receive a copy of the Court Writ or other notice that the entry or property retrieval was authorized.
- Class B misdemeanor.

Hearing Following Access and Retrieval of Property

- No later than the 10th day after the access of the Residence and retrieval of the property, the Occupant may file a complaint with the Court alleging that the Applicant has appropriated property belonging to the Occupant or the Occupant's dependent.
- The Court is required promptly to hold a hearing and rule on the disposition of the disputed property.
- The Occupant retains all other legal remedies for recovery of the Occupant's property.

The Constable's current fee schedule allows:

- Any Other Process / Order \$75.00
- Writ – Any Other (Includes IV-D Capias) \$125.00
- Writs/Order – Additional Fees – Per Hour/Per Deputy
After Two Hours \$65.00

- **HB 2486, effective 9-1-2015**, relating to the right of a person to enter the person's residence or former residence accompanied by a peace officer to recover certain personal property; creating an offense
- This Bill adds Chapter 24A to the Texas Property Code creating a process for entry into a residence accompanied by a peace officer, to retrieve certain personal property.
- Any peace officer may undertake this duty: sheriffs, constables, city marshals, city police, state agency police, any peace officer identified in Art. 2.12 of the Code of Criminal Procedure.