Self-Help Legal Information Packet: *When You Have Been Locked Out or the Landlord Has Cut Off Your Utilities*

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What Can You Request if You are Locked Out of Your Residence or if Your Landlord Cuts Off Your Utilities?

Writ of Retrieval: If you are locked out of your residence or former residence by another **occupant**, you may be able to ask a judge for a **writ of retrieval** authorizing you to go back in, accompanied by a peace officer, to retrieve certain essential items that belong to you (such as clothes or medicine).

Writ of Re-entry: If you are locked out of your residence by your **landlord**, you may be able to ask a judge for a **writ of re-entry** ordering the landlord to let you back in.

Writ of Restoration: If your landlord cuts off your utilities, you may be able to ask a judge for a **writ of restoration** ordering the landlord to turn them back on.

Small Claims Case: In some situations you might be able to bring a small claims case to recover money from a landlord who wrongfully locks you out of your residence or wrongfully shuts off your utilities. To file a small claims case please see the "Filing a Small Claims Case" information packet on the Self-Represented Litigants page at tjctc.org.

The clerk or judge **cannot** give you advice on whether or not to ask for a writ of retrieval, a writ of re-entry or a writ of restoration, or file a small claims case. However, the information and forms provided in this packet should assist you.

Writ of Retrieval

What is a Writ of Retrieval?

A writ of retrieval is an order from a justice court allowing a person to enter their residence or former residence, accompanied by a peace officer, to get certain things belonging to them when the current occupant won't let them in or they are in danger of family violence.

How Do I Get a Writ of Retrieval?

To get a writ of retrieval you must file an application with a justice of the peace in which you:

1. Explain that you are unable to enter your residence or former residence because the current occupant has either denied you access or presents a clear and present danger of family violence to you or your dependent;
2. State that you are not subject to a protective order under the Family Code or an Emergency Protective Order and that you are not otherwise prohibited from entering the residence by law or another court order;
3. State that you and the current occupant are not parties to a pending divorce or annulment case or that a divorce decree or annulment between you and the current occupant didn't order that the current occupant had possession of the items being requested (*if either is the case, the application for a writ of retrieval must be filed with the divorce court instead of a justice of the peace*);
4. State that you or your dependent require certain personal items located in the residence that fall within the categories listed below *(see next section);*
5. State that your right to possession of those items is not subject to a decree of divorce or annulment to which you and the current occupant are parties;

6. Specifically describe the items you need;
7. State that you or your dependent will suffer personal harm if those items are not retrieved promptly; and
8. Include a lease or some other document (like a utility bill or your driver's license) that shows that you are currently or were formerly authorized to occupy the residence.

What Am I Allowed to Get?

You can only get specific items that fall into one of these categories:

1. Medical records.
2. Medicine and medical supplies.
3. Clothing.
4. Child-care items.
5. Legal or financial documents.
6. Checks or bank or credit cards in your name.
7. Employment records.
8. Personal identification documents.
9. Copies of electronic records containing legal or financial documents.
10. Assistance animals or service animals (dogs only) used by you or your dependents.
11. Wireless communication devices belonging to you or your dependents.
12. Tools, equipment, books, or apparatus used by you in your trade or profession.

Is There a Filing Fee?

Yes. You will have to pay the $54 standard filing fee. If the judge grants the application and signs the writ of retrieval you will also have to pay a fee for having the writ of retrieval served on the occupant *(this fee varies from county to county).* If you cannot afford these filing and service fees you may file a Statement of Inability to Afford Payment of Court Costs, in which case these fees may be waived.

What Else Will I Have to Do?

In most cases you will also have to sign a bond in an amount required by the judge. The purpose of the bond is to protect the occupant in case any property is wrongfully retrieved. You may either put up cash for the bond or the bond will need to be signed by two individuals (they could be friends or acquaintances) who serve as "sureties" or by one corporate surety that issues bonds in Texas. In some cases, the judge may waive the requirement for a bond.

What Happens Next?

The judge will normally have a hearing, which may be conducted by telephone or video conference, and give the occupant of the residence notice of the hearing and an opportunity to participate. But the judge may issue a writ of retrieval without giving the occupant of the residence notice of the hearing and an opportunity to participate if:

- The occupant presents a clear and present danger of family violence to you or your dependent; and
- You or your dependent will suffer immediate and irreparable personal harm if you are not able to retrieve your belongings.

If those conditions are present, be sure to bring them to the attention of the judge in your application. The judge will decide when to have the hearing and whether or not to give the occupant notice.

How Do I Get My Things Back if the Judge Signs the Writ of Retrieval

If the judge signs the writ of retrieval, and you post a bond *(if you are required to do so),* then a peace officer *(for example, a deputy constable)* will accompany you to the residence so you can retrieve the items you are entitled to get back. Before you remove your property from the residence you must give it to the peace officer so they may create a list of the items that are being removed.

Does Anything Else Happen?

The occupant of the residence has a right to file a complaint with the court within 10 days claiming that some or all of the property taken belonged to them or their dependent. If such a complaint is filed, the court will hold a hearing and decide who owns the disputed property.

Writ of Re-entry

What is a Writ of Re-Entry?

A writ of re-entry is an order requiring a landlord to let you back into the place you are renting if the landlord improperly locks you out. The information discussed here only applies if you are locked out of your **residence** *(for example, an apartment or a mobile home);* it does not apply if you are locked out of a **business.**

When May a Landlord Lock You Out?

A landlord may only lock you out of your residence to conduct necessary repairs or construction or in an emergency, or if you have not paid all or part of your rent. However, to lock you out for not paying rent, the landlord's right to do so must be included in the lease, and they have to give you a written notice (at least five days beforehand if mailed or at least three days beforehand if posted on the inside of your door) that states:

- The date when they will change the locks;
- The amount of rent you have to pay to avoid being locked out;
- The location of and person with whom you may discuss or pay your rent during normal business hours; and
- That you have a right to get a key to the new lock **at any hour** even if you do not pay the rent you owe.

A landlord may not change the locks:

- If you or another occupant are in the residence;
- More than once during a rental payment period; or
- On a day, or the day before a day, when the landlord or his representative are not available, or the management office is not open, so that you can pay the rent.

What Does the Landlord Have to Do if They Lock You Out?

A landlord who locks you out of your residence by changing the locks **must give you a key to the new lock even if you do not pay the rent**. *(If the landlord wants to evict you for not paying your rent, then they may file an eviction suit.)*

If your landlord changes your locks for not paying rent, they must place a written notice on your front door that says:

- Where you may go 24 hours a day to get a new key or a number you may call that is answered 24 hours a day to have a key delivered to you within two hours;
- That they **must give you a new key at any hour, even if you do not pay any of the rent due**; and
- The amount of rent and other charges that you owe.

If your landlord comes to your residence promptly after you call and you aren't there to get the new key, they must leave a notice on your front door saying when they were there and where you may go to get the key during their normal business hours.

What if You Waived Your Rights in Your Lease?

The rights you have if your landlord locks you out of your residence, including your right to get a key to the changed locks, may not be waived in a written lease. Therefore, even if you signed a lease that says you waived these rights, you still have them and any such waiver in your lease should be ignored.

How Do I Get Back Into My Residence?

If you have been wrongfully locked out of your residence, you may ask a justice of the peace to issue a writ of re-entry ordering your landlord to let you back in. To do this you must file a sworn complaint with the justice court in the precinct in which the residence is located explaining the facts concerning the lockout. You

also must state orally to the justice of the peace the facts concerning the lockout. *The judge may be able to do this by telephone conference or video conference.*

Is There a Filing Fee?

Yes. You will have to pay the $54 standard filing fee. If the judge signs the writ of re-entry, you will also have to pay a fee for having the writ of re-entry served on the landlord *(this fee varies from county to county).* If you cannot afford these filing and service fees you may file a Statement of Inability to Afford Payment of Court Costs in which case these fees may be waived.

What Happens Next?

If the judge believes your landlord improperly locked you out, then the judge will sign a writ of re-entry without waiting to hear from the landlord. A constable or sheriff will serve the writ of re-entry on your landlord or their management company. The landlord may request a hearing which the judge must hold within seven days after the writ of re-entry is served on your landlord. If the landlord does not request a hearing before the eighth day, then you are entitled to a judgment awarding you the costs of requesting the writ of re-entry (the filing and service fees).

What if My Landlord Still Won't Let Me In?

If your landlord still won't let you into your residence after being served with the writ of re-entry, you may file an affidavit *(a sworn statement)* with the judge explaining how they have disobeyed the writ. The judge will set a hearing to decide whether the landlord should be held in contempt of court.

What if My Landlord Gets a Writ of Possession?

If your landlord files an eviction suit and wins, then they may be entitled to a writ of possession which would require you to leave. If a writ of possession is issued, it takes the place of a writ of re-entry and gives possession of the residence to the landlord instead of you.

Writ of Restoration

What is a Writ of Restoration?

A writ of restoration is an order from a judge requiring a landlord who has improperly shut off the utilities to your residence to turn them back on.

When May a Landlord Shut Off Your Utilities?

If you pay for utility service directly to the utility company, your landlord may not shut off or interrupt your utility service unless it is the result of genuine repairs, construction, or an emergency.

If your landlord pays for utility service as part of your lease, they may not shut off or interrupt your electric, gas, water, or wastewater service unless it is the result of genuine repairs, construction, or an emergency.

If a landlord shuts off your utilities for some other reason, for example, because you have not paid your rent, you have certain rights under the law, including possibly the right to a writ of restoration.

What if You Waived Your Rights in Your Lease?

The rights you have if your landlord improperly shuts off or interrupts the utility service for your residence may not be waived in a written lease. Therefore, even if you signed a lease that says you waived these rights, you still have them and any such waiver in your lease should be ignored.

How Do I Get My Utility Service Restored?

If your landlord has improperly shut off your utility service, you may ask a justice of the peace to issue a writ of restoration ordering your landlord to turn the utilities back on. To do this you have to file a sworn complaint with the justice

court in the precinct in which the residence is located explaining the facts concerning the utility shut off by your landlord. You also must state orally to the justice of the peace the facts concerning the shut off. *The judge may be able to do this by telephone conference or video conference.*

Is There a Filing Fee?

Yes. You will have to pay the $54 standard filing fee. If the judge signs the writ of restoration, you will also have to pay a fee for having the writ of restoration served on the landlord *(this fee varies from county to county).* If you cannot afford these filing and service fees you may file a Statement of Inability to Afford Payment of Court Costs in which case these fees may be waived.

What Happens Next?

If the judge believes your landlord improperly disconnected your utility service, then the judge will sign a writ of restoration without waiting to hear from the landlord. A constable or sheriff will serve the writ of restoration on your landlord or their management company. The landlord may request a hearing which the judge must hold within seven days after the writ of restoration is served on your landlord. If the landlord does not request a hearing before the eighth day, then you are entitled to a judgment awarding you the costs of requesting the writ of restoration *(the filing and service fees).*

What if My Landlord Still Won't Turn My Utilities Back On?

If your landlord refuses to turn your utilities back on after being served with the writ of restoration, you may file an affidavit *(a sworn statement)* with the judge explaining how your landlord has disobeyed the writ. The judge will set a hearing to decide whether the landlord should be held in contempt of court.

What if My Landlord Gets a Writ of Possession?

If your landlord files an eviction suit and wins, then they may be entitled to a writ of possession which would require you to leave the residence. If a writ of possession is issued, it takes the place of a writ of restoration and gives possession of the residence to the landlord instead of you, so at that point your landlord does not have to turn the utilities back on.

Resources

Legal Aid - www.txcourts.gov/programs-services/legal-aid

Texas Lawyer Referral & Information Service - (800) 252-9690

To check military status – https://scra.dmdc.osd.mil/

Texas Justice Court Training Center information for self-represented litigants – www.tjctc.org/SRL

Office of Court Administration Self-Represented Litigant Site - www.txcourts.gov/programs-services/self-help/self-represented-litigants/

State Bar of Texas Information, including Legal Information and Low or No-Cost Legal Assistance - www.texasbar.com, and then click on "For The Public."

Forms and Information, including for other types of cases – www.texaslawhelp.org