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Orders of Retrieval

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Resources

- Chapter 24A, Property Code
- www.tjctc.org
 - Webinar Archive
 - Legal Question Board
 - Forms
 - Newsletter Archive
 - July 2015, February 2016

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Order of Retrieval

- HB 2486, passed in 2015, authorizes justice courts to issue an order of retrieval
- Person who is not being permitted into their residence but needs their or their dependent's belongings may petition any justice court to allow a peace officer to accompany them
 - No jurisdictional or venue limitation – any JP court may issue
 - Order is for specific items of personal property

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Order of Retrieval

- In this code, "peace officer" means sheriffs, their deputies, constables, deputy constables, and those reserve deputy sheriffs and constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code

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Order of Retrieval

- Basic components of an order of retrieval case:
 - 1. Person seeking to retrieve property files an application
 - 2. Justice court provides notice to the occupant and holds a hearing
 - 3. Justice court issues an order of retrieval (or denies issuance)
 - 4. Applicant provides a bond to protect the occupant if order issued
 - 5. Peace officer assists applicant in retrieval of property
 - 6. Peace officer inventories property
 - 7. Occupant may request a hearing if property is wrongfully taken from the residence.

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Order of Retrieval: Fees

- When an application for an order of retrieval is filed with a justice court, should a filing fee be charged?
- Cases which are not criminal in nature are either civil in nature or administrative in nature.
- Whether order of retrieval cases are civil in nature is a question that has not yet been examined by Texas courts of appeal or the Attorney General of Texas.

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Order of Retrieval: Fees

- TJCTC's position (shared by the Office of Court Administration): Order of Retrieval cases are civil in nature, and civil filing fees should be collected upon the filing of an application.
- Rule 502.3 of the Texas Rules of Civil Procedure allows a plaintiff who is unable to afford to pay the filing fees to file a sworn statement of inability to pay costs in lieu of the filing fees.
 - New Supreme Court order mandates that courts provide this statement for litigants without charge or request

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Order of Retrieval: Fees

- An order of retrieval may not be issued until "after sufficient notice to the current occupant and an opportunity to be heard."
- Service of the hearing notice may generate additional fees, which may vary between counties.
- TJCTC's position: Standard fee for serving civil papers likely applies.

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Order of Retrieval: Fees

- If the justice court issues an order, a peace officer "shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application."
- May a sheriff or constable's office charge a fee for providing this service?
- What if the sheriff or constable's office currently collects a fee for serving "other writs?"

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Order of Retrieval

- It is a Class B Misdemeanor to interfere with retrieval of personal property under the order.
- It is a defense to prosecution that the actor did not receive a copy of the court order or other notice that the entry or retrieval of property was authorized.
- Nothing prohibits this offense from also being committed by the applicant, although less likely (e.g. disruptive behavior)

Sec. 24A.005, Property Code

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Order of Retrieval

- The occupant has 10 days after the "date of authorized entry" to file a complaint in the court that issued the order of retrieval alleging that the applicant has taken property which does not belong to the applicant.
- If a complaint is filed, the court shall "promptly" hold a hearing and rule on ownership of the property.
- The occupant may also choose to file a small claims lawsuit or use other legal remedies to reclaim wrongfully appropriated property.

Sec. 24A.006, Property Code

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Scenarios

- Applicant comes into Cameron County Precinct 12 Justice of the Peace office. They seek an Order of Retrieval. The applicant resides in Cameron County Pct. 8, and the property is in Hidalgo County.
- Can the Cameron County Pct. 12 Justice of the Peace issue the order?
- What if the applicant lives in Brooks County instead?

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Scenarios

- Applicant was over at their in-laws' for Thanksgiving dinner. At dinner, an argument broke out over politics and the in-laws kicked applicant out of their home. There are clothes and baby formula still at the in-laws' house.
- Can the applicant get an order of retrieval to get these items?

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Scenarios

- Applicant works as a mechanic. The occupant has excluded them and refuses to allow them to get the tools of their trade. Can the applicant get an order of retrieval?

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Scenarios

- No constable or sheriffs deputy is available to accompany the applicant to execute the order. May a municipal peace officer accompany the applicant?

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Scenarios

- The applicant begins collecting items not specifically listed in the order during the application. What should the peace officer do in that situation?

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Scenarios

- Applicant seeks to retrieve their selection of Guns N' Roses concert T-shirts from the occupant. Can they accomplish this with an order of retrieval?

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Scenarios

- Applicant states that they cannot afford a bond. Can the judge waive the bond?
- Different applicant posts \$200 cash bond. When/how should that bond be released?

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Scenarios

- Applicant states that her boyfriend kicked her out and has financial documents she needs. She doesn't have a lease and didn't receive bills at that address. How could she prove that she had a residence there?
- Occupant shows up at the hearing and says he never excluded her from the residence. Applicant shows text message from occupant saying "Show your face around here and I'm not responsible for what happens". Issue the order?
