86R867 BEE-F

By:  Rodríguez S.B. No. 260

A BILL TO BE ENTITLED

AN ACT

relating to access to a residence or former residence to retrieve personal property by persons who are parties to certain suits and decrees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 24A.002, Property Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (e) to read as follows:

(a-1)  A person may not apply for a writ under Subsection (a) if:

(1)  the person and the current occupant are parties to a pending suit under Title 1, Family Code; or

(2)  the person's right to possession of the items described in the application is based on an order or award in a decree of divorce or annulment to which the person and the current occupant are subject.

(b)  An application under Subsection (a) must:

(1)  certify that the applicant is unable to enter the residence because the current occupant of the residence:

(A)  has denied the applicant access to the residence; or

(B)  poses a clear and present danger of family violence to the applicant or the applicant's dependent;

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

(A)  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

(B)  otherwise prohibited by law from entering the residence;

(3)  certify that the applicant and the current occupant are not parties to a pending suit under Title 1, Family Code;

(4)  certify that the applicant's right to possession of the items described in the application is not based on an order or award in a decree of divorce or annulment to which the applicant and the current occupant are subject;

(5)  allege that the applicant or the applicant's dependent requires personal items located in the residence that are only of the following types:

(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;

(H)  personal identification documents; or

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

(6) [~~(4)~~]  describe with specificity the items that the applicant intends to retrieve;

(7) [~~(5)~~]  allege that the applicant or the applicant's dependent will suffer personal harm if the items listed in the application are not retrieved promptly; and

(8) [~~(6)~~]  include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

(e)  On 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, the justice of the peace may grant the application under this section and issue a writ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the justice of the peace finds that:

(1)  the applicant is unable to enter the residence because the current 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;

(2)  the applicant is not:

(A)  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

(B)  otherwise prohibited by law from entering the residence;

(3)  the applicant and the current occupant are not parties to a pending suit under Title 1, Family Code;

(4)  the applicant's right to possession of the items described in the application is not based on an order or award in a decree of divorce or annulment to which the applicant and the current occupant are subject;

(5)  there is a risk of personal harm to the applicant or the applicant's dependent if the items listed in the application are not retrieved promptly;

(6) [~~(4)~~]  the applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence; and

(7) [~~(5)~~]  the current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application.

SECTION 2.  Section 24A.0021(a), Property Code, is amended to read as follows:

(a)  A justice of the peace may issue a writ under Section 24A.002 without providing notice and hearing under Section 24A.002(e)(7) [~~24A.002(e)(5)~~] if the justice finds at a hearing on the application that:

(1)  the conditions of Sections 24A.002(e)(1)-(6) [~~24A.002(e)(1)-(4)~~] are established;

(2)  the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent; and

(3)  the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted.

SECTION 3.  Chapter 24A, Property Code, as amended by this Act, applies only to an application filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2019.