

Exempt Property Issues

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TJCTC Programs are an educational endeavor of the Justices of the Peace and Constable's Association of Texas, Inc. and funded by the Texas Court of Criminal Appeals.

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Today's Class



What is exempt property?



HB3774 & new Rules of Civil Procedure related to exempt property



Common issues related to exempt property



Resources

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What is exempt property?

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Exempt Property Definition

- Exempt property is property that the law allows a person to keep away from creditors if they owe a debt.
- Each state chooses what property is exempt.
- The types of property are generally those types that would allow a person to keep their job and have a place to live.

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Common Exempt Property in Texas

*See your Exempt Property
Benchmark Handout*

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Homestead

- Each person or family can designate a homestead that will be safe from creditors.
- Most people know about this, because there are also property tax benefits to designating a homestead. See <https://comptroller.texas.gov/taxes/property-tax/exemptions/residence-faq.php> for more info.

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Size of a Homestead

Real Property			
Type	Amount		Statute
Rural Homestead	Family	200 acres	Property Code 41.001, 41.002
	Single Adult	100 acres	
Urban Homestead	10 acres		
Burial Plots	One or more		Property Code 41.001

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Rural vs. Urban

A homestead is considered to be **urban** if, at the time the designation is made, the property is:

- located within the limits of a **municipality** or its extraterritorial jurisdiction or a platted subdivision; *and*
- **served by** police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:
 - electric; natural gas; sewer; storm sewer; and water.
 - Property Code 41.002(c)

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Family vs. Single

- If a couple is married, they can only have 1 homestead – each spouse cannot designate their own.
- The family status will be in place until a final divorce decree is entered – even if a couple has been living separately for a long time!
- Family can be husband + wife or mother or father + children

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Manufactured & Mobile Homes

- Generally treated as **PERSONAL property!**
- Owner can elect to treat as real property by following procedures in Property Code 2.001
 1. Make sure the Statement of Ownership (Occupations Code 1201.207) reflects that the owner has elected to treat as real property; and
 2. File a certified copy of the Statement of Ownership in the real property records in the county where the home is located
- Helpful FAQs for owners can be found at TDHCA's website:
<https://www.tdhca.state.tx.us/mh/faqs-sol.htm>

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Current Wages

- Current wages are exempt except for to pay state-ordered child support payments, spousal maintenance, federally guaranteed student loans in default, or federal income taxes owed
 - CPRC 63.004
- Most often current wage issues come up in garnishment

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Current Wages Definition

- Current wages are an employee's pay that is due for personal services
- Notice this doesn't include commissions paid to an independent contractor – Texas courts have held that those are not current wages for personal services
 - *Campbell v. Stucki*, 220 S.W.3d 562, 567 (Tex. App.—Tyler 2007, no pet.);
Pitts v. Dallas Nurseries Garden Ctr., Inc., 545 S.W.2d 34, 36 (Tex. Civ. App.—Texarkana 1976, no writ)
- Once the money is deposited in a bank account, it is no longer current wages

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Retirement, Healthcare, & College Savings Plans

- Why do you think these are exempt?
- In addition to state law, many of these are covered by federal laws making them exempt.

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Co-Mingled Property

- If a person mixes exempt and non-exempt property (usually money in a bank account), it may lose its exemption

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What about public property?

- Like you might expect, government-owned property is mostly exempt.
 - Example: There is a statute specifically making public libraries exempt. Property Code 43.001
- Property Code Chapter 43 governs public property exemptions.

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Exempt Property Polls

*Use your Exempt Property
Benchcard Handout*

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Poll 1

A judgment debtor has 30 cattle on his ranch, and that is what you would like to seize to satisfy the writ of execution against him.

How many cattle can you seize?

1. 20
2. 12
3. 18
4. none

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Poll 2

Larry is a single judgment debtor. You want to seize some personal property including his library collection. How much can you seize?

1. As much as you need to satisfy the judgment
2. Anything over the \$50,000 aggregate value that he would be able to keep
3. You don't know until you get more information

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Poll 3

Jill is a judgment debtor who owns 5 vehicles. She has a teenage daughter (17 years old) and husband who live with her. Can you seize any of her vehicles to satisfy your writ?

1. Yes
2. No

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Key Tips about Exempt Property in Texas

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What if the court specifically names what looks like exempt property in a writ?

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If the court puts it in the writ, they have made a determination that it is subject to levy.

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Can a judgment debtor choose to designate exempt property for levy?

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Yes, a judgment debtor may designate the property they wish to be levied on.

Be cautious and check-in with judgment creditor if it is clearly exempt to avoid issues later.

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Pro-tip:

- It is okay to provide legal information to a judgment debtor if they ask about exempt property.
- This helps avoid them making any claims that you “tricked” or “lied to them” later.
- Also, it is consistent with new statutes and rules that we will discuss later today.

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HB 3774 & New Rules Related to Exempt Property

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House Bill
3774

Added Government
Code § 22.0042

*See your handouts
for text of the
statute*

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What does this statute do?

- Creates a procedure for a judgment debtor to assert an exemption to the seizure of their personal property
- Requires a court to stay a proceeding and have an exemption hearing
- Required the Supreme Court to issue rules implementing the statute

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Supreme Court Order 21-9152

- *See your handout*
- The rules are required to:
 - Include a **plain language notice** to judgment debtors about their rights under these rules
 - Must be in **English** and **Spanish** translation
 - Include **forms** (also English with a Spanish translation) that include **instructions** on how to use the form
 - **List all exemptions** under state and federal law
 - Provide information on **how to access free or low-cost legal help**

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Let's Take a Look

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RULE 306a. PERIODS TO RUN FROM SIGNING OF JUDGMENT

Notice of Judgment. When the final judgment or other appealable order is signed, the clerk of the court shall immediately give notice to the parties or their attorneys of record electronically or by first-class mail advising that the judgment or order was signed. If the judgment awards monetary damages, the notice must contain the following language: "If you are an individual (not a company), you may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. Find out more by visiting www.TexasLawHelp.org." Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).

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RULE 503. DEFAULT JUDGMENT; PRE-TRIAL MATTERS; TRIAL

RULE 503.1. IF DEFENDANT FAILS TO ANSWER

- (d) *Notice.* The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket. The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed. If the default judgment awards monetary damages, the judgment must contain the following language: “If you are an individual (not a company), you may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. Find out more by visiting www.TexasLawHelp.org.” Failure to comply with the provisions of this rule does not affect the finality of the judgment.

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Any other place in the rules where the judge is awarding a money judgment this paragraph was added:

- (5) If the judge awards monetary damages, the judgment must contain the following language: “If you are an individual (not a company), you may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. Find out more by visiting www.TexasLawHelp.org.”

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New Garnishment Notice

- *Starts on page 7*
- Must be given by Plaintiff to Defendant on the front of the writ
- Explains exemptions to garnishment
- Explains how to use the new forms for seeking an exemption
- Includes how to find legal help & replevy options

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New Rule 679a

- Requires a justice of the peace to use the new Order Appointing Receiver in Justice Courts form
- Requires all courts to include language regarding the process to seek an exemption under Rule 679b by either using the above form or adding in some required language in this rule

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New Rule 679b

- Outlines the notice and process for a judgment debtor to make a personal property seizure exemption claim.
- *Take a look at pages 11-12 of the Supreme Court Order in your handouts*

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Forms

*See the end of your Supreme
Court Order Handout*

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Common Issues

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The new procedure for notice about property exemptions doesn't require anyone to tell the constable if there is a stay/etc.

What issues do you expect?

What are some practical solutions?

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What do you do if the judgment debtor files a homestead exemption on the real property you levied on after you levied?

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You go out to levy, and the judgment debtor is confused. They ask you, **“What do I do?!”**

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Resources You May Provide to the Public

- Toolkit: My Debt Collection Rights in Texas by Texas Appleseed - <https://mydebtcollectionrights.org/>
- Texas Law Help - <https://texaslawhelp.org/>
- Texas State Law Library Self-Help - <https://www.sll.texas.gov/legal-help/>
- Texas Attorney General Debt Collection and Relief - <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief>
- TJCTC Self-Represented Litigant Page – www.tjctc.org/srl