

Exempt Property Hearings, Receivership and Turnover Orders

Texas Justice Court Training Center

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1

What We Will Cover

Some Debt
Collection
Terminology

Exempt
Property

Exempt
Property
Hearings

Receivership

Turnover
Orders

Additional
Resources

2

Let's Do a Little Translation!

- A “judgment creditor” is:
 - The person in whose favor a judgment was entered or someone who acquired the judgment later.
 - It is the person who “holds” the judgment that is being enforced!
 - Usually the plaintiff.
 - Or an “assignee”
 - Someone to whom the judgment was “assigned” after they bought it from the original plaintiff or a prior assignee.

3

Let's Do a Little Translation!

- A “judgment debtor” is:
 - A person against whom a judgment has been entered.
 - Usually the defendant.
 - They owe the amount of the judgment to the judgment creditor.

4

Let's Do a Little Translation!

- “Exempt property” is property that may **not** be seized to satisfy a judgment. For example:
 - Your home;
 - Personal property up to \$100,000 for a family or \$50,000 for an individual;
 - Current wages;
 - Alimony or child support;
 - Home furnishings, including heirlooms;
 - Two firearms;
 - Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;
 - Household pets.

5

Let's Do a Little Translation!

- “Non-exempt property” is property that is subject to seizure to satisfy a judgment.
 - It is any property that is **not** exempt.
- It can be seized by:
 - a Constable or Sheriff under a writ of garnishment or
 - a Receiver if authorized by a court
- and used to pay the amount of the judgment to the judgment creditor.

6

Exempt Property Bench Card

Attached as Handout 1

<https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

Exempt Property Benchcard

What is Exempt Property?

Texas property law exempts certain categories of property from seizure to satisfy a debt. This means that if a judgment is entered against a person, it can only be satisfied by specific categories of properties that are not exempt by the law called, **non-exempt property**. Chapter 41 and 42 of the Texas Property Code govern most property exemptions.

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

Personal Property – No Aggregate Limits	
Type	Statute
Current Wages for Personal Services <i>*except for the enforcement of court-ordered child support payments, spousal maintenance, defaulted federal student loans, and federal income taxes</i>	Property Code 42.001
Professionally Prescribed Health Aids <i>*of debtor or debtor's dependent</i>	
Alimony, Spousal Support, or Spousal Maintenance	
Child Support	
Bible or Other Book Containing Sacred Writings of a Religion	Property Code 42.001, 42.0021
Savings and Retirement Accounts	
College Savings Plans	Property Code 42.0022

Common Exempt Property in Texas

See your Exempt Property Benchcard (Handout 1)

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.

9

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

10

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

11

Current Wages Definition

- Current wages are an employee's pay that is due for personal services
 - This doesn't include commissions paid to an independent contractor
- Once the money is deposited in a bank account, it is no longer current wages

12

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.

13

Exempt Property Poll 1

A judgment debtor has 30 head of cattle on his ranch. How many can the constable seize?

- 1.20
- 2.12
- 3.18
- 4.30
- 5.none

14

Exempt Property Poll 2

Jill is a judgment debtor who owns 5 vehicles. She has a teenage daughter (17 years old) and husband who live with her. How many of their vehicles are exempt property?

1. Only 1
2. All 5
3. 3 if they each have a DL

15



EXEMPT

Exempt Property Hearings

16

What are
Exempt
Property
Hearings?

- **HB 3774 (87th Legislative Session) required the Supreme Court to adopt rules by May 1, 2022 that:**

- Established a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or a receiver appointed by a court;

17

What are
Exempt
Property
Hearings?

- Required a court to promptly set a hearing and stay proceedings concerning disposition of the property until that hearing is held, if the judgment debtor timely asserts an exemption.

-- Govt. Code § 22.0042(a)

18

New Rules and Forms

- The Texas Supreme Court issued Rule 679b and forms:
 - To give a judgment debtor notice of their right to claim a property exemption;
 - That the judgment debtor may submit; and
 - To stay enforcement of the judgment and decide whether the property is exempt.

19

New Rules and Forms

- The rules and forms went into effect on May 1, 2022.
- They are on the TJCTC website.
- And attached as Handout 2.

20

New Rules and Forms

- All judgments issued by a justice court that award money damages must now contain this language:
- “If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property.” [And in Spanish]

21

New Rules and Forms

- This includes:
 - judgments in debt claim cases
 - Judgments in small claims cases
 - default judgments
 - judgments in eviction cases that award back rent
 - judgments following summary disposition.
- TJCTC has updated all judgment forms on our website.
- Be sure to use these judgment forms!

22

New Rules and Forms

- The judgment creditor or receiver must serve the judgment debtor with the Seizure Exemption Notice, Instructions and Exemption Claim Form within **three** days after they have notice that property has been seized.

23

New Rules and Forms

- Seized property may not be sold within 14 days after service of those documents (17 days if service is by mail).
- If a judgment debtor files a Seizure Exemption Claim Form, the court must hold a hearing and the property may not be sold until the court determines the claim.

24

New Rules and Forms

- Each party is entitled to notice of the hearing.
- The burden of proof is on the judgment debtor.

25

New Rules and Forms

- The court must determine the Exemption Claim within 10 days after the judgment debtor files the claim.
 - The court may extend the time for good cause.
- If the court determines the property is exempt, the court must order its release within three business days.

26

Receivers

27

What is a Receiver?

- A receiver is a person appointed by the court who has the authority given to them by the court in the order appointing them as a receiver.
 - This means the authority to take possession of the judgment debtor's non-exempt property, sell it and pay the proceeds to the judgment creditor to satisfy the judgment.

28

What is a Receiver?

- A receiver basically serves the same function as a constable or sheriff but only has the powers granted to them by the court in the order appointing him.
- Most debt collectors want the court to appoint a receiver rather than using a writ of execution or a writ of garnishment!
 - Why might that be the case?

29

Where Does the Court's Authority to Appoint a Receiver Come From?

- A law saying a court may "aid" a judgment creditor by:
 - **Appointing a receiver** with authority to take possession of non-exempt property, sell it and pay the proceeds to the judgment creditor.
- Civil Practice and Remedies Code § 31.002

30

Let's Look at
the Statute

Sec. 31.002. COLLECTION OF JUDGMENT
THROUGH COURT PROCEEDING.

(a) A judgment creditor:

- is entitled to aid from a court of appropriate jurisdiction, including a justice court,
- through injunction or other means
- in order to reach property to obtain satisfaction on the judgment
- if the judgment debtor owns property . . . that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

31

Let's Look at
the Statute

(b) The court may:

(1) order the judgment debtor to **turn over** nonexempt property that is in the debtor's possession . . . , together with all documents or records related to the property, to a designated sheriff or constable for execution; . . . **or**

(3) **appoint a receiver** with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

32

Where Must the Application to Appoint a Receiver be Filed?

- With the court that issued the judgment that is being enforced; or
- A court in which a foreign judgment has been domesticated (rarely happens).

33

What Must the Judgment Creditor Prove?

- For the court to appoint a receiver the judgment creditor must prove that:
 - The judgment debtor owns property; and
 - That property is not exempt from attachment, execution or seizure and therefore may be used to satisfy the judgment.

34

What Must the Judgment Creditor Prove?

- Cases hold that the court must have some evidence before it that establishes the “necessary conditions” for appointment of a receiver (on the previous slide).
 - This is usually submitted by affidavit but could be done with testimony at a live hearing.
- How much evidence is sufficient is within the court’s discretion.

35

Is the Court Required to Appoint a Receiver?

- If the judgment creditor cannot show that the judgment debtor has non-exempt property, then the court should not appoint a receiver.
- How strict the court wants to be in scrutinizing the judgment creditor’s affidavit is up to the court.
 - For example, the court could ask the judgment creditor what evidence they have that the judgment debtor does have non-exempt property.
- If a court does appoint a receiver it must use the form issued by the Texas Supreme Court (discussed below).

36

Must the Court Hold a Hearing?

- No!
- It is up to the court whether to hold a hearing or notify the judgment debtor of the application.
- The court may grant the order ex parte.
- Question:
 - Why might you notify them?
 - Why might you not notify them?

37

Fees and Costs

There is no filing fee for an application to appoint a receiver.

Costs are normally included in an order appointing a receiver since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.

But the receiver's fee must be reasonable and fair based upon the work the receiver does.

38

What May the Court Require of the Receiver?

- If the court appoints a receiver, the court may require the receiver to post a bond in an amount within the court's discretion.
- And the court must require the receiver to take an oath to faithfully execute their duties.
- Included in the new Supreme Court receiver form.

39

Broad Orders Are No Longer Allowed

- Prior to May 1, 2022, some debt collectors would submit orders allowing the receiver to:
 - Intercept all of the debtor's mail.
 - Change the locks on any location where there is non-exempt property.
 - Obtain all communication records of the debtor.
 - Order a constable to stop what they are doing and come with the receiver to seize the debtor's assets.
- You may no longer sign such an order.

40

Supreme Court Has Issued a Form for Appointing a Receiver

The Texas Supreme Court has issued a form that Justice Courts are **required** to use for appointment of a receiver.

The form went into effect on May 1, 2022.

The form is on the next three slides and is attached as Handout 3.

41

CAUSE NO. _____	
PLAINTIFF (JUDGMENT CREDITOR)	§ IN THE JUSTICE COURT
v.	§
DEFENDANT (JUDGMENT DEBTOR)	§ PRECINCT ____
	§ _____ COUNTY, TEXAS

ORDER APPOINTING RECEIVER

The court has considered Judgment Creditor's Application for Appointment of a Receiver under Texas Civil Practice and Remedies Code § 31.002. After reviewing the evidence and the court's file, the court **FINDS** that the judgment rendered in Cause No. _____ is valid, final, and fully payable. The judgment awarded was \$ _____, including costs, with interest at the rate of ____% to be compounded annually.

On _____ (date), the amount of any credits, payments, and offsets was \$ _____.

The court **FINDS** that the judgment remains unsatisfied; that Judgment Debtor owns property that is not exempt from attachment, execution, or seizure for the satisfaction of the judgment; and that Judgment Creditor is entitled to the court's aid in reaching Judgment Debtor's nonexempt property to satisfy the judgment.

The court also **FINDS** _____

It is therefore **ORDERED** that the following person ("Receiver") is appointed under Texas Civil Practice and Remedies Code § 31.002 with authority to take possession of Judgment Debtor's nonexempt property that is in Judgment Debtor's possession or is subject to Judgment Debtor's control, sell the property, and pay the proceeds to Judgment Creditor to the extent required to satisfy the judgment. Judgment Debtor's nonexempt property may include financial accounts, certificates of deposit, and money-market accounts held by a third party.

Receiver's Information:
Name: _____
Address: _____

New Supreme Court Order Appointing Receiver (Handout 3)

42

Email Address: _____
 Telephone Number: (____) ____-____
 State Bar No.: _____

Receiver's Additional Limited Powers: Receiver also has the following limited authority. Receiver may: (1) obtain Judgment Debtor's credit information and credit reports; (2) obtain Judgment Debtor's financial information and records from Judgment Debtor or a third party; (3) certify copies of this Order; and (4) negotiate and obtain installment payment agreements with Judgment Debtor, if Receiver reasonably believes that a payment agreement is the best option to satisfy the Judgment and Receiver provides Judgment Debtor with the Notice of Personal Property Rights approved by the Supreme Court of Texas. Receiver cannot reduce the total balance owed under the Judgment without Judgment Creditor's authorization.

Personal Property Rights of Judgment Debtor: Receiver must comply with Texas Rule of Civil Procedure 679b.

Turnover: Judgment Debtor and any third party in possession of Judgment Debtor's property is **ORDERED** to turn over to the Receiver Judgment Debtor's nonexempt property within _____ days after receipt of this Order.

Time Period: This Receivership terminates on _____ (date, not to exceed 180 days after the date this Order is signed), unless extended by the court on request of Judgment Creditor or Receiver and on good cause shown.

Receiver's Fee: Receiver's fee is conditionally set at _____% of the funds collected during the receivership, subject to the Judgment Debtor's written agreement or later determination of reasonableness based on written agreement of the Judgment Debtor or proof of the work performed and the results obtained. The court-approved fee will be taxed as costs against Judgment Debtor, and Receiver may collect that fee from Judgment Debtor in addition to the amount collected to satisfy the Judgment.

Receiver's Oath: Receiver must file an oath to perform their duties faithfully before acting under this Order.

Receiver's Bond:

No bond required; or

Receiver must execute a good and sufficient bond in the amount of \$_____ before acting under this Order.

New Supreme Court Order Appointing Receiver (Handout 3)

43

Receiver's Expenses: Receiver must provide an accounting or receipts of any reasonable and necessary expenses, including those for storage of any property seized, to the court. Court-approved expenses will be taxed as costs against Judgment Debtor, and Receiver may collect those expenses from Judgment Debtor in addition to the amount collected to satisfy the Judgment.

Attorney's Fees: Judgment Creditor's reasonable attorney's fees will be taxed as costs against Judgment Debtor.

Receiver to Hold Property: Receiver must not disburse funds to Judgment Creditor or sell property within 14 days after serving Judgment Debtor with the Notice of Protected Property Rights, the Instructions for Protected Property Claim Form, and the Protected Property Claim Form approved by the Supreme Court of Texas, or within 17 days if service was by mail. If Judgment Debtor asserts an exemption, Receiver may only disburse funds to Judgment Creditor or sell property with Judgment Debtor's written consent or a court order.

ISSUED AND SIGNED on _____, 20____.

 JUSTICE OF THE PEACE, PRECINCT _____
 _____ COUNTY, TEXAS

New Supreme Court Order Appointing Receiver (Handout 3)

44

Approval of Receiver's Fee

- The receiver's fee is only approved conditionally.
- When they complete their work they must ask the court to approve their fee based on the work they performed and the results they obtained.
- The court may approve the fee requested (typically 25% of the amount of the debt, which is added to the debt).
- Or the court may approve a lesser amount.
- See Order to Disburse Funds (next slide and Handout 4)

45

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT
 v. _____ § PRECINCT ____
 DEFENDANT _____ § COUNTY, TEXAS

ORDER TO DISBURSE FUNDS IN RECEIVERSHIP

On _____, 20____, this court reviewed Receiver's Request to Disburse Funds and attached documentation including: a summary of work completed, money collected, and receipts during the receivership from _____, 20____ to _____, 20____.

The court **FINDS** the total amount collected by Receiver during this time period is \$ _____.

The court **FINDS** that:

The Receiver's Fee as stated in the Order Appointing Receiver (____%) is reasonable based on the work performed and the results obtained as shown by Receiver's submitted evidence.

The Receiver's Fee as stated in the Order Appointing Receiver is not reasonable based on the work performed and the results obtained as shown by the Receiver's submitted evidence and is now **ORDERED** set at the reasonable amount of _____% of the funds collected or \$ _____.

It is **ORDERED** that the funds remaining minus any fee or reimbursement for receipts owed to Receiver be disbursed to Plaintiff, _____.

Receipts (if any): \$ _____

Receiver Fee: \$ _____

Total Amount to be Disbursed to Plaintiff: \$ _____

It is **FURTHER ORDERED** that in the event any funds remain after the above disbursements, then such funds be returned to Defendant.

ISSUED AND SIGNED on _____, 20____.

 JUSTICE OF THE PEACE, PRECINCT ____
 COUNTY, TEXAS

TJCTC Order TO Disburse Funds in Receivership (Handout 4)

46

Turnover Orders

47

Remember
What the
Statute Says!

- A court may “aid” a judgment creditor by either:
 - Ordering a judgment debtor to “**turn over**” non-exempt property to a Constable or Sheriff to satisfy a judgment; **or**
 - **Appoint a receiver** with authority to take possession of non-exempt property, sell it and pay the proceeds to the judgment creditor.
- These are two different procedures!

48

What Needs
to be Shown
for a
Turnover
Order?

- Same as for appointment of a receiver.
 - The court where the application is filed is a court of jurisdiction, which means either:
 - The court that issued the judgment; or
 - A court where a foreign judgment has been domesticated (hardly ever happens).
- AND
- The judgment debtor owns property that is non-exempt and therefore may be used to satisfy the judgment.

49

What Needs
to be
Shown
for a
Turnover
Order?

- As with appointment of a receiver, for the court to issue a turnover order, the court must have “some evidence” before it that establishes the facts the judgment creditor must show (listed on the previous slide).
- How much evidence is sufficient is up to the court.

50

Must the Court
Hold a Hearing?

- No!
- It is up to the court whether to hold a hearing or notify the judgment debtor of the application.

51

What is the
Court Ordering
in a Turnover
Order?

- In a Turnover Order the court orders the judgment debtor to turn over any non-exempt property to the Constable or Sheriff.
- The Order is directed to the judgment debtor!
 - Not to the Constable or Sheriff.
 - So this is not a writ of execution!

52

Does the Order
Have to
Say What Property
to Turn Over?

- No!
- The order does not have to identify specific property to be turned over.
 - But the property must be non-exempt.
- The court may therefore not order the judgment debtor to turn over current wages.

53

To Whom is
the Non-
Exempt
Property
Turned
Over?

- The court may not order the judgment debtor to turn the property over **directly** to the judgment creditor.
- The property must be turned over to the Constable or Sheriff.

54

What Happens if a Judgment Debtor Fails to Comply with a Turnover Order?

- Contempt proceeding!
- But a big issue here is whether the turnover order is specific enough that the judgment debtor can comply with it?
 - If the order doesn't identify any specific property, how does the debtor know what he has to turn over?
 - You can't hold someone in contempt for failure to comply with a vague order!

55

Fees and Costs

- There is no filing fee for a Turnover Order.
 - But the Constable or Sheriff may charge a service fee.
- Costs may be included in a Turnover Order since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.

56

CAUSE NO. _____

PLAINTIFF _____ § _____ IN THE JUSTICE COURT
 §
 §
 V. § _____ PRECINCT _____
 §
 §
 DEFENDANT § _____ COUNTY, TEXAS

TURNOVER ORDER

On this day the court considered Plaintiff's Application for Turnover Order pursuant to Texas Civil Practice and Remedies Code § 31.002. After reviewing the evidence and the court's file, the court **FINDS** that the judgment rendered in this case is valid, final, and fully payable. The judgment awarded was \$ _____ together with costs in the amount of \$ _____ with interest at the rate of ____% to be compounded annually.

The court **FINDS** that the judgment remains unsatisfied and that Plaintiff is entitled to aid from this court to reach the non-exempt property of Defendant in order to obtain satisfaction of the judgment. At the time of filing this Application for Turnover Order, the total balance due on this judgment, less any credits or payments is, \$ _____.

It is therefore **ORDERED** that Defendant turn over non-exempt property that is in Defendant's possession or is subject to Defendant's control, together with all documents or records related to the property, to a designated constable or sheriff for execution.

Notwithstanding any language to the contrary, this Order does not compel turnover of the homestead, checks for current wages, or other exempt property of Defendant.

It is further **ORDERED** that _____, Constable for Precinct _____, County, Texas, is hereby designated to take possession of such nonexempt property in Defendant's possession or subject to Defendant's control, together with all documents or records related to the property, for execution thereon.

ISSUED AND SIGNED on _____, 20____.

 JUSTICE OF THE PEACE, PRECINCT _____
 _____ COUNTY, TEXAS

TJCTC Turnover Order (Handout 5)

NOTICE TO DEFENDANT:

You can find out more about what property of yours is exempt by visiting www.texaslawhelp.org/exempt-property.

Obtenga mayor información sobre las exenciones, visitando el sitio www.texaslawhelp.org/exempt-property.

You are encouraged to get a lawyer to help you. For information on free and low-cost legal services, visit www.texascourts.gov/programs-services/legal-aid or call the legal aid offices that serve your area: Texas RioGrande Legal Aid at (888) 988-9996; Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (888) 529-5277. You can also call the State Bar of Texas at (800) 252-9690.

Se le recomienda que consiga a un abogado que le ayude. Para información sobre cómo obtener servicios de asesoría legal gratuitos o a un bajo costo, visite el sitio www.texascourts.gov/programs-services/legal-aid o llame a la oficina de asistencia legal que presta servicios en su área: Texas RioGrande Legal Aid al (888) 988-9996; Lone Star Legal Aid al (800) 733-8394; y Legal Aid of Northwest Texas al (888) 529-5277. También puede llamar al Servicio de Información de Abogados en el Colegio de Abogados de Texas al (800) 252-9690.

TJCTC Turnover Order (Handout 5)

Additional Resources

Civil Deskbook (3d ed. Oct. 2021) at pages 142 – 148.

Legal Board: search for turnover, receiver, exempt!

**Forms:
<https://www.tjctc.org/tjctc-resources/forms/>**