

Garnishment, Turnover Orders and Receivership

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What We Will Cover

Some Debt Collection Terminology	Garnishment
Turnover Orders	Receivership
Additional Resources	

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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.

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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.

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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.
- See the Exempt Property Bench Card at: <https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

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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.

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Knowledge Check!

- A “judgment creditor” is:
 - A. Someone who owes the amount of a judgment to a debt collector or other creditor.
 - B. The person who “holds” the judgment that is being enforced and is trying to collect it.

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Knowledge Check!

- A “judgment debtor” is:
 - A. The person who owes the amount of the judgment to the person who holds the judgment.
 - B. A debt collector or financial institution in the business of collecting judgments.

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Knowledge Check!

- “Non-exempt” property means:
 - A. Property owned by the judgment debtor that **may not** be seized and sold to pay off a judgment against the owner of the property.
 - B. Property that is not exempt from seizure and therefore **may** be seized and sold to pay off a judgment against the owner of the property.

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Poll

- We're going to talk today about garnishment and receivership which are ways to collect a judgment. But what are some other ways to collect a judgment:
 - Writ of Execution?
 - Order of Contempt?
 - Abstract of Judgment?
 - Capias pro fine?

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Garnishment

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What is a Writ of Garnishment?

- It's a way to seize assets held by a third party (the garnishee) but that belong to or are owed to the judgment debtor.
- For example:
 - A judgment debtor has a bank account.
 - The bank holds the money but it actually belongs to the judgment debtor.
- A writ of garnishment is how the plaintiff (the garnishor) can require the bank (the garnishee) to turn over the judgment debtor's money to satisfy the judgment.



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Which Court May Issue a Writ of Garnishment?



Only the court that issued the judgment that is being collected may issue the writ of garnishment.



The clerk of a justice court may issue a writ of garnishment returnable to the court.

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What Property May be Seized?

- Only non-exempt **personal** property may be seized by a writ of garnishment.
- Real property (land) may not be seized this way.
- How does the plaintiff know what non-exempt personal property the judgment debtor has?
 - May use post-judgment discovery to find out!

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Exempt Property in Garnishment Proceedings

- This property is also exempt from garnishment:
 - Current wages
 - Worker's compensation benefits
 - Government assistance funds
- But the court will not know if the plaintiff is trying to garnish these funds unless the garnishee or the judgment debtor raise the issue in response to the writ of garnishment.

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Step 1:
Application
for the
Writ

- The plaintiff must file an application for a writ of garnishment stating that:
 - They have a final judgment against the judgment debtor; and
 - The judgment debtor does not have enough property in Texas to satisfy the judgment with a writ of execution.

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Step 1:
Application
for the Writ

Side Note: There is a separate procedure for a pre-judgment writ of garnishment but this rarely comes up.

If it does, please see the Civil Deskbok at page 127.

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Step 1:
Application
for the Writ

CAUSE NO. _____

PLAINTIFF _____, IN THE JUSTICE COURT
§
§
v. § PRECOUNT
§
GARNISHEE _____ COUNTY, TEXAS
§

APPLICATION FOR WRIT OF GARNISHMENT

The undersigned Applicant makes this Application for a Writ of Garnishment based on the following:

I have a valid judgment that is in effect. To the best of my knowledge, Defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.

I have filed a suit for a debt that is just, due, and unpaid. To the best of my knowledge, Defendant does not possess property in Texas subject to execution sufficient to satisfy the debt. This garnishment is not sought to injure Defendant or the garnishee. I have posted a bond in accordance with Rule 684a.

The following facts support the above statements:

Additional information or affidavits are attached and incorporated by reference.

Defendant in the original suit: _____
The case number of the original suit: _____
The amount of judgment/debt owed as of the date of the application: \$ _____
The judgment date, if any: _____
Garnishee's name: _____

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Step 1:
Application
for the Writ

Garnishee's address for service: _____
 Garnishee's officer for service purposes, if applicable: _____
 Account name and number, if applicable: _____

WHEREFORE the applicant seeks assets held by a third party (Garnishee) and requests this court issue a Writ of Garnishment directed to the above-named Garnishee.

APPLICANT:
 Applicant's Signature _____ Date _____
 Address & Phone Number _____
 Email _____

SWORN TO AND SUBSCRIBED before me on _____, 20____.

CLERK OF THE JUSTICE COURT OR NOTARY _____

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Step 2:
Issuance
of the
Writ

- A garnishment case is filed and docketed as a **separate** proceeding against the garnishee.
- Once the requirements for issuance of the writ have been met, the clerk or judge must:
 - Docket the case in the name of the garnishor as plaintiff and the garnishee as defendant; and

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Step 2:
Issuance of
the Writ

- Issue a writ directing the garnishee to appear and state under oath what, if anything, it is indebted to the judgment debtor for and what property, if any, of the judgment debtor it has in its possession, and to hold any such property until further order of the court.

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Step 2: Issuance of the Writ

- The garnishee’s answer must be filed by 10:00 a.m. on the Monday following the expiration of ten days after service of the writ on the garnishee.
- Filing fees:
 - \$5 writ fee for preparing and issuing the writ.
 - Most courts charge the standard civil filing fee (usually \$46) since the rule says the case is docketed as a separate action. TJCTC agrees with this. It’s okay not to charge it but be consistent.

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Step 3:
Service of
the Writ
and Notice
to the
Judgment
Debtor

- A writ of garnishment must be served by a Constable or Sheriff.
 - A private process server may not serve it.
- The clerk gives the writ to a Constable or Sheriff or to the plaintiff for them to deliver to a Constable or Sheriff.
 - The plaintiff will have to pay the service fee.

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Step 3:
Service of
the Writ
and Notice
to the
Judgment
Debtor

- As soon as practicable after the writ has been served on the garnishee, a notice must be served on the judgment debtor giving them a copy of the writ and telling them they have a right to regain possession of the property that was seized by filing a replevy bond.
 - Why is this notice not served on the judgment debtor until after the writ has been served on the garnishee?
 - Type your answer in the chat box!

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Step 3:
Service of
the Writ
and Notice
to the
Judgment
Debtor

The notice may be served by a Constable, Sheriff, process server or any other person authorized by the court.

The court is not required to serve the notice but the court should verify that proper notice was given.

Usually the plaintiff will arrange service of the notice so it is served after the writ has been served.

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Step 3:
Service of the
Writ
and Notice to
the Judgment
Debtor

CAUSE NO. _____

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

WRIT OF GARNISHMENT

THE STATE OF TEXAS

To _____, GARNISHEE, GREETINGS

WHEREAS Plaintiff filed suit against _____, Defendant in the Justice Court, Precinct _____ of _____ County, Texas, in cause number _____; and in that case, Plaintiff alleges that the Defendant owes a debt of \$ _____; and Plaintiff has applied for a writ of garnishment against you, _____, as Garnishee; therefore you are hereby

COMMANDED to appear before this court at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service of this writ. You are to answer, under oath, if you are indebted to Defendant and what effects of Defendant you have in your possession. You also must state if you know any other person or entity that is indebted to Defendant or has effects belonging to Defendant in their possession.

YOU ARE FURTHER COMMANDED not to pay to Defendant any debt or deliver to Defendant any effects, pending further order of this court.

It is **ORDERED** that the officer executing this writ follow all orders and commands included and make a return to this court in a timely manner as the law directs.

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Step 3: Service of the Writ
and Notice to the Judgment Debtor

NOTICE TO DEFENDANT OF WRIT OF GARNISHMENT

Note: This notice is to be served on the Defendant only after this Writ of Garnishment has been served on the Garnishee.

To _____, DEFENDANT, GREETINGS:

You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO CONTEST THE ANSWER OF THE GARNISHEE.

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND.

YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
COUNTY, TEXAS

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Knowledge Check!

- A writ of garnishment may be used to seize any property of the judgment debtor held by the garnishee, including real property and current wages.
 - A. True
 - B. False

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Knowledge Check!

- An application for a writ of garnishment is filed:
 - A. As part of the same case in which the judgment was rendered; therefore, there is no filing fee for a writ of garnishment.
 - B. As a new and separate action from the original case in which the judgment was rendered; therefore, the court may charge the standard filing fee for a civil case.

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Knowledge Check!

- A writ of garnishment:
 - A. May be served by a private process server like any civil case.
 - B. Must be served by a constable or sheriff.

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Knowledge Check!

- The notice to the judgment debtor should be sent:
 - A. As soon as the garnishment case is filed.
 - B. At the same time the writ of garnishment is served on the garnishee.
 - C. Only after the writ of garnishment is served on the garnishee.

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Step 4: Garnishee's Response

- What happens next depends on how the garnishee responds:
 - Garnishee fails to answer.
 - Garnishee admits they hold assets of the judgment debtor.
 - Garnishee denies they hold any assets of the judgment debtor.
 - Garnishee's answer is disputed by the plaintiff or the judgment debtor.

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Step 4A: Garnishee Fails to Answer

- If the garnishee fails to answer, the court should enter a default judgment against the garnishee for the full amount of the judgment.
 - The default judgment is solely against the garnishee's assets and not against the assets of the judgment debtor.

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Step 4A:
Garnishee
Fails to
Answer

But if the garnishee is a financial institution (like a bank), then the default judgment is only as to the existence of liability.

The plaintiff has to establish what that liability is.

They have to prove the "amount of actual damages proximately caused to the [plaintiff] by the financial institution's default."

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Step 4A:
Garnishee
Fails to
Answer

CAUSE NO. _____

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

DEFAULT JUDGMENT AGAINST GARNISHEE

On _____, 20____ Plaintiff appeared for a default hearing. Garnishee failed to timely answer the writ of garnishment and failed to appear at the default hearing; and
The court **FINDS** in the suit of Plaintiff v. _____ Defendant, cause number _____ on the docket of this court, Plaintiff was awarded a judgment in the amount of \$ _____ against Defendant together with interest from _____, 20____ and
The court **FINDS** that because Garnishee failed to answer the writ of garnishment issued on the judgment against Defendant, Plaintiff had the right to seek a default judgment against Garnishee;
The court **FINDS** that Garnishee:
 Is not a financial institution; it is therefore **ORDERED** that Plaintiff recover from Garnishee the full amount of the judgment rendered against _____ Defendant, in the amount of \$ _____ together with
 Interest thereon at the rate of _____% compounded annually,
 and court costs of \$ _____;
 Is a financial institution; it is therefore **ORDERED** that Plaintiff recover from Garnishee the amount of \$ _____ which is the amount of actual damages caused to the Plaintiff by the Garnishee's default.

ISSUED AND SIGNED on _____, 20____

JUSTICE OF THE PEACE, PRECINCT _____
COUNTY, TEXAS

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Step 4B:
Garnishee
Holds
Assets of
Judgment
Debtor

- If the garnishee admits it is indebted to or holds assets of the judgment debtor, then the court must render judgment for the plaintiff against the garnishee.
- The judgment should be for the amount the garnishee holds for the judgment debtor up to the amount currently due on the original judgment (including costs and interest).

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Step 4B:
Garnishee
Holds
Assets of
Judgment
Debtor

- For example: Carl is the judgment debtor and First Bank is the garnishee. The current amount due under the judgment against Carl (including costs and interest) is \$3,000 and First Bank holds \$400 in Carl's account. The judgment should be for \$400.
- But if First Bank holds \$8,000 in Carl's account, then the judgment should be for \$3,000 (the current amount due under the original judgment).

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Step 4C:
Garnishee
Denies it
Holds
any Assets of
the Judgment
Debtor

- If the garnishee files an answer denying that it has any of the judgment debtor's property, and does not know of anyone else who holds any of their property (or if it does, it identifies that person), then the court must enter a judgment discharging the garnishee.

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Step 4C:
Garnishee
Denies it
Holds
any Assets of
the Judgment
Debtor

CAUSE NO. _____

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

JUDGMENT DISCHARGING GARNISHEE

On _____, 20____, the court reviewed the sworn answer of Garnishee to the writ of garnishment in this case.

It appears to the court from the answer that Garnishee was not indebted to _____ Defendant in the original action, when the writ of garnishment was served on Garnishee.

It further appears from the answer that Garnishee does not have any effects of Defendant in its possession and did not have any effects in its possession when the writ of garnishment was served.

In its answer Garnishee has denied having knowledge of any other persons who are indebted to Defendant or who have effects in their possession that belong to Defendant.

Garnishee's answer is satisfactory in all respects and has not been controverted by Plaintiff or Defendant; it is therefore **ORDERED** that _____ Garnishee, is discharged from the writ of garnishment; and

It is further **ORDERED** that Garnishee shall recover from Plaintiff its costs in the amount of \$ _____ for filing its answer in this case.

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

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Step 4D:
Garnishee's
Answer is
Controverted

- Either the plaintiff or the judgment debtor may controvert the garnishee's answer.
- In that case, if the garnishee is a resident of the county where the case is pending, then the court will try the issues that are controverted.
- But if the garnishee is a resident of another county, then the issues that are controverted must be tried in a court in that county.
 - If that happens, the court must transfer the case to that county.

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Step 4D:
Garnishee's
Answer is
Controverted

CAUSE NO. _____

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

NOTICE TO GARNISHEE OF TRIAL DUE TO CONTROVERTED ANSWER
 An application for a writ of garnishment and your answer as Garnishee have been filed in this case, and an affidavit controverting your answer has been filed by:
 Plaintiff
 Defendant

YOU ARE THEREFORE NOTIFIED that this case is set for trial on _____, 20__.

ISSUED AND SIGNED on _____, 20__.

 JUSTICE OF THE PEACE, PRECINCT _____
 COUNTY, TEXAS

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Step 5: Court
Costs
and Attorney's
Fees

- If the garnishee is discharged based on its answer, then the costs (including reasonable attorney's fees for the garnishee) are taxed against the plaintiff.
- If the garnishee's answer is not controverted, and the judgment is against the garnishee, then costs are taxed against the judgment debtor.
- If the answer is controverted, then the costs are awarded based on the outcome of the trial.

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Step 6: What the Judgment Debtor May Do

- Replevy: This means the judgment debtor may recover their assets by posting a replevy bond payable to the plaintiff in the amount set by the court's order.
- Motion to Substitute Property: The judgment debtor may file a motion to substitute property worth enough to satisfy the garnishment order.

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Step 6: What the Judgment Debtor May Do

- Motion to Dissolve or Modify the Writ: The judgment debtor may move to dissolve or modify the writ. They must admit or deny each reason for issuing the writ, or explain why they cannot do so.
- The filing of the motion stays further proceedings. The court must hear the motion promptly (may be less than three days) after notice to the plaintiff.
- If the judgment debtor denies the grounds for issuance of the writ, the burden is on the plaintiff to prove those grounds.

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Knowledge Check!

- Adam files a garnishment case against Heavenly Bank seeking to collect \$5,000 on a judgment against Eve. Heavenly Bank is busy with new business and fails to file an answer to the writ of garnishment. The court should:
 - Enter a default judgment against Heavenly Bank for \$5,000.
 - Enter a default judgment against Heavenly Bank only on liability and require Adam to prove his damages due to the bank's default.

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Knowledge Check!

- Same facts but Heavenly Bank files an answer stating that Eve has an account with the Bank in which there is \$2,000. Eve does not dispute Heavenly Bank's response. The court should:
 - Enter a judgment for Adam against Heavenly Bank for \$5,000.
 - Enter a judgment for Adam against Heavenly Bank for \$2,000.
 - Dismiss the case since Eve did not appear.

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Knowledge Check!

- Same facts but Heavenly Bank files an answer stating that Eve no longer has an account with the Bank and therefore it does not hold any of her assets and does not know where any of her assets are located. The court should:
 - Set the case for trial.
 - Order Eve to pay off the judgment held by Adam.
 - Enter a judgment discharging Heavenly Bank.

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Knowledge Check!

- Same facts but Heavenly Bank files an answer stating that Eve has an account with the Bank in which there is \$8,000 and Eve files a response disputing the Bank's answer. She claims the account belongs solely to her husband and not to her. The court should:
 - Dismiss the case since Eve does not have an account with the Bank.
 - Enter a judgment for Adam for \$4,000 since this is community property.
 - Subpoena Eve's husband and find out why he hasn't paid the judgment off.
 - Set the case for trial to determine who owns the account.

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Turnover Orders and Receivership

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What is the Turnover Statute?

- A law saying a court may “aid” a judgment creditor by:
 - 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!

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What Needs to be Shown for a Turnover Order?

- The court that the application is filed in 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.



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What Needs to be Shown for a Turnover Order?

- Because the statute only authorizes a turnover order upon proof of the necessary facts, the court must have "some evidence" before it that establishes the facts the judgment creditor must show (listed on the previous slide).
 - Usually this is done in an affidavit.
 - But the court could hear live testimony at a hearing.
- How much evidence is sufficient is up to the court.

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Turnover Order: 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?
- Type your comments in the chat box!

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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!

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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.
 - But once they are deposited into a bank account they are no longer **current** wages.

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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.

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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!

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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.

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Knowledge Check!

- A Turnover Order:
 - Orders the Constable or Sheriff to seize non-exempt property of the judgment debtor and turn it over to the judgment creditor.
 - Orders the judgment debtor to turn over non-exempt property to a Constable or Sheriff for them to sell and pay the proceeds to the judgment creditor.

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Knowledge Check!

- A Turnover Order may require a judgment debtor to turn non-exempt property over directly to the judgment creditor in order to save the Constable or Sheriff time:
 - True.
 - False.

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Receivers

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Appointment of a Receiver

- The alternative to issuing a turnover order is for the court to appoint a receiver.

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What is a Receiver?

- A receiver is a person appointed by the court who has the authority given to him by the court in the order appointing him as a receiver.
 - Usually 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.

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What is a Receiver?

- A receiver basically serves the same function as a constable or sheriff but only has the powers granted to him by the court in the order appointing him.
- Most debt collectors want the court to appoint a receiver rather than issuing a turnover order!
 - Why might that be the case?
 - Type your responses in the chat box!

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Is the Court Required to Appoint a Receiver?

- No! Appointment of a receiver is within the court's discretion.
- The court is not required to appoint a receiver.
- The court may order the judgment debtor to turn over nonexempt property to a constable or sheriff instead.
 - Why might a judge prefer a turnover order to a receiver?
 - Type your answers in the chat box.

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Where Must the Application to Appoint a Receiver be Filed?

- Same as a request for a Turnover Order:
 - With the court that issued the judgment that is being enforced; or
 - A court in which a foreign judgment has been domesticated (rarely happens).

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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.

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What Must the Judgment Creditor Prove?

- As with a Turnover Order, 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.

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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.

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Fees and Costs

- In one recent case the court held that because the record contained no evidence establishing what percentage or amount constitutes a fair, reasonable or necessary fee, the trial court abused its discretion by pre-setting the receiver's fee at 25%.

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Fees and Costs

- The best way to deal with this is for the court to conditionally approve a percentage fee.
- Then at the end of all the receiver's work, the receiver must provide proof to the court that the fee is reasonable based on the work performed and the results obtained.
- Then the court will either make the conditional fee final or change it accordingly to match the work performed and results obtained.

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What May the Court Require of the Receiver?

- If the court appoints a receiver, the court may require the receiver:
 - To be a Texas resident;
 - To take an oath to faithfully execute their duties; and
 - To post a bond in an amount within the court's discretion.

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What Should the Court Authorize the Receiver to do?

- An order appointing a receiver should be definite, clear and precise so that the receiver has sufficient information concerning his duties and does not have to interpret the order or draw inferences or conclusions.

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What Should the Court Authorize the Receiver to do?

- The court has broad discretion concerning the **duties** of the receiver and may limit or expand the duties as the court sees fit:
 - May restrict the receiver's authority to take "cash on hand."
 - May require receiver to provide an inventory of all property taken.

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Broad v. Limited Order

- Some proposed orders appointing receivers are very broad and allow the receiver to:
 - Intercept and open the debtor's mail.
 - Use force.
 - 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.
- These orders usually have no time limit and award fees upfront.
- See Handout 1 (broad order)

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Broad v.
Limited Order

- Other proposed orders appointing receivers are more limited:
 - Valid only for 120 days.
 - Receiver may seize bank accounts and other non-exempt assets.
 - No authorization to intercept and open mail, use force, change locks, obtain all electronic communication records, or commandeer a constable.
 - Only contingent award of fees.
- See Handout 2 (limited order)

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Broad v.
Limited Order

- At a recent workshop, there was a panel discussion among individuals involved in the collection industry, on both the creditor and debtor sides.
- The general consensus among most of the attorneys and judges involved was that the best practice generally was to adopt a more limited order rather than a broad one, especially in justice courts.

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Broad v.
Limited Order

- Make sure your judge reads the order and knows what's in it before signing it!
- The judge may modify a proposed order or deny it and tell the judgment creditor they may submit a more limited order for the court to consider.

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Knowledge Check!

- With respect to a receiver's fees, the best practice is:
 - A. To award a fee of 25% up front so the receiver can be sure to get paid.
 - B. To award a conditional fee but require the receiver to report back to the court upon completing their work and then determine what the final fee should be based upon the work performed and results obtained.

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Additional Resources

- Garnishment module! You may watch it here: <https://www.tjctc.org/onlinelearning/selfpacedmodules.html>
- Civil Deskbook (2d ed. Aug. 2020) at pages 125 – 138.
- Legal Board: search for garnishment, receiver, turnover!
- Forms: <https://www.tjctc.org/tjctc-resources/forms/Small-Claims.html>

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Questions?

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