

# Introduction to Executions: Proceed Without Delay

Carl Herbst, Brazoria County, Precinct 1

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## Thank You!

- Special thank you to Travis County Precinct 5 Deputy **Carl Eller** for providing insight, ideas, and examples for the class.

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- [www.txcourts.gov](http://www.txcourts.gov)
  - Texas Rules of Civil Procedure (TRCP)
- [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
  - All statutes other than the Rules of Civil Procedure
- TJCTC website resources ([www.tjctc.org](http://www.tjctc.org))
  - Texas Civil Process Field Guide
  - Deskbooks – **Practical Guide to Writs of Execution**
  - Legal Question Board
  - Forms
  - Blog – The Docket
  - Webinar archive

## Resources

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What is a Writ of Execution?

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Writ of Execution:

- It is a post-judgment court order commanding an officer to:
  - 1) levy upon money or non-exempt property of the defendant for a sum of money, and directing the payment of a sum of money,
  - 2) for the sale of particular property (Order of Sale), or
  - 3) for the delivery of possession of particular property to whom the judgment awards possession.

TRCP Rules 129, 629 - 633

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Writ of Execution:  
(continued)

- The writ can be for:
  - A sum of money.
  - Sale of particular property (Order of Sale).
  - Delivery of the possession of certain property.
  - Recovery of personal property or its value.

TRCP Rules 629 - 633

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Issuance of the Writ of Execution

- A writ of execution can be issued by:
  - District court.
  - County court.
  - Justice court.

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Writ of Execution:  
REQUIREMENTS

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Turn to page  
63 of the  
Field Guide

Most writs should be in correct format,  
but it's always good to double check.

**Things to note:**

- Expiration of service: 30, 60, 90 days
- Description of the property

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Sample Form  
Available at [www.tjctc.org](http://www.tjctc.org) > Legal Resources > Forms > Civil Process or Small Claims

New forms  
coming  
January  
2021!

KAUSE NO. \_\_\_\_\_

PLAINTIFF \_\_\_\_\_ § \_\_\_\_\_ IN THE JUSTICE COURT  
" § \_\_\_\_\_  
§ \_\_\_\_\_ PRECINCT NO. \_\_\_\_\_  
DEFENDANT \_\_\_\_\_ § \_\_\_\_\_ COUNTY, TEXAS  
§ \_\_\_\_\_

WRIT OF EXECUTION

**THE STATE OF TEXAS  
TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS-GREETINGS**

**WHEREAS** on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the Justice Court of Precinct \_\_\_\_\_, County, Texas, the Plaintiff in the above styled cause recovered a judgment against Defendant as follows:

Judgment in the amount of \$ \_\_\_\_\_

Costs in the amount of \$ \_\_\_\_\_ (A bill of costs is attached)

Interest at \_\_\_\_\_% compounded annually thereafter

**YOU ARE COMMANDED:**

To execute on the Defendant's property to satisfy the judgment amount of \$ \_\_\_\_\_, any other costs taxed against the Defendant, and any costs of executing this writ.

**HEREIN FAIL NOT** and bring the money, together with this writ, showing how you executed the same, to this Court at the Courthouse of \_\_\_\_\_ County, Texas within  30  60  90 days.

**ISSUED AND SIGNED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
COUNTY, TEXAS

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NON-EXEMPT PROPERTY:

- Corporations have no exemptions.
- Personal property exemptions are detailed in the Property Code (mostly in Ch. 42).
- Exempt Property Bench Card can be found at: <https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

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Dates & Times for Service

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### Expiration of Writ: Time computation

The life of a writ:

- Excludes the date of issuance.
- Includes every day, including Saturdays, Sundays, and legal holidays.
- Extends to the end of the next business day, if the last day is a Saturday, Sunday, or legal holiday.
- Includes date of return.
- The court has discretion to extend the time period for service.  
TRCP Rules 5, 500.5

**Don't forget! It expires in 30, 60, or 90 days!**

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### Who May Serve the Writ of Execution

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### Who May Serve:

- A writ of execution **MUST** be served by:
  - Sheriff,
  - Constable, or
  - Their deputies.
- The writ may be served anywhere in the state.

TRCP Rules 103 & 501.2(a)

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### Quick Question #1:

#### TRUE OR FALSE:

A Writ of Execution can be issued for the delivery or sale of a particular piece of property.

- 1. 1. True
- 2. 2. False

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### Methods of Service

- Delivering a copy to the party to be served, or their duly authorized agent or attorney of record, by:
  - Personal service;
  - Mail;
  - Commercial delivery service;
  - Fax;
  - Email; or
  - Any other manner that the court may direct.

TRCP Rule 21a

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### QUICK QUESTION #2:

- Do property exemptions apply to corporations?

- 1. Yes
- 2. No

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## Service Duties & Requirements of the Officer

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## Requirements of the Officer

- Endorse the date/time received. If receiving more than one writ against the same person on same day, number them as received.
- Proceed without delay to levy from the defendant or his agent to either pay or point out non-exempt property within the county.
- Levy upon enough non-exempt property within the county to satisfy execution and costs.
- Execute writ in accordance with it's terms.
- Return writ within 30, 60, or 90 days.

TRCP Rules 621, 629, 636, & 637

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## Requirements of the Officer,

*Continued...*

- Keep property safely stored until the judgment is paid or the property is sold.
- Give and post notices of sale and prepare for sale.
- Conduct an auction-type sale.
- Collect funds from sale.
- Prepare and deliver a bill of sale (personal property) or deed (real property) to the purchaser.
- Disburse funds.
- Keep copies of all documents in accordance with established record retention schedules.

TRCP Rules 629, 636, 639

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Calling Upon  
the Defendant

- The officer shall first call upon the defendant to point out non-exempt property found within the county to be levied upon.
- Levy shall first be made upon the property designated by the defendant.
- If no property is designated by the defendant, the officer shall levy upon any of defendant's property that is subject to execution.

TRCP Rule 637

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Calling Upon  
the  
Defendant:  
*How it really  
happens*

- Plaintiff or plaintiff's attorney tells the officer ahead of time about property the defendant has, if known.
- Before making demand on the defendant, the officer runs record checks to see if the defendant owns any non-exempt property.
- Officer makes demand for payment of judgment and costs.
- Officer asks the defendant if they have any non-exempt property before pursuing levy on the property identified by the plaintiff or the officer's research.

TRCP Rule 637

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Sample Form  
Available at [www.tjctc.org](http://www.tjctc.org) > Legal Resources > Forms > Civil Process or Small Claims

(CONSTABLE'S LETTERHEAD)

--DATE--  
--DEFENDANT (JUDGMENT DEBTOR)--  
--DEFENDANT (JUDGMENT DEBTOR'S ADDRESS)--

YOU ARE HEREBY NOTIFIED TO CALL <PHONE NUMBER> IMMEDIATELY TO DISCUSS THE PAYMENT OR ASSIGNMENT. A WRIT OF EXECUTION HAS BEEN ISSUED IN THE ABOVE LISTED CAUSE OF ACTION.

Demand is hereby made for payment of the judgment amount and, if applicable, interest, court costs, attorney fees, and all other costs connected with collection ordered by this writ.

If you do not pay this judgment immediately, we will proceed to collect this judgment by selling any non-exempt property belonging to you according to law.

If you cannot pay this judgment, you have the right to designate property to levy upon to satisfy this judgment if payment is not forthcoming.

This notice is being sent to you as a courtesy with the intention of saving you time and additional costs. All payments must be made through this office to ensure proper credit toward this judgment.

Please contact me for assistance in resolving this court order.

--TITLE-- OFFICER'S NAME--  
--COUNTY-- Constable's Office  
--COUNTY-- County, Precinct --PRECINCT NUMBER--

New forms  
coming  
January  
2021!

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### Non-Exempt Property

- An officer can only levy on **NON-EXEMPT** property, even if plaintiff or defendant points out conflicting property.
- See **Handout** or [www.tjctc.org](http://www.tjctc.org) > *Legal Resources* > *Charts and Checklists* > *Civil Procedure* > *Exempt Property Benchcard*

Property Code Sec. 41.001 - 42.004

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### Protecting Seized Property

- Document seized property by video or photo to document the condition of property when it was seized.
  - Video/photo seized property when it is seized, and also when it is released.
  - If visual documentation isn't possible, note a detailed description and condition of the property so you have some type of documentation.

This protects:  
 The property.  
 All parties.  
**Especially YOU!**

*More details in the Practical Guide to Writs of Execution*

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### Notice of Sale: Real Property

- Deliver Notice to defendant or their attorney, in person or by mail.
- Publish in a newspaper within the county, once per week for 3 consecutive weeks, with the first publication being at least 20 days prior to sale date.
- Post in 3 public places within the county, 1 of which must be the courthouse door, at least 20 days prior to sale date.
- Contents on next slide.

TRCP Rules 646a, 647

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Notice of Sale: Real Property *(continued)*

- Contents:
  - Authority by which sale is made;
  - Time of levy;
  - Time/place of sale;
  - Brief property description;
  - Number of acres;
  - Original survey;
  - Locality in the county; and
  - Name by which property is most generally known.

TRCP Rules 646a, 647

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Notice of Sale: Personal Property

- Send a copy of the sale notice to the defendant and the plaintiff by certified mail.
- Post the notice for 10 successive days, prior to sale date, at any courthouse door and at sale location.

TRCP Rule 650

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QUICK QUESTION #3

- If the defendant voluntarily offers their exempt property to be seized and sold, is the officer permitted to seize it for sale?

1. Yes
2. No

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QUICK QUESTION #4

How long must a Notice of Sale for **real property** be posted, prior to the sale?

- 1. 10 days.
- 2. 20 days.
- 3. 60 days.
- 4. 90 days.

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Sale Time & Location:  
Real Property

Hold the Sale:

- At the county courthouse door, unless the court orders sale to be where property is situated;
- On first Tuesday of the month; and
- Between 10:00 a.m. and 4:00 p.m.

TRCP Rules 646a, 647 & 648

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Sale Time & Location: Personal Property

Hold the Sale:

- Where property was seized, at the courthouse door, or at a more convenient location for exhibition;
- Property must be exhibited, if possible:
  - Exceptions:
    - Shares of stock in joint stock or stock in incorporated companies;
    - Property the defendant has only an interest in, but no exclusive right of possession; and
    - Livestock.
- At any time of day.

TRCP Rules 646a & 649

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- If collection is made, the writ and payment shall be returned to the court forthwith.
- After a sale is held, and the funds have been collected, the officer must:
  - Retain the officer's costs of execution;
  - Pay the plaintiff the amount that satisfies the judgment; and
  - Return any difference to defendant.

TRCP Rule 654

## Disbursing Funds

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- The initial service fee for some counties covers only a specific amount of field time.
  - If the officer spends more time executing the writ in the field, additional fees can be charged.
  - Service fees vary by county.
  - Where to find fee schedules is on the next slide

**\*\* If a fee is not listed on your county's Fee Schedule, it cannot be assessed. \*\***

## Fees

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- Fee schedules for the service of civil process are:
  - Set by the commissioner's court of each individual county in accordance with Section 118.131, Local Government Code.
  - Listed in the "Sheriffs' and Constables' Fees" listing published by the Comptroller's Office, at <https://comptroller.texas.gov/transparency/local/sheriffs/>.

## Where to Find Fee Schedules

**\*\* If a fee is not listed on your county's Fee Schedule, it cannot be assessed. \*\***

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• The sheriff or constable may demand payment of his service fee prior to serving a process from **an out-of-county court.**

• In your county, the fees shall be collected as costs of court.

• **EXCEPTION:** If a Statement of Inability to Afford Payment of Court Costs has been filed, the officer must execute without demanding payment

• If a responsible party fails to pay costs within 10 days of demand, said costs shall be included in the bill of costs.

TRCP Rules 17, 126, 129, & 145

Fee Collection

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**QUICK QUESTION #5**

**PERSONAL PROPERTY CAN BE SOLD:**

1. Between the hours of 10:00 a.m. and 4:00 p.m.
2. The First Tuesday of the month.
3. Both, A & B.
4. Any time or day.

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Return OF SERVICE  
&  
Requirements OF  
OFFICER

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### Contents of Return

Turn to page 64 of the **Field Guide** and page 41 of the **Practical Guide** for Additional Return Duties & Requirements

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### Notes about the Levy

The writ can be returned after 1 levy/attempt, if the judgment creditor (plaintiff) cannot designate any non-exempt property at the time of service/demand.

If no non-exempt property of defendant's can be located, the return should be entitled "Nulla Bona," indicating such.

An attempt to levy on property may begin at any time during the life of the writ (provided that the officer shall allow enough time to complete the sale).

TRCP Rule 637; CPRC § 34.072

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### Liability REDUCTION

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### Actions of Good Faith

- An officer is **NOT** liable for damages resulting from the execution of a writ issued by a Texas court if the officer in **good faith** executes or attempts to execute the writ as provided by law and the Texas Rules of Civil Procedure.
- An officer shows that they acted in good faith when they show that a **reasonably prudent** officer, under the same or similar circumstances, could have believed that the officer's conduct was justified based on the information the officer possessed when the conduct occurred.

CPRC § 7.003

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- The officer shall **securely** keep all personal property on which he has levied and for which no delivery bond is given.
- If an injury or loss results from the negligence of the officer, the officer and his sureties are liable for the value of the property lost or damaged.
  - The injured party has the burden to prove:
    - That the officer took actual possession of the injured party's property; and
    - The **actual** value of any property lost or damaged.

CPRC § 34.061

### Duty Toward Seized Property

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### Duty of Successor Officer

- If the officer who receives a writ of execution dies or goes out of office before the writ is returned, his successor or the officer authorized to discharge the duties of the office shall proceed in the same manner as the receiving officer was required to proceed.

- This also applies to situations where officers transfer writs to each other or share execution duties.

CPRC § 34.062

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• If an officer receives more than one writ of execution on the same day against the same person and fails to number them as received or if an officer falsely endorses a writ of execution, the officer and his sureties are liable to the plaintiff **only** for the **actual** damages suffered by the plaintiff because of the failure or false endorsement.

• The plaintiff has the burden to prove:

- The officer failed to properly number or endorse the writs of execution,
- The officer's failure precluded the levy of executable property owned by the debtor,
- The executable property owned by the debtor was not exempt from execution or levy, and
- The plaintiff suffered actual damages.

CPRC § 34.063

Improper Endorsement of Writ

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Failure to Execute & Return

- If a constable fails or refuses to execute and return a process that is lawfully directed and delivered to him or her, the constable **SHALL** be fined for contempt on the motion of the person injured by the failure or refusal.
    - Applies to deputies as well.
  - Fine:
    - \$10 - \$100 with costs.
    - Paid to the injured person.
    - Constable must be given 10 days notice of the motion.
- LGC § 86.024

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Improper Return of Writ

- An officer may file an amended or corrected return after the officer has returned a writ to a court.
- Once an officer receives actual notice of an error on a return or of the officer's failure to file a return, the officer **shall** amend the return or file the return no later than 30 days after receiving notice.
- An officer who fails or refuses to amend or file the return may be subject to contempt.

CPRC § 34.064

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• If an officer fails or refuses to levy on or sell property subject to execution and the levy or sale **could** have taken place, the officer is liable to the party entitled to receive money collected on execution **only** for **actual** damages suffered.

Failure to Levy or Sell

CPRC § 34.065

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Failure to Levy or Sell

- The creditor seeking relief has the burden to prove:
  - The creditor has a valid judgment against the debtor,
  - The writ of execution was issued to the creditor,
  - The writ was delivered to the officer,
  - The creditor's judgment was unpaid and unsatisfied,
  - The property to be levied on was subject to execution,
  - The officer failed or refused to levy under the writ, and
  - The amount of actual damages suffered.
- The court **must** find that the creditor specifically told officer the property was non-exempt, it was owned by debtor, and they directed officer to levy on it.

CPRC § 34.065

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Improper Sale

- If an officer sells property without giving notice as required, or sells property in a manner other than that set out by this chapter and TRCP, the officer shall be liable only for actual damages sustained by the injured party.
- The injured party has the burden to prove that the sale was improper and any actual damages suffered.

CPRC § 34.066

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### Failure to Deliver Money

• If an officer fails or refuses to deliver money collected under an execution when demanded by the person entitled to receive the money, and the amount is proven by the injured party, the officer is liable to the person for:

- Amount collected; and
- Damages at a rate of 1% a month on that amount.

CPRC § 34.067

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### Duties of Executing Officer

• An officer receiving a writ of execution does **NOT** have a duty to:

- Search for property belonging to the debtor.
- Determine whether property belongs to a debtor.
- Determine whether property belonging to the debtor is exempt property that is not subject to levy.
- Determine the priority of liens asserted against property subject to execution.
- Make multiple levies for cash or multiple levies at the same location.

CPRC § 34.071

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### Transfer of Writ

• An officer receiving a writ may transfer the writ to an officer in another precinct, or to another law enforcement agency authorized to perform executions, within the same county as the first officer who received the writ.

• An officer does **NOT** have a duty to levy on or sell property not within the officer's county, unless it is real property that is partially in the officer's county and partially within a contiguous county.

CPRC § 34.073

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**Wrongful Levy**

- When personal property is levied and any part of the property is claimed by someone who is not a party to the suit, the only remedy against a sheriff or constable for wrongful levy on the property is by trial of property.
- Example: Bob has a writ of execution issued against Sue. The constable levies on Sue's coin collection. Sue's friend, Virginia claims the coin collection is actually hers.

CPRC § 34.075

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**QUICK QUESTION #6**

In order for a Plaintiff to file for failure to levy, they must prove:

1. Actual amount of damages suffered.
2. Officer failed or refused to levy.
3. Specific property could have been levied.
4. All the above.

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**Executions:  
The Very Basics**

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### Be Prepared: Do Your Homework

- **Commit to the following:**
  - Note deadline dates:
    - Writ expiration date.
    - Notice of sale posting and publication dates.
    - Sale date.
  - List addresses of the defendant:
    - Run driver's license & vehicle registrations.
    - Request a postal verification through USPS.
  - Check for personal and real property and assets:
    - Appraisal district(s).
    - Accurant/Lexis Nexis, and CLEAR software.
    - Secretary of the State (SOS Direct)

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- Options for identifying defendant's non-exempt property:
  - Ask the plaintiff or their attorney.
  - Run property checks.
  - Ask defendant.
- It's a good business practice to work closely with the plaintiff or their attorney.
  - They may know more about defendant and his/her property than you'll be able to find out on your own.
  - It will make the execution easier, faster, and more successful.
  - It's good customer service!

### Do Your Homework, Cont'd

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### Example of How to Keep Good Records

OFFICE OF THE COMPTROLLER  
HUNT COUNTY, TEXAS  
PROPERTY SALE

**WRIT OF EXECUTION COVERSHEET**

Case No. 24-2018-077204 Title Case

2018-07-27 2018-07-27 2018-07-27

2018-07-27 2018-07-27 2018-07-27

ISSUED OUT OF: 2018-07-27 DISBURSED AMOUNT: \_\_\_\_\_  
 DATE WHEN RECEIVED: 2018-07-27 DISBURSED DATE: 2018-07-27  
 DATE WHEN CANCELED: 2018-07-27 DATE PAID: 2018-07-27

DATE	FOR	ISSUED
<u>2018-07-27</u>	DEPOSIT	
<u>2018-07-27</u>	DEPOSIT	

Additional Forms  
Available at [www.tjctc.org](http://www.tjctc.org) > Legal Resources > Forms > Civil Process

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### Calculating Interest

- Formulas:
  - Which do you use?
- Which dates do you calculate from and to?
- What amounts are included?
- Does the demand amount in your documents include interest?
  - If yes then how much? For what? At which rate?
  - Does it include the attorney fees and court costs?
  - Do you list the different subtotals/categories separately, or just list the total amount due?
  - Does it include ALL incurred fees/costs?

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### Demand Letters

- Who receives one?
- When do you send one?
  - Before making demand?
  - After making demand?
  - After contact attempts are unsuccessful?
- Why are they sent?

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- Contact defendant and make demand.
  - Run vehicles at defendant's residence.
  - Compare those vehicles with your plaintiff's information and software reports.
  - Be observant of possible non-exempt property around defendant's house/business location(s).

### Levy

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Levy  
(continued)

- Ask if defendant wants to (or can) satisfy the judgment by paying demand amount in full.
  - Accept any partial payment(s) offered during the life of the writ.
- Ask defendant to point out non-exempt property for levy.
  - Which of their vehicles, guns, etc. do they wish to keep?

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Notice of Sale

- Is the property described adequately?
- Has it been posted in proper locations?
- Will it be posted for the proper amount of time?
- Is the sale location listed properly?
- Has a copy been sent to plaintiff/plaintiff's attorney?
  - They may want to bid.

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Conducting a Constable's Sale

- Covered in the Advanced Executions class by Travis County Sergeant Alan Redd.
  - Because HE ROCKS! 😊

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### Return of the Writ

- Should a Nulla Bona return be filed immediately following demand?
- Should you hold the writ until it expires?
  - Circumstances may change during the life of the writ.
  - Plaintiff may know of non-exempt property.
  - Have you kept the plaintiff/attorney updated of execution status?
  - Should a Writ Cancellation Fee be assessed?

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Questions?

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GIVING CREDIT WHERE  
CREDIT IS DUE:  
A SALUTE TO ALFRED TAYLOR

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