

# Introductions to Executions

## **Buck Stevens**

Constable, Brazoria County, Pct 3

## **Bronson Tucker**

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## Resources

- [www.txcourts.gov](http://www.txcourts.gov) Texas Rules of Civil Procedure (TRCP)
- [www.statutes.capitol.Texas.gov](http://www.statutes.capitol.Texas.gov) Statutes other than TRCP
- [www.thelawdictionary.org](http://www.thelawdictionary.org)
- [www.tjctc.org](http://www.tjctc.org)
  - Texas Civil Process Field Guide
  - Practical Guide to Writs of Execution Deskbook
- **Civil Process for Texas, 2020-2021 Edition, by John Steinsiek**

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## What Is A Writ Of Execution?

- A **post-judgment** writ commanding an officer to enforce a judgment by make demand upon defendant under one of the four types of Writs of Execution.
- A writ to put in force the judgment or decree of a court.  
([thelawdictionary.org/writ-of-execution/](http://thelawdictionary.org/writ-of-execution/))
- A writ commanding an officer to levy upon the non-exempt property of a defendant in satisfaction of a previous judgment rendered by the issuing court.
- TRCP 621: “The judgments... shall be enforced by execution or other appropriate process.”
- TRCP 505.2 and 507.4 Apply to JP Courts, specifically.

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## 4 Types of Executions

1. TRCP 630 - Money Judgment
2. TRCP 631 - Sale of Particular Property
3. TRCP 632 - Delivery of Certain Property
4. TRCP 633 - Recovery of Personal Property or its value.

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## TRCP 630 – Money Judgment

### 1. Money Judgment:

- States sum of amount due;
- States amount actually due at time of issuance;
- States applicable interest rate(s);
- Requires officer to satisfy judgment & costs from debtor's property subject to execution;

TRCP 630.

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## TRCP 631 – Particular Property

### 2. Sale of Particular Property:

- Particularly describes property;
- Exemptions do not apply;
- Commands officer to seize/sell it;
- Tax suit is to satisfy tax judgment against property;
- a/k/a Order of Sale.

TRCP 631; TC 33.41

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## TRCP 632 – Certain Property

### 3. Delivery of Certain Property:

- Particularly describes property;
- Exemptions do not apply;
- States who gets possession.
- Directs officer to deliver property.
- a/k/a Writ of Possession in personal property foreclosure case
- May also be known as “Fieri Facias” (fī-(ə-)rē-'fā-sh(ē)əs) or the old “Turnover Order”.

TRCP 632.

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## TRCP 633 – Personal Property (Only) or its Value

### 4. Recovery of Personal Property or its value:

- Same criteria as above;
- If for **personal property**, commands levy on non-exempt property if delivery of listed property cannot be made;
- Proceed as in execution;

TRCP 633

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## Quick Review

### True or False:

A Writ of Execution can be issued so that a plaintiff can get possession of a particular piece of property.

1. True
2. False

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### Who May Issue:

Justice Court;

County Court;

District Court;

TRCP 621, 622

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**Definition:** Judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.

CPRC 35.001

## Foreign Judgments

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## When Issued:

**Not before 30<sup>th</sup> day after judgment, unless:**

- Supersedeas bond or notice of appeal filed;
  - At least 31 days after appeal motion overruled.
- Motion for new trial or arrest of judgment filed;

TRCP 627

- Personal property to be transferred or secreted.

TRCP 628

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## Receipt of Writ

- Officer has a duty to:
  - Endorse date/time received;
  - Number writs if necessary.
  - Must be worked in order received
- TRCP 636; CPRC 34.063

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## Who May Serve:

Any Sheriff;

Any Constable;

Their Deputies;

TRCP 103, 501.2

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## Requisites of Execution

- Describes judgment;
  - Includes Bill of Costs;
  - Requires execution according to its terms;
  - Requires officer to make adjudged costs & further costs of executing writ;
  - Requires Return.
- TRCP 629

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## Writ Example: Judgment Summary

ALIAS EXECUTION  
(With Bill of Costs)

Cause No. 02-61953-00-0-4

475748

THE STATE OF TEXAS

To the Sheriff or Constable of Any County of the State of Texas, Greetings;

WHEREAS, at the Regular Term of the County Court at Law #4 of Nueces County, Texas on the 21st day of January, 2003, in a certain cause styled: **FROST NATIONAL BANK vs. ROSALES, JOE C., ET AL**, and numbered 02-61953-00-0-4 on the Civil Docket of said Court, Frost National Bank, Plaintiff recovered a judgment against **Joe C. Rosales And Laura Rosales, Jointly And Severally for \$4,009.14 With Interest Thereon At The Rate Of 11.45% Per Annum From January 13, 2000 Until Paid; And Attorney's Fees In The Sum Of \$1,336.00 With Interest Thereon At The Rate Of 10% Per Annum From 1-21-2003 Until Paid And That All Costs Of Court Herein Are Assessed Against Defendants. (Joe C. Rosales, 1000 Morningside St., Angleton, Tx 77515).**

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## Writ Example: Command

Now, THEREFORE, you are hereby commanded that of the goods and chattels, lands and tenements of the said **Joe C. Rosales And Laura Rosales, Jointly And Severally** you cause to be made the sum of **\$4,009.14 With Interest Thereon At The Rate Of 11.45% Per Annum From January 13, 2000 Until Paid; And Attorney's Fees In The Sum Of \$1,336.00 With Interest Thereon At The Rate Of 10% Per Annum From 1-21-2003 Until Paid And That All Costs Of Court Herein Are Assessed Against Defendants**

and the further sum of **\$342.00** Dollars, cost of suit together with your legal fees, and commissions for collecting the same, and the officer executing this writ shall execute the same according to law and the mandates hereof.

HEREIN FAIL NOT, and have you this writ showing how you have executed the same, together with said moneys collected as herein directed, before the above Court at the Courthouse thereof in Corpus Christi, Texas, (1) within **90 days** from the date of the issuance of this writ.

Issued and given under my hand and seal of said Court in Corpus Christi, Nueces County, Texas on this **13th day of October, 2021.**

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### Quick Review

Which of the following is the correct party to serve a Writ of Execution on a corporation?

- Shift supervisor,
- Gate guard, because it is a gated property,
- Manager's wife, who is also the bookkeeper, or
- Registered agent.

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## Service Fees

- Differ by county;
- Must be included in county's annual Fee Schedule in order to be collected;
- Set by **Commissioners Court** before October 1<sup>st</sup> each year;
- Effective date is January 1<sup>st</sup> of following year;
- Find it here: <https://comptroller.Texas.gov/transparency/local/sheriffs/>.
- LGC 118.131

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## Service Fees

- Constable may require payment prior to serving process from an out-of-county suit;
- Added to court costs if not paid within 10 days of request for payment;
- Not collected if Statement of Inability to Afford Payment of Court Costs (pauper's affidavit) has been filed with court. Fee is then added to court costs.

TRCP 126, 129, 145

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## Time Computations

- Excludes date of issuance;
- Includes every day, including Saturdays, Sundays, and legal holidays;
- Includes the last day of the period;
- Rolls to next full business day if last day is a Saturday, Sunday, or legal holiday;
- Time may be enlarged by the issuing court.
- TRCP 5, 500.5

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## Time Computations

- <https://www.timeanddate.com/date/duration.html>
- Allows you to include end date in calculation

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## Quick Review

Sheriff's and Constable's Service Fees are set by:

- A. Secretary of State Office
- B. Comptroller's Office
- C. Commissioners Court
- D. Carlos Lopez

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## Quick Review

Does the computation of time for the life of a writ include the date of issuance?

- A. Yes
- B. No

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## Financial Calculations

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What accrues interest?

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What does not accrue interest?

---

Type of interest?

---

Periods of accrual?

---

Is total interest amount stated?

---

Is interest rate stated?

---

Where do I find applicable interest rates?

---

Is a contractual interest rate applicable?

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What accrues interest?

- Read the writ.... Then.... **Read it again!**
- Note each listed item/amount that accrues interest;
- Note the interest rate (if stated specifically);
- Find the interest rate (if **not** stated specifically);
- Note the effective interest date ranges;
- Add the sum(s) of each common criteria.

## What Accrues Interest

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## Prejudgment Interest

- **Prejudgment** interest accrues beginning on the earlier of:
  - The 180<sup>th</sup> day after defendant receives written notice of a claim; or
  - The date the suit is filed; and
  - Ends on the day **before** judgment is rendered.
- It is computed as **simple** interest and does not compound.

FC 304.104

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## Judgment Rate

- 304.001 - Money judgments **must** specify post-judgment rate.

FC 304.001

- 304.002 - Money judgment on a contract that provides for interest earns post-judgment interest at the lesser of:
  - Rate specified in contract, **or**
  - 18% per year.

FC 304.002

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## Post-judgment Interest

- 304.003(a) - A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns postjudgment interest as set out in section 304.006.
- 304.003(b) - Consumer Credit Commissioner shall determine post-judgment interest rate for money judgments on the 15<sup>th</sup> day of each month.

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## Post-judgment Interest Rate

- 304.003(c) - Money judgment **not** under contract earns post-judgment interest at the following rate:
  - As listed by Consumer Credit Commissioner; **or**
  - Prime rate per Federal Reserve System;
    - 5% per year if Federal Reserve rate is less than 5%; **or**
    - 15% per year if Federal Reserve rate is more than 15%.

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# Texas Register

304.004 - That is sent to the Secretary of State and published in the Texas Register.

<https://occc.texas.gov/publications/interest-rates>

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# TEXAS CREDIT LETTER

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Volume 42, Number 28, January 17, 2023

ISSN 0738-6877

### NOTICE OF RATE CEILINGS

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.009 and 304.003, TEX. FIN. CODE.

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial<sup>(2)</sup> thru \$250,000</u>	<u>Commercial <sup>(2)</sup> over \$250,000</u>
Weekly Rate - Sec. 303.003 and 303.009, TEX. FIN. CODE	01/23/23-01/29/23	18.00%	18.00%
Judgment Rate - Sec. 304.003, TEX. FIN. CODE	02/01/23-02/28/23	7.50%	7.50%

<sup>(1)</sup>Credit for personal, family, or household use. <sup>(2)</sup>Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas this the 17th day of January 2023.

<https://occc.texas.gov/publications/interest-rates>

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## Accrual of Postjudgment Interest

- 304.005(a) - Post-judgment interest on money judgment begins on date of judgment and continues until judgment is satisfied.
- 304-005(b) - If case is appealed, interest does not accrue from filing of motion until subsequent ruling is made.

FC 304.005

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## Compounds Annually

- 304.006 - Post-judgment interest compounds annually.
  - “Per annum”
  - This simply means, you take the awarded amount plus the interest from yesterday, add it together and then add interest to that total amount today. Then tomorrow, you take todays figure and add interest to that, ..... and so on .... Until paid
- Texas courts shall take judicial notice of published interest rates.
- FC 304.007

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## Financial Calculation Resources

### Sources:

- <https://occc.texas.gov/publications/interest-rates>
- TJCTC: There is a writ worksheet on the website.
- [www.calculatorsoup.com/](http://www.calculatorsoup.com/)
- [www.judgmentcenter.com/calculator.htm](http://www.judgmentcenter.com/calculator.htm)
- Judgment x (1 + Interest rate)<sup>Number of years</sup>

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## Financial Calculation Example

**PRINCIPAL = \$10,000**  
**INTEREST + 5.5%**  
**9.5 Years**

**A = Answer:**  
**A = \$16,630.23**

**A = P + I where**  
**P (principal) = \$10,000.00**  
**I (interest) = \$6,630.23**

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## Financial Calculation Example Cont.

### Calculation Steps:

First, convert R as a percent to r as a decimal

$$r = R/100$$

$$r = 5.5/100$$

r = 0.055 rate per year,

Then solve the equation for A

$$A = P(1 + r/n)^{nt}$$

$$A = 10,000.00(1 + 0.055/1)(1)(9.5)$$

$$A = 10,000.00(1 + 0.055)(9.5)$$

$$A = \$16,630.23$$

### Summary:

The total amount accrued, principal plus interest, with compound interest on a principal of \$10,000.00 at a rate of 5.5% per year compounded 1 times per year over 9.5 years is \$16,630.23.  $P(1 + r/n)^{nt}$

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## Consider This:

Now, THEREFORE, you are hereby commanded that of the goods and chattels, lands and tenements of the said Joe C. Rosales And Laura Rosales, Jointly And Severally you cause to be made the sum of \$4,009.14 With Interest Thereon At The Rate Of 11.45% Per Annum From January 13, 2000 Until Paid; And Attorney's Fees In The Sum Of \$1,336.00 With Interest Thereon At The Rate Of 10% Per Annum From 1-21-2003 Until Paid And That All Costs Of Court Herein Are Assessed Against Defendants

and the further sum of \$342.00 Dollars, cost of suit together with your legal fees, and commissions for collecting the same, and the officer executing this writ shall execute the same according to law and the mandates hereof.

HEREIN FAIL NOT, and have you this writ showing how you have executed the same, together with said moneys collected as herein directed, before the above Court at the Courthouse thereof in Corpus Christi, Texas, (1) within **90 days** from the date of the issuance of this writ.

Issued and given under my hand and seal of said Court in Corpus Christi, Nueces County, Texas on this **13th day of October, 2021.**

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## Quick Review

Who sets the post-judgment interest rates on the 15<sup>th</sup> of each month?

- A. Commissioners Court
- B. Office of Consumer Credit Commission
- C. Justice of the Peace & Constable's Association
- D. Texas Secretary of State
- E. None of the above

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## Quick Review

Does post-judgment interest accrue during a stay of judgment or an appeal period?

- A. Yes
- B. No

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## Quick Review

What sets the prejudgment interest rates?

- A. Commissioners Court
- B. Office of Consumer Credit Commission
- C. Justice of the Peace & Constable's Association
- D. Office of Court Administration
- E. None of the above

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- Constable's Offices serving process are in a customer driven business just like the private sector
  - Paid to provide a expected service
  - (delivery of court process and provide the return to court)
  - Paid by budget from your County Commissioners
  - Paid by private entity for your service
    - - Plaintiff
    - - Attorneys
    - - AG's offices
    - - Process servicers
    - -Lien holders
    - -Other judgment creditors

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## Due Diligence

“Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstance; not measured by an absolute standard but depending on the relative facts of the special case”.

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## Due Diligence

- Include the following in your writ file:
  - Log of calls & conversations, emails;
  - Copies of demand letter, postal receipts, seizure notices, sale notices, bid sheets bill of sale/deed;
  - Handwritten notes;
  - Computer generated reports;
  - Photos.

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## What You May Do

As part of due diligence, you may:

- (1) search for property belonging to the judgment debtor within your county;
- (2) determine whether property actually belongs to a judgment debtor;
- (3) determine whether property belonging to the judgment debtor is exempt property that is not subject to levy;
- (4) stay connected with your customer: **Communication** is key, update them often by phone or email.

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## What You Are Required To Do

- **Make demand, collect payment and/or levy on non-exempt property**
  - Determine if there is any property which is non-exempt within your county **and** take it.
  - Refer to Texas Property Code sec. 41.001 through 42.004 to determine what is considered exempt property

If still in doubt:

- Contact the plaintiff or plaintiff's attorney for direction
- Contact youNo better protection than due diligence and guidance in writing telling you to levy or not levy on certain property
- r District or County Attorney for advisement

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## What You Are Required To Do

- ❖ Conduct a sale of levied property
- ❖ Safe and secure storage of levied property
- ❖ You are responsible for secure storage
- ❖ Disburse monies collected in a timely manner  
(could be either levied funds or proceeds of a sale or both)
- ❖ Provide a return to the court
- ❖ Fill out Officers return that tells the story  
(Be thorough in explaining where the money went)

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### Always Think:

#### TCPRC 7.003 Good Faith

(c) An officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer:

- (1) in **good faith** executes the write as provided by law and by the TRCP; and
- (2) uses **reasonable diligence** in performing the officer's official duties.

#### Good Faith

- 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.

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# Liability

## *USC Title 42, Section 1983*

- Permits civil liability for
  - Both The Agency
  - And The Officer
  - These suits have greatly increased in recent years.

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# Liability Issues

- **CCP 2.16 Neglecting To Execute Process**
  - Willful refusal or failure to execute;
  - \$10-\$2,000 fine for contempt, payable to court.
  - Only **the officer** is liable.
- **CPRC 34.065 Failure To Levy Or Sell**
  - Officer fails or refuses to levy or sell;
  - Sale could have taken place;
  - Officer & sureties are liable for actual damages only.

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## Liability Issues

### **CPRC 34.061 Duty To Ward Seized Personalty**

Secure all property levied and for which no delivery bond is given;

- Officer & sureties are liable for negligent loss;
- Injured party has burden of proof of levy and actual value.

### **CPRC 34.063. Improper Endorsement Of Writ**

- Fails to number writs, if more than one received same day;
- Falsely endorses writ;
- Officer & sureties liable for actual damages.

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## Liability Issues

### **CPRC 34.064 Improper Return Of Writ**

- May file amended writ after initial return filed;
- Shall amend erroneous return within 30 days after learning of error.
- Fails or refuses to amend or file return.
- Contempt under Sec. 7.001(b).
  - Punishable by contempt fine of \$10-\$100, with costs;
  - Officer must be given 10 days notice of motion being filed.

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## Liability Issues

- **CPRC 34.066 Improper Sale**
  - Sells without giving notice;
  - Sells in manner other than prescribed by TRCP;
  - Officer liable for actual damages.
- **CPRC 34.067 Failure to Deliver Money Collected**
  - Fails or refused to deliver money when demanded;
  - Officer & sureties liable

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## Liability Issues

- **CPRC 34.048 Purchase By Officer Void**
  - If officer or his deputy conducting an execution sale directly or indirectly purchases the property, the sale is void.
- **CPRC 34.075 Wrongful Levy**
  - When **personal** property is levied and then claimed by party not in writ, property hearing is the only remedy.

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## Liability Issues

### • LGC 86.021 General Powers & Duties (Constable)

- May perform service **anywhere** in his county.
- **May** serve process in his county or contiguous county.
- **All** served process is presumed served under **official capacity**.
- Collected fees **shall** be deposited with county treasurer of his county.

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## Liability Issues

### LGC 86.025. Unfinished Business

- If a constable vacates the office for any reason, all unfinished business shall be transferred to the succeeding constable and completed in the same manner as if the successor had begun the business.

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## Liability Issues

### CPRC 34.062 Duty of Successor Officer

- If the officer who receives writ dies or leaves office before return of a writ, his successor shall proceed in the same manner as the receiving officer was required to proceed.

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## Liability Issues

### CPRC 7.003 Liability Regarding Execution of Writs

- Officer is **not** liable for damages if officer acted in good faith to execute the writ by law and TRCP.

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### CPRC 34.072 Timing of Execution and Return

- May return after first levy or attempt;
- Ensure seizure early enough to hold sale.

### CPRC 34.073 Transfer of Writ

- First officer may transfer to officer in another precinct or agency within his county.

### CPRC 34.073 No Duty to Levy Outside of County

- No duty to seize outside your county, unless real property partially in your county.

## Timing, Transfer, & Seizure

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## Quick Review

If an officer files a return with errors in it, how long does he have to file an amended return with the court?

- A. 10 days
- B. 30 days
- C. 60 days
- D. 90 days

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# Demand Letter



Address one to each named defendant/debtor;



Mail & hand-deliver when demand is made;



Attach writ;



Include pertinent case information.

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## Get Ready To Make Your Demand

### Preparing to make demand

Get you facts and figures in order



### Demand letter or statement

Prepare a document to give to the judgment debtor in language they can understand

Not all demand letters contain the same information

- Notice to debtor that payments should be made through your office.
- Judgment (Principal)
- Interest – Post and Prejudgment
- Attorney Fees and Interest if awarded
- Court Costs
- Other Costs of Execution
  - Publication
  - Storage fees
  - Towing
  - Additional Deputy time

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 <p><b>Carlos E. Lopez, Constable</b> Travis County Constable Precinct 6 Austin, Texas 78701 01/08/2019</p> <p>Attention: MATTHEW MARTINEZ Case Number: 207002-1 Court: Justice Co. #1 - 3 File #/IT: ASSET ACQUISITIONS GROUP, LLC Respondent: MATTHEW MARTINEZ</p> <p>You are notified to call (512)854-9707, to discuss payment in the above referenced Execution of Judgment or to point out specific property, real or personal, which this office is to levy upon. This written notice is delivered as an explanation of fees due, and as a courtesy with the intention of saving you additional costs.</p> <p><b>NOTICE:</b> Demand is hereby made for immediate payment of the amount due as of this date as listed below. <b>Interest accrues at the daily rate shown and will be added at time of payment.</b> Payment may be made in cash or certified funds, payable to Constable Carlos E. Lopez. The Office of the Constable will proceed to collect on this judgment by seizing any non-exempt property as defined in section 47 of the Texas Property Code unless we hear from you concerning the immediate payment or specific property you wish this office to levy upon.</p> <p>Sincerely, SR DEPUTY JULIEN SMITH, Deputy Constable</p> <table border="0"> <tr> <td>Judgment date: 02/20/2009</td> <td>WRIT OF EXECUTION</td> </tr> <tr> <td>Judgment amount: \$3,829.17</td> <td>ISSUE DATE: DECEMBER 31, 2018</td> </tr> <tr> <td>Interest rate: 0.25% Daily rate: \$2.88 Total days: 3692 Total years: 2.89</td> <td>NOTE: Interest is accrued daily. Therefore, please call Sr. Deputy Smith at (512) 854-9700 ext. 33415 to get the current amount due.</td> </tr> <tr> <td>Total interest: \$2,374.05 Additional interest: \$0.00 Daily Rate (Add'l): 0.00</td> <td></td> </tr> <tr> <td>Court costs: \$132.00 Attorney fee: \$0.00 Constable fee: \$0.00</td> <td></td> </tr> <tr> <td>Subtotal: \$6,515.22</td> <td></td> </tr> <tr> <td>Commission: \$951.52 Amount due: \$7,196.74</td> <td></td> </tr> </table> <p>Travis County Courthouse - 1003 Guadalupe Street, Austin, Texas 78701 (512)854-9700 - Fax: (512)854-4228 - www.constables.com</p>	Judgment date: 02/20/2009	WRIT OF EXECUTION	Judgment amount: \$3,829.17	ISSUE DATE: DECEMBER 31, 2018	Interest rate: 0.25% Daily rate: \$2.88 Total days: 3692 Total years: 2.89	NOTE: Interest is accrued daily. Therefore, please call Sr. Deputy Smith at (512) 854-9700 ext. 33415 to get the current amount due.	Total interest: \$2,374.05 Additional interest: \$0.00 Daily Rate (Add'l): 0.00		Court costs: \$132.00 Attorney fee: \$0.00 Constable fee: \$0.00		Subtotal: \$6,515.22		Commission: \$951.52 Amount due: \$7,196.74		 <p><b>Brazoria County Constable Precinct 1</b> <b>Constable David Thacker</b> 210 W. First Street Freeport, Texas 77541 979-233-4188 Office 979-415-0610 Fax</p> <p>March 12, 2020</p> <p>Baywood Food, Inc. ETAL c/o Michael A. Wood 113 Cedar Street Lake Jackson, Texas 77566</p> <p>Cause Number: 1145116      Court: County Civil Court at Law No. 2 Harris County, Texas</p> <p>Oak Farms Dairy vs Baywood Food, Inc. ETAL</p> <p><b>Judgment, Interest, and Costs Due to Date: \$37,791.95</b> Payment Made To: Constable David Thacker</p> <p>Dear Baywood Food, Inc. ETAL and Michael A. Wood,</p> <p>This letter is to inform you that a Writ of Execution was received by this department on February 18, 2020. The writ was filed against you by the above named party, and it requires immediate response. <b>DEMAND IS HEREBY MADE</b> for the above amount, and it must be paid by cash, cashiers check, or money order, and payable to the order of Constable David Thacker.</p> <p>Unless the above amount is received by our office immediately, we will proceed with the writ and seize and sell any non-exempt property found in Brazoria County, Texas, as under execution, and the proceeds will be applied to the payment and satisfaction of the above listed judgment, interest due thereon, all costs of suit, and all costs of executing said writ, according to law. This notice is being delivered to you as a courtesy, with the intention of saving you time and additional costs. You may contact me at any of the listed phone numbers or by email at the below listed email address. Thank you or your cooperation and prompt attention in this matter.</p> <p>Sincerely, Carl D Herbst Chief Deputy Constable 979-864-5885 Cell carlh@brazoria-county.com</p>
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Interest rate: 0.25% Daily rate: \$2.88 Total days: 3692 Total years: 2.89	NOTE: Interest is accrued daily. Therefore, please call Sr. Deputy Smith at (512) 854-9700 ext. 33415 to get the current amount due.														
Total interest: \$2,374.05 Additional interest: \$0.00 Daily Rate (Add'l): 0.00															
Court costs: \$132.00 Attorney fee: \$0.00 Constable fee: \$0.00															
Subtotal: \$6,515.22															
Commission: \$951.52 Amount due: \$7,196.74															

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## How To Make Your Demand

- Make contact with defendant
  - Deliver the demand
    - Does the demand have to be hand delivered?
  - Make sure they understand it
  - Ask questions...do you own real property? a boat? an RV?
- Explain defendant's consequences of failing to comply or interference when you are levying
  - Contempt of Court?
  - Texas Penal Code - 38.15 Interference with Public Duties
  - Hiding assets? Transferring ownership after judgment?

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## How To Make Your Demand

- Initial visual search for personal property
  - Look around at the demand site or other location where a debtor's property may be found
    - Is any personal property located likely to belong to defendant?
    - Can any property located be moved or hidden before you return?
    - Is there access to the property?

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### ➤ Where do you search for the property?

- **The plaintiff/attorney is responsible to provide information on where the debtor's property may be located.**
  - Texas Civil Practices and Remedies Code Sec. 34.071
- No legal duty to conduct search but may do so to enhance customer service experience

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## Resources For Locating Assets

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- Debtor
- Plaintiff's Attorney
- Plaintiff
- Court Documents
- Appraisal District
- County/District Clerk records
- Internet search (Google, Facebook, name search engines, etc.)

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### Personal Property Exemption

Texas Property Code Section 42.001(a)

For a Family:

\$100,000

For a Single

Adult:

\$50,000

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## DESIGNATION OF EXEMPT PROPERTY Texas Property Code Section 42.003(a)

- If the number or amount of a type of personal property owned by a debtor exceeds the exemption allowed...the officer making the levy shall ask the debtor to designate the non-exempt property... if the debtor fails to make a designation, the officer shall make the designation.
- If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable time after the officer's request, the officer shall make the designation.

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## What Is Exempt Property?

**Sec. 42.002. Personal Property.** (a) The following personal property is exempt under Section 42.001(a):

- (1) home furnishings, including family heirlooms;
- (2) provisions for consumption;
- (3) farming or ranching vehicles and implements;
- (4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
- (5) wearing apparel;
- (6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);
- (7) two firearms;

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(8) athletic and sporting equipment, including bicycles;

(9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;

(10) the following animals and forage on hand for their consumption:

(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

(B) 12 head of cattle;

(C) 60 head of other types of livestock; and

(D) 120 fowl; and

(11) household pets.

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## Other Exemptions

- Homestead
- Retirement plans: 401k, pension plans, ROTH, annuities, etc.
- Education savings: 529 plans and pre-paid tuition
- Life insurance proceeds
- Personal income and accounts (unless a tax debt or Child support related)
- Personal property up to \$50,000 for individuals and \$100,000 for married couples

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## With The Exception Of ?

- What about Child Support Lien and the OAG?
- \* Real property, personal property, retirement plans of this code ***do not apply to a child support lien.***

- TPC 42.001, 42.002, 42.0021, 42.005

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## Knowledge Check:

Kenny has a judgment against him for \$88,236.17. You have received an execution to levy on his non-exempt property. When you make demand, he says he cannot pay anything. He works as an auto body specialist for a local company. You see a couple large MATCO tool chest in his garage you know to be worth a lot of money. He says he also does some side work fixing peoples cars at home.

Can you levy on the tools?

1. Yes
2. No
3. Maybe

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## Knowledge Check 2:

Same scenario as above **but** the execution is based on the defendant's child support lien through a private judicial agreement not enforced by the Child Support division of the Texas Attorney General.

Does anything change?

- Yes
- No

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**How to Levy...  
PERSONAL  
PROPERTY**

### **Texas Rules of Civil Procedure Rule 639**

Levy on personal property is made by taking physical possession thereof.

➤ **If you find non-exempt property that is moveable—Take it!**

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## How to Levy... PERSONAL PROPERTY

### What are the restrictions and limitations you have in executing a writ?

- Peaceful Entry/Forcible Exit
- Use of force issues when executing writs

It is important to understand that there are limitations in executing Civil Process relative to seizure of property.

There are no provisions in the Civil Rules or statutes to allow the use of force when levying property under a writ of execution.

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## How to Levy... REAL PROPERTY

- Real property is levied when you say it is levied
  - In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground, but it shall be sufficient for him to endorse such levy on the writ. TRCP Rule 639
- Not a homestead as defined in TRCP 41.001 & 41.002
  - Non-exempt property
    - Rental property
    - Urban or rural property in excess of exempt amounts allowed in statutes
    - Common property?

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## Community Property

### Texas Family Code Chapter 3

**Sec. 3.001. Separate Property.** A spouse's separate property consists of:

- (1) the property owned or claimed by the spouse before marriage;
- (2) the property acquired by the spouse during marriage by gift, devise, or descent; and
- (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

**Sec. 3.002. Community Property.** Community property consists of the property, other than separate property, acquired by either spouse during marriage.

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## Marital Property Liability

### Texas Family Code Chapter 3

**Sec. 3.202. (a)** A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is not subject to:

- (1) any liabilities that the other spouse incurred before marriage; or
- (2) any non tortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage.

(d) All community property is subject to tortious liability of either spouse incurred during marriage.

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## Common Law Marriage

- Same community property rules apply if party established common law marriage
- How to prove common law marriage is found in Texas Family Law Code Section 2.401
- If debtor wants to fight levy, they can file the Protected Property Claim Form and have the court decide

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## What If It Has A Lien?

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

Take the property if directed by the plaintiff or plaintiff's attorney **in writing** even if you suspect it may be exempt.  
All lien holders must be notified of the levy and may exert their lien on the buyer of the property.

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## Sale of Personal Property

### Texas Rules of Civil Procedure Rule 649

Personal property levied on under execution shall be offered for sale on the premises:

- where it is taken in execution,
- or at the courthouse door of the county
- or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place.

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## Sale Of Real Property

### Texas Rules Of Civil Procedure Rule 646a

Real property taken by virtue of any execution **shall be sold:**

- At public auction
- At the courthouse door of the county (or other location designated by the County Commissioners Court) unless the court orders that such sale be at the place where the real property is situated
- On the 1<sup>st</sup> Tuesday of the month, between the hours of 10:00AM - 4:00PM

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## Stop Immediately!

- TRO- Temporary Restraining Order
- Exempt Property Hearing under Rule 679b
- Bankruptcy (must provide proof of filing)
- Notice of Appeal (with an appeal bond & direction from the issuing court to cease and desist)

Or

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## Stop immediately! - Supersedeas

### Supersedeas Bond

- **Black's Law Dictionary**

- A writ or bond that suspends a judgment creditor's power to levy execution. (usually pending appeal.)

- **TRCP Rule 634 Execution Superseded**

The clerk or justice of the peace shall immediately issue a writ of supersedeas suspending all further proceedings under any execution previously issued when a supersedeas bond is afterward filed and approved within the time prescribed by law or these rules.

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## Out Of Time To Sell?

### Venditioni Exponas (Ven-di-she-oni Ex-Pone-es)

- Legal definition: A court order arising from a motion filed by the plaintiff or his attorney; ordering that property taken in execution that remains unsold be "exposed to sale" despite the lack of buyers.
- Where it appears upon the return of a writ of FIERI FACIAS that seized goods of the judgment debtor have not sold or have been unable to sell for want of buyers, the judgment creditor may apply for a writ of venditioni exponas, directing to 'sell for the best price obtainable'.
- Referenced in TRCP Rule 647, yet it is not defined in the Rules, nor is it defined in any statute.

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## Venditioni Exponas

### Texas Law "definition"

- A Writ of Venditioni Exponas is used to **extend the life of an active writ** of execution when the property has been seized and the writ under which it was seized will expire before the property can be sold.
- In other words.... It is day 70 of a 90 day writ and you can't have sale on the first Tuesday, regardless of the efforts of the officer and the plaintiff, real or personal property levied on cannot be sold before the writ expires, i.e. discovery of errors in publication, delay in seizure of property due to acts of the defendant, etc..
- The writ has been used per case law to extend the life of a writ of execution on personal property as well. Warnock v. Marin, 93 S.W.2d 793 (Tex. App. –El Paso, 1936, no writ).

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## Reviving a Writ after Dormant Judgment

### Scire Facias (sī-rē-'fā-sh(ē)əs)

- Legal definition: a judicial writ founded on some matter of record and requiring the party proceeded against to show cause why the record should not be enforced, annulled, or vacated.

### Explained

- On application of the judgement creditor (Plaintiff), or the creditors agent or attorney, and subsequent order of the court, the clerk shall issue a scire facias for service on the judgment debtor (defendant) requiring them to appear and “show cause” as to why the judgement should NOT be revived as provided in section 31.006 CPRC.
- CPRC Sec. 31.006. REVIVAL OF JUDGMENT. A dormant judgment may be revived by scire facias or by an action of debt brought not later than the **second anniversary** of the date that the judgment becomes dormant.

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TRAVIS COUNTY OFFICER'S RETURN – CAUSE # GN402944

*CAME TO HAND DECEMBER 13, 2004 @ 10:33 A.M.*

EXECUTED BY MAKING DEMAND ON THE DEFENDANT, YC GROUP, INC., DOING BUSINESS AS PACIFIC BLUE, ALSO KNOWN AS PACIFIC BLUE PANASIAN BISTRO & BAR AND YOUNGCHUL “ALEX” CHON, AS GUARANTOR @ 12196 N. MOPAC AUSTIN, TEXAS 78758 BY LEVYING ON PERSONAL PROPERTY OWNED BY THE DEFENDANTS (SEE ATTACHED INVENTORY LISTING). THE DEFENDANT FILED A BANKRUPTCY IN U.S. BANKRUPTCY CASE NUMBER 05-10335 (YOUNGCHUL CHON) AND 05-103349YC GROUP, INC.). ON JANUARY 25, 2005 ATTORNEY MARY DALE FOR THE PLAINTIFF NOTIFIED THIS OFFICE TO KEEP LOCKS ON THE PROPERTY TO SECURE THE ITEMS FOR THE BANKRUPTCY TRUSTEE TO TAKE POSSESSION. ON MARCH 9, 2005 BANKRUPTCY JUDGE FRANK MONROE GRANTED A MOTION LIFTING THE AUTOMATIC STAY ALLOWING THE RELEASE OF THE PROPERTY LEVIED TO BIG AUSTIN (THIRD PARTY CREDITOR). ON APRIL 25, 2005 ATTORNEY RANDALL CARR NOTIFIED THIS OFFICE THAT HIS CLIENT, BIG AUSTIN, DECLINED TO TAKE CUSTODY OF THE PROPERTY DUE TO AN OUTSTANDING TRAVIS COUNTY PROPERTY TAX LIEN. A TAX WARRANT WAS ISSUED ON MAY 25, 2005 BUT NO HOLD ON THE PROPERTY WAS ENFORCED BY TRAVIS COUNTY. THE PARTIES INVOLVED WERE NOTIFIED THAT ALL HOLDS PURSUANT TO THE ORIGINAL WRIT WERE RELEASED. THE PROPERTY WAS RETURNED TO THE DEFENDANT ON JUNE 15, 2005 VIA FAX TO THE DEFENDANT, PLAINTIFF AND BIG AUSTIN (THIRD PARTY) AND ALL LOCKS WERE REMOVED FROM THE STORAGE UNITS.

THIS WRIT IS RETURNED TO COURT, ON THIS MONDAY, JANUARY 23, 2023.

ALAN J. REDD  
SENIOR DEPUTY CONSTABLE  
TRAVIS COUNTY – PRECINCT 5

## Officer's Return

### Texas Rules Of Civil Procedure Rule 654

- The levying officer shall make do return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace, as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed there on.

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## Officer's Return 2

### Texas Rules Of Civil Procedure Rule 654

- The levying officer shall make due return of the execution, in writing and signed by him officially, stating concisely what such officer has done in pursuance of the requirements of the writ and of the law. The return shall be filed with the clerk of the court or the justice of the peace, as the case may be. The execution shall be returned forthwith if satisfied by the collection of the money or if ordered by the plaintiff or his attorney indorsed thereon.

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## Officer's Return 3

- It shall be returned forthwith if satisfied by the collection of the money
- upon expiration (even if nothing has been collected)
- or if ordered by the plaintiff
- **AND..... Returned to the "court of issuance"**

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# Officer's Return 4

- Be thorough in your return to court
- Tell the story of what actions were taken
- Describe what property was levied, if any
- Were any monies collected
- Explain how you sold property or distributed the money
- Don't leave room for the court or anyone else to need to ask questions

TRAVIS COUNTY OFFICER'S RETURN – CAUSE # GN402944

CAME TO HAND DECEMBER 13, 2004 @ 10:33 A.M.

EXECUTED BY MAKING DEMAND ON THE DEFENDANT, YC GROUP, INC., DOING BUSINESS AS PACIFIC BLUE, ALSO KNOWN AS PACIFIC BLUE PANASIAN BISTRO & BAR AND YOUNGCHUL "ALEX" CHON, AS GUARANTOR @ 12196 N. MOPAC AUSTIN, TEXAS 78758 BY LEVYING ON PERSONAL PROPERTY OWNED BY THE DEFENDANTS (SEE ATTACHED INVENTORY LISTING). THE DEFENDANT FILED A BANKRUPTCY IN U.S. BANKRUPTCY CASE NUMBER 05-10335 (YOUNGCHUL CHON) AND 05-103349YC GROUP, INC.). ON JANUARY 25, 2005 ATTORNEY MARY DALE FOR THE PLAINTIFF NOTIFIED THIS OFFICE TO KEEP LOCKS ON THE PROPERTY TO SECURE THE ITEMS FOR THE BANKRUPTCY TRUSTEE TO TAKE POSSESSION. ON MARCH 9, 2005 BANKRUPTCY JUDGE FRANK MONROE GRANTED A MOTION LIFTING THE AUTOMATIC STAY ALLOWING THE RELEASE OF THE PROPERTY LEVIED TO BIG AUSTIN (THIRD PARTY CREDITOR). ON APRIL 25, 2005 ATTORNEY RANDALL CARR NOTIFIED THIS OFFICE THAT HIS CLIENT, BIG AUSTIN, DECLINED TO TAKE CUSTODY OF THE PROPERTY DUE TO AN OUTSTANDING TRAVIS COUNTY PROPERTY TAX LIEN. A TAX WARRANT WAS ISSUED ON MAY 25, 2005 BUT NO HOLD ON THE PROPERTY WAS ENFORCED BY TRAVIS COUNTY. THE PARTIES INVOLVED WERE NOTIFIED THAT ALL HOLDS PURSUANT TO THE ORIGINAL WRIT WERE RELEASED. THE PROPERTY WAS RETURNED TO THE DEFENDANT ON JUNE 15, 2005 VIA FAX TO THE DEFENDANT, PLAINTIFF AND BIG AUSTIN (THIRD PARTY) AND ALL LOCKS WERE REMOVED FROM THE STORAGE UNITS.

THIS WRIT IS RETURNED TO COURT, ON THIS WEDNESDAY, JANUARY 09, 2019.

ALAN J. REDD  
SENIOR DEPUTY CONSTABLE  
TRAVIS COUNTY – PRECINCT 5

# A Tricky Execution to Review

- Original Execution:
  - Review and review again
  - Write down figures and necessary info
  - Create a demand document

THE STATE OF TEXAS  
County of Travis

Cause No. D-1-GN-16-005498

To the Sheriff or any Constable of any County of the State of Texas - GREETING:

WHEREAS, on **NOVEMBER 21, 2018**, an Final Judgment was rendered in the District Court of the **250TH JUDICIAL DISTRICT COURT**, in and for Travis County, in Cause No. D-1-GN-16-005498. IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

DEFENDANT, LAMAR GATEWAY BACELINE HOLDINGS, LLC shall recover PLAINTIFFS, LES BERGQUIST AND AUSTIN MAC REPAIR, LLC. Baceline shall have and recover from Plaintiffs, jointly and severally, Baceline's expert consultant fees in the amount of \$10,325.00; Baceline shall have and recover from Plaintiffs its reasonable and necessary attorney fees through time of trial in the amount of \$249,380.50. All cost of court spent or incurred in this cause are adjudged against Plaintiffs, jointly and severally. Baceline shall recover from Plaintiffs the following cost of the court: \$6,229.60 plus \$8. Plaintiffs are awarded the sum of \$12,823.43, representing the utility bill payments made for the Pylon Sign. **Baceline is entitled** to set off this sum against attorneys' fees and expert and consultant fees, and costs awarded to Plaintiff. As a result, Baceline shall have and recover from Plaintiffs the amount of TWO HUNDRED FIFTY-THREE THOUSAND, ONE HUNDRED ELEVEN AND 67/100 (\$253,111.67) DOLLARS, which reflects this offset. Baceline shall recover post-judgment interest as to the total amount of the judgment rendered at the rate of eight percent (8%) from the date of judgment until the judgment is paid in full.

THEREFORE, YOU ARE HEREBY COMMANDED to proceed without delay to levy upon property of PLAINTIFFS, LES BERGQUIST AND AUSTIN MAC REPAIR, LLC found within your county not exempt from execution and sell same according to law in satisfaction of said judgment, less any credits that hereinabove may be set out.

HEREIN FAIL NOT, but make due return of this execution to said District Court within 20 days from the 12TH day of FEBRUARY, 2019, with your return thereon endorsed showing how you have executed the same.

WITNESS, VELVA L. PRICE, Clerk of the District Courts of Travis County, Texas.  
Given under my hand and seal of office at Austin, Texas, this the 12TH day of FEBRUARY, 2019.

REQUESTED BY:  
JASON WILLIS SNELL  
1615 W. 6TH ST, STE A  
AUSTIN, TX 78703  
BUSINESS PHONE: (512) 477-5291 FAX: (512) 477-5294



*Velva L. Price*  
Velva L. Price  
Travis County District Clerk

### Plaintiff/Attorney points out real property to levy

- Prepare Notice of Sale
- Follow additional statutory requirements
- Publish
- Mail
- Post

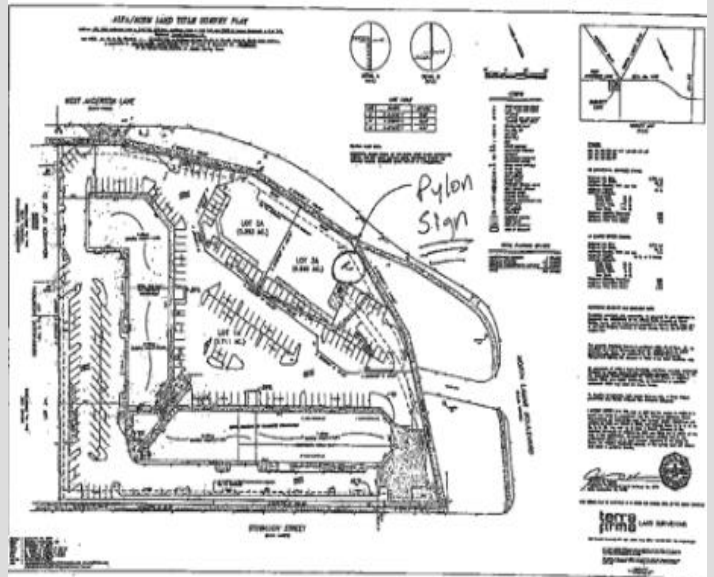


Exhibit A

Pad Sites

Lot 2A and Lot 3A of AMENDED PLAT OF PORTIONS OF LOTS 19-24 & 35-40, BLOCK D, NORTH GATE ADDITION, a subdivision in Travis County, Texas, according to the map or plat recorded under Document Number 200900098, in the Official Public Records of Travis County, Texas.

# Exempt Property Hearings



## New Rules

The Texas Supreme Court has issued modifications to rules related to civil judgments, garnishments, receiverships, and exempt property hearings.

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## What are Exempt Property Hearings?

Rules require 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)

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## Rules and Forms

The Texas Supreme Court has issued Rule 679b and new 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.

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## Effective Date

The rules and forms went into effect on **May 1, 2022.**

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## Service of Notice, Instructions, & Form

The **judgment creditor** must serve the judgment debtor with the Seizure Exemption Notice, Instructions and Exemption Claim Form within three business days after they have notice that property has been seized under a writ of execution.

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## Delay of Sale

- 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.

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## Hearing Timeline

- 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.

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## Handout Attached

Rule 679b and the Seizure Exemption Notice, Instructions and Exemption Claim Form are attached as a Handout.

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## Effect Of Plaintiff's Death

If plaintiff/creditor dies **after judgment**, and his estate is administered, writ **must be issued in the name of their legal representative**. An affidavit of death & certificate of appointment must be filed with the court.

- CPRC 34.002(a)

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## Effect Of Plaintiff's Death

If plaintiff/creditor dies **after judgment**, and his estate **is not** administered, writ must be issued **in plaintiff's name** shown in judgment. An affidavit showing that administration of the estate was unnecessary must be filed with the court that rendered judgment.

- CPRC 34.002(b)

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## Effect Of Plaintiff's Death

Death of plaintiff **after writ has been issued** does not abate the execution, and the writ shall be levied and returned as if the plaintiff were living.

- CPRC 34.002(c)

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## Effect Of Defendant's Death

Death of defendant/debtor **after writ is issued** stays the execution proceedings, but any lien acquired by levy must be recognized and enforced by the county court in payment of the debts of the deceased.

- CPRC 34.003

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## Quick Review

If a plaintiff dies after judgment is rendered and his estate has been administered, in whose name must the Writ of Execution be issued?

- A. Plaintiff's
- B. Plaintiff's spouse
- C. Thea Whalen's
- D. Plaintiff's legal representative

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**But  
What If  
You  
Get...**

- What now?

WRIT OF SUPERSEDEAS  
THE STATE OF TEXAS  
CAUSE NO. D-1-GN-16-005498

TO: TRAVIS COUNTY CONSTABLE

WHEREAS, NOVEMBER 21, 2018, in the 250TH JUDICIAL DISTRICT COURT of Travis County, Texas, in Cause No. D-1-GN-16-005498 styled LES BERGQUIST AND AUSTIN MAC REPAIR, LLC, AS SUCCESSOR - IN INTEREST - TO LES BERGQUIST vs. STREAM REALTY PARTNERS - AUSTIN, L.P AND LAMAR GATEWAY BACELINE HOLDINGS, LLC BACELINE INVESTMENTS, LLC, the DEFENDANT, LAMAR GATEWAY BACELINE HOLDINGS, LLC, recovered judgment against PLAINTIFF, LES BERGQUIST AND AUSTIN MAC REPAIR, LLC consultant fees in the amount of \$10,325.00; BACELINE shall have and recover from Plaintiffs its reasonable attorney fees through time of trial in the amount of \$249,380.50. All cost of court spent or incurred in this cause are adjudged against Plaintiffs, jointly and severally. Baseline shall recover from Plaintiffs the following costs of the court: \$6,229.60 plus \$8.00. Baseline shall recover from Plaintiffs in the amount of TWO HUNDRED FIFTY-THREE THOUSAND, ONE HUNDRED ELEVEN AND 67/100 (\$253,111.67) Dollars.

By virtue of a Writ of Execution issued February 12, 2019 in cause number D-1-GN-16-005498 of Travis County, Texas styled LAMAR GATEWAY BACELINE HOLDINGS, LLC VERSUS LES BERQUIST AND AUSTIN MAC REPAIR, LLC, ON A JUDGMENT RENEDED AGAINST LES BERQUIST AND AUSTIN MAC REPAIR, LLC; Lot 2A and Lot 3A of AMENDED PLAT OF PORTIONS OF LOTS 19-24 & 35-40, BLOCK D, NORTH GATE ADDITION, a subdivision in Travis County, Texas, according to the map or plat recorded under Document Number 200900098 in the Official Public Records of Travis County, Texas.

And Whereas, on FEBRUARY 27, 2019, Notice of Sale of Real Property was issued out of Travis County Constable 5.

And, Whereas, on MARCH 25, 2019, a Supersedeas Bond in the sum of \$17,879.00 Dollars superseding said Judgment as provided by law was approved and filed.

Now, therefore, this is to command you, TRAVIS COUNTY CONSTABLE 5, desist from further proceedings under and by virtue of said Writ of Execution, and that you return the same forthwith.

Witness, VELVA L. PRICE, Clerk of the District Court of Travis County, Texas.  
Issued and given under my hand and seal of said Court at office in the City of Austin, March 27, 2019.

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## Officer Safety – Prior To Levy

### Obtain Personal Information on defendant.

Plaintiff Should have some information about defendant.

Criminal History of defendants;

Local Incident / Offense Reports for defendant and physical location of writ.

S.A.R.S. Reporting System if available

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## Officer Safety Concerns

- Safety Issues with Individuals
  - Not familiar with Judgment Enforcement Orders and Due process of Law
  - Depriving Defendants of Property Possession and Ownership normally protected by the 4th Amendment.
  - May feel threatened, intimidated, or believe they are being singled out
  - May respond or react in a Hostile Manner

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## Officer Safety - During Levy



### Use Contact and Cover Principle

- Contact Officer to handle details of the Writ and Levy.
  - Cover Officer to Ensure Officer Safety and maintain overall scene control / integrity.
- Cover Officer should not be assigned video or other duties.
- Additional officers when necessary.



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## Scenarios from You!

What executions have you served that are less common or involved a unique situation?

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## Not sure? Use Your Resources

- [www.TJCTC.org](http://www.TJCTC.org)
- <https://tinyurl.com/ypk6zw5k>
- Civil Process Field Guides and other handbooks
- Call TJCTC 512-347-9927 and press 1 for Legal Questions or post on Legal Question Board
- <https://statutes.capitol.texas.gov/>
- Additional - Co. Attorney, phone a friend

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**Questions?**  
**Thank you!!!**

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