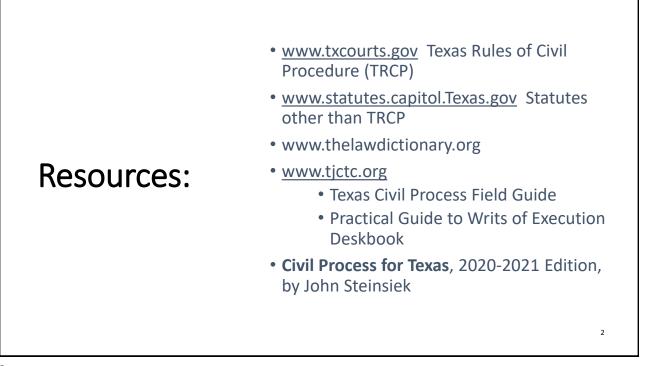
# Introductions to Executions: Part 1

Constable Buck Stevens Constable Brazoria County, Precinct 3

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

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# Second Type

- 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

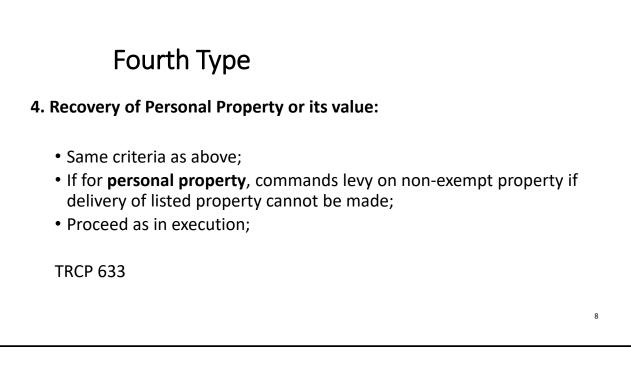
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# Third Type

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 foreclosure case.

TRCP 632.



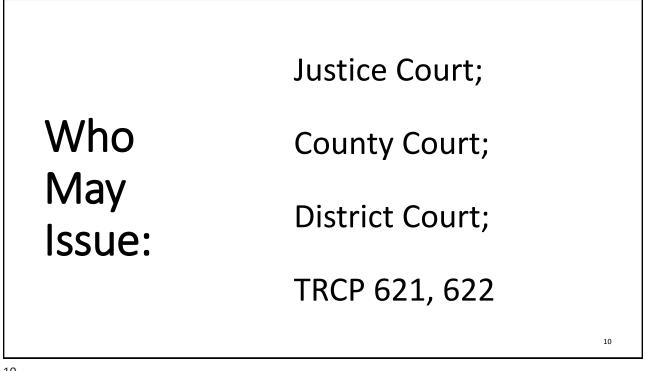
# **Quick Question 1**

### 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



**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

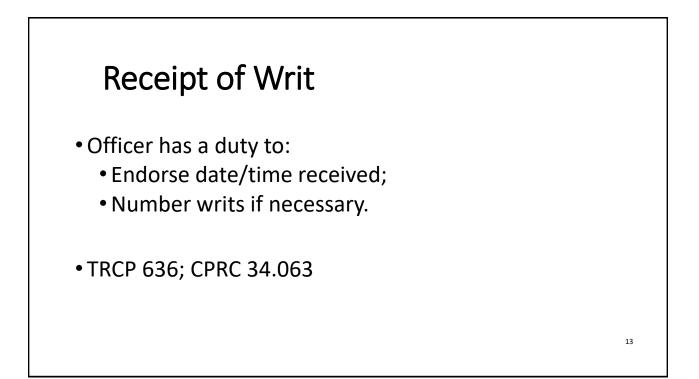
Foreign Judgments

# When Issued:

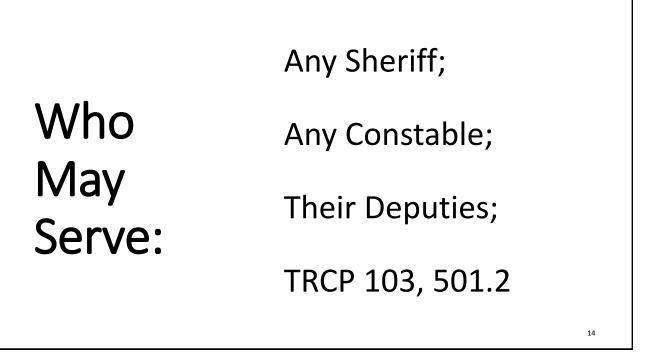
### Not before 30<sup>th</sup> day after judgment, unless:

- 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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# **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

### 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).

### Writ Example: Command

Now, THEREFORE, you are hereby commanded that of the goods and chattels, lands and tenements of the said <u>Joe C. Rosales</u> 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 Question 2 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.

# **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: <u>https://comptroller.Texas.gov/transparency/local/sheriffs/</u>.
- LGC 118.131

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	<ul> <li>Constable may require payment prior to serving process from an out-of-county suit;</li> </ul>	
	<ul> <li>Added to court costs if not paid within 10 days of request for payment;</li> </ul>	
Service Fees 2	<ul> <li>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.</li> </ul>	
	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 2

• www.timeanddate.com/date/duration/html

• Allows you to include end date in calculation

# Ouick Question 3 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 Question 4

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

- A. Yes
- B. No

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What accrues interest?

What does not accrue interest?

Type of interest?

Periods of accrual?

Is total interest amount stated?

Is interest rate stated?

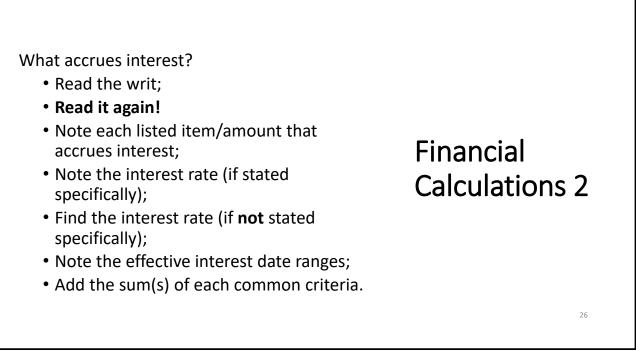
Where do I find applicable interest rates?

Is a contractual interest rate applicable?

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**Financial** 

Calculations



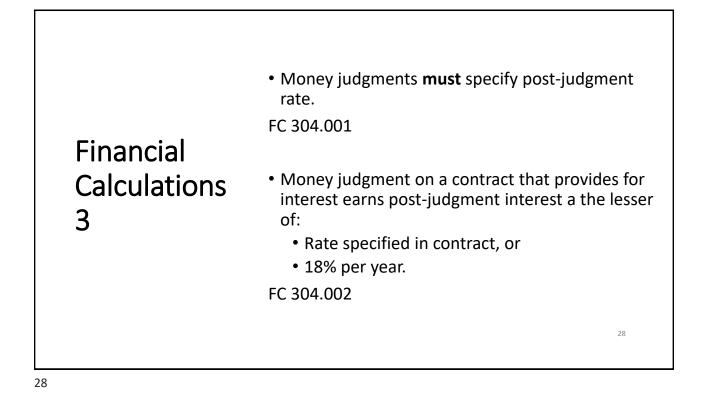
### Consider This:

Now, THEREFORE, you are hereby commanded that of the goods and chattels, lands and tenements of the said <u>Joe C. Rosales</u> 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

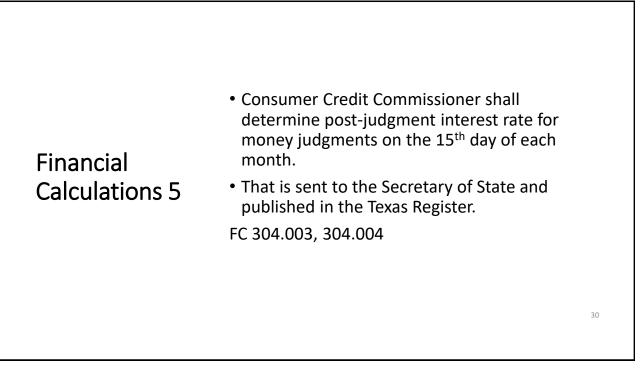
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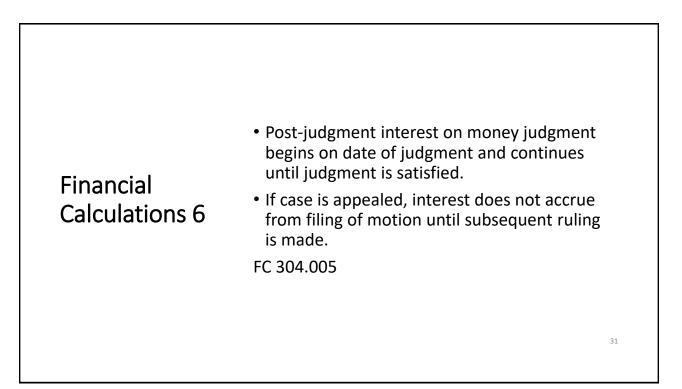
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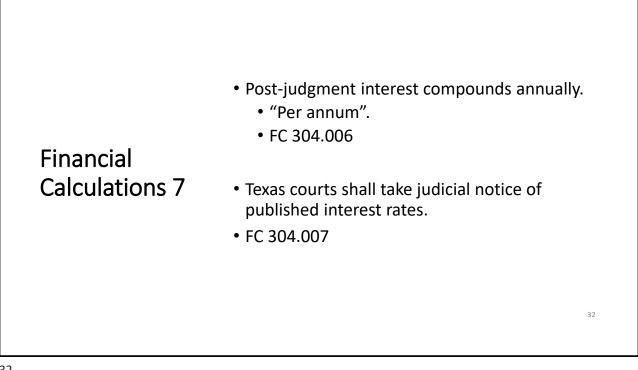
Issued and given under my hand and seal of said Court in Corpus Christi, Nueces County, Texas on this 13th day of October, 2021.



Financial Calculations 4	<ul> <li>Money judgment not under contract earns post-judgment interest at the following rate:</li> <li>As listed by Consumer Credit Commissioner; or</li> <li>Prime rate per Federal Reserve System;</li> <li>5% per year if Federal Reserve rate is less than 5%; or</li> <li>15% per year if Federal Reserve rate is more than 15%.</li> </ul>
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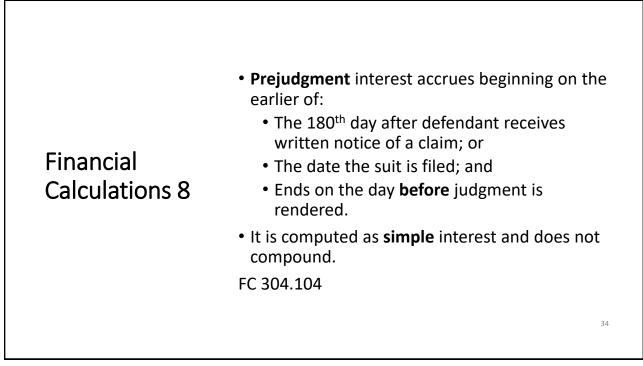




# **Quick Question 5**

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

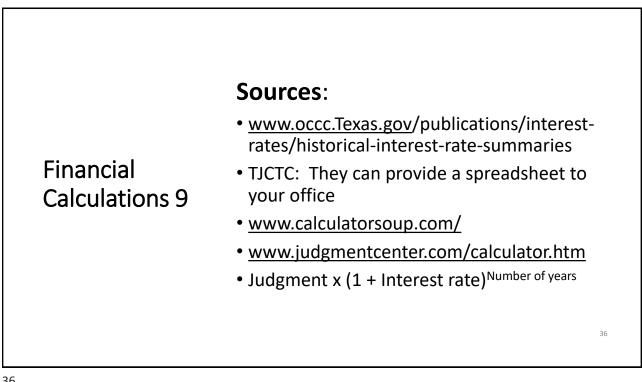


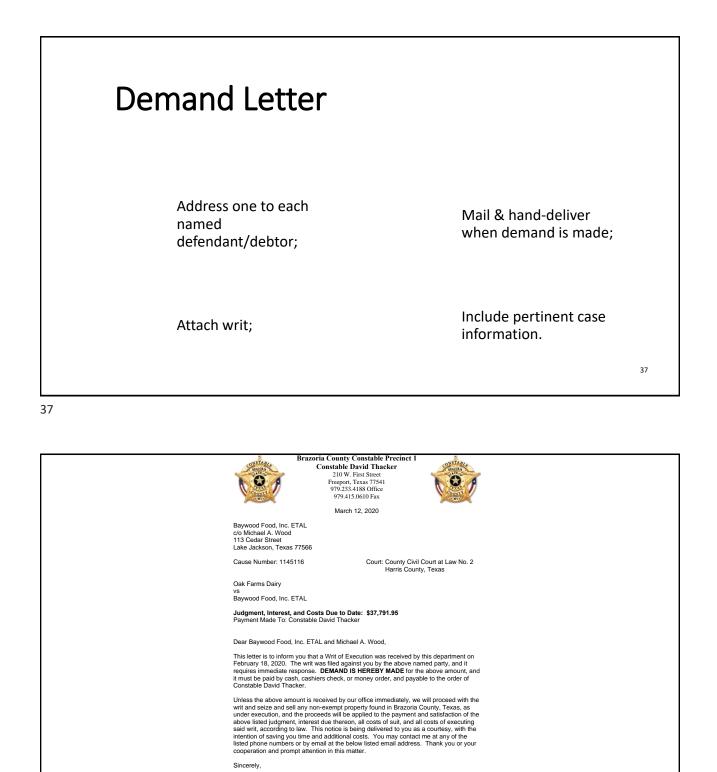
# **Quick Question 6**

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

A. Yes

B. No

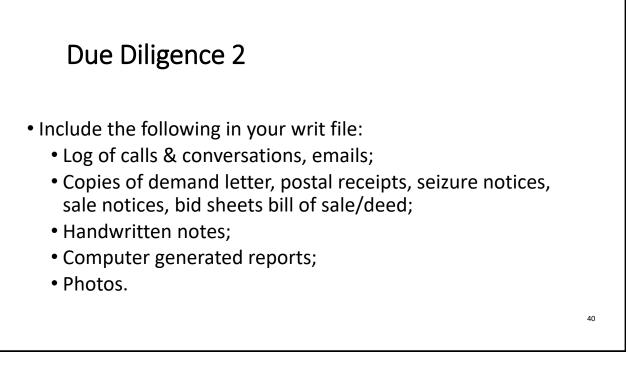




Carl D Herbst Chief Deputy Constable 979-864-5885 Cell carlh@brazoria-county.com

## 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".



## **Quick Questions 7**

Who sets the prejudgment interest rates?

- 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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### 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)

# 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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# Rules and Forms 2

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

# Rules and Forms 3

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.

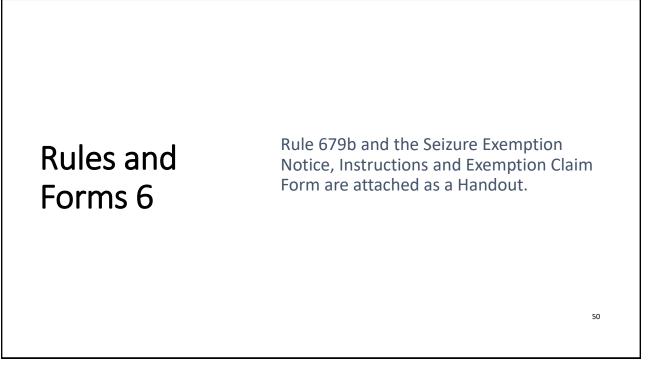
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 If a judgm Exemptio hold a her not be so

- 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.

# Rules and Forms 5

- 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.





# Effect Of Plaintiff's Death If plaintiff/creditor dies after judgment, 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)

# Effect Of Plaintiff's Death 2 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)

	Effect Of Plaintiff's Death 3	
	Death of plaintiff <b>after writ has been issued</b> 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

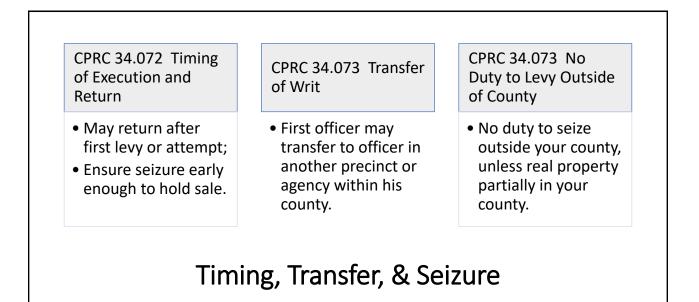
Death of defendant/debtor **after writ is issued** stays the execution proceedings, but any lien acquired by levy must be recognized and enforced by the county court in payment of the debts of the deceased.

• CPRC 34.003

# **Quick Question 8**

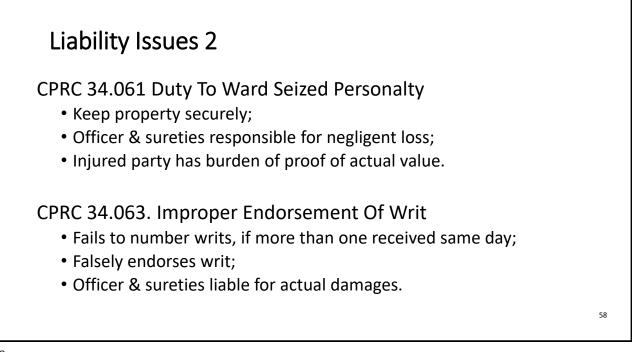
If a plaintiff dies after judgment is rendered, in whose name must the Writ of Execution be issued?

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



# 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.



### Liability Issues 3

CPRC 34.064 Improper Return Of Writ

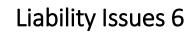
- May file amended writ after initial return filed;
- Shall amend erroneous return within 30 days after learning of error.
- Fails or refuses to amend or file return.
- Contempt under Sec. 7.001(b).
  - Punishable by contempt fine of \$10-\$100, with costs;
  - Officer must be given 10 days notice of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

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### Liability Issues 4

- 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 for amount collected at 1% a month.

# Liability Issues 5 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.

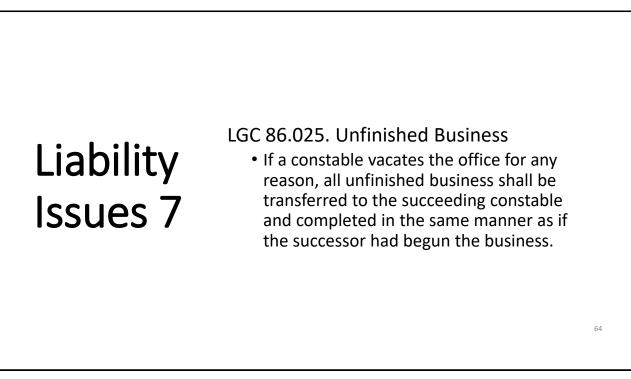


- LGC 86.021 General Powers & Duties (Constable)
  - May perform service **anywhere** in his county.
  - May serve process in his county or contiguous county.
  - All served process is presumed served under official capacity.
  - Collected fees shall be deposited with county treasurer of his county.

# **Quick Question 9**

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

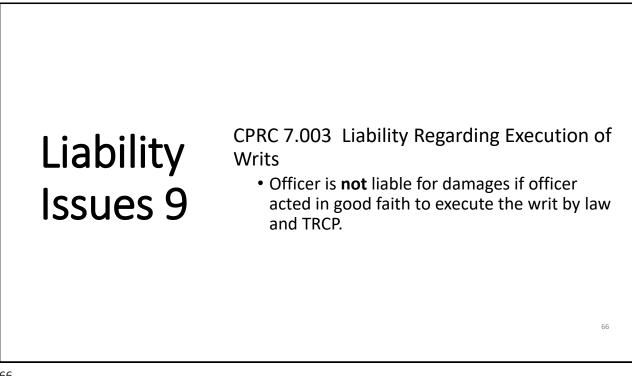
- A. 10 days
- B. 30 days
- C. 60 days
- D. 90 days





### 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.



# Questions? Thank you!!!