

# Constable Sales

Tax, Executions, Order & Auto Auctions

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Montgomery County Constable Civil Specialist Pct. 4

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## Deputy Randy Crowder

- Attended Sam Houston State University & University of Houston – Downtown
- Studied English, Kinesiology & Criminal Justice
- Graduated from U of H Police Academy in 1992
- Worked at North Forest I.S.D. Police Dept. 1992 – 1994
- Completed Houston Police Academy in 1994
- Worked Patrol, Robbery Div., Narcotics, Field Training, Mental Health Unit & Police instructor at H.P.D. Academy.
- Retired from H.P.D. in 2018
- Hired by Montgomery Co. Constable Pct. 4 in November 2018
- Assigned to Civil Division in 2020 & currently the Civil Specialist in charge of Civil and Writs for the department.

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## Course Objectives

- Basic understanding of conducting sales
- Tax Sales
- Execution/Order of Sales
- Auto Auctions
- Tricky Situations and complicated issues

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## Tax Auctions

- Auctions held by a county official, usually the Sheriff or Constable, to sell properties that have become delinquent on their local property taxes and have been foreclosed on in the courts (a Property Tax Foreclosure).
- In Texas, even though you may hear of a sale referred to as a “Texas Tax Lien Sale”, a buyer is not buying a lien, but is **actually buying the deed** to a property at a Sheriff Sale.

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## Texas Property Tax Code: Chapter 34. Tax Sales and Redemption

- **Sec. 34.01. Sale of Property** – This section describes in very general terms the entire process of the tax sale from the point of tax foreclosure on an individual to the sale of the property and through the redemption period.

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## Institution of Seizure

Once a tax becomes delinquent, a tax warrant can be sought from any court in any county where there is property

*Tax Code §33.22.*

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## Tax Warrant

- A **tax warrant** is a legal action that can be brought against you by the state or federal government if you **fail to pay your taxes**. Also called a lien, the warrant is a public record that allows the government to claim your personal property or assets to satisfy the **unpaid taxes**.

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## Tax Warrant Contents

- Direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, interest, and attorney's fees included in the application and all costs of seizure and sale.
- Direct the person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property

*A fee or court cost may not be charged for issuance or delivery of a warrant*

*Tax Code §33.23*

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## After Issued:

- Shall take possession of the property pending its sale.
- The person (or another person having possession of property) shall surrender the property on demand.
- Pending the sale of the property, peace officer may secure the property at the location where it is seized or may move the property to another location.

*Tax Code §33.23*

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## Bond for Payment of Taxes

A person may prevent seizure of property or sale of property seized by delivering to the collector a cash or surety bond conditioned on payment of the tax before delinquency. The bond must be approved by the collector in an amount determined by him, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

*Tax Code §33.24.*

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## Sec. 34.01 – Tax Foreclosure Sale of Property (1 of 3)

- **Who conducts the sale** – Unless otherwise requested by the foreclosing party, a tax foreclosure property is to be sold by a Sheriff or a Constable in the County where the property is located.

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## Sec. 34.01 – Tax Foreclosure Sale of Property (2 of 3)

- **Where is a Tax Sale advertised?** – A notice of the upcoming tax sale must be advertised in a local newspaper for three consecutive weeks prior to the sale and the notice must include date, time and location of the sale as well as a brief description of the property to be sold. If there is no local newspaper, the officer will post a notice of the sale in three different public places including the county courthouse.

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## Sec. 34.01 – Tax Foreclosure Sale of Property (3 of 3)

- **Where is the Sheriff Sale held?** – Tax Sales must take place at the County Courthouse in which the properties in question are located. A County Commissioner may change the location, but it is rarely the case

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## Redemption Period Defined

- A Foreclosure Redemption Period is a period of time in which the original owner of a property that has been sold at a Property Tax Foreclosure Sale may choose to financially redeem (buy back) his or her property as stated in the *Texas Property Tax Code, Chapter 34.21* .

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## Redemption Time Period Details

- **Properties with Homeowner's Exemptions or Properties designated as Agricultural Use**– This category includes any property where a previous owner had on file a current Homeowner's Exemption for the purposes of taxes or was agricultural in nature. Properties with this exemption, in the state of Texas, are allowed **two years** after the date that a Sheriff's deed is filed to redeem their property. It is important to note that this two-year time period does not commence until the Sheriff's deed is actually filed (not on the date of the sale) and in many counties, it is up to the purchaser to file that deed – not the county.

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## Redemption Time Period

- **Properties without Homeowner's Exemptions**- This category includes any properties that do not have a Homeowner's Exemption on file for the purpose of taxes. Even if a homeowner is using the property as his primary residence, if he or she has not filed an exemption prior to the property being sold, the property falls into this category. Properties in this category carry only a **six-month** exemption period.

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## Redemption Fees

- The amount the purchaser paid for the property
- The amount of the fee for filing the purchaser's deed for record
- The amount paid by the purchaser as taxes, penalties, interest, and costs on the property
- Plus a redemption premium of **25 %** of the aggregate total if the property is redeemed in the first year of the redemption period or **50 %** of the aggregate total if the property is redeemed in the second year of the redemption period" (as quoted from the Texas Property Tax Code.
- **Note that this redemption fee *does not* include such things as remodeling.**

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## Buyer' Rights

- If you purchase a property at a sale, the officer at the sale will prepare a Sheriff's Deed for the purchaser and mail it to the purchaser once it has been filed.
- This deed gives the purchaser the right to collect rent and use the property during the redemption period.

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## Minimum Bid

- Properties are generally not sold for less than the amount that covers the taxes, penalties, interest, cost and other claims for which the foreclosure warrant was issued. This amount is usually referred to as the “Minimum Bid” at most Tax Sales.
- It is the responsibility of the Plaintiff/Creditor to set the minimum bid. **Not the Constable.**

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## Method of Payment

- 100% Payment is due when purchasing a property from a tax sale. No financing is available, and obtaining financing after the fact is difficult due to the difficulty of acquiring mortgage insurance on a Sheriff/Constable Sale of property.
- With extremely few exceptions, payment is expected in full at the time of the sale or within a few hours later, by cashier’s check or by cash. Note: Some counties still accept Money Orders, however the payment can be stopped.

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## Deputy's Duties

- The sale shall be conducted in the manner similar property is sold under execution.
- The Commissioners Court of a county by official action may authorize the officer charged with selling property under this section to conduct a public auction using online bidding and sale.
- On receipt of an order of sale of real property, the officer charged with selling the property shall endorse on the order the date and exact time when the officer received the order.
- Provide a certified tax statement showing the amount of the taxes included in the judgment that remain due that taxing unit and all penalties, interest, and attorney's fees provided by the judgment as of the date of the proposed sale

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## Duties Continued

- The officer charged with the sale shall give written notice of the sale in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure, as amended, or that rule's successor to each person who was a defendant to the judgment or that person's attorney.
- Provide a Notice of Sale

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## The Notice Must Include:

- The date, time, and location of the sale
- Gives a brief description of the property to be sold.
- A notice of sale is not required to include field notes describing the property.
- State the number of acres and identifies the original survey.
- States the name by which the land is generally known with reference to that subdivision or addition.
- The officer shall post the notice in writing in three public places in the county not later than the 20th day before the date of the sale.
- One of the notices must be posted at the door of the county courthouse.

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## Date & Time of Tax Sales

### **In Person**

- A sale of real property under this section, other than a sale conducted by means of a public auction using online bidding and sale under Subsection (a-1), must take place between 10 a.m. and 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, between 10 a.m. and 4 p.m. on the first Wednesday of the month.

### **Online**

- A sale of real property conducted by means of a public auction using online bidding and sale under Subsection (a-1) may begin at any time and must conclude at 4 p.m. on the first Tuesday of a month or, if the first Tuesday of a month occurs on January 1 or July 4, at 4 p.m. on the first Wednesday of the month.

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# Online Auction Systems?

- What are some of the systems, programs, or websites your county uses for online auctions?

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## Know Your System

- Counties may use different resources for online auctions
- JPCA and TJCTC does not recommend any one system or resource over another.
- Next slides talk about Real Auction only as one example of how online auctions can work and illustrate the benefits of any online system.
- Important thing here is to know what system your county uses (if any) and make sure you are comfortable with that system.

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## Online Auction

- Real Auction– [www.realauction.com](http://www.realauction.com)
- Auction products are as follows: **RealTaxLien** for all Online Tax Lien Auctions, and **RealForeclose** for all Online Foreclosure Auctions, Tax Deed Auctions, and Sheriff Sale Auctions. We also offer **RealTDA** for online Tax Deed Applications and **RealTDM** for Tax Deed Management solutions.
- **REALTAXLIEN™** takes the arduous process of managing tax sale auctions and simplifies it by taking all the tools needed and putting them into one online piece of software that is easy to use for both counties and bidders.
- The Montgomery County, TX Tax Assessor-Collector, Tammy McRae, held her first ever Online Tax Sale hosted by Realauction.com on Tuesday, March 1st. The results were amazing!

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## Constable Duties For Online Auction

- Same duties with exception of In-Person Tax Sale
- Serve the warrant/citation
- Post Notices of Sale
- Enter and complete returns on all sales.
- Sign Deeds
- Taxing Unit (L,G,B & S) collects and disburses money
- Constable fees & commissions should increase

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## Tax Sale Cheat Sheet

- Receive Order of Sale from Attorney with cover letter
- Date/Time stamp
- Enter into Spillman (Montgomery County)
- Make folder
- Copy of O/S to put in folder – make copies to be mailed to Defendant
- They will email the NOS – add dates and signature
- Type publication instructions – hold until mail out dates
- Publish in newspaper – Ex: Montgomery County News
- Confirm that newspaper received publication (Publisher's affidavit)

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## Tax Cheat Sheet Continued

- Ask attorney for list of Defendants with addresses
- Prepare mail outs to Defendants, send 1 copy regular mail & 1 copy certified
- Prepare posting documents – post at other Constable offices & Courthouse
- Wait until Tax Sale Date !

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## Post Tax Sale

- Our Taxing Unit (L,G,B & S) will email the returns to be completed
- Once signed return original to District Clerk with original Order of Sale
- Wait for Deed to be mailed to you
- Receive Deed, input dates, make sure deeds are only 2 pages long
- Print Deed on Deed paper
- Have The Constable sign the deeds and notarize them
- Send Deeds to respective Tax Attorney
- Return the Original Order of Sale & Deputy Return to District Clerk.

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## Conducting An Auction

- Arrive an hour early – 9:00 a.m.
- Set up Sign In Log
- Post Disclaimer
- 10:00 a.m. Announce agency and area
- Read Disclaimer
- Read Property Description
- Take Bids

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## Props

- Bidder numbers
- Disclaimer
- Disclaimer Board

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## Bidder Registration

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- A commissioners court may require that, to be eligible to bid at a sale of real property under this chapter, a person must be registered as a bidder with the county assessor-collector before the sale begins.

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## Bidder Registration Reasons

- to designate the person's name and address
- to provide valid proof of identification
- to provide written proof of authority to bid on behalf of another person, if applicable
- to provide any additional information reasonably required by the county assessor-collector
- a form provided by the county assessor-collector certifying that there are no delinquent ad valorem taxes owed by the person registering as a bidder to the county or to any taxing unit having territory in the county.

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TAX SALE				
CAUSE NO. 22-01-00783 ; MONTGOMERY COUNTY, ET AL. v. RUBIANA BECERRA, ET AL				
NUMBER	NAME	ADDRESS	DRIVERS LICENSE	PHONE NUMBER
1	Krystle Hedrick	21130 US Hwy 59 New Caney TX	01234567	281-577-8415
2				
3				
4				
5				
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**ORDER OF SALE/WRIT OF EXECUTION DISCLAIMER**

This sale is being conducted pursuant to statutory or judicial requirements. Bidders will bid on the rights, title and interest, if any, in the real or personal property offered today.

The property is sold **AS IS**, where is, without any warranty, either expressed or implied. Neither the County nor the Constables Department warrants or makes any representations about the properties title, condition, habitability, merchantability, or fitness for a particular purpose. Buyers assume all risks.

In some situations, a lot of five (5) acres or less is presumed to be intended for residential use. However, if property lacks water and wastewater service, the property may not qualify for residential use. A potential buyer who would like more information should make additional inquiries or consult with private counsel.

Properties purchased from the Constables Sale require payment today, immediately after the sale with cash or cashiers check made payable to **Montgomery County Constable**.

There will be an additional \$20.00 filing fee that you need to pay to have your land recorded in the real property records of Montgomery County. This check must be made payable to **L. Brandon Steinmann, County Clerk** and is due today.

This property is being sold at public auction to the highest bidder based on *oral bids*. Any successful bidder who fails to make payment shall be held liable for twenty percent (20%) of the value of the property plus costs incurred as a result of the bidders pursuant to Rule 652 of the Texas Rules of Civil Procedure.

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## Reading Property Description

- Cause #
- Judgment date
- Account #
- Order issue date
- Style of Case
- Legal Description
- Adjudged value
- Minimum Bid.

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NOTICE OF SALE						
STATE OF TEXAS		§	BY VIRTUE OF AN ORDER OF SALE			
MONTGOMERY COUNTY		§				
		§				
<p>and issued pursuant to judgment decreet(s) of the District Court of Montgomery County, Texas, by the Clerk of said Court on said date, in the hereinafter numbered and styled suit(s) and to me directed and delivered as Sheriff or Constable of said County, I have on _____, seized, levied upon, and will offer for sale the following properties, on the first Tuesday in March, 2023, the same being the 7th day of said month. Pursuant to Texas Tax Code 34.01, and as further provided in the Resolution adopted by the Commissioners Court of Montgomery County, Texas on July 27, 2021 and recorded as instrument number 2021105114 in the Official Public Records of Montgomery County, Texas, tax sales in Montgomery County shall be conducted as an ONLINE AUCTION at the following URL: <a href="https://montgomery.texas.realforeclose.com">https://montgomery.texas.realforeclose.com</a>. Beginning February 1, 2022, the Montgomery County Constables will no longer conduct LIVE tax sale auctions. The Montgomery County Constables will continue conducting live auctions for execution sales, if any are scheduled in a given month, between the hours of 10 o'clock a.m. and 4 o'clock p.m. on said day, beginning at 10:00 AM, and will proceed to sell for cash to the highest bidder all the right, title, and interest of the defendants in such suit(s) in and to the following described real estate levied upon as the property of said defendants, the same lying and being situated in the County of Montgomery and the State of Texas, to-wit:</p>						
Sale #	Case # Judgment Date	Act # Order Issue Date	Style of Case	Legal Description	Adjudged Value	Estimated Minimum Bid
1	17-01-01122 02/24/22	0066400205400 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. ALMA DIANE DYMACEK, FKA ALMA D. MUSGROVE, ET AL	S664002 - LAKELAND CLUB 02, BLOCK 17, LOT 9 (AKA BLOCK 8, LOT 9), ACRES 0.12, MORE OR LESS, CLK'S FILE NO. 9122779*	\$3,930.00	\$3,930.00
2	18-06-07018 10/24/19	0060600010911 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. KEVIN MICHAEL KELLY, ET AL	S666000 - IDA STRAUSS, LOT 10918 - 11018, ACRES 2.4741, MORE OR LESS, CLK'S FILE# 2010018753*	\$153,650.00	\$16,600.00
3	20-09-10514 10/27/22	0083970430600 JANUARY 23, 2023	MONTGOMERY COUNTY, ET AL VS. LORELLA M. STEVENS, TRUSTEE OF THE WILLIAM ARTHUR STEVENS BYPASS TRUST, DECEASED, ET AL	ROMAN FOREST 04, BLOCK 10, LOT 23, CABINET A, SHEET 48A & VOL. 791, PG 94*	\$1,000.00	\$1,000.00
4	20-12-15656 07/28/22	0077970102900 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. DELBERT LEO READY, ET AL	PEACH CREEK LK & DAM 01, BLOCK 3, LOT 10, ACRES 0.120, MORE OR LESS, CLK'S FILE NO. 8100050*	\$1,020.00	\$1,020.00
5	21-11-15089 04/29/22	0083970409600 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. REGIONS BANK, SUCCESSOR TO MERCHANTS BANK	ROMAN FOREST 04, BLOCK 1, LOT 6, CABINET A, SHEET 48A & CLERK'S FILE # 9240545*	\$1,000.00	\$1,000.00
6	21-11-15089 04/29/22	0083970557400 JANUARY 24, 2023	MONTGOMERY COUNTY, ET AL VS. REGIONS BANK, SUCCESSOR TO MERCHANTS BANK	ROMAN FOREST 05, BLOCK 12, LOT 45, CABINET A, SHEET 74B & CLERK'S FILE# 9240545*	\$500.00	\$500.00
7	22-01-00440 07/28/22	0003030004400 JANUARY 23, 2023	MONTGOMERY COUNTY, ET AL VS. GIANELLA TORRES CIBUENTES	KIBBE WM TRACT 44, ACRES 22, MORE OR LESS, CLK'S FILE NO. 2018087903	\$67,030.00	\$9,700.00

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## Tips For Conducting An Auction

- Control the room
- Speak loudly & clearly
- Make sure all bidders know which property you are selling
- Record every bid
- Control the bids

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## Writ of Execution & Order of Sales

- A more proactive approach to post-judgment collection is the Writ of Execution.
- Thirty days after obtaining a final judgment, a creditor can request a Writ of Execution from the Clerk of the Court.
- Once the Clerk issues the Writ of Execution, the writ permits a Texas constable to seize the judgment debtor's non-exempt property and sell it at auction.
- The proceeds of the sale are used to satisfy the judgment; however, there are fees associated with this process that must be considered prior to utilizing this option.

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## Exempt Property

- Almost everything a debtor owns is exempt property.
- The most common non-exempt assets that can be seized by the judgment creditor are: Investment/rental properties, vacation properties, second cars or boats and or personal property that exceeds a certain value.
- The most common exemptions under Texas law are collected in Chapters 41 (real property) and Chapter 42 (personal property) of the Texas Property Code. Other exemptions for personal property are scattered throughout the Texas statutes.
- Texas exempts only two types of real property: (1) one or more cemetery plots: and (2) a homestead. Texas Property Code § 41.001(a).

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## Types of Exempt Property

- 1. home furnishings and 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. clothes;
- 6. jewelry, as long as it does not exceeds 25% of the value of the aggregate exemption;
- 7. two firearms;

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## Exempt Property Continued

- 8. athletic and sporting equipment, including bicycles;
- 9. a motor vehicle for each member of a family or single adult who (A) holds a driver's license or (B) does not hold a drivers license but relies on another person to operate the vehicle for the unlicensed person;
- 10. the following animals, including forage on hand for their consumption: (A) horses, mules, or donkeys, including a saddle, blanket and bridle for each one; (B) 12 head of cattle; (C) 60 head of other types of livestock; and (D) 120 fowl;
- 11. household pets;

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## Who Identifies Property

- The Judgement Creditor
- It is the responsibility of the Judgment Creditor (the party trying to collect) to locate and identify assets belonging to the judgment debtor that can be **Levied** (seized) to satisfy the Judgment.
- Personally identifying property at the location
- Written correspondence specifically describing property to be seized

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## Levied Property

- Held for safe keeping until sale
- Bonded Warehouse
- Warehouse/Storage Lien announced at sale
- Replevy
- Constable Bill of Sale

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## Execution Goes to Sale

- Advise attorney of process ( attached letter)
- Request list of defendants/lienholders and defendants/lienholders addresses from attorney
- Prepare Notice of Sale
- Send to attorney for approval and get newspaper to publish it
- Invoice Attorney with Publication Fees
- Send publication instructions and NOS to publisher; send copy of NOS to all defendants/lienholders
- Figure bill of costs (need publication fees)
- Send to attorney for approval
- Prepare bid sheet for sale

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## Order of Sale

- An Order for sale is a way to enforce a **Charging Order**. It is an order granting the chargeholder the right to take possession of the property and then to sell it in order to recover the monies secured by their charge

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## Sale At Place Other Than Courthouse Door

- If the public sale of real property is required by court order or other law to be made at a place other than the courthouse door, sales under this chapter shall be made at the place designated by that court order or other law.
- The commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this chapter will take place that is in a public place within a reasonable proximity of the county courthouse.

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## Failure To Levy Or Sell

- 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 and the officer's sureties are liable to the party entitled to receive the money collected on execution only for actual damages suffered.
- valid judgment
- Writ of Execution was issued & writ was delivered to the officer
- creditor's judgment was unpaid and unsatisfied
- property to be levied on was subject to execution
- the officer failed or refused to levy under the writ

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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 judgment debtor

- determine whether property belongs to a judgment debtor
- determine whether property belonging to the judgment debtor is exempt property
- determine the priority of liens asserted against property subject to execution
- make multiple levies for cash or multiple levies at the same location

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## Post Sale

- The officer making the sale shall prepare a deed to the purchaser of real property at the sale, to any other person whom the purchaser may specify, or to the taxing unit to which the property was bid off.
- The taxing unit that requested the order of sale may elect to prepare a deed for execution by the officer.
- If the taxing unit prepares the deed, the officer shall execute that deed.
- The officer shall either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the order of sale, which shall file the deed for recording with the county clerk.
- The county clerk shall file and record each deed filed under this subsection and after recording shall return the deed to the grantee.

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## Duties After The Sale

- Collect money from the purchaser – cashier’s check, money order or cash. Note: Remember that money order’s can be stopped.
- View tax clear certificate
- Check the identification of the purchaser
- Issue the deed – sent to taxing unit for filing
- Distribution of sale proceeds – County Clerk & County Treasurer
- Proceeds applied to cost of advertising, fees ordered by the judgment to be paid to appointment of attorney ad litem, fees and commissions to the officer conducting the sale, expenses incurred by the taxing unit, tax penalties and interest granted in the judgment & any other amount awarded in the judgment.

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## Auto Auctions

- Verifying eligibility - Tow/Record/Notice
- TCIC/NCIC
- Notification of Auction Letter
- Prepare Auto Auction Sales Receipt
- Auction Sale Slip
- Bidder Sign In Sheet
- Bidder Sheet
- Sign Sales Receipt
- Commissions

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## Conducting an Auto Auction

- Verify (VIN) Vehicle Identification Numbers
- Have List ready with Minimum Bids
- Read Disclaimer
- Announce Liens or Fees
- Record all Bids
- Complete Auction Sales Receipts
- Calculate commissions and overages

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## Tricky Issues

- Winning Bidder does not have money at the time of Sale
- The Defendant is the winning bidder
- Third party claims that there is a lien on the property
- Third party claims ownership of property to be sold
- Bankruptcy
- Judgment Creditor cancels Sale
- Unable to verify VIN
- Judgment is satisfied prior to all items being sold
- Sale is not enough to pay full judgment

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