

Writ Scenarios: Fixing Errors

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Resources

- Civil Process Field Guide
- Practical Guide to Writs of Execution
- Evictions Deskbook
- Civil Deskbook
- Rules 621-656; 696-716
- CPRC Ch. 31, 34, 62
- Property Code Sec. 24.0061; 94.203

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How to Avoid Errors in the First Place?

- Communication
 - Pre-Planning
 - Education
 - Take a Breath, You Don't Have to Act This Second
 - Use Your Resources
- Do These Eliminate All Errors?

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When You
Find Yourself
In A Tight
Spot



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Writ Has an Error on its Face

- How do you handle situations where a judge has issued a writ or other order that has something that appears to be an error on its face?

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Questions From the Field

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Scenario 1

- On Thursday the 9th, you serve a Writ of Execution on defendant, and make demand for \$4,813. The defendant tells you she will have to borrow the money from her 401k account, but she will pay the full amount due next Wednesday, the 15th. While double-checking your calculations, on Tuesday the 14th, you learn that you mistakenly omitted \$800 in attorney fees from the initial demand amount.
- What do you do?

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Scenario 2

- Writ of Execution states that prejudgment interest is to accrue “to the date of the judgment.” Is this a problem? If so, how to handle it?

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Scenario 3

- You have a Writ of Execution. On the Default Judgment and the Writ where the money is awarded it states on one line, "Post judgment interest at the legal rate from the date of judgment." According to Texas Finance Code 304.001 and Texas Rules of Civil Procedure 630, the Judgment and Writ should state a specific interest rate. Should this Writ be returned as "Unserved" and reference the Finance Code and Rules of Civil Procedure?

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Scenario 4

- You did a "levy in place" on a vehicle (tagged it and left the vehicle in the defendant's driveway) and the defendant now has taken the vehicle and hidden it and will not disclose the location. What now?

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Scenario 5

- You receive an order of sale (non-tax) which directs you to distribute any overage of funds into the court registry. How to handle this situation?

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Scenario 6

- Defendant has non-exempt property, the value of which appears to be so low that it would cost more to levy on it than you could ever hope to get for it at auction. However, writs typically just command that we take we take their non-exempt property and sell it to "satisfy" the judgement.
- Question: Do I have any discretion in declining to levy on non-exempt property when it is apparent that doing so is likely going to be a net loss? It seems to me that doing so kind of goes against the "in satisfaction of said judgment" part of the writ.

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Scenario 7

- I have a Writ of Execution. The wife is listed on the Writ the husband is not listed anywhere on the Writ. He has land in his name. she does not have any land in her name. Can I execute on his land if she is not on the deed?

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Scenario 8

- You levy on the judgment debtor's property pursuant to a Writ of Execution. After you levy on the property, but before it has been sold, the court contacts you and says they failed to notice the judgment had gone dormant. What should you do? What if the sale had already occurred?

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Scenario 9

- Writ of possession for a mobile home in a mobile home park. The mobile home is owned by the defendant who was only renting space in the park. Defendant is absent, believed to be deceased and the mobile home is in such poor condition as to be unmovable. Upon execution of the writ, what becomes of the personal property inside the mobile home? Is it to be removed, inventoried and placed outside the mobile home as if it was in a house or apartment, or is it to be left inside the mobile home for the plaintiff to dispose of when disposing of the trailer?

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Scenario 10

- The JP Clerk calls you at 4:40 p.m. on Friday and tells you the Judge wants you to serve a Writ of Re-entry on El Lago Apartments before 5:00. While you are picking the writ up from the court, the Judge tells you that if the manager refuses to allow the tenant access to the apartment, you are to call a locksmith, and the locksmith costs will be billed to the complex. You serve the landlord right at 5:00, and they tell you they are not allowing the tenant to have access to the apartment.
- What do you do?

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Scenario 11

- You receive a writ of sequestration. In the order, signed by the judge after being presented by the plaintiff's attorney, it states that you have authority to remove locks, gates, etc.
- What do you do?

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Scenario 12

- You receive an order from a court in a CPS case to accompany CPS to a residence, inform a person that they are excluded from the residence, and provide protection to the child and CPS while the person vacates the premises. If they refuse, you may arrest the person.
- Can the court order you to do this? Is there authority to make an arrest?

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Scenario 13

- You have an execution on a case “Demi Bennett vs. Dominik Gutierrez d/b/a Mysterio Masks”. You proceed to levy on the property of Mysterio Masks but Gutierrez shows proof that Mysterio Masks is actually an LLC, not a d/b/a. How do you proceed?

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Questions?

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