

# Intro to Executions – Part I

Constable Buck Stevens, Brazoria County Pct. 3  
Chief Deputy Patrick Youngren, Williamson County Pct. 1

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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
- [www.tjctc.org](http://www.tjctc.org)
  - Texas Civil Process Field Guide
  - Practical Guide to Writs of Execution Deskbook

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# What is a Writ of Execution?

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## Black's Law Dictionary says:

A court order directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property.

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## Enforcement of Judgment – TRCP 621

- The judgments of the district, county, and justice courts **shall** be enforced by execution or other appropriate process.
- Such execution or other process shall be returnable in **thirty, sixty, or ninety days as requested by the plaintiff, his agent or attorney.**

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## Execution – TRCP 622

- An execution is a process of the court from which it is issued.
- The clerk of the district or county court or the justice of the peace, as the case may be, shall tax the costs in every case in which a final judgment has been rendered and shall issue execution to enforce such judgment and collect such costs.
- The execution and subsequent executions shall not be addressed to a particular county but shall be addressed to any sheriff or any constable within the State of Texas.

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## Enforcement of Judgment – Gov't Code 21.001

- A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.

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## Four Types of Writs of Execution

- Rule 630 - Execution for money judgment (***most common***)
- Rule 631 – Execution for sale of particular property
- Rule 632 – Execution for delivery of certain property
- Rule 633 – Execution for possession of or value of personal property
- We will cover each in some detail, then follow up with provisions applicable to all executions

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# Execution for the Sale of Particular Property

TRCP 631

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## Writ of Execution for the Sale of Particular Property – TRCP 631

- Writ commands the Constable or Sheriff to seize and sell certain property
- The order may also be used to order the officer to sell property seized under another writ.
- Sale conducted in the same manner as an ordinary execution

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## Writ of Execution for the Sale of Particular Property (cont.) - TRCP 631

- May require the officer to levy on other properties in satisfaction of the judgment
- Exemptions are not an issue for the officer.
- May order the officer to sell real or personal property
- Also known as Order of Sale

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## Order of Sale – TRCP 309

- “...order of sale shall issue to any sheriff or any constable within the State of Texas, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.”

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# Property Not Found – TRCP 309

- “...if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to take the money or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.”
- This clause required the officer to levy on additional properties should the proceeds from the sale fail satisfy the judgment amount.

THEREFORE, you are hereby commanded that you proceed to seize and sell the above described property, as under execution, and by virtue of this order of sale place the purchaser of the same in possession thereof within 30 days after the day of sale, and you apply the proceeds thereof to the payment and satisfaction of said sum of \$224,367.79 with interest accruing at 6.75% from March 15, 2019 through April 11, 2019; post judgment interest shall accrue on the balance at the rate of 6.75% per annum and costs of court as ordered in judgment, together with your legal fees and commissions for executing this writ. And if the said property shall sell for more than sufficient to pay off and satisfy said sums of money, then you are hereby directed to pay over the excess thereof to the Registry of the Court. But if you fail to find said property or if the proceeds of such sale be insufficient to satisfy said judgment, then you are directed to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.

HEREIN FAIL NOT, but due return make hereof within 90 days, showing how you have executed the same.

GIVEN under my hand and seal of the District Court of Williamson County, Texas at my office in Georgetown, Texas this 8th day of September 2022.

LISA DAVID, District Clerk,  
Williamson County, Texas



*Teresa Maskunas* Deputy  
Teresa Maskunas

ED  
10:30  
SEP 11  
AM '22 TX

## Requisites of an Order of Sale

- Directed to any Sheriff or Constable in the state of Texas
- Shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court
- Returnable in 30, 60 or 90 days
- Date of issuance shall be noted thereon.
- Description of the judgment
- No sale within 30 Days of judgment
- Suspended by supersedeas

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## Officer Duties – Order of Sale

- Endorse date and time received
- Call on the defendant as you would in an execution
- Levy on the property listed in the writ
- Conduct sale following the rules of real property & personal property sales (including advertising requirements)

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## Additional Duties – Order of Sale

- Deliver Deed/Bill of sale to purchaser
- Levy on additional property subject to execution to satisfy the judgment
- Provide notice of sale as in an execution.

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## Real Estate Foreclosure Jurisdiction – Gov't Code Sec. 24.007(4)

- Texas district courts have exclusive subject matter jurisdiction over lawsuits for the enforcement of liens against real property.
- “The district court shall have original jurisdiction in civil cases of suits for the trial of title to land and for the enforcement of liens thereon.”
- Exceptions exist as authorized by statute.

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## Foreclosure Prohibited – Prop. Code Sec. 209.009

- A property owners' association **may not** foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:
  - (1) fines assessed by the association;
  - (2) attorney's fees incurred by the association solely associated with fines assessed by the association; or
  - (3) amounts added to the owner's account as an assessment under Section 209.005 (Association Records)(i) or 209.0057 (Recount of Votes)(b-4).

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## Writ of Execution – Delivery of Specific Property

TRCP 632

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## Execution for Delivery of Property - TRCP 632

- Commands the officer to take possession of property and deliver the possession to a person designated in the writ *Rules 308, 505.2, 632.*
- The writ will also specifically list and describe any personal or real property to be seized.

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## Other Names for the Same Thing

- These writs are often called “special writs” in JP Court – Serves the same function (Rule 505.2)
- a/k/a Writ of Possession in foreclosure case.

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## Delivery of Property – TRCP 308

- The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment

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## Writ of Execution for Possession of or Value of Personal Property

### TRCP 633

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## TRCP 633

- If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

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## Writ for Possession of or Value of Personal Property

- Commands the officer to take possession of a specific personal property and deliver to the party named within the writ.
- Should the officer be unable to take possession of the property, he is commanded to levy and execute on the property of the debtor to satisfy the value of the specific personal property listed in the writ.

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**TO ANY SHERIFF OR ANY CONSTABLE WITH THE STATE OF TEXAS: GREETING:**

WHEREAS on the on 10/10/2023, in the Justice of The Peace, Pct. One Court of Williamson County, Texas, in Cause No. 1JC-22-1953, Plaintiff(s) recovered a judgment against Defendant(s), for liquidedated damages in the sum of \$4,828.50 OR return of said vehicle, 2016 HYUNDAI ELANTRA VIN: 5NPDH4AE4GH694524, together with court costs in the amount of \$124.00 and post judgment interest at the rate of 8.5%. The defendant is entitled to the following credits to wit: \$0.00.

THEREFORE, you are commanded that out of the property of said Darryl Walton, subject to execution by law, you cause to be made as the sum as indicated above with interest as indicated above, together with all cost of suit as indicated below and also the cost of executing this writ and you will forthwith execute this writ according to law and the mandates thereof. In case a delivery thereof cannot be had of listed property, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered.

HEREIN FAIL NOT but make due return of this execution to said Justice Court within **30** days from the date of issuance hereof, with your return thereon endorsed showing how you have executed the same.

ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT, at Round Rock, Texas, this the 1/9/2024.

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# Writ of Execution on Money Judgment TRCP 630

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## Execution on Money Judgment

- This type of writ requires the officer to seize non-exempt property in an amount to satisfy the judgment along with costs and any interest due. *Rule 630.*
- This writ will not list specific property, and the officer will have to work with the litigants to determine what property to levy on.

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## Text of TRCP 630

- “When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due. It must require the officer to satisfy the judgment and costs out of the property of the judgment debtor subject to execution by law”

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## General Forms & Guidelines for All Writs of Execution

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### Issuance of Writ

- Upon the request of a judgment creditor, or the creditor's agent or attorney, a Writ of Execution to enforce the judgment and collect the costs shall be prepared only by the clerk or Justice of the Peace that rendered the judgment.

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## Requisites of Writ – TRCP 629

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

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## Delivery of Writ

- The clerk / JP must deliver the writ to:
  - The Sheriff or Constable designated by the judgment creditor or the judgment creditors attorney; or
  - The judgment creditor or the judgment creditors attorney who must then deliver the writ to the sheriff or constable.

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## Multiple Writs

- Multiple Writs may be prepared at the same time or in succession, without requiring return of the prior writ or writs.
- Writs may be sent to different counties for service by the Sheriff's or Constables.
- If multiple writs are issued, the judgment creditor, or the judgment creditors agent or attorney must inform the officers to whom the writs are delivered that multiple writs are outstanding.

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## Time for Issuance - TRCP 627

- "If no supersedeas bond or notice of ap, as required of agencies exempt from filing bonds, has been filed and approved, the clerk of the court or justice of the peace shall issue the execution upon such judgment upon application of the successful party or his attorney after the expiration of thirty days from the time a final judgment is signed..."

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## Execution Within 30 Days of Judgment – TRCP 628

- “Such execution may be issued at any time before the 30<sup>th</sup> day upon the filing of an affidavit by the plaintiff in the judgment or his agent or attorney that the defendant is about to remove his personal property subject to execution by law out of the county, or is about to transfer or secrete such personal property for the purpose of defrauding his creditors”

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## Stay of Execution – Justice Court – TRCP 635

- At any time within 10 days of judgment, justice court may grant a stay of execution.
  - Stay for three months from date of judgment
  - Judgment debtor must provide sufficient sureties
  - Sureties payable to successfully party
  - Debtor may file an affidavit stating the issuance of an execution would “cause a sacrifice of his property which would not likely be caused should said execution be stayed.”

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## Time Computation – TRCP 5, 500.5


- Excludes date of issuance
- Includes every day, including Saturday, Sunday and legal holidays
- Includes the last day of the period.

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**Start Date**

Month: Day: Year: Date:

9 / 22 / 2023 

Today

Include the time Include only certain weekdays

Repeat

**Calculate New Date**

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From Friday, September 22, 2023  
Added 90 days

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**Result: Thursday, December 21, 2023**

<https://www.timeanddate.com/date/duration.html>

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No. 1JC-20-0552

<u>Elizabeth Pille; Patrick Pille</u>	§	JUSTICE COURT PRECINCT 1	In the Justice Court of
Plaintiff	§	AUG 15 2022	Williamson County, Texas
<u>Leroy Martinez</u>	§	WILLIAMSON COUNTY TEXAS	Precinct One
Defendant			

**REQUEST FOR ISSUANCE OF A WRIT OF EXECUTION**

As the party awarded judgment, or that party's authorized agent, I hereby request the issuance of a **WRIT OF EXECUTION** on the above styled and numbered cause.

I understand that before a **WRIT OF EXECUTION** can be issued thirty days must have passed since the date of judgment unless I have requested and granted waiver for good cause shown. I further understand that, if necessary, the Constable's Office can only confiscate and auction the NON-EXEMPT personal property of the defendant and that members of the Constable's Office can not force their way into a person's home in order to levy upon their property.

**The following information is true and correct to the best of my knowledge.**

Amount **previously** collected on judgment: \$0.00 Amount of the Judgment: \$ 2448.36

Debtor's Full Name Leroy Martinez

Debtor's last known HOME address 2201 North Drive

City Taylor State TX Zip Code 76574

Debtor's last known WORK address Pro Painting, Power Washing; 2201 North Drive

City Taylor State TX Zip Code 76574

Debtor's Work Phone #: cell 512-955-9994 Debtor's Home Phone #: \_\_\_\_\_

List any known non-exempt personal property owned by the Debtor:

1. 2000 Toyota 4-Runner, TX VIN plate EFR 1256; JT3GN86R5Y0176403
2. (defendant may likely may not have a valid driver's license)
3. \_\_\_\_\_
4. \_\_\_\_\_

30 days/ASAP

Elizabeth A. Pille  
Signature of Person Requesting WRIT OF EXECUTION

Phone Number 512 587 6442

Work Number 512 799 7323

**Writ of Execution**

**629,622**      C-1-CV-23-000128

**THE STATE OF TEXAS**  
**COUNTY OF TRAVIS**

**FUNDATION GROUP, LLC, Plaintiff vs. PRECISION MACHINED COMPONENTS, INC., Defendant**

TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS:

Whereas **FUNDATION GROUP, LLC** Plaintiff on 01/06/2023 in County Court at Law #2 of Travis County, Texas, recovered foreign judgment against **PRECISION MACHINED COMPONENTS, INC.** and **HOWARD A. MOORE**, Defendants, whose last known address is **608 E. Austin Ave., Round Rock, TX 78738**, for the sum of **\$25,133.99**, plus post-judgment interest on said indebtedness from **04/08/2022**, at the rate of **6%** per annum until date of entry of this judgment; plus **\$1,586.00**, for attorney's fees, AND all costs of court;

AND WHEREAS said judgment is entitled to the following credits: NONE

THEREFORE you are commanded to proceed without delay to levy upon property of said Defendants found in your county not exempt from execution and sell same according to law in satisfaction of said judgment, including the costs of executing this writ, less the credits hereinabove set out.


HEREIN FAIL NOT, but make due return of this execution to said County Clerk on or before 90 days from the date hereof, with your return thereon endorsed showing how you have executed the same.

Issued on this the **28th** day of **February**, 2023, by Dyana Limon-Mercado, County Clerk, Travis County, Texas.

By [Signature], DEPUTY      507.4

I Sotelo

District/County



**Attorney:**  
**IAN ANDREW MCCARTHY**  
3821 JUNIPER TRCE STE 108  
AUSTIN TX 78738

# 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 2003**

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# Judgment Description

**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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## Duties of the Officer

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### Duties – Indorsement (TRCP 636)

- Indorsement by officer – The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person he shall number them as received.

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## Duties – Service – TRCP 21a

- (a) Methods of Service. Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record in the manner specified below:

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## Methods of Service – TRCP 21a

- (2) Documents Not Filed Electronically. A document not filed electronically may be served in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.

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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 1st each year;
- Effective date is January 1st of following year;
- Find it here:  
<https://comptroller.Texas.gov/transparency/local/sheriffs/>.
- LGC 118.131

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## Payment of 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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## Duties – Return – TRCP 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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## Duties of Officer – Local Gov't Code Sec. 86.021

- May perform service anywhere in the officer's county
- May serve process in his county or contiguous county
- All process served in presumed served in the officer's official capacity
- Collected fees shall be deposited with the treasurer of his county.

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## Duties of Officer – Property to be Levied - TRCP 637

- Officer does not have a duty to levy on or sell property not within the officer's county.
  - Exceptions exist for property partially within the officer's county.
- Make demand on the defendant for payment of the judgment.
- Judgment debtor has the right to first point out non-exempt property for levy and sale.

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## Demand Letter

- Case Information, Style, etc.
- Rule 637 designation
- Case Payoff
- Post Judgment Interest  
(if applicable)
- Payments made through the  
Constable's Office
- Authority of to Levy

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INTEGRATED ENVIRONMENT , LLC D/B/A INTEGRATED ENVIRONMENTAL  
8212 MONONA AVE  
AUSTIN TX 78717

Reference : Cause # 21-1383-CC4 Court: WILLIAMSON County COUNTY COURT AT LAW #4

UNITED RENTALS(NORTH AMERICA), INC.

VS.

INTEGRATED ENVIRONMENT, LLC D/B/A INTEGRATED ENVIRONMENTAL AND JIMMY JONES

Judgment, Interest and Costs Due if paid by 11/08/2023 \$160,435.60

Payment Made to : Williamson County

This is to inform you a Writ of Execution was received by this office on 08/21/2023. The execution was filed against you by UNITED RENTALS (NORTH AMERICA) , INC. and requires immediate response . DEMAND IS HEREBY MADE for the above amount (s) and must be paid by cash , cashier's check , or credit card and paid to the Constable 's office named above .

Unless the above amount is received by our office immediately , we will proceed with the execution of the Writ and seize sufficient amounts of your non -exempt property to sell according to law to satisfy the above judgment . If payment is not forthcoming you have the right to designate property owned by you to be levied upon to satisfy the judgment. This notice is being provided to you as a courtesy with the intention of saving you time and additional costs . You may contact the deputy assigned to this case between the hours of 9:00 am and 4:30 pm Monday through Friday at (512) 244-8650 .

All payments must be made through this office to assure proper credit (s) toward the judgment .

Thank you ,

Patrick Youngren  
Constable Precinct 1

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## Insufficient or No Designation – TRCP 637, CPRC Sec. 34.065

- If in the opinion of the officer, the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall require an additional designation by the defendant.
- If no property is designated by the defendant, the officer shall levy and execute upon any property of the defendant subject to execution.

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## Duties – Calculate the Amount Due

- Calculate the judgment amount including all cost, interest, and fees.
- Officers' duty to calculate interest is derived from Texas Finance Code 304.005 (accrual of interest ends when judgment satisfied)
- May be helpful to request or obtain a copy of the judgment from the clerk.

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### Case Payoff

UNITED RENTALS (NORTH AMERICA), INC. vs. INTEGRATED ENVIRONMENT, LLC D/B/A INTEGRATED ENVIRONMENTAL AND JIMMY JONES

Civil # C1-23151514

Through 09/18/2023

Docket # 21-1383-CC4

Description	Starting Balance	Adjustment	Accrual	Total Amount	Billing Balance	Debtor Balance
Commission	0.00	0.00	7,176.92	7,176.92	0.00	7,176.92
Writs	200.00	0.00	0.00	200.00	0.00	200.00
Interest on Pre-Judgment Amount	0.00	0.00	10,233.46	10,233.46	0.00	10,233.46
Interest on Attorney Fee	0.00	0.00	339.91	339.91	0.00	339.91
Interest on Court Cost	0.00	0.00	72.52	72.52	0.00	72.52
Interest on Principal	0.00	0.00	22,337.12	22,337.12	0.00	22,337.12
Pre-Judgment Amount	36,127.20	0.00	0.00	36,127.20	0.00	36,127.20
Attorney Fee	1,200.00	0.00	0.00	1,200.00	0.00	1,200.00
Court Cost	256.00	0.00	0.00	256.00	0.00	256.00
Principal	78,856.76	0.00	0.00	78,856.76	0.00	78,856.76
	<b>116,639.96</b>	<b>0.00</b>	<b>40,159.93</b>	<b>156,799.89</b>	<b>0.00</b>	<b>156,799.89</b>

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## Calculating Interest

- **Prejudgment** interest is computed as simple interest and does not compound. (Fin. Code 304.104) The writ should provide a date for the beginning of accrual and it ends the day before the date of judgment.
- **Post-judgment** interest accrues during the period beginning on the date the judgment is rendered and ending on the date the judgment is satisfied, and compounds annually. (Fin. Code 304.005, 304.006)

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## Judgment and Writ Must State Rate

- Tx. Fin Code Sec. - 304.001. A money judgment of a court in this state must specify the post-judgment interest rate applicable to that judgment.
- Tx. R. Civ. P. 630 - When an execution is issued upon a judgment for a sum of money, or directing the payment simply of a sum of money, it must specify in the body thereof the sum recovered or directed to be paid and the sum actually due when it is issued and the rate of interest upon the sum due.

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THEREFORE, you are hereby commanded that you proceed to seize and sell the above described property, as under execution, and by virtue of this order of sale place the purchaser of the same in possession thereof within 30 days after the day of sale, and you apply the proceeds thereof to the payment and satisfaction of said sum of ONE THOUSAND SEVEN HUNDRED SEVENTY ONE DOLLARS AND 54/100 (\$1,771.54); reasonable attorney's fees in the amount of \$3,650.00; court costs; **post judgement interest thereon at the rate established by law** from October 22, 2019 until paid, **minus above named credit of \$1,084.79** together with your legal fees and commissions for executing this writ. And if the said property shall sell for more than sufficient to pay off and satisfy said sums of money, then you are hereby directed to pay over the excess thereof to the Registry of the Court. But if you fail to find said property or if the proceeds of such sale be insufficient to satisfy said judgment, then you are directed to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions.

HEREIN FAIL NOT, but due return make hereof within 90 days, showing how you have executed the same.

GIVEN under my hand and seal of the District Court of Williamson County, Texas at my office in Georgetown, Texas this 11th day of November 2022.

LISA DAVID, District Clerk,  
Williamson County, Texas



*Teresa Maskunas* Deputy  
Teresa Maskunas

- The post-judgment interest rate is published rate by the Texas Office of Consumer Credit Commissioner. This rate will be used unless the parties agreed to a different rate in a contract.
- There may be a contractual rate of 0% / Not awarded



The screenshot shows the OCCC (Office of Consumer Credit Commissioner) website. The header includes the OCCC logo and navigation links for CONSUMERS, REGULATED INDUSTRIES, and PUBLICATIONS. The breadcrumb trail is Home > Publications And Policy > Interest Rates. The main heading is INTEREST RATES. Below this, it states: "The following publications and rates are issued by the OCCC". A link for "Texas Credit Letter" is provided. A text block explains that the Texas Credit Letter is published each Tuesday and reports rate ceilings for future weeks. On a quarterly basis (March, June, September, December), the rates below are calculated on the first of the month by the Consumer Credit Commissioner using the formulas found in the Texas Finance Code, and reported in the first issue of the month in the Texas Credit Letter. A dark grey box on the right contains the "Current Rates" for June 2023: Postjudgment Interest Rate: 8.25%, Weekly Ceiling: 18.00% (06/12/23 - 06/18/23), and Monthly Rate: 18.00% for the month of June.

What if you are  
unsure on your  
calculation?

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## Partial Payments

- A judgment creditor has no obligation to accept partial payments on a judgment unless stated in a judgment.
- If the judgment creditor does accept a partial payment, the 'declining principal' formula described by the Texas Supreme Court in *Brainard vs. Trinity Universal Ins. Co.*, 216 S.W.3d 809 (Tex. 2006) applies.

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## Partial Payments (cont.)

- A judgment creditor can only recover interest on the amount that they have lost the use of.
- Partial payment first applied to interest. (*Hand & Wrist Center of Houston, P.A. v. Republic Services, Inc.* (Tex. App. Houston (14th Dist.), 401 S.W.3d 712 at 721

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Discussion:  
When can the constable withhold  
distribution of funds ?

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# Appeal Issues

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## Writs During Appeal

- Appeals from courts **other than justice courts** DO NOT automatically enjoin the enforcement of the judgment
- The filing of an appeal does not prohibit the Judgment Creditor from enforcement of the judgment, this applies to Writs of Execution, Writs of Garnishment, Turnover Orders etc.

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## Interest During Appeal

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

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## Suspension of Enforcement During Appeal (Tx. R. App. P. 24.1)

- A judgment debtor may supersede the judgment by:
  - Filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement judgment
  - Filing with the trial court clerk a good and sufficient bond
  - Making a deposit with the trial court clerk in lieu of a bond
  - Providing alternate security as ordered by the court

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# Writ of Supersedeas

- Officers are often notified by the judgment creditor that a supersedeas has been filed
- County, District, or JP Clerks may also notify the officer and send a copy of the writ

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 costs and 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 \$19,380.50. All costs of court spent or incurred in this cause are adjudged against Plaintiffs, jointly and severally. BACELINE shall recover from Plaintiffs the following costs of the court: \$6,229.60 plus \$8.00. BACELINE 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 BERGQUIST AND AUSTIN MAC REPAIR, LLC, ON A JUDGMENT RENDERED AGAINST LES BERGQUIST 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.



*Velva L. Price*  
Velva L. Price  
Travis County District Clerk  
1005 Guadalupe, P.O. Box 678008 (78762)  
Austin, TX 78762

PREPARED BY: DANIEL SMITH

--- RETURN ---  
Came to hand this the \_\_\_ day of \_\_\_\_\_ at \_\_\_ o'clock \_\_\_ M. Executed at  
\_\_\_ o'clock \_\_\_ M. on the \_\_\_ day of \_\_\_\_\_, within County of \_\_\_\_\_ at  
named \_\_\_\_\_, by delivering to the within

To certify which witness my hand officially :

# Dormant Judgments – CPRC Chapter 34

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## No Execution on Dormant Judgment – CPRC Sec. 34.001

- If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant, and execution **may not** be issued on the judgment unless it is revived.
- If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant.

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## Exception – Family Code Sec. 157.005

- Judgment for child support obligation may be enforced if a motion requesting a money judgment is filed not later than the 10th anniversary after the date:
  - (1) the child becomes an adult; or
  - (2) on which the child support obligation terminates under the child support order or by operation of law

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## *Williams v. Short* (730 S.W.2d 98 (1987)) – When is the Judgment Renewed?

- Appeals court affirmed the 1908 decision in *Bourn v. Robinson* (107 S.W. 873, 875).
- The term "**issue**" is something more than mere act of the clerk preparing and attesting the writ; the plaintiff must show that the writ was actually placed in the hands of a proper officer for enforcement.

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# Foreign Judgments – CPRC

## Chapter 35

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### Foreign Judgment

- “Foreign judgment” means a 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.
- Any court of competent jurisdiction shall certify the foreign judgment and may issue a writ on said judgment, following notice being given to the judgment debtor of the filing.

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# Domestication of Judgment – CPRC § 35.003

- The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed.
- A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.

### Writ of Execution

**THE STATE OF TEXAS  
COUNTY OF TRAVIS**

**C-1-CV-23-000128**

**FUNDATION GROUP, LLC, Plaintiff vs. PRECISION MACHINED COMPONENTS, INC., Defendant**

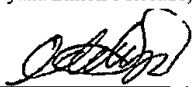

TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS:

Whereas, **FUNDATION GROUP, LLC** Plaintiff on **01/06/2023** in **County Court at Law #2** of Travis County, Texas, recovered foreign Judgment against **PRECISION MACHINED COMPONENTS, INC.,** and **HOWARD A. MOORE,** Defendants, whose last known address is **608 E. Austin Ave., Round Rock, TX 78738,** for the sum of **\$25,133.99,** plus post-judgment interest on said indebtedness from **04/08/2022,** at the rate of **6%** per annum until date of entry of this judgment; plus **\$1,586.00,** for attorney’s fees, AND all costs of court. AND WHEREAS said judgment is entitled to the following credits: NONE

THEREFORE you are commanded to proceed without delay to levy upon property of said Defendants found in your county not exempt from execution and sell same according to law in satisfaction of said judgment, including the costs of executing this writ, less the credits hereinabove set out.

HEREIN FAIL NOT, but make due return of this execution to said County Clerk on or before 90 days from the date hereof, with your return thereon endorsed showing how you have executed the same.

Issued on this the **28th day of February, 2023,** by **Dyana Limon-Mercado,** County Clerk, Travis County, Texas.

By , DEPUTY 



C-1-CV-23-000128

Dyana Limon-Mercado  
Travis County Clerk  
C-1-CV-23-000128  
Jazmonique Williams

CAUSE NO. \_\_\_\_\_

FUNDATION GROUP, LLC,  
PLAINTIFF,

§ IN THE COUNTY COURT

vs.

§ AT LAW NO. \_\_\_\_\_

PRECISION MACHINED  
COMPONENTS, INC. AND  
HOWARD A. MOORE,  
DEFENDANTS.

§  
§  
§  
§  
§  
§  
§  
§ TRAVIS COUNTY, TEXAS

**AFFIDAVIT**

STATE OF Maryland §  
COUNTY OF Maryland §

BEFORE ME, the undersigned notary, on this day personally appeared Thomas Friedrich, a person whose identity is known to me. After I administered an oath to the affiant, upon the affiant's oath the affiant said:

"My name is Thomas Friedrich. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"Plaintiff and Judgment Creditor, FUNDATION GROUP, LLC, owns a judgment against Defendants and Judgment Debtors, PRECISION MACHINED COMPONENTS, INC. AND HOWARD A. MOORE.

"The last known address of the plaintiff and judgment creditor, FUNDATION GROUP, LLC, is in care of its attorneys, Barnett & Garcia, PLLC, 3821 Juniper Trace, Suite 108, Austin, Texas 78738.

"FUNDATION GROUP, LLC has retained as counsel Ian A. McCarthy, State Bar No. 24078960, of Barnett & Garcia, PLLC, located at 3821 Juniper Trace, Suite 108, Austin, Texas 78738.

"The last known address of Defendants and Judgment Debtors, PRECISION MACHINED COMPONENTS, INC. AND HOWARD A. MOORE is 608 E. Austin Ave., Round Rock, TX 78664."

Affiant  
[Signature]

Sworn to and subscribed before me on June 24, 2022

[Signature]  
Notary Public  
State of Maryland



My commission expires on: 70/59/2023

•Questions?

# Intro to Executions – Part II

Constable Buck Stevens, Brazoria County Pct. 3  
Chief Deputy Patrick Youngren, Williamson County Pct. 1

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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
- [www.tjctc.org](http://www.tjctc.org)
  - Texas Civil Process Field Guide
  - Practical Guide to Writs of Execution Deskbook

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# Levy & Sale Procedure

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## Levy on Real Property TRCP 639, 646a

- “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 indorse such levy on the writ.”

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## Division of Real Property Civ. Prac & Rem. Code 34.002 & 34.003

- If property consist of multiple lots, the officer should sell the lots individually. (exception applies)
- If rural property, the Debtor may divide the property into lots not less than 50 acres.
- May not be a delay tactic.
- Division cost incurred are not a cost of the sale.


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2022112302 LN Total Pages: 2



**Mickey Chance**  
Williamson County Constable Precinct 1  
1801 E. Old Settlers Blvd #105  
Round Rock, TX 78664  
Office (512) 244-8650 • Fax (512) 244-8662



**Notice of Levy**

Under and by virtue of a certain Writ of Execution issued by the 26TH JUDICIAL DISTRICT COURT of Williamson County, Texas, on the 8th day of September 2022, in Cause No. 15-1157-C26, Styled **JESSE B. ARQUERO VS U.S. BANK NATIONAL ASSOCIATION** with costs of:

Commission	\$12,511.05
Service Fee	\$150.00
Pre-Judgment Amount	\$1,161.79
Court Cost	\$195.00
Interest on Principal	\$57,051.79
Principal	\$224,367.79
<b>Total</b>	<b>\$295,437.42</b>

Therefore I, Mickey Chance, Constable of Constable Precinct 1 of Williamson County, Texas, on this the 28<sup>th</sup> day of September 2022, have levied on and have seized all rights title, interest and claim which said **defendant(s), JESSE B. ARQUERO** has in the following described Real Property situated in Williamson County, Texas, viz:


**LOT 1, BLOCK D, OF CHANDLER CREEK SECTION 10, AN ADDITION IN WILLIAMSON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET S, SLIDES 353-356, OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS**

Said property being more fully described as follows:

**1206 Shettle Lane, Round Rock Texas, 78664**

Witness my hand this 28th day of September 2022.

Mickey Chance, Constable  
Williamson County Constable Precinct 1

By  Deputy  
Jereme Brinkmann

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## Sale of Real Property TRCP 646a.

- Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, unless the court orders that such sale be at the place where the real property is situated, on the first Tuesday of the month, between the hours of ten o'clock, a.m. and four o'clock, p.m.
- Exception exist for situations when the court require the real property to be sold at the location of the property.

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## Sale of Real Property – When and Where

- Must be sold while the writ is still alive 30, 60 or 90 days.
- Sale must be held the first Tuesday of the month (exception for July 4<sup>th</sup>)
- Sale to be conducted at the courthouse door unless otherwise ordered by court
- Sale must be conducted between 10 AM and 4PM

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## Sale of Real Property – Notice & Deed

- Notice delivered to Debtor and their attorney (Rule 21a)
- Notify lienholders
- Notice must be posted at Courthouse door/designated area.
- Notice shall be given by publication
- Officer must execute Constable's/Sheriff's deed to successful bidder

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## Real Property Sale Notice TRCP 647

- A brief description of the property to be sold, as well as give the number of acres, original survey, locality in the county, and the name by which the land is most generally known
- Notice must be posted at Courthouse door/designated area.

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## Real Property Sale Notice – Publication

### TRCP 647

- Published in the English language in a newspaper published in the county in which the property is located
- Must be published at least once a week for three consecutive weeks preceding the date of the sale

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## Real Property Sale Notice – Timing

### TRCP 647

- First publication must be at least 20 days preceding the date of the sale.
- Must contain a statement of the authority by virtue of which the sale is to be made.

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THE STATE OF TEXAS  
COUNTY OF WILLIAMSON  
IN THE MATTER OF

Willatt & Flickinger, PLLC  
Notice of Constable Sale, Cause No. 20-1271-C26  
Arbor Village Condominiums, Plaintiff vs. Patrick Burch, Defendant

The Williamson County Sun/Sunday Sun, newspapers of general circulation, have been continuously and regularly published for a period of not less than one year in the County of WILLIAMSON, Texas, preceding the date of the above-referenced notice. Said notice was published in said paper as follows:

First insertion 13th day of August, 2023  
Second insertion 20th day of August, 2023  
Third insertion 27th day of August, 2023  
Fourth insertion          day of August, 2023

*Eileen Gray*  
Newspaper Representative  
Subscribed and sworn to before me, this  
28th day of August, 2023.

Witness my hand and official seal.  
*Dawn Steele*  
Dawn Steele, Notary Public  
My Commission Expires August 26, 2024



NOTICE OF CONSTABLE'S SALE  
(LEGAL NOTICE)  
BY VIRTUE OF An Order of Sale issued by the Clerk of the Court District Clerk of the County of Williamson Cause No. 20-1271-C26 on the 20th day of July A.D. 2023 and the said Order of Sale, PLAINTIFFS vs. Patrick Burch, DEFENDANT, to me, the Deputy Constable of the County of Williamson County, Texas, directed and delivered, I have held upon this 14 day of July A.D. 2023 at 4:00 PM and will between the hours of 10:00 A.M. and 4:00 P.M. at approximately 1:00 PM on the 1st Tuesday of September A.D. 2023, at being the 5th day of said month in the Williamson County Justice Center, Courthouse Annex, 400 North Greenburg St., Georgetown, Texas 78626 S.W. Williamson County, proceed to sell at public auction to the highest bidder, for cash in hand, all right, title and interest, if any, which the Defendant(s) had on the 14th day of July A.D. 2023 at 4:00 AM or at any time thereafter, if at all, in the following described property:  
Lot 253, Building D, Arbor Village Condominiums, a Condominium Regime in Williamson County, Texas, Declaration, Exhibits, Plans and Rules recorded in Volume 1, Page 1 of the Williamson County Records, more commonly known as 8032 Fabron Circle, Unit 403, Austin, Texas 78745.  
NOTE ON THE PROPERTY SOLD: THESE ARE NOT WARRANTED, UNEXPIRED OR IMPAIRED INCLUDING, BUT NOT LIMITED TO THE SAID WARRANTIES AND FINESSE FOR A PARTICULAR PURPOSE. YOU HAVE BOUGHT THE PROPERTY AS IS. BUYERS ARE FURTHER ADVISED THAT THE PURCHASE OF THE PROPERTY AT THE CONSTABLE'S SALE MAY NOT ENTITLE YOU TO A MORTGAGE OR SECURITY INTEREST ON THE PROPERTY YOU HAVE SIMPLY PURCHASED WHATEVER INTEREST THE DEFENDANT HAD IN THE PROPERTY IF YOU HAVE QUESTIONS, YOU SHOULD CONSULT THE COUNSEL OF YOUR STATE.  
THE PURCHASER WILL BE REQUIRED TO PRESENT AN UNEXPIRED WRITTEN STATEMENT FROM THE TAX ASSESSOR-COLLECTOR OF THE COUNTY IN WHICH THE SALE IS CONDUCTED THAT THERE ARE NO AD VALOREM TAXES OWED TO THE COUNTY, SCHOOL DISTRICT OR MUNICIPALITY. Texas Tax Code 34.0105.  
Said property is being sold on the proceeds of a Public Sale, LEGISLATION 85, and the proceeds to satisfy the Judgment for \$847,000. Deedee Rose attorney fees and court cost in the amount of \$6192.39 and the cost of executing this sale.  
GIVEN UNDER MY HAND on this 14 day of July A.D. 2023.  
J. Brinkman, Sgt. Deputy Constable.

# Publishers Affidavit

# Persons Eligible to Purchase Real Property Civ. Prac. & Rem. Code 34.0445.

- An officer conducting a sale of real property under this subchapter may not execute or deliver a deed to the purchaser of the property unless the purchaser exhibits to the officer an unexpired written statement issued to the person in the manner prescribed by Section 34.015 Tax Code, showing that the county assessor-collector of the county in which there are no known or reported delinquent ad valorem taxes owed by the person to that school district or municipality etc. - Violation is a Class B



# 34.015 Tax Code Statement



**WRITTEN STATEMENT ABOUT DELINQUENT TAXES  
REQUIRED TO PURCHASE AT TAX FORECLOSURE SALE**

County tax office name: Williamson County Tax Assessor-Collector      Date of This Statement: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Address: 904 S. Main St. Georgetown, TX 78626  
 Phone (area code & number): ( 512 ) 943 - 1801      This Statement Expires: \_\_\_\_/\_\_\_\_/\_\_\_\_

Property Tax Code Section 34.015 requires a purchaser at a tax foreclosure sale to obtain a statement of no delinquent taxes from the county tax office where the property is located. This written statement is for the person named in Step 1. This statement will expire on the date noted above, which is 90 days after date of this statement. If delinquent taxes listed on this statement are subsequently paid, this person will need to request a new statement to remove those years of delinquency.  
**THIS IS NOT A TAX CERTIFICATE.**

<b>Step 1:</b> Name, address, request date	Requesting person/company's name: _____ Current mailing address: _____ City, state: _____ ZIP code +4: _____ Phone (area code and number): ( ) _____ Date of Request: ____/____/____																											
<b>Step 2:</b> Properties currently and formerly owned by person/company listed in Step 1	This statement is for all properties currently and formerly owned by the person/company listed in Step 1 and located in this county or in any school district or city located in part in this county. The properties are listed on the requesting person's Request for Written Statement about Delinquent Taxes for Tax Foreclosure Sale dated ____/____/____. This person's request is available at the county tax office named above.																											
<b>Step 3:</b> Delinquent taxes owed by person/company listed in Step 1	<input type="checkbox"/> The person/company listed in Step 1 owes no delinquent taxes on properties currently or formerly owned and located in this county or in any school district or city located in part in this county. <input type="checkbox"/> The person/company listed in Step 1 owes delinquent taxes on properties currently or formerly owned and located in this county or in a school district or city located in part in this county in the following amounts: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Year(s) Delinquent</th> <th style="width: 50%;">County/School/City Name (and Collector(s) Name if Not Step 5) *</th> <th style="width: 30%;">Total Delinquent Taxes, Penalties &amp; Interest**</th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>2. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>3. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>4. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>5. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>6. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>7. _____</td><td>_____</td><td>\$ _____</td></tr> <tr><td>8. _____</td><td>_____</td><td>\$ _____</td></tr> </tbody> </table>	Year(s) Delinquent	County/School/City Name (and Collector(s) Name if Not Step 5) *	Total Delinquent Taxes, Penalties & Interest**	1. _____	_____	\$ _____	2. _____	_____	\$ _____	3. _____	_____	\$ _____	4. _____	_____	\$ _____	5. _____	_____	\$ _____	6. _____	_____	\$ _____	7. _____	_____	\$ _____	8. _____	_____	\$ _____
Year(s) Delinquent	County/School/City Name (and Collector(s) Name if Not Step 5) *	Total Delinquent Taxes, Penalties & Interest**																										
1. _____	_____	\$ _____																										
2. _____	_____	\$ _____																										
3. _____	_____	\$ _____																										
4. _____	_____	\$ _____																										
5. _____	_____	\$ _____																										
6. _____	_____	\$ _____																										
7. _____	_____	\$ _____																										
8. _____	_____	\$ _____																										
<small>* See attached list of names and addresses of tax collectors.                  ** Amount is based on the date of request; amount will change at the beginning of the next delinquent month.</small>																												

## Tax Certificate Requirement Civ. Prac. & Rem. Code 34.0445.

- Tax Certificate only required in counties with a population over 250,000 people or in those where the commissioners court has adopted the provisions of Civil Practice and Remedies Code 34.0445, only people qualified under that section may purchase real property at an execution sale.

## Proxy Bidding

Civ. Prac. & Rem. Code 34.0445.

- An individual may not bid on or purchase the property in the name of any other individual. An officer conducting a sale under this subchapter may not execute a deed in the name of or deliver a deed to any person other than the person who was the successful bidder.

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## Sale of Personal Property

TRCP 650

- Must be sold while the writ is still alive (30, 60 or 90 days).
- Sale can occur any day of the week.
- Sale must be conducted between 10 AM and 4PM
- Notice shall be given by posting the notice for 10 consecutive days immediately prior to the date of the sale.

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Williamson County Precinct 1  
1801 E. Old Settlers Blvd #105  
Round Rock, TX 78664  
Office (512) 244-8650



**NOTICE OF CONSTABLE'S SALE  
PERSONAL PROPERTY**

BY VIRTUE OF A WRIT OF EXECUTION ISSUED BY THE CLERK OF THE 425<sup>TH</sup> DISTRICT COURT OF WILLIAMSON COUNTY, STATE OF TEXAS, IN A CERTAIN CAUSE NUMBERED 19-1468-F425 ON A JUDGMENT RENDERED IN SAID COURT ON 10<sup>TH</sup> DAY OF DECEMBER A.D. 2021 AND DIRECTED AND DELIVERED TO ME AS DEPUTY CONSTABLE OF PCT 1 WILLIAMSON COUNTY, TEXAS, I HAVE ON THE 30<sup>TH</sup> DAY OF JANUARY, A.D. 2023 UPON AND WILL OFFER FOR SALE ON THE 28<sup>TH</sup> DAY OF FEBRUARY, 2023, A.D. BETWEEN THE HOURS PRESCRIBED BY LAW, AT APPROXIMATELY 10:00 AM AT PUBLIC AUCTION TO THE HIGHEST BIDDER, FOR CASH IN HAND AT GASTON & SHEEHAN AUCTIONEERS LOCATED AT 1420 FARM TO MARKET 085, PFLUGERVILLE, TEXAS. ALL THE RIGHT, TITLE AND INTEREST, IF ANY OF JABIER ALLUE LABANINO AND TO THE FOLLOWING PERSONAL PROPERTY TO WIT:

2013 MERCEDES BENZ (VIN WDDGF4HB0DA845418)



THE ABOVE PROPERTY IS LEVIED ON AS THE PROPERTY OF JABIER ALLUE LABANINO AND WILL BE SOLD TO SATISFY A JUDGMENT IN THE 425<sup>TH</sup> DISTRICT COURT OF WILLIAMSON COUNTY RENDERED ON THE 10<sup>TH</sup> DAY OF DECEMBER A.D. 2021 IN FAVOR OF ELVIRA M. HERNANDEZ AND AGAINST JABIER ALLUE LABANINO.

FOR THE PRINCIPAL, INTEREST AND ALL COSTS ACCRUING BY VIRTUE OF SAID SUIT THE TOTAL SUM OF \$20,596.41

NOTICE TO JUDGMENT DEBTOR: IF THERE IS ANY PROPERTY, REAL OR PERSONAL, YOU WISH TO POINT OUT FOR LEVY IN LIEU OF THE ABOVE-DESCRIBED PROPERTY, YOU MUST CONTACT THIS OFFICE IMMEDIATELY.

NOTICE TO BIDDERS: ALL SALES SHALL BE BY CONSTABLE'S BILL OF SALE AND ARE WITHOUT WARRANTY AS TO TITLE OR CONDITION, EXPRESS OR IMPLIED, AS EVIDENCED BY CONSTABLE'S BILL OF SALE. YOU ARE BUYING WHATEVER INTEREST, IF ANY, THE DEBTOR HAS IN THE PROPERTY. PURCHASE OF THE DEBTOR'S INTEREST IN THE PROPERTY MAY NOT EXTINGUISH ANY LIENS OR SECURITY INTERESTS HELD BY OTHER PERSONS. IF YOU HAVE QUESTIONS, YOU SHOULD CONSULT THE COUNSEL OF YOUR CHOICE.

GIVEN UNDER MY HAND ON THIS 8<sup>TH</sup> DAY OF FEBRUARY A.D. 2023.

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## Sale of Personal Property – Location TRCP 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. Personal property susceptible of being exhibited shall not be sold unless the same be present and subject to the view of those attending the sale...”
- Exception for Livestock, Shares of stock

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## Persons Not Eligible to Purchase

Civ. Prac. & Rem. Code 34.048

- “If an officer or his deputy conducting an execution sale directly or indirectly purchases the property, the sale is void”
- Constable or Sheriff & their deputies executing a sale may not purchase the property.
- A Sheriff or Constables may not indirectly purchase the property or use a “straw purchaser” to buy property.

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## Purchase by Judgment Creditor or Debtor *Needham v. Cooney, 173 S.W. 981*

- Both the Judgment Debtor and the Judgment Creditor may purchase the property at a sale if they are eligible bidders.
- Should the Judgment Creditor purchase the property the officer conducting the sale will only need to collect cost.
- The Creditors purchase should be credited to Judgment.

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## Successful Bidder; Failure to Comply

Tx. R. Civ. P. 652, 653

- If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided.

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## Resale of Property

TRCP 653

- When the terms of the sale shall not be complied with by the bidder the levying officer shall proceed to sell the same property again on the same day, if there be sufficient time; but if not, he shall readvertise and sell the same as in the first instance.

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# Preparing for the Sale

- Set the sale date
- Establish minimum/opening bid.
- Calculate case pay off for sale date w/ cost, including publication
- Find your publication dates (if applicable)
- Prepare sale notice
- Post notice at Courthouse door
- Mail sale notice to JD and JC
- Is the JC going to bid on the property?

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**Real Property Sale Checklist**

<table border="1"> <tr><td>Judgment Debtor</td><td></td></tr> <tr><td>Judgment Date</td><td></td></tr> <tr><td>Issue Date</td><td></td></tr> <tr><td>Came to Hand</td><td></td></tr> <tr><td>Levy Date</td><td></td></tr> <tr><td>Expiration Date</td><td></td></tr> <tr><td>Sale Date</td><td></td></tr> <tr><td colspan="2" style="text-align: center;">Publication Dates</td></tr> <tr><td>1<sup>st</sup> Publication</td><td></td></tr> <tr><td>2<sup>nd</sup> Publication</td><td></td></tr> <tr><td>3<sup>rd</sup> Publication</td><td></td></tr> <tr><td>Affidavit of Publication</td><td></td></tr> <tr><td colspan="2" style="text-align: center;">Postings</td></tr> <tr><td>Courthouse (REQ.)</td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </table>		Judgment Debtor		Judgment Date		Issue Date		Came to Hand		Levy Date		Expiration Date		Sale Date		Publication Dates		1 <sup>st</sup> Publication		2 <sup>nd</sup> Publication		3 <sup>rd</sup> Publication		Affidavit of Publication		Postings		Courthouse (REQ.)						<ul style="list-style-type: none"> <li>• Sale date must be first Tuesday of the month, 10:00 AM at the Williamson County Justice Center Courthouse Annex. Unless July 4<sup>th</sup> or January 1<sup>st</sup>. (TRCP 646a &amp; CPRC 34.041C)</li> <li>• Publication must run once a week for three consecutive weeks preceding such sale, 1<sup>st</sup> publication not less than twenty days immediately preceding the day of sale. (TRCP – 647)</li> <li>• Email Sale Notice to the Newspaper. <b>Must be in the Newspaper hands by the Thursday prior at 10:00 AM</b> to make the Sunday publication. Georgetown Sun: (512) 930-482 <a href="mailto:legals@wilcosun.com">legals@wilcosun.com</a></li> <li>• Posting at the 'Courthouse door' is always required. Posting of two additional sale notice only required when no publican exist in your county. (TRCP – 647)</li> </ul>
Judgment Debtor																																		
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Affidavit of Publication																																		
Postings																																		
Courthouse (REQ.)																																		
Mail Copy of sale notice to Judgment Debtor (regular & Cert) TRCP 647																																		
Mail Copy of sale notice to Judgment Debtor's Atty (regular & Cert) TRCP 647																																		
Mail a copy of sale notice to lien holder (if applicable) Judgment creditor to furnish this information.																																		
File notice of lien with County Clerk - Retain file stamped copy																																		
Calculate case pay off for the date of the sale, add the Constables Deed fee & single notice posting fee & publication cost																																		
Determine Obtain starting / Discuss with Judgment Creditor																																		
Find out if there are any liens on the property, Judgment debtor should furnish this information																																		
Find out if the Judgment Creditor is bidding on the property. (Credit to Judgment) (Pay Associated Cost, Constable Deed, Posting, Constable's Commissions)																																		
Post-sale release lien on property with County Clerk, when filing the release of lien be sure to provide a copy of the Notice of lien previously filed (good practice, not a legal requirement)																																		

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# Post-Collection/Sale Procedures

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## Distribution of Funds

- Any proceeds left over after the judgment and costs have been satisfied must be paid to the judgment debtor. *Civil Prac. & and Rem. Code § 34.047.*
- If an officer fails or refuses to deliver money collected under an execution when demanded by the person entitled to receive the money, the officer and the officer's sureties are liable to the person for the amount collected and for damages at a rate of one percent a month on that amount if proven by the injured party. *Civil Prac. & and Rem. Code § 34.067*

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## Conveyance of Title After Sale Civ. Prac. & Rem. 34.045

- When the sale has been made and its terms complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest, and claim that the defendant in execution had in the property sold.

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## Bill of Sale & Deed

- Heading including the court ordering the sale, case name, and the cause number;
- Description of the officer's authority to levy on the property;
- Date of the officer's levy;
- Date of sale;
- Description of the judicial sale, including notice of sale;

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## Bill of Sale and Deed (cont.)

- Description of price and payment by the winning bidder;
- Legal description of the property;
- Name and signature of the selling officer;
- Disclaimer that there are no warranties and only the judgment debtor's interest conveys; and
- Any other disclaimers the officer believes to be necessary.

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## Constable's Deed

- Constable's Deed, not a warranty deed.
- May be prepared by the attorney for the judgment creditor
- Signed by the elected official

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## Relevant Policies

- Type of payment accepted
- Time to remit payment
- Funds clear
- Purchasing on behalf of a corporation
- Bidder / Purchaser to obtain tax statement (when relevant)

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### CONSTABLE DEED

THE STATE OF TEXAS

Know All Men by These Presents:

COUNTY OF WILLIAMSON

"NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER."

THAT WHEREAS, by virtue of an Order of Sale issued out of the 26<sup>th</sup> District Court of Williamson County, Texas, in favor of

**Arbor Village Condominiums**  
as Plaintiff(s)

*and*

**Patrick Burch**  
Defendant(s),

on certain Judgment and Decree of Sale, rendered on the 31<sup>st</sup> day of March, A.D. 2022 and directed and delivered to Mickey Chance, Constable Pct. 1 of Williamson County, Texas, commanding me to levy upon, seize and sell the land or lots herein described to satisfy said Judgment, the same being for penalties, interest and costs due on the hereinafter described lands.

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CONSTABLE MICKEY CHANCE  
Williamson County Precinct 1  
1801 E. Old Settlers Blvd #105  
Round Rock, TX 78664  
Office (512)244-8650



The State of Texas  
County of Williamson

Bill of Sale

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, by virtue of a certain Writ of Execution Cause Number 19-1498-F425 issued out of the 425th District Court of the County of Williamson in the State of Texas, in favor of Elvira Maria Hernandez and against Jabler Alloe Labanino on a certain judgment rendered in said Court on the 10th day of December, A.D. 2021 and directed and delivered to me as Constable of Williamson County commanding me as Deputy Constable as aforesaid, did on the 30th day of January, A.D. 2023, levy upon and take into my possession the property hereinafter described, and after advertising the same as required by law. I did on the 28th day of February, A.D. 2023, within the hours prescribed by law, at 1420 Farm to Market 685, Pflugerville, TX 78660 sell said property at public auction, when the same was struck off to Victor Camarena for the sum of \$4,050.00 Dollars, Victor Camarena being the highest secure bid therefore.

Now therefore in consideration of the premises, and the payment of said sum of \$4,050.00 Dollars, the receipt of which is hereby acknowledged, I, Patrick Youngren, Deputy Constable as aforesaid, have sold and delivered and by these presents do sell and deliver unto the said Victor Camarena, 106 Sunnyside Georgetown, Tx 78626 all right, title and interest which the said Jabler Alloe Labanino had on the 28th day of February, A.D. 2023 in and to the following described personal property, to wit:

2013 MERCEDES-BENZ C250, VIN: WDDGF4HB6DA845418

TO HAVE AND TO HOLD the same unto said heirs and assigns forever, as fully as I, as Constable as aforesaid, can sell, transfer and dispose of the same by virtue of said Writ of Execution .

IN TESTIMONY WHEREOF, I have hereunto set my hand, this 28 day of February, A.D. 2023.

Mickey Chance, Constable Pct. 1  
Williamson County, Texas

By *Patrick Youngren* #15543  
Patrick Youngren, Chief Deputy Constable

Subscribed and sworn to before me on the 1 day of March, 2023

*Kerri Michelle Foiles*  
Notary Public in and for the State of Texas



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# Return of Service TRCP 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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**Mickey Chance**  
 Williamson County Constable Precinct 1  
 1801 E. Old Settlers Blvd #105  
 Round Rock, TX 78664  
 Office (512) 244-8650 • Fax (512) 244-8662



**CONSTABLE'S EXECUTION/ORDER OF SALE RETURN**

**REAL PROPERTY SALE**

Came to hand this 13 day of July 2023, at 10:48 AM.

Cause No: 20-1271-C26 Court 26<sup>th</sup> DISTRICT COURT - WILLIAMSON COUNTY TEXAS

Plaintiff(s) Arbor Village Condominiums

Defendant(s) Patrick Burch

Demand and service was made on Judgment Debtor: Patrick Burch

In Person

Tex. R. Civ. P. 21a: \_\_\_\_\_

Location: 8340 Fathom Cir. Unit 403 Austin, TX 78750

Date: 7/19/2023

Time: 7:43 AM

On the 14<sup>th</sup> day of July 2023, I as Deputy Constable of Pct. 1 Williamson County, did levy on the property of Patrick Burch, as Judgment Debtor to wit:

Unit 403, Building D, Arbor Village Condominiums, a Condominium Regime in Williamson County, Texas, according to the Condominium Declaration, Exhibits, Plats and Bylaws recorded in Volume 1, Page 1, et seq., Condominium Records of Williamson County, Texas; more commonly known as 8340 Fathom Circle, Unit 403, Austin, Texas 78750.

Notice of sale was published in the Williamson County Sun, a newspaper of general circulation in Williamson County Texas on 8/13/23, 8/20/23, and 8/27/23 for three consecutive weeks with the first publication being at least 20 days preceding the date of sale. Said advertisement stated the authority by which sale was to be made, the time of levy, and the time and place of the sale with a legal and common description of the property.

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## Amended Return Civ. Prac & Rem Code 34.064

- Officer may file an amended return
- Corrects an error on the original return
- Must be filed within 30 days from notice or error
- Failure to amend or file a return punishable by contempt

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## Death of Judgment Creditor Civ. Prac. & Rem. Code 34.002(a)

- If a judgment creditor dies prior to the issuance of a writ and there was an administration of their estate, then a writ of execution on a judgment owed to that judgment creditor should be issued in the name of the judgment creditor's legal representative and any other judgment creditors.
- Affidavit of death attached.
- Certificate of appointment of legal rep. attached.

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## Death of Judgment Creditor (cont.) Civ. Prac. & Rem. Code 34.002(c)

- If there is no administration of the judgment creditor's estate, then the writ of execution should be issued in the name of the judgment creditor and any money collected under that execution will be paid into the registry of the court, and the court will order the money to be paid to the parties that are entitled to it.
- If the writ of execution was issued prior to the death of the judgment creditor, then the writ is simply levied and returned as if that person were living.

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## Death of Judgment Debtor Civ. Prac. & Rem. Code 34.003

- A judgment debtor's death after the issuance of a writ of execution will stay the execution. Any lien already acquired by a levy on the writ of execution must be recognized and enforced by the county court or probate court in the payment of the deceased's debts.
- Executing officer should notify the court of issuance and provide any supporting evidence.

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## Officer Liabilities

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## Liability – Execution of Writs

- Officer is not liable for damages if officer acted in good faith to execute the writ by law, Civ. Prac & Rem Code 7.003

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## Unfinished Business

LGC 86.025, Civ Prac & Rem Code 34.062

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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## 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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## Improper Endorsement of Writ

Civ. Prac. & Rem. Code 34.063

- Fails to number writs if more than one is received for the same judgment debtor.
- Fails to endorse writs
- Officers & sureties liable for actual damages

RECEIVED  
2023 AUG 21 PM 12:25  
CONSTABLE PCT. 1  
WILLIAMSON COUNTY, TX

RECEIVED  
August 8, 2023 9:12 AM  
Constable 1  
Williamson County, TX , USA

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## Officer Liable for Actual Damages

- If the officer receives more than one execution on the same day against the same person, he shall number them as received. TRCP 636. Failure to do so results in liability of the officer for actual damages. Tex. Civ. Prac. & Rem. Code § 34.063

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## Duty of Officer to Levy

- When an officer receives a writ of execution, he is required to "proceed without delay" to levy on the defendant's nonexempt property found in his county, unless directed otherwise by the plaintiff or his agent or attorney. TRCP 637.
- An officer receiving a writ of execution may return the writ after the first levy, or attempted levy, if the judgment creditor cannot designate any more executable property currently owned by the judgment debtor at the time of the first levy or first attempted levy. Civ. Prac. & Rem. Code § 34.072.

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## Duty to Protect Seized Property Civ Prac. & Rem Code 34.061

- Officer has a duty to keep property secured
- Responsible for neglect and loss
- Injured party has the burden to prove actual damages and value of loss

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### *Smith v. Harvey,* 104 S.W.2d 938.

- San Patricio County Sheriff levied on 34,000 bushels of feed
- Sheriff seized the property by instructing the defendant any removal of the property would be illegal and result in action taken against him. On several occasions he prevented the removal of the property.
- Sheriff did not take the property into his actual possession.
- The levy was effective, It was sufficient for the Sheriff to point out the property, and “assume dominion over it” and forbid its removal

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*Smith v. Harvey (cont.)*

- The sequestered property was of “great bulk, weight and immobility” which was so cumbersome that it could not be moved without great expense and effort.
- The levy was effective, It was sufficient for the Sheriff to point out the property, and “assume dominion over it” and forbid its removal
- A levy may occur even when the officer does not take actual possession of the subject property

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*Nueces County Sheriff James T. Hickey v. Couchman*  
797 S.W.2d 103 Tex. App.-Corpus Christi 1990

- After requesting the debtor to designate property subject to execution, the debtor stated he had filed a personal bankruptcy.
- The attorney representing the judgement debtor told the deputy his client was “in the process” of filing the bankruptcy.
- “over ninety days from the date of the attempted execution and the debtor's sale of his assets, he filed a Chapter 7 bankruptcy petition, it was a no asset case. All of debtor's debts were discharged and appellee received no distribution from the proceedings”

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## *Hickey v. Couchman (cont.)*

- “When the deputy learned that bankruptcy had not been filed and the debtor was hiding and selling his assets, he had a duty to execute immediately. Rule 637 (Vernon 1989). We hold that where a sheriff is aware of the debtor's non-exempt assets and is able to seize them but does not, he willfully and intentionally violates Sec. 34.065. [Civ Prac. & Rem. Code]

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## Limitation on your Duty (1) CPRC § 34.071

- An officer receiving a writ of execution **does not** have a duty to:
  - Search for property belonging to the judgment debtor
  - Determine whether the property belongs to a judgment debtor

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## Limitation on your Duty (2)

### CPRC § 34.071

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

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## Accessing Property

Hillman V. Edwards 28 Tex. Civ. App. 308  
(Tex. Civ. App. 1902) 66 S.W. 788

- Entry Into Dwelling by Force.

“Although an officer has in his hands an order of court for the sale of specific property upon which a lien has been foreclosed, he has not the right to make a forcible entry into the dwelling of the defendant for the purpose of seizing the property...”

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## Re-Entry By Force

Hillman V. Edwards 28 Tex. Civ. App. 308  
(Tex. Civ. App. 1902) 66 S.W. 788

- Re-Entry by Force.

“Where an officer has effected a lawful entry into a dwelling house and thereby acquired the right to use all necessary force in making the levy, and he voluntarily leaves without doing so, he is not entitled to re-enter the house by force.”

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## Texas Attorney General Opinion GA-0113

- Does a refusal to permit a constable to enter the restricted area of a business in order to serve civil process constitutes an offense under section 38.16 (preventing the execution of civil process) of the Penal Code?

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# Texas Attorney General Opinion GA-0113

- A person does not “intentionally or knowingly by words or physical action” prevent “the execution of any process in a civil cause,” TEX. PEN. CODE ANN. 9 38.16(a) (Vernon 2003)’ by refusing to permit a process server (including Constables) to enter an area of his workplace that his employer has designated as “private,”

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## LEVY AUTHORIZATION

On this the \_\_\_\_ day of \_\_\_\_\_, 2023, I, \_\_\_\_\_ Agent for \_\_\_\_\_ do hereby direct Deputy Constable, Patrick Youngren of the Williamson County Constable Precinct 1, Constable’s Office to levy on the items that are designated by me prior to seizure and listed below. I also understand that as the Plaintiff I am responsible for all fees associated with pickup and storage of the personal property items levied on and/or advertising fees associated with Notice of Sale postings for real property, by the Constable’s Office or 3<sup>rd</sup> Party. This is being directed in an effort to satisfy the judgment for the Plaintiff(s) United Rentals (North America) INC. Rendered in this case, Cause No. 21-1383-CC4.

UNITED RENTALS (NORTH AMERICA), INC. vs INTEGRATED ENVIRONMENT, LLC D/B/A  
INTEGRATED ENVIRONMENTAL AND JIMMY JONES

\_\_\_\_\_  
Plaintiff / Attorney / Agent, Signature

\_\_\_\_\_  
Date

Please contact our office at (512) 244-8650 if you have any questions.

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## Judgment Debtor Protections

- Bankruptcy
- Exemption claim (Rule 679b)
- Temporary Restraining Order
- Writ of Supersedeas
- Stay of Execution (Justice Court)
- Wrongful levy

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## Wrongful Levy

Tex. Civ. Prac. & Rem. Code § 340.075

- Whenever a Distress Warrant, Writ of Execution, Attachment, or other like writ is levied upon personal property, and the property or any part of the property, is claimed by and claimant who is not party to the writ, the exclusive remedy against a Sheriff or Constable for wrongful levy is by trial of the right of property.

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## Notice of Exemption Rights Gov't Code § 22.0042

- 87<sup>th</sup> Legislature Directed the Supreme Court to:
  - Establish a simple and expedited procedure for a judgment debtor to assert exemption to the seizure of property
  - Create a notice in both English and Spanish listing exemptions

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## Notice of Exemption Rights (cont.) Gov't Code § 22.0042

- Include instruction for use of form
- Requires courts to promptly set a hearing on the assertions and stay a proceeding for a reasonable amount of time
- Provide legal aid contact
- Effective May 1, 2022

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## Required Documents Tx. R. Civ. P. 679b

- “When a post-judgment turnover order, order appointing a receiver under section 31.002 CPRC, writ of garnishment, writ of execution, or other post-judgment order is issued, the receiver or judgment creditor must serve the judgment debtor with the Seizure Exemption Notice, the Instructions for Seizure Exemption Claim Form, and the Seizure Exemption Claim Form adopted by the Supreme Court. Before service, the receiver or judgment creditor must list in the Seizure Exemption Claim Form the “Interested Persons” to Notify.”

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## Service of Documents Tx. R. Civ. P. 679b

- Service Timing. The receiver or judgment creditor must serve the documents in within three business days after the receiver or judgment creditor has notice that the property has been seized
- Service Method. The documents must be served as provided in Rule 21a or Rule 501.4

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# Suspension Period Tx. R. Civ. P. 679b

- A receiver or officer must not sell the judgment debtors personal property or distribute proceeds to the judgment creditor within 14 days after service of the documents or within 17 days if served by mail.
- Nothing in this rule prohibits a receiver or officer from noticing the sale of the judgment debtor's property during the suspension period is the sale date is to occur after the expiration of the period.

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CAUSE NO. \_\_\_\_\_

_____	§	_____
_____	§	_____
_____	§	_____
_____	§	_____
_____	§	_____
_____	§	_____
_____	§	_____
_____	§	_____

### SEIZURE EXEMPTION NOTICE

You are receiving this notice because your money or property has been frozen or "seized" (taken) to pay a debt judgment against you. **IF YOU ARE AN INDIVIDUAL (NOT A COMPANY), YOU MAY BE ABLE TO GET YOUR MONEY OR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.** Certain laws, called "exemptions," protect some kinds of money and property from being taken. The following is a list of the types of money and property that may be protected:

Current wages for personal services
Social Security Administration benefits, including Social Security Retirement, SSI, and SSDI
Veterans Administration benefits
Railroad Retirement Board benefits
Office of Personnel Management retirement benefits
FEMA disaster benefits
Workers' compensation benefits
Unemployment benefits

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<input type="checkbox"/> Office of Personnel Management retirement benefits
<input type="checkbox"/> FEMA disaster benefits
<input type="checkbox"/> Workers' compensation benefits
<input type="checkbox"/> Unemployment benefits
<input type="checkbox"/> Child support, alimony, and spousal support
<input type="checkbox"/> Pension and retirement benefits
<input type="checkbox"/> Proceeds from the sale of a homestead
<input type="checkbox"/> Tax-deferred retirement accounts, like 401(k) and IRA accounts
<input type="checkbox"/> Professionally prescribed health aids
<input type="checkbox"/> Education savings accounts
<input type="checkbox"/> Health savings accounts
<input type="checkbox"/> Temporary Assistance for Needy Families ("TANF") funds
<input type="checkbox"/> Life insurance and annuity benefits
<input type="checkbox"/> Religious bible or other sacred religious book
<input type="checkbox"/> Home furnishings, including family heirlooms Value: \$ _____ (Write value.)
<input type="checkbox"/> Food and similar items for consumption Value: \$ _____ (Write value.)
<input type="checkbox"/> Farming or ranching vehicles and implements Value: \$ _____ (Write value.)
<input type="checkbox"/> Tools and equipment used for a job Value: \$ _____ (Write value.)
<input type="checkbox"/> Clothes Value: \$ _____ (Write value.)
<input type="checkbox"/> Jewelry Value: \$ _____ (Write value.)
<input type="checkbox"/> Firearms Number: _____ (Write number.); Value: \$ _____ (Write value.)
<input type="checkbox"/> Athletic and sporting equipment Value: \$ _____ (Write value.)
<input type="checkbox"/> Motor vehicles Number: _____ (Write number.); Value: \$ _____ (Write value.)
<input type="checkbox"/> Horses, mules, or donkeys Number: _____ (Write number.); Value: \$ _____ (Write value.)
<input type="checkbox"/> Cattle Number: _____ (Write number.); Value: \$ _____ (Write value.)
<input type="checkbox"/> Other livestock Number: _____ (Write number.); Value: \$ _____ (Write value.)
<input type="checkbox"/> Fowl Number: _____ (Write number.); Value: \$ _____ (Write value.)
<input type="checkbox"/> Household pets Value: \$ _____ (Write value.)
<input type="checkbox"/> Unpaid commissions for personal services Value: \$ _____ (Write value.)

I ask that the Court set a hearing on my exemption claim(s) and order that my money or property be returned to me.

*(Check one.)*

I would prefer to receive communications from the court, including notice of my hearing, by email to the email address listed above.

I would prefer to receive communications from the court, including notice of my hearing, by mail to the mailing address listed above.

**4. Declaration/Affidavit:** *(Check and fill out ONLY ONE box. If you fill out the Declaration, you will not need to sign the form in front of a notary public. If you fill out the Notary box, you need to do that in front of a notary public.)*

**Declaration:** I declare under penalty of perjury that the foregoing is true and correct.

My name is \_\_\_\_\_ My date of birth is \_\_\_/\_\_\_/\_\_\_.

My address is \_\_\_\_\_  
Street City State Zip Code Country

\_\_\_\_\_ signed on \_\_\_/\_\_\_/\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_  
Your Signature Today's Date County State

**Notary:** I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Your Printed Name Your Signature

*Notary to fill in:*  
 Sworn to and subscribed to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary)

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## Claiming an Exemption TRCP 679b

- Burden of proof on the Judgment Debtor – must prove the exemption claim and the values of the exempt property.
- The court must determine the judgment debtors claim withing 10 days after filing
- If the court determines the property is exempt, the court must order its release within 3 days

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# What is Exempt Property?

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## Homestead Exemption

Texas Property Code 41.002

- Shall not consist of more than 10 acres urban for a single individual or a family.
- Shall not consist of more than 100 rural acres for a single individual and 200 for a family.
- May be in or more contiguous or separate lots.

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## Urban or Rural Homestead

Civ. Prac & Rem. Code 41.002(c)

- A homestead is considered urban if at the time the designation is made, the property is:
  - Located within the city limits of municipality or its ETJ or a platted subdivision and serviced by police protection, paid or volunteer fire protection and at least three of the following services provided by the municipality:
    - Electric
    - Natural gas
    - Sewer
    - Storm sewer and
    - Water

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## Temporary Renting of Homestead

Civ. Prac & Rem. Code 41.003

- Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

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## Sale of Excess

Civ. Prac & Rem. Code 41.003

- An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this chapter may sell the excess of the judgment debtor's interest in land not included in the homestead.

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## Personal Property Exemptions

Tx. Prop. Code 42.001

- The property is in the categories below and if provided for a family has an aggregate fair market value of not more than \$100,000
  - \$50,000 for a single adult.
- Current wages (exemption for child support)
- Professionally prescribed health aids including those of a dependent
- Alimony, support
- Religious bible or book

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## Additional Exemptions

Tx. Prop. Code 42.002

- The following personal property is exempt:
  - Home furnishings, including family heirlooms.
  - Provisions for consumption
  - farming/ranching vehicles & equipment
  - Tools, equipment, books and apparatus including boats/vehicles used in a trade/ profession

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## Continued List of Exemptions

Tx. Prop. Code 42.002

- Wearing apparel
- Jewelry not to exceed 25% of the aggregate limitations
- Athletic/ sorting equipment including bicycles
- A two-wheeled, three-wheeled, or four-wheeled vehicle for each member of a family or a single adult who holds a driver license or who does not hold a drivers license but relies on another person to operate the vehicle for their benefit.

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## Exemptions - Animals

Tx. Prop. Code 42.002

- The following animals and forage on hand:
  - 2 horses, 2 mules or donkeys and a saddle, blanket, and bridle for each
  - 12 head of cattle
  - 60 head of other type of livestock
  - 120 fowl
  - Household pets.

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## Additional Exemption for Savings Plans

Tx. Prop. Code 42.0021

- Qualified savings plans are exempt, this includes:
  - Retirement plans & Accounts
  - Pensions,
  - Annuities
  - Deferred Comp.
  - IRA's
  - HSA's
  - ESA's / Tuition savings plans
  - Savings trust accounts

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## Exempt Property – Corporations & Entities

- Corporations do not have any exempt property.
- LLC, Inc, LLP etc. VS DBA, assumed names

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## Debtor Right to Replevy Tx. R. Civ. P. 644 & 645

- Any property seized under an execution can be returned to a judgment debtor if that judgment debtor pays a bond.
- After the judgment debtor has replevied the property in the above manner, the judgment debtor can sell or dispose of the property if they pay the officer the stipulated value.

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## Forfeiture of Replevy Bond Tx. R. Civ. P. 646

- The bond will be forfeited if the judgment debtor fails to deliver the property to the officer as directed by the bond and also fails to pay the value to the officer. The officer should then endorse the bond as forfeited and return it to the clerk or the court or the justice of the peace where the execution was issued.

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•Questions?

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## Scenario One

- You receive a writ of execution on a money judgment. In the cover letter the attorney for the judgment creditor list two pieces of equipment that he states are non-exempt and has directed you to levy on to satisfy the judgment.
  - How do you proceed?

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## Scenario Two

- You receive a writ of execution for a money judgment. In accordance with Rule 637 you call on the judgment debtor to point out property to levy on to satisfy the judgment. The debtor points out that she owns single car, and states the car is free and clear from any liens.
  - How do you proceed?

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## Scenario Three

- You receive a writ of execution for a money judgment against a small locally owned business. After making demand you contact the judgment creditor who demands that you levy on the furniture and the appliances located in the business. You know from your experience that the items may not sell at auction, but the judgment creditor is insistent.
  - How do you proceed?

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## Scenario Four

- You receive a writ of execution, the attorney representing the judgment creditor informs you the judgment debtor resides in a neighboring state and has directed you to levy on a parcel of non-exempt real property owned by the judgment debtor.
  - How do you proceed?

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## Scenario Five

- You receive a writ of execution and levied on two non-exempt pieces of property, a boat and a jet ski, neither of the items sold at auction. The property is still being held at the tow lot.
  - How do you proceed?

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**BE PROUD!**

**BE SAFE!**

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