

# Writ Scenarios: Fixing Errors

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## Resources

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

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## How to Avoid Errors in the First Place?

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

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When You  
Find Yourself  
In A Tight  
Spot



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## Writ Has an Error on its Face

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

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## Questions From the Field

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## Scenario 1

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

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## Scenario 2

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

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## Scenario 3

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

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## Scenario 4

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

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## Scenario 5

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

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## Scenario 6

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

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## Scenario 7

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

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Questions?

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