

Beyond Judgments

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What we are covering

- Abstracts of Judgment
- Writs of Execution
- Writs of Garnishment
- Receivers
- Turnover Orders
- Exempt Property and Exempt Property Hearings

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You forgot about writs of sequestration and writs of attachment

- Writs of sequestration and writs of attachment are pre-judgment writs, so they are not being covered today.
- Writs of sequestration and writs of attachment are covered on pages 115-122 of the Civil Deskbook

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Where do I find
the forms I
need?

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Where to find the forms? Step 1

The screenshot shows the homepage of the Texas Justice Court Training Center. At the top, there is a browser address bar with the URL 'tjctc.org'. Below the browser bar is a navigation menu with the following items: 'System', 'Texas Justice Court...', 'Statutes - Home', 'Sign in to Concur [...]', 'Virtual Private Netw...', 'Westlaw', 'Home | Adobe Crea...', 'KMFA 89.5 | Austin's...', and 'TJB | 3rd COA'. The main header features the 'TEXAS STATE' logo on the left and a search bar on the right. Below the header is a large banner image of a field of flowers. Overlaid on the banner is the text 'Texas Justice Court Training Center' and a horizontal menu with the following items: 'Justices of the Peace', 'Constables', 'Court Personnel', 'Legal Resources', 'Online Learning', 'Contact Us', 'Log In', 'Database', and 'Handouts'. Below the banner is a section with the tagline 'Ensuring Justice and Fairness Through Education' and an image of a network of laptops. To the right of this section is a sidebar with the heading 'Important Links' and two links: 'Login to your Account' and 'Register for an Event'. Below the sidebar is a section titled 'Legal Resources'.

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Where to find the forms? Step 2

The screenshot shows the Texas Justice Court Training Center website. The browser address bar displays 'tjctc.org'. The page header includes the 'TEXAS STATE' logo and a search bar. Below the header is a navigation menu with the following items: Justices of the Peace, Constables, Court Personnel, Legal Resources (circled in red), Online Learning, Contact Us, Log In, Database, and Handouts. The main content area features the tagline 'Ensuring Justice and Fairness Through Education' and a background image of a network of laptops. On the right side, there is a sidebar with 'Important Links' containing 'Login to your Account' and 'Register for an Event', and a 'Legal Resources' section.

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Where to find the forms? Step 3

This screenshot shows the same website as in Step 2, but with the 'Legal Resources' dropdown menu open. The dropdown menu lists the following options: Overview, Legal Question Board, Deskbooks, Forms (highlighted in blue), Charts and Checklists, Bench Exchange Program and Virtual Hearings Module, Constable Resources, The Docket, Traffic Safety Initiative, and Additional Resources. The background image of the network of laptops is visible behind the menu.

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Where to find the forms? Step 4

The screenshot shows the Texas Justice Court Training Center website. The header includes the title 'Texas Justice Court Training Center' and a navigation menu with links for 'Justices of the Peace', 'Constables', 'Court Personnel', 'Legal Resources', 'Online Learning', 'Contact Us', 'Log In', 'Database', and 'Handouts'. Below the menu, the breadcrumb 'Texas State > Texas Justice Co...' is visible. The main heading is 'Forms'. The text below explains that users can click 'Expand' to reveal form titles and use Ctrl-F to search. An 'Important Note' states that many forms are being updated and users should check legislative handouts for the latest information. The 'Expand' link is shown, followed by a list of form categories: 'Administrative Proceedings Forms' and 'Cruelly-Treated Animals - Updated April 2021'.

Forms

We hope you enjoy our new and improved forms page! While we have tried to make the organization user-friendly, one trick is to click "Expand" below, which will expose all of the form titles, then click Ctrl-F which will open up a "find" box where you can type a keyword to help you find the form you are looking for.

Important Note: Many current forms were published before the 88th Legislative Session. Updated versions of some forms are being published now. Please view our legislative handouts to ensure that you are receiving the most up-to-date information. Thank you!

[Expand](#)

- Administrative Proceedings Forms
 - ▶ Cruelly-Treated Animals - Updated April 2021

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Where to find the forms? Step 5

The screenshot shows the Texas Justice Court Training Center website. The breadcrumb 'Texas State > Texas Justice Co...' is visible. The main heading is 'Forms'. The text below explains that users can click 'Expand' to reveal form titles and use Ctrl-F to search. An 'Important Note' states that many forms are being updated and users should check legislative handouts for the latest information. The 'Expand' link is shown, followed by a list of form categories: 'Public Nuisance Hearings - Updated April 2021', 'Civil Procedure Forms', 'Criminal Procedure Forms', and 'Cruelly-Treated Animals - Updated April 2021'.

Forms

We hope you enjoy our new and improved forms page! While we have tried to make the organization user-friendly, one trick is to click "Expand" below, which will expose all of the form titles, then click Ctrl-F which will open up a "find" box where you can type a keyword to help you find the form you are looking for.

Important Note: Many current forms were published before the 88th Legislative Session. Updated versions of some forms are being published now. Please view our legislative handouts to ensure that you are receiving the most up-to-date information. Thank you!

[Expand](#)

- Public Nuisance Hearings - Updated April 2021
- Civil Procedure Forms
 - ▶ Filing Through Trial - Updated October 2022
 - ▶ Default Judgment and Dismissal - Updated March 2023
 - ▶ Trial, Judgment, and Appeals - Updated March 2023
 - ▶ Enforcement of Civil Judgments - Updated March 2023
 - ▶ Civil Process and Constable Forms - Updated April 2021
- Criminal Procedure Forms
- Cruelly-Treated Animals - Updated April 2021

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Where to find the forms? Step 5

▶ Public Nuisance Hearings - Updated April 2021

Civil Procedure Forms

▶ Filing Through Trial - Updated October 2022

▶ Default Judgment and Dismissal - Updated March 2023

▶ Trial, Judgment, and Appeals - Updated March 2023

▶ Enforcement of Civil Judgments - Updated March 2023

▶ Civil Process and Constable Forms - Updated April 2021

Criminal Procedure Forms

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Definitions

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Judgment creditor: Person who is owed money after a lawsuit, usually the plaintiff. A judgment creditor is also a garnishor.



Judgment debtor: Person who owes the money after a lawsuit, usually the defendant.



Garnishee: Someone like a bank who may hold property

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Abstract of Judgment

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Abstract of Judgment: Property Code sections 52.001-.003

What is an abstract of judgment?

- A document placed in the county records that records facts about the judgment

What does an abstract do?

- Creates a lien on real property located in the county (e.g. second home, investment property)
- Clouds title to ensure that judgment creditor is paid from the profits of the sale of the land.

15

Abstract of Judgment: Timing and Costs

When can a party get an abstract of judgment?

- Can be requested by the judgment creditor as soon as the judgment is final.
- On the one hand, there is a risk that the abstract will have no effect if the judgment is appealed. On the other hand, it prevents the judgment creditor from selling the property ASAP.

There is a \$5 fee per abstract

- The party may need to file abstracts in multiple counties.

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Where can an abstract be filed?

In any county in which the judgment creditor believes the judgment debtor owns non-exempt property

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How an abstract is prepared

It can be prepared by the court clerk.

The clerk uses information from the judgment to fill it out.

The clerk does not research additional information.

Attorneys can create their own abstracts with the county clerk without involvement of your court.

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What is included in an abstract of judgment?

- The names of the plaintiff and defendant
- The defendant's date of birth
- The last three digits of the defendant's driver's license and social security number.
- The date and amount of the judgment
- The balance due on the judgment
- The interest rate specified in the judgment

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Time for a Poll

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Poll Question # 1

Does the filing of an abstract of judgment extend the life of the judgment?

- Yes
- No.

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Writs of Execution

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Writs of Execution (Rule 621)

What is a writ of execution?

- An order from the court to a constable or sheriff to seize (“levy on”) the judgment debtor’s non-exempt property and sell it to pay off the judgment.
- Certain items of property are “exempt,” meaning they cannot be seized and sold
 - Civil Deskbook, page 159
 - Exempt Property Benchcard.

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How does a writ of execution work?

- Judgment creditor files an application for a writ of execution – normally must be at least 30 days after judgment
- There is a \$5 per page writ fee.
- The writ is returnable to the court in 30, 60, 90 days at the option of the judgment creditor.
- Can only be issued from a court with jurisdiction over the judgment.

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What must be included in the writ?

Description of the judgment.

Requirement that the officer execute the writ and collect the costs adjudged against the defendant and the costs of execution.

The rendering court and the time when the judgment was rendered.

Names of the parties.

A copy of the bill of costs taxed against the defendant.

Signed by the judge.

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When may a writ of execution be issued before the 30th day?

When the plaintiff files an affidavit stating that the defendant is about to remove his personal property subject to execution out of the county or is about to transfer or hide his personal property for the purpose of defrauding his creditors.

-- Rule 628.

26

Then what?

If the court finds that the requirements are met, the court signs the writ

The clerk will attach a copy of the bill of costs (including all court costs the judgment creditor has paid).

Then it goes to the constable's office for execution.

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What if the writ expires before the property can be sold?

If, after the levy, there is not enough time to sell the seized property before the writ expires, the sheriff or constable must return the writ to the court and the plaintiff must secure a writ of **venditioni exponas**, which authorizes the sheriff or constable to sell the seized property after the writ of execution expires.

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Execution docket (Rule 507.3)

The clerk must enter in the docket:

- Time when the writ of execution was issued.
- To whom it was directed and delivered.
- The amount of the debt, damages and costs.
- When the writ is returned, the clerk must note the return in the docket and show the manner in which it was executed.

29

What about an appeal?

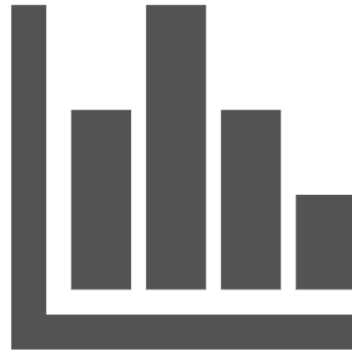
A writ of execution may not be issued once an appeal has been perfected.

A justice court judgment is not set aside, and a writ of execution may be issued, if:

- the case is one which cannot be appealed; or
- the county court dismisses the appeal because it has not obtained jurisdiction of the case.

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Time for a Poll



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Poll Question # 2

A party properly files an appeal bond with the justice court but fails to pay the filing fee in the county court. Can the justice court issue a writ of execution?

- Yes
- No.

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Stay of execution

- A defendant might have a judgment rendered against him that he is currently unable to pay but believes he will be able to pay within three months.
- He can request a stay of execution of the judgment.

33

Application for a stay of execution

Judgment debtor has to file an affidavit stating:

- He does not have the money to pay the judgment; and
- Enforcement of the judgment prior to three months would be a hardship on him and cause a loss of property which would not be caused if the execution were stayed for three months.

The judgment debtor and at least one surety approved by the judge must acknowledge that they are bound to the judgment creditor for the full amount of the judgment with interest and costs.

Rule 635

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Timing for Stay

- Within ten days after signing a judgment in justice court, the judge may grant a stay of execution for three months from the date of the judgment. Rule 635
- If signed, the judgment creditor cannot obtain a writ of execution, a writ of garnishment, a turnover order, ect., until the three months have passed.

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Garnishment

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judgment debtor

For example:

What is a writ of garnishment?
A judgment debtor has a bank account.

- The bank holds the money that actually belongs to the judgment debtor.

A writ of garnishment is how the plaintiff (the garnishor) can require the bank (the garnishee) to turn over the judgment debtor's money to satisfy the judgment.

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Which Court May Issue a Writ of Garnishment?



Only the court that issued the judgment that is being collected may issue the writ of garnishment.



The clerk of a justice court may issue a writ of garnishment returnable to the court.

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Pre-judgment garnishment

- Side note: there is a separate procedure for a pre-judgment writ of garnishment, which rarely comes up
- If it does, please see the Civil Deskbook, at page 132.

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What property may be seized?

- Only non-exempt personal property may be seized by a writ of garnishment.
- Judgment creditors may not seize real property (land) this way
- How does a judgment creditor know what non-exempt personal property the judgment creditor has? Post-judgment discovery

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Exempt property in garnishment proceedings

Some property is exempt from garnishment, such as:

- Current wages
- Worker's compensation benefits
- Government assistance funds

New rules allow a judgment debtor to assert that property sought in a garnishment proceeding is exempt (we'll get to that later).

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Step 1: application for the writ

The plaintiff must file an application for a writ of garnishment stating that:

- They have a final judgment against the judgment debtor; and
- The judgment debtor does not have enough property in Texas to satisfy the judgment with a writ of execution.

42

Filing fees

- \$5 writ fee for preparing and issuing the writ.
- Most courts charge the standard civil filing fee of \$54 since the rule says the case is docketed as a separate action. TJCTC agrees with this. It's okay not to charge it but be consistent and check with your county auditor.

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Here is the form

- <https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Writ of Garnishment -- Application

[Turnover Order - Updated May 2022](#)

[Writ of Attachment - Application - Updated /](#)

[Writ of Attachment - Updated April 2021](#)

[Writ of Execution - Application - Updated Ap](#)

[Writ of Execution - Updated April 2021](#)

[Writ of Execution - Request for Stay of Execu](#)

[Writ of Execution - Stay of Execution - Updat](#)

[Writ of Garnishment - Application - Updated](#)

[Writ of Garnishment and Notice to Defendan!](#)

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Step 2: Issuance of the writ

- A garnishment case is filed and docketed as a separate proceeding against the garnishee.
- Once the requirements for issuance of the writ are met, the clerk or judge must docket the case in the name of the garnishor as plaintiff and the garnishee as defendant; and

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Step 2: issuance of the writ (cont.)

- Issue a writ directing the garnishee to appear and state under oath what, if anything, it is indebted to the judgment debtor for and what property, if any, of the judgment debtor it has in its possession, and to hold any such property until further order of the court.

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Step 3: Service of the writ to the garnishee

A writ of garnishment must be served by a Constable or Sheriff (including a deputy).

- A private process server may not serve it.

The clerk gives the writ to a Constable or Sheriff or to the plaintiff for them to deliver to a Constable or Sheriff.

- The plaintiff will have to pay the service fee.

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Step 3: service on garnishee (cont.)

- Service may be on a Sunday.
- If the garnishee is a financial institution, then the writ must be served on the institution's registered agent for service of process if they have one.
- Financial Code section 59.008; Civil Practice & Remedies Code section 63.008

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Step 4: Service of notice on judgment debtor

Judgment debtor entitled to notice of the application, any accompanying affidavits, and orders of the court.

Judgment debtor also to be informed that the writ has been served and they have a right to move to modify or dissolve the writ, a right to regain possession of the property by filing a replevy bond, as well as the right to file a personal property claim form and request an exempt property hearing

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Service of notice on judgment debtor (cont.)

Notice may be served as you would a citation or any other manner allowed by Rule 501.4 (e.g., in person, mail, fax, email or other manner directed by the court).

Notice is supposed to be "as soon as practicable." Why is this service after service on the garnishee?

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Step 3: Service of the Writ and Notice to the Judgment Debtor - Form

- A form for this is located here:
<https://www.tjctc.org/tjctc-resources/forms.html> > Civil
Procedure Forms > Enforcement of
Civil Judgments > Writ of
Garnishment and Notice to
Defendant of Writ

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Time for a Poll

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Poll Question # 3

True or False:

A writ of garnishment may be used to seize any property of the judgment debtor held by the garnishee, including real property and current wages.

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Poll Question # 4

The notice to the judgment debtor should be sent:

- A. As soon as the garnishment case is filed.
- B. At the same time the writ of garnishment is served on the garnishee.
- C. After the writ of garnishment is served on the garnishee.

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Garnishee's answer

- The garnishee's answer must be filed by 10 am on the Monday following the expiration of ten days after service of the writ on the garnishee.

55

Ways a garnishee can respond

- Garnishee can fail to answer
- Garnishee can admit they hold assets of the judgment debtor, which is undisputed
- Garnishee can deny they hold any assets of the judgment debtor, which is undisputed
- Garnishee's answer can be disputed.

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If the garnishee fails to answer ...

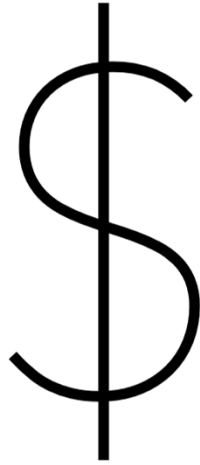
... and is not a bank, the court should enter a default judgment against the garnishee for the full amount of the judgment. This judgment is solely against the garnishee's assets, not the assets of the judgment debtor.

57

If the garnishee fails to answer but IS a financial institution ...

... then the default judgment is only as to the existence of liability. The plaintiff must prove "the amount of actual damages proximately caused to the [plaintiff] by the financial institution's default."

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The court may award the garnishor:

- Actual damages proximately caused to the garnishor by the financial institution's default; and
- For good cause shown, reasonable attorney's fees in establishing actual damages.

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Form when garnishee fails to answer

- A form for this is located here: <https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Writ of Garnishment – Default Judgment Against Garnishee

[Writ of Garnishment - Application](#) - Updated April 2021

[Writ of Garnishment and Notice to Defendant of Writ](#) - Updated May 2022

[Writ of Garnishment - Default Judgment Against Garnishee](#) - Updated March 2023

[Writ of Garnishment - Judgment Discharging Garnishee](#) - Updated March 2023

[Writ of Garnishment - Judgment](#) - Updated March 2023

[Writ of Garnishment - Notice to Garnishee of Trial](#) - Updated April 2021

60

If garnishee holds assets of judgment debtor

If the garnishee admits it is indebted to or holds assets of the judgment debtor, then the court must render judgment for the plaintiff against the garnishee.

- Subject to an exempt property claim (discussed below)!

The judgment should be for the amount the garnishee holds for the judgment debtor up to the amount currently due on the original judgment (including costs and interest).

61

But the garnishee gets paid.

If the garnishee is discharged based on its answer, the costs are taxed against the judgment creditor.

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For example,

- Mark has a judgment against Rebecca for \$3k, including costs and interest. In garnishment action, First Bank answers with a statement that it holds \$8k in Rebecca's account, and that it has spent \$400 in answering this suit. None of this money is exempt.
- In that case, Mark gets a judgment for \$3k, First Bank is paid \$400, and Rebecca gets to keep \$4,600.

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Time for a Poll

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Poll Question # 5

Mark has a judgment against Rebecca for \$3k. First Bank files an answer in garnishment case indicating Rebecca has \$600 in its account and indicates it has suffered \$600 in costs responding to this action. All of this is uncontested. Rebecca does not assert that the money is exempt. Assume no additional costs. Who gets what in the garnishment judgment?

65

Judgment in garnishment action?

- A. Mark gets judgment for \$3k. He is entitled to this amount under the original judgment.
- B. Mark gets judgment for \$600, the amount in Rebecca's account.
- C. First Bank recovers \$600, which are its costs in responding to the garnishment action. Mark gets nothing at this time.

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The form if the garnishee holds the judgment debtor's assets

- A form for this is located here:
<https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Writ of Garnishment – Judgment

[Writ of Garnishment - Application](#) - Updated April 2021

[Writ of Garnishment and Notice to Defendant of Writ](#) - Updated May 2022

[Writ of Garnishment - Default Judgment Against Garnishee](#) - Updated March 2023

[Writ of Garnishment - Judgment Discharging Garnishee](#) - Updated March 2023

[Writ of Garnishment - Judgment](#) - Updated March 2023

[Writ of Garnishment - Notice to Garnishee of Trial](#) - Updated April 2021

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If the garnishee denies it holds any assets and this is undisputed ..

If the garnishee files an answer denying that it has any of the judgment debtor's property and does not know of anyone else who holds any of their property (or if it does, it identifies that person), then the court must enter a judgment discharging the garnishee.

68

But the garnishee gets paid, part two.

If the garnishee is discharged based on its answer, the costs are taxed against the plaintiff.

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The form if the garnishee does not hold the judgment debtor's assets

- A form for this is located here:
<https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Writ of Garnishment – Judgment Discharging Garnishee

[Writ of Garnishment - Application](#) - Updated April 2021

[Writ of Garnishment and Notice to Defendant of Writ](#) - Updated May 2022

[Writ of Garnishment - Default Judgment Against Garnishee](#) - Updated March 2023

[Writ of Garnishment - Judgment Discharging Garnishee](#) - Updated March 2023

[Writ of Garnishment - Judgment](#) - Updated March 2023

[Writ of Garnishment - Notice to Garnishee of Trial](#) - Updated April 2021

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What if the garnishee's answer is controverted

Either the plaintiff or the judgment debtor may controvert the garnishee's answer.

In that case, if the garnishee is a resident of the county where the case is pending, then the court will try the issues that are controverted.

But if the garnishee is a resident of another county, then the issues that are controverted must be tried in a court in that county.

If that happens, the court must transfer the case to that county.

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We have a form for that too

- A form for this is located here:
<https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Writ of Garnishment – Notice to Garnishee of Trial

[Writ of Garnishment - Application - Updated April 2021](#)

[Writ of Garnishment and Notice to Defendant of Writ - Updated May 2022](#)

[Writ of Garnishment - Default Judgment Against Garnishee - Updated March 2023](#)

[Writ of Garnishment - Judgment Discharging Garnishee - Updated March 2023](#)

[Writ of Garnishment - Judgment - Updated March 2023](#)

[Writ of Garnishment - Notice to Garnishee of Trial - Updated April 2021](#)

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What, the attorneys don't get paid?

Neither the judgment creditor nor the judgment debtor can recover attorney's fees when the answer is contested, regardless of who wins.

[We get paid. We always get paid. Our client just can't recover costs.]

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Garnishee collecting fees in contested action

Garnishee may not collect if their answer is contested, and they lose. They are entitled to collect attorney's fees if their answer is contested, and they win.

74

How can a judgment debtor react?

- Exempt property claim
- Replevy
- Motion to Substitute Property
- Motion to Dissolve the Writ of Garnishment

75

If the judgment creditor files a Protected Property Claim Form

... the court must hold a hearing and the frozen or seized property may not be sold or transferred in the meantime.

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Replevy or motion to substitute

- Replevy: This means the judgment debtor may recover their assets by posting a replevy bond payable to the plaintiff in the amount set by the court's order.
- Motion to Substitute Property: The judgment debtor may file a motion to substitute property worth enough to satisfy the garnishment order.

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Another option: motion to dissolve or modify the writ

- Motion to Dissolve or Modify the Writ: The judgment debtor may move to dissolve or modify the writ. They must admit or deny each reason for issuing the writ, or explain why they cannot do so.
- The filing of the motion stays further proceedings. The court must hear the motion promptly (may be less than three days) after notice to the plaintiff.
- If the judgment debtor denies the grounds for issuance of the writ, the burden is on the plaintiff to prove those grounds.

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Time for a Poll

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Poll Question # 6

Mark files a garnishment case against Heavenly Bank to collect on \$5k on a judgment against Thea. Heavenly Bank is busy and fails to file an answer to the writ of garnishment. The court should:

- A. Enter a default judgment against Heavenly Bank for \$5k
- B. Enter a default judgment against Heavenly Bank only on liability and require Mark to prove his damages due to the bank's default.

80

Poll Question # 7

This time, Heavenly Bank files an answer stating Thea no longer has an account with the Bank and therefore it does not hold any of her assets and does not know where any of her assets could be located. No one responds. The court should:

- A. Set the case for trial.
- B. Order Thea to pay off the judgment held by Mark.
- C. Enter a judgment discharging Heavenly Bank.

81

Poll Question # 8

Heavenly Bank files an answer stating Thea has an account with \$8k. Thea files a response disputing the Bank's answer, claiming that the account belongs solely to her husband and not to her. The court should:

- A. Dismiss the case since Thea does not have an account there.
- B. Enter a judgment for Mark for \$4k because this is community property.
- C. Set the case for trial to determine who owns the account.

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Receivers

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What is a receiver?

A receiver is a person appointed by the court who has the authority given to them by the court in the order appointing them as a receiver.

- This means the authority to take possession of the judgment debtor's non-exempt property, sell it and pay the proceeds to the judgment creditor to satisfy the judgment.

84

What does a receiver do?

A receiver basically serves the same function as a constable or sheriff but only has the powers granted to them by the court in the order appointing him.

Most debt collectors want the court to appoint a receiver rather than using a writ of execution or a writ of garnishment.

Why might that be the case?

85

Court's authority

- A law saying a court may "aid" a judgment creditor by:
- Appointing a receiver with authority to take possession of non-exempt property, sell it and pay the proceeds to the judgment creditor.

-- Civil Practice and Remedies Code § 31.002

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Tex. Civ. Prac. & Rem. Code § 31.002(a)

A judgment creditor:

- is entitled to aid from a court of appropriate jurisdiction, including a justice court,
- through injunction or other means
- in order to reach property to obtain satisfaction on the judgment
- if the judgment debtor owns property . . . that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

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Tex. Civ. Prac. & Rem. Code § 31.002(b)

The court may:

(1) order the judgment debtor to **turn over** nonexempt property that is in the debtor's possession . . . , together with all documents or records related to the property, to a designated sheriff or constable for execution; . . . **or**

(3) **appoint a receiver** with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

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Where must the application to appoint a receiver be filed?

- With the court that issued the judgment that is being enforced;
or
- A court in which a foreign judgment has been domesticated.

89

Burden on judgment creditor

For the court to appoint a receiver the judgment creditor must prove that:

- The judgment debtor owns property; and
- That property is not exempt from attachment, execution or seizure and therefore may be used to satisfy the judgment.

90

How much evidence?

Cases hold that the court must have some evidence before it that establishes the “necessary conditions” for appointment of a receiver (on the previous slide).

- This is usually submitted by affidavit but could be done with testimony at a live hearing.

How much evidence is sufficient is within the court’s discretion.

91

Is the court required to appoint a receiver?

If the judgment creditor cannot show that the judgment debtor has non-exempt property, then the court should not appoint a receiver.

- How strict the court wants to be in scrutinizing the judgment creditor’s affidavit is up to the court.

For example, the court could ask the judgment creditor what evidence they have that the judgment debtor does have non-exempt property.

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SCOTX has the receiver form order you are required to use

The form is available here:

<https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Receivership – Order Appointing Receiver

[Exempt Property Claim Form \(Supreme Court Form\) - Added](#)

[Exempt Property Claim Form - Instructions \(Supreme Court F](#)

[Notice of Protected Property Rights \(Bilingual; Supreme Cou](#)

[Post-Judgment Discovery Order Including Sanctions - Update](#)

[Receivership or Turnover Order - Application - Updated April](#)

[Receivership - Order Appointing Receiver - Updated May 202](#)

[Receivership - Order to Disburse Funds - Updated April 2021](#)

93

Must the court hold a hearing?

No!

It is up to the court whether to hold a hearing or notify the judgment debtor of the application.

The court may grant the order ex parte.

Question:

- Why might you notify them?
- Why might you not notify them?

94

Fees and costs

- There is no filing fee for an application to appoint a receiver
- Costs are included in the form order appointing a receiver since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.
- But the receiver's fees must be reasonable and fair based on the amount of work done.

95

Approval of receiver's fees

- The receiver's fee is only approved conditionally.
- When they complete their work, they must ask the court to approve their fee based on the work they performed and the results they obtained.
- The court may approve the fee requested (typically 25% of the amount of the debt, which is added to the debt), or the court may approve a lesser amount.

96

I got your form right here.

See Order to Disburse Funds at this link: <https://www.tjctc.org/tjctc-resources/forms.html> > Civil Procedure Forms > Enforcement of Civil Judgments > Receivership – Order to Disburse Funds

[Exempt Property Claim Form \(Supreme Court Form\) - Added](#)

[Exempt Property Claim Form - Instructions \(Supreme Court F](#)

[Notice of Protected Property Rights \(Bilingual; Supreme Cou](#)

[Post-Judgment Discovery Order Including Sanctions - Update](#)

[Receivership or Turnover Order - Application - Updated April](#)

[Receivership - Order Appointing Receiver - Updated May 202](#)

[Receivership - Order to Disburse Funds - Updated April 2021](#)

97

Turnorder Orders

98

Tex. Civ. Prac. & Rem. Code § 31.002(b), again

The court may:

(1) order the judgment debtor to **turn over** nonexempt property that is in the debtor's possession . . . , together with all documents or records related to the property, to a designated sheriff or constable for execution; . . . **or**

(3) **appoint a receiver** with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

99

What is in a turnover order?

- The court orders the judgment debtor to turn over any non-exempt property to the constable or sheriff.
- Compare this to a writ of execution, which orders the constable or sheriff to take the property.

100

Judgment creditor's burden

Same as for appointment of a receiver.

The judgment creditor must also show that the judgment debtor owns property that is non-exempt and therefore may be used to satisfy the judgment.

The court where the application is filed is the court of jurisdiction, which is either:

- The court that issued the judgment; or
- A court where a foreign judgment has been domesticated.

101

How much evidence

“some evidence”

You are the fact finder

102

Must the court hold a hearing?

It is not required. It is up to your discretion.

103

Does the order have to identify the property to be turned over?

No.

But the property must be non-exempt, so the court may not order the judgment debtor to turn over the current wages or the paycheck.

104

The problem with being vague.

The turnover order can only be enforced with a contempt hearing, but how can the judgment debtor be held in contempt with an order that didn't order specific property to be turned over.

105

To whom does the judgment debtor turn over the property?

Not directly to the judgment creditor.

The property must be turned over to the constable or sheriff.

106

Fees and costs for turnover order

There is no filing fee for a turnover order.

But the constable or sheriff may charge a service fee.

Costs may be included in a turnover order since the judgment creditor is entitled to recover reasonable costs, including attorney's fees.

107

What do debt collectors prefer?

- Receivers!
- Not turnover orders, not garnishments
- Why is this so?

108

Time for a Poll

109

Poll Question # 9

A turnover order:

- A. Orders the constable or sheriff to seize non-exempt property of the judgment debtor and turn it over to the judgment creditor.
- B. Orders the judgment creditor to turn over non-exempt property to a constable or sheriff for them to sell and pay the proceeds to the judgment creditor.

110

Exempt property and exempt property hearings

111

Common exempt property

- See your Exempt Property Benchcard (Handout 1)

112

Homestead

Each person or family can designate a homestead that will be safe from creditors.

Most people already know about this because there are also property tax benefits to designating a homestead

See <https://comptroller.texas.gov/taxes/property-tax/exemptions/residence-faq.php>

113

Size of a homestead

Real Property			
Type	Amount		Statute
Rural Homestead	Family	200 acres	Property Code 41.001, 41.002
	Single Adult	100 acres	
Urban Homestead	10 acres		
Burial Plots	One or more		Property Code 41.001

114

Current wages

Current wages are exempt except for court-ordered child support, spousal maintenance, federally guaranteed student loans, or federal income taxes owed. Civ. Prac. & Rem. Code section 63.004.

Most often current wages come up in garnishment.

115

Definition of “current wages”

“Current wages” are an employee’s pay that is due for personal services.

- This doesn’t include commissions paid to an independent contractor.

Once the money is deposited in a bank account, it is no longer “current wages.”

116

Retirement, Healthcare & College Savings Plans are exempt

Federal law also makes these issues exempt.

Why do you think they are exempt?

117

Time for a Poll

118

Poll Question # 10

A judgment debtor has 30 head of cattle on his ranch. How many can the constable seize?

- A. 20
- B. 12
- C. 18
- D. 30
- E. None

119

Poll Question # 11

John is a judgment debtor who owns five vehicles. He has a 17-year-old daughter and a wife who live with him. How many vehicles are exempt property?

- A. Only 1
- B. All 5
- C. 3 if each of them has a DL

120

Exempt Property Hearings

121

Judgment language

All judgments issued by a justice court that award money damages must now contain this language in English and Spanish:

- “If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property.”

122

Updated forms on TJCTC site

This includes judgments in:

- debt claims cases
- small claims cases
- defaults
- eviction cases which award back rent
- summary disposition.

123

TRCP 679b Personal Property Exemptions in Post-Judgment Proceedings

Handout 2

RULE 679b. PERSONAL PROPERTY EXEMPTIONS IN PROCEEDINGS

- (a) *Exemption Notice.*
- (1) *Notice Required.* If a post-judgment turnover order under section 31.002 of the Civil Practice and Remedies Code, or other post-judgment order restraining personal property of an individual judgment debtor, a judgment creditor must serve the judgment debtor with the Rights, the Instructions for Protected Property Claim Form approved by the Supreme Court or judgment creditor must fill in the case style and Notify” in the Protected Property Claim Form.

124

Service of forms

The judgment creditor or receiver must serve the judgment debtor with the Seizure Exemption Notice, Instructions and Exemption Claim Form within three days after they have notice that property has been seized.

125

Restrictions on sale of property

- Seized property may not be sold within 14 days after service of those documents (17 days if service is by mail).
- If a judgment debtor files a Seizure Exemption Claim Form, the court must hold a hearing and the property may not be sold until the court determines the claim.

126

The hearing

- Each party is entitled to notice of the hearing.
- The burden of proof is on the judgment debtor.

127

Timelines

The court must determine the Exemption Claim within 10 days after the judgment debtor files the claim.

- The court may extend the time for good cause.

If the court determines the property is exempt, the court must order its release within three business days.

128

Exempt Property Lightning Round

129

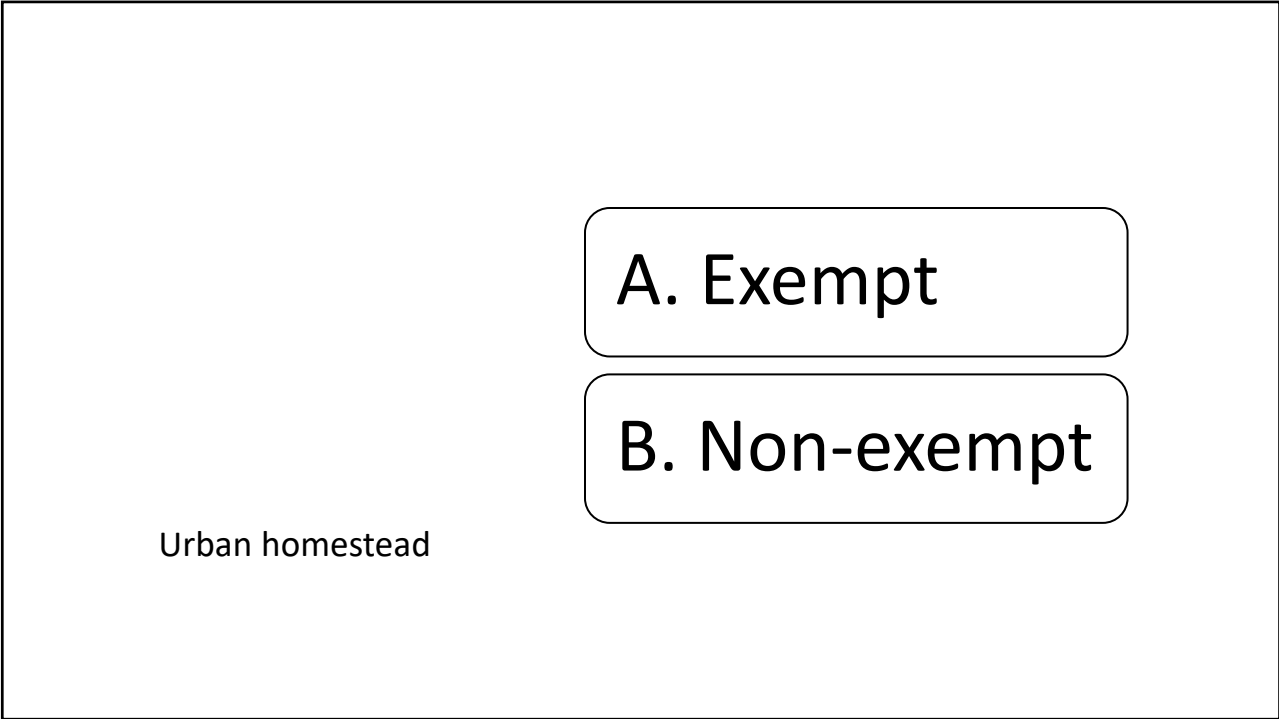
Chapter 41 and 42 of the Texas Property Code govern most property exemptions.

Use the exempt
property bench
card (Handout 1)

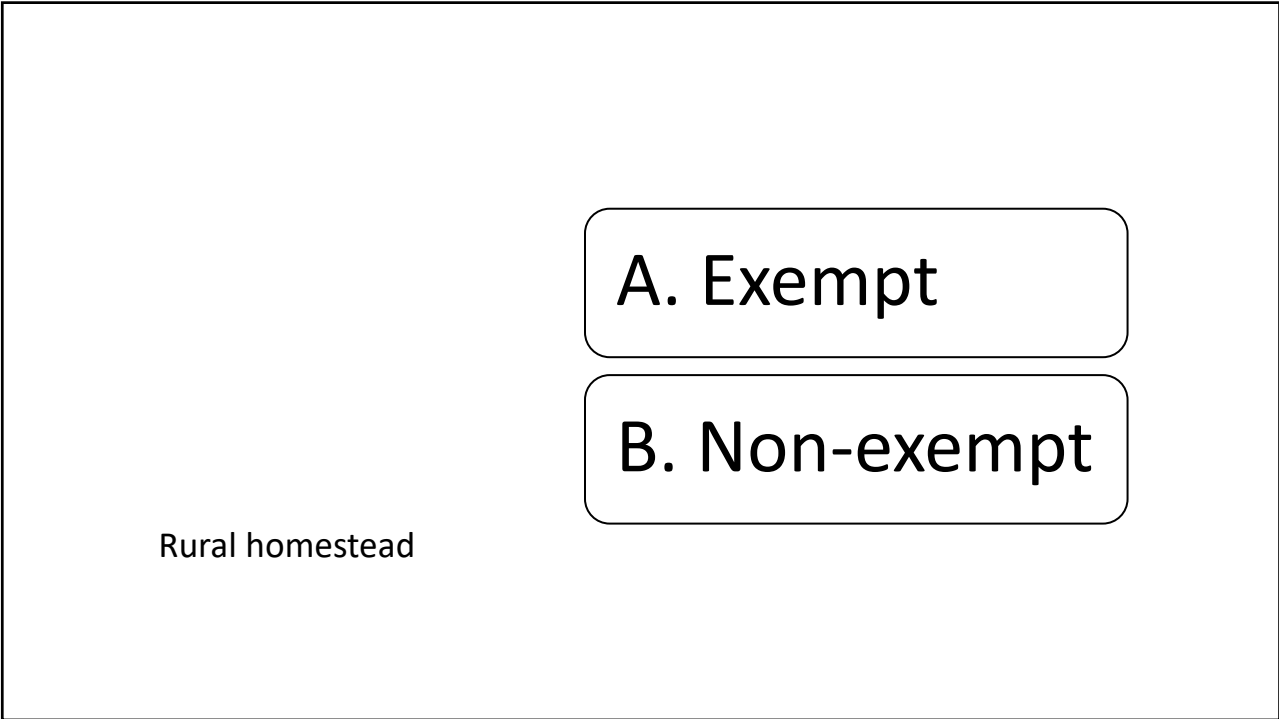
Real Property			
Type	Amount		Statute
Rural Homestead	Family	200 acres	Property Code 41.001, 41.002
	Single Adult	100 acres	
Urban Homestead	10 acres		
Burial Plots	One or more		Property Code 41.001

Personal Property - No Aggregate Limits	
Type	Statute
Current Wages for Personal Services <i>*except for the enforcement of court-ordered child support payments</i>	Property Code 42.001
Professionally Prescribed Health Aids <i>*of debtor or debtor's dependent</i>	
Alimony, Spousal Support, or Spousal Maintenance	

130



131



132

Second home

A. Exempt

B. Non-exempt

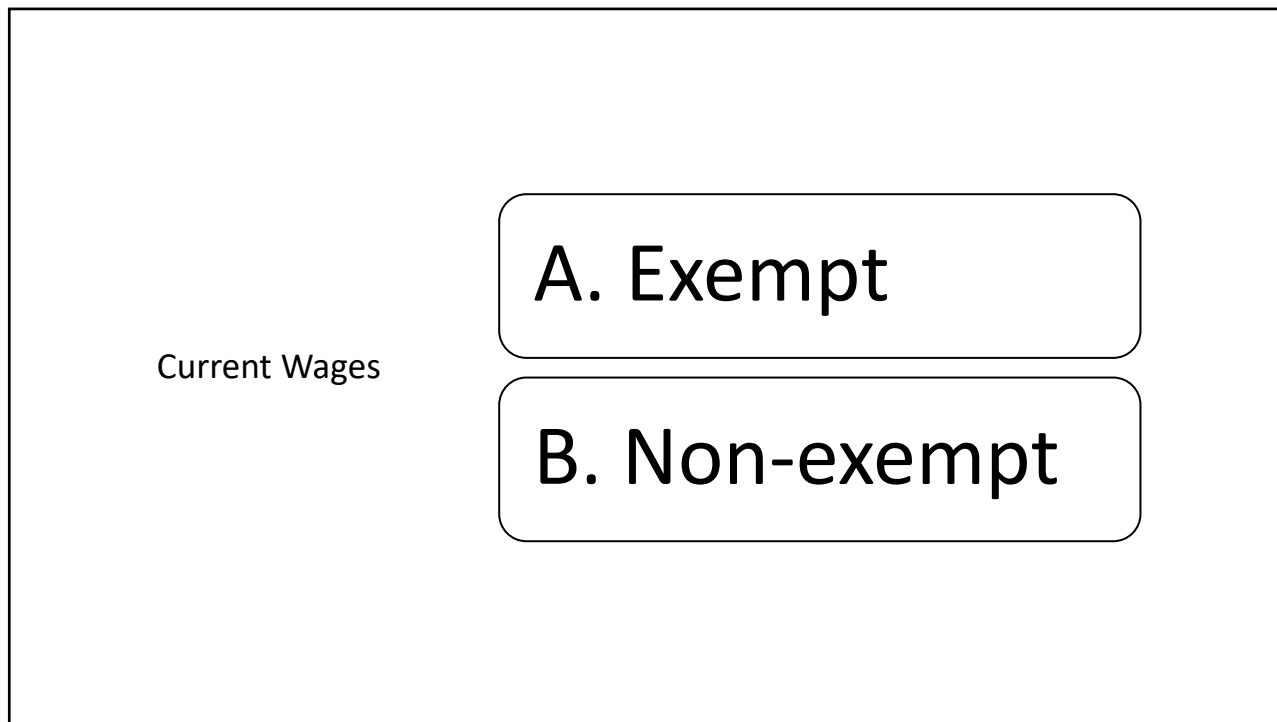
133

Burial plots

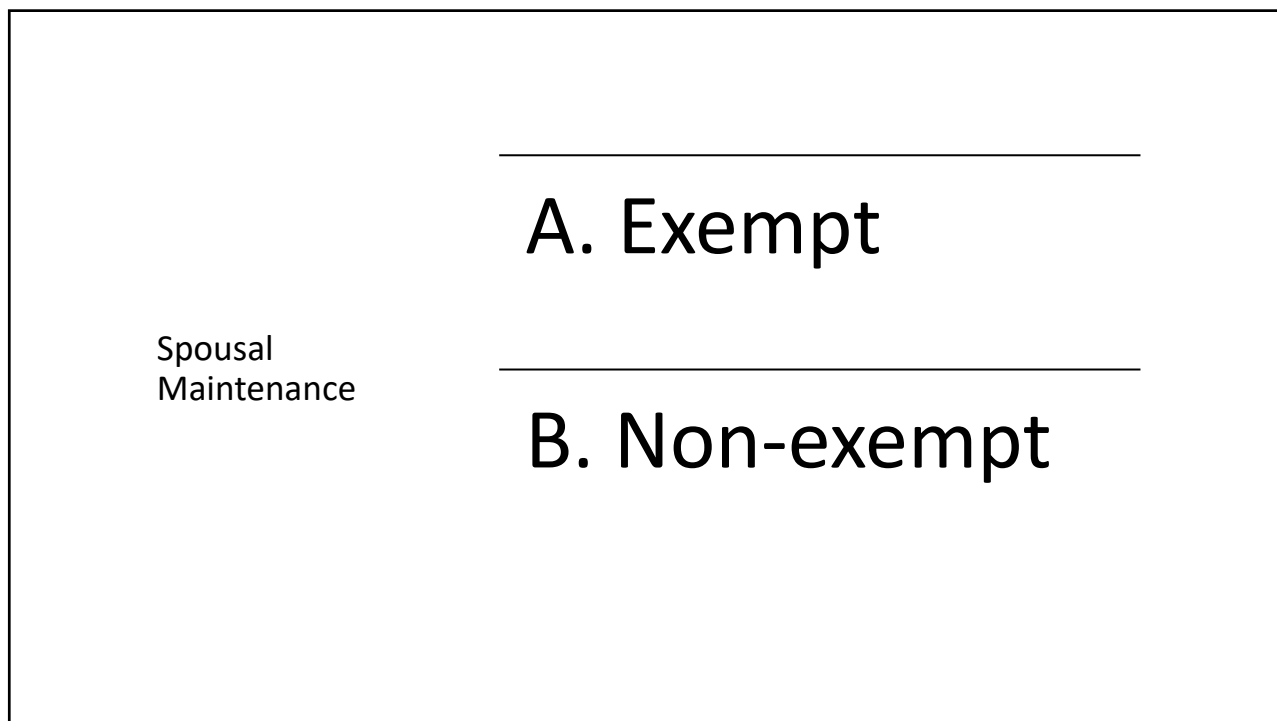
A. Exempt

B. Non-exempt

134



135



136

Bible or other
religious text

A. Exempt

B. Non-exempt

137

Pension or
retirement
accounts

A. Exempt

B. Non-exempt

138

Pop Quiz

139

Amber gets a judgment against Bronson. She knows Bronson has a lakehouse on Lake Travis. In order to be able to get money from the sale of the lakehouse to pay the judgment, Amber needs a _____.

140

Thea wins a judgment against Loc, and finds out in post-judgment discovery that Loc has money in the bank. If Thea wants to get that money, she needs a

_____.

141

Bronson wins a judgment against Mark. Mark owns valuable pieces of hemp art. In order for that art to be seized and sold, and the money given to Bronson, he should get a

_____.

142

Mark wins a judgment against Rebecca. Rebecca has some property in a lockbox and wouldn't allow the constable to look inside during execution. What kind of order could Mark get to force Rebecca to let the constable take the property?

_____.

143

Resources

144

This TJCTC publication is aimed more at constables but can educate on what occurs when writs are executed.



Practical Guide to Writs of Execution



An Educational Endeavor of the Justices of the Peace
and Constables Association of Texas, Inc. Funded by the
Texas Court of Criminal Appeals

145

Other resources

- Garnishment module! You may watch it here:
<https://www.tjctc.org/onlinelearning/selfpacedmodules.html>
- Civil Deskbook (4th ed. Sept. 2023) :
<https://www.tjctc.org/tjctc-resources/Deskbooks.html>
- Legal Board: search for abstract, execution, garnishment, turnover, receiver, exempt, dormant!
- Forms: <https://www.tjctc.org/tjctc-resources/forms/Small-Claims.html>
- Exempt Property Chart: <https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>

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Questions?