

Writs: Sequestration, Abstracts, Executions, & Garnishments

Bronson Tucker, General Counsel, TJCTC

Amy Tucker, Civil Division Coordinator, Justice of the Peace Pct. 2, Travis County

1

© Copyright 2025. All rights reserved.
Creation of this material was funded by a grant from the Court of Criminal Appeals. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd, Suite 530, Austin, TX, 78744.

2

Resources

- Civil Deskbook – Chapter 10
 - See also Civil Process Field Guide & Practical Guide to Writs of Execution for info from constable perspective
- Forms -> Civil Procedure Forms -> Enforcement of Civil Judgments
- Garnishment Self-Paced Module
- TRCP 621-656 (execution), 657-679 (garnishment), 696-716 (sequestration)
- Property Code Sec. 52.002, 52.003 (abstract)
- CPRC Chs. 34 (execution), 62 (sequestration), 63 (garnishment)

3

Sequestration – What?

Order to hold a piece of personal property in custody while a case regarding who has possession is pending

- What is the difference between “personal property” and “real property”?

Does not create a *lien* (ownership interest) against the piece of personal property

4

Sequestration – Example

- Chris is in possession of a trophy with a value of \$10,000. Josh claims that he is the rightful possessor of the trophy and files a small claims case to be awarded possession. Josh's attorney Torrance wants to ensure that the trophy isn't lost, sold, damaged, or destroyed, and so files a writ of sequestration to have the trophy held safe during the pendency of the trial.

5

Sequestration – When?

- Must be filed with or after commencement of a suit
 - What if property is worth more than \$20,000?
- Cannot just file the writ itself to have the court act as a “repo man” for the piece of property
- Must be immediate danger that the property will be concealed, disposed of, ill-treated, wasted or destroyed, or removed from the county.
 - Rule 696, CPRC Sec. 62.001

6

Sequestration – How?

- Application – outlining statutory grounds (Rule 696) – *no fee for application, what about service?*
- Hearing – may be ex parte
- Bond – Rule 698 (purpose of bond?)
- Replevy bond – (what is this?) – 10 day first bite (Rule 701, 708)
- Written order – Rule 696
 - Findings of fact, specific description, value, county of location

7

Customer Service Corner - Sequestration

- A party comes in and says they are suing to recover possession of livestock and they have some questions. How would you respond?
 - Is a sequestration available?
 - What happens to the livestock if sequestered?
 - Who pays for that?
 - What is the difference in sequestration and a “special writ” to enforce the judgment for personal property?

8

Sequestration – Scenarios

- The constable goes out to execute a writ of sequestration and is unable to locate the property. What are the next steps for the parties and the court?
- What if the property is instead behind a locked gate, can the constable break into the property to execute the writ?
- The constable finally locates the property and relocates it to a warehouse. Someone breaks in and steals the property. Is the constable liable?

9

Abstract – What?

- A document that summarizes details about a judgment, placed on file with the county clerk's office.
- An abstract of judgment places a *lien* (ownership interest) on any *real property* located in the county.
 - How does this help?

10

Abstract – When?

- Can be requested *as soon as the judgment is final*.
 - What about appeals?
- Can be prepared by an attorney, or by the court upon request of a party or attorney.
 - If an attorney does it, you will likely not know
- If the court prepares the abstract, the party or attorney takes the document to file with the county clerk.
 - Property Code Sec. 52.002

11

Abstract – How?

- Court may charge \$5 fee for preparation
- Must contain:
 - Names of the parties
 - D birth date and last 3 numbers of DL & SSN, if available
 - Cause number, date and amount of the judgment
 - Balance due and interest rate of the judgment
 - Property Code Sec. 52.003

12

Customer Service Corner - Abstract

- “I need this judgment to not go dormant, so I need to get an abstract of judgment, please.”
- “The judgment debtor paid the debt so I need you to release the abstract.”
- “How long does my lien last? Can I get another abstract when this one runs out?”

13

Execution – What?

- A writ directing the sheriff/constable to *levy on* (seize) non-exempt property belonging to the defendant, sell it, and deliver the proceeds of the sale to be applied toward the judgment amount.
- Also has the effect of renewing the life of the judgment back to the original 10 years.
- Rules 621, 629; CPRC Sec. 34.001

14

Execution – When?

- Generally cannot be issued until at least 30 days after the judgment is signed (why?) – Rule 627
- May be issued within that period if plaintiff files an affidavit claiming the defendant is going to remove, transfer, or hide personal property to defraud creditors – Rule 628
- Cannot be issued if an appeal is perfected (why?)

15

Execution – How?

Party files an application, including \$5 per page writ fee

Constable will have separate service fee

Writ is valid for 30, 60, or 90 days, at the direction of the plaintiff (Rule 621)

Must include a copy of the bill of costs with the writ (Rule 629)

16

Execution – Requisites

- The writ must:
 - Be signed by the judge
 - Be directed to an officer to execute and return the writ, including collecting the costs of execution
 - Include description of the judgment, parties, and court

17

Execution Docket

- Court must maintain a searchable execution docket, including names of the parties, amount and balance of judgments, when the writ was issued, to whom the writ was delivered, and any returns.
- Rules 507.3, 656

18

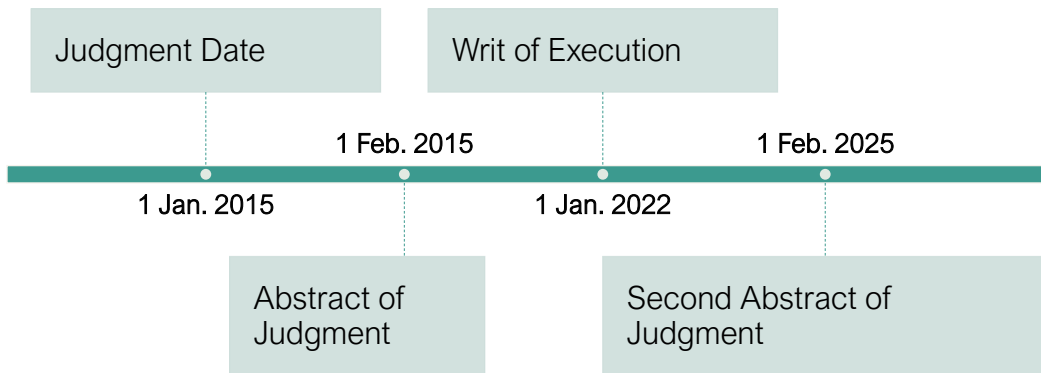
Customer Service Corner - Execution

- What if a plaintiff doesn't specify 30, 60, or 90 days?
- What happens if property is taken during the time period, but the period expires before the sale can occur?
- "The constable came and took some of my property, but I don't think it was legal for them to take what they took. What can I do about this?"
- "I can't pay right now, but will be able to pay soon. I don't want my property seized. Do I have options?"

19

Fun with Math – Execution and Abstract

When does the judgment go dormant? When does the lien expire? What are the answers if another execution issues on January 1, 2027?



20

Garnishment – What?

- An order from the court to a 3rd party to turn over assets belonging to the judgment debtor to the judgment creditor to satisfy the judgment.
- Who would be a likely 3rd party who would hold assets belonging to the judgment debtor?

21

Garnishment – When?

- Limited availability pre-judgment (rare, see P. 132 of the Civil Deskbook for requirements and procedure)
- Post-judgment, a party is entitled to garnishment if they have a final judgment and file an affidavit that the defendant lacks sufficient resources non-exempt from execution to satisfy the judgment
- Rules 657, 658; CPRC Sec. 63.001

22

Garnishment – How?

- The garnishment action is docketed as a separate action, with the judgment creditor as the plaintiff and the 3rd party as the *garnishee* – Rule 659
- A writ fee may be charged and most courts assess a new filing fee as well, and constable service fees are incurred
- The writ directs the garnishee to file an answer stating what assets belonging to the j/m debtor, due the next Monday after expiration of 10 days – Rule 661

23

Garnishment – Contents and Service

- Writ must comply with Rule 661, orders the garnishee to answer and to not turn over any assets to the judgment debtor
- Writ can be delivered to constable/sheriff or to plaintiff for them to deliver to constable/sheriff for service
- If 3rd party is financial institution, can be served on registered agent – Finance Code Sec. 59.008

24

Garnishment – Notice to the Defendant

Only after the writ is served on the garnishee, the defendant must be provided notice of the writ (why after?), served as provided by Rule 501.4

Notice must include the application, order, and the defendant's rights to modify or dissolve the writ, replevy seized property, as well as their exempt property rights

- Rule 663a

25

Garnishment – Garnishee Fails to Answer

- The court enters a default judgment for the full amount, including interest/costs and attorney's fees in the garnishment, against the garnishee, to be satisfied with the garnishee's assets, not the judgment debtor's!
 - Rule 667
- However, this *does not* apply if the garnishee is a financial institution (as they usually are)

26

Garnishment – Garnishee is Bank & Fails to Answer

- If a financial institution fails to answer, the default judgment is granted as to liability, however, the plaintiff must show actual damages from their failure to answer. They may also be awarded attorney's fees "for good cause."
 - Finance Code Sec. 276.002

27

Garnishment – Garnishee Answers

- If they claim to possess non-exempt assets belonging to the judgment debtor, the court should enter judgment in favor of the plaintiff, for the greater of the amount currently due or the amount of non-exempt assets. (Rule 668)
- If they claim they do not have assets, the court enters judgment discharging the garnishee and awarding attorney's fees against the garnishee. (Rule 666)

28

Garnishment – Answer Controverted

Either party can controvert (dispute) the garnishee's answer.

If the answer is controverted, the court must set the matter for a hearing, if the garnishee is located in the county, or transfer the matter for hearing in the county of the garnishee's location if not.

29

Garnishment – Costs and Attorney's Fees

If the answer is controverted, costs are awarded to prevailing party, but no attorney's fees to plaintiff or defendant (but can be to garnishee, if answer is upheld)

If the garnishee answers that they have assets, and it is uncontroverted, the garnishee recovers attorney's fees from the judgment amount, and the plaintiff recovers costs

If the garnishee is discharged, costs and fees taxed against the plaintiff

30

Garnishment – Defendant's Rights

- Right to Replevy (Rule 664)
- Motion to Modify or Dissolve (Rule 664a)
- Right to Substitute Property (Rule 664)
- Protected Property Claim Form (Rule 679b)

31

Customer Service Corner – Garnishment

- “Can I garnish the defendant’s wages with this?”
- “How do I know what bank they have money in?”
- “If I don’t know if they have money in their account, should I just go ahead and file the garnishment? What happens if they don’t have any money in it?”
- “My bank account is frozen and I never got any notice!”

32

Garnishment – Fun With Math

- 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.
- How much is Mark awarded, First Bank awarded, Rebecca can keep?