

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

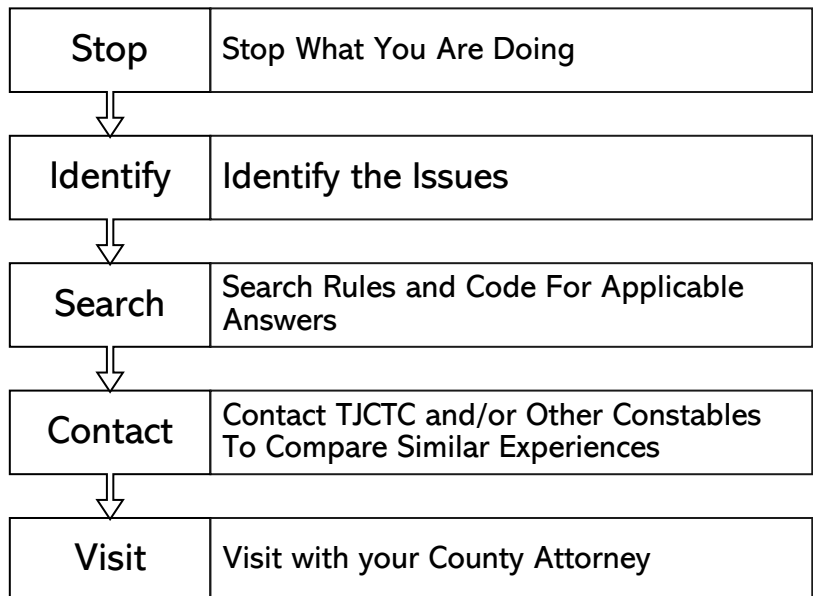
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How to Avoid Errors in the First Place?

- 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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Questions From the Field

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Want Us to Address Your Situation?

- Each table has index cards. Write out the gist of a write error scenario and turn it in at the end of the first hour. We will review a couple of them in the second hour!
- Sorry that we won't have time to get to them all!

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Other Scenarios

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Scenario 1

- Your office receives three executions in the following sequence:
 - 1st writ – j/m debtors Tiffany Morgan, TM Land Corp
 - 2nd writ – j/m debtors Tiffany Morgan, TM Land Corp, MorganCorp
 - 3rd writ – j/m debtor Tiffany Morgan
- Creditor on writ 2 instructs deputy to levy on real property owned by MorganCorp. Tiffany Morgan makes offer to satisfy judgment in full on writ 2 to stop the sale. Can they accept this payment, or does it have to go to the first writ?

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Scenario 2

- 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 3

- 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 4

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

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Scenario 5

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

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Scenario 6

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

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Scenario 7

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

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