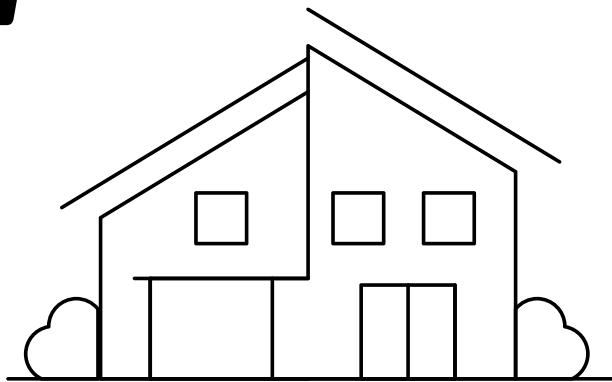


Exempt Property Issues



Mark Zuniga



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Texas Justice Court Training Center
1701 Directors Blvd. Suite 530
Austin, TX, 78744



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Exempt Property Played a Role in Texas History

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Today's Class

01

Resources & Pre-Quiz

02

Protected Property Hearings
& Exempt Property Review

03

Scenarios

04

Reminders

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Resources & Pre-Quiz

Are you up-to-date on exempt
property issues??

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Resources

- Exempt Property Self-Paced Module
- Civil Deskbook (*pages 157-58*)
- TX Rules of Civil Procedure

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Exempt Property Benchcard

What is Exempt Property?

Texas property law exempts certain categories of property from seizure to satisfy a debt. This means that if a judgment is entered against a person, it can only be satisfied by specific categories of properties that are not exempt by the law called, ***non-exempt property***. Chapter 41 and 42 of the Texas Property Code govern most property exemptions.

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

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Forms

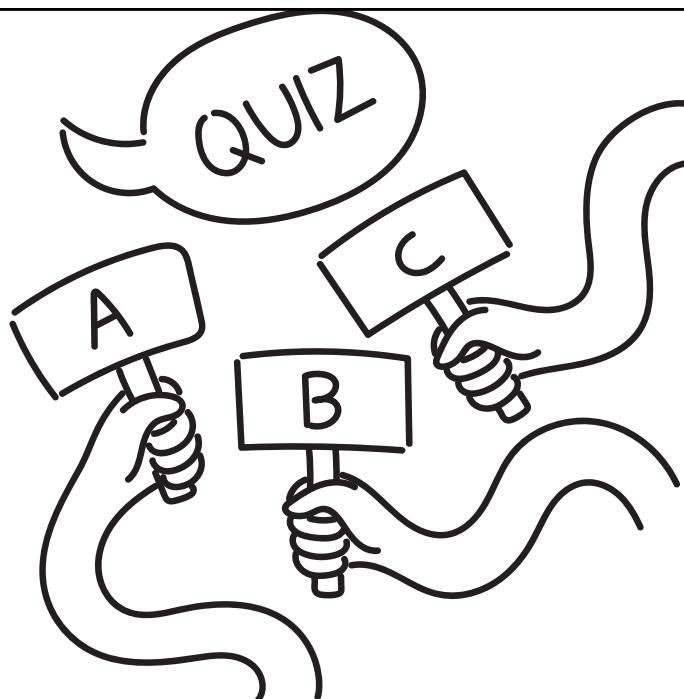
- Exempt Property Claim Form (*Texas Supreme Court*)
- Exempt Property Claim Form – Instructions (*Texas Supreme Court*)
- Notice of Protected Property Rights (*Bilingual; Texas Supreme Court*)
- Updated judgment forms for all money judgments
- Updated garnishment forms
- All forms can be found on TJCTC Forms Page:
<https://www.tjctc.org/tjctc-resources/forms.html>

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Resources You May Provide to the Public

- Toolkit: My Debt Collection Rights in Texas by Texas Appleseed
 - <https://mydebtcollectionrights.org/>
- Texas Law Help - <https://texaslawhelp.org/>
- Texas State Law Library Self-Help -
<https://www.sll.texas.gov/legal-help/>
- Texas Attorney General Debt Collection and Relief -
<https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief>
- TJCTC Self-Represented Litigant Page – www.tjctc.org/srl

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So you think you know Exempt Property?

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QUESTION #1

Multiple Choice

The court must determine a judgment debtor's exemption claim within _____ days after the claim is filed.



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QUESTION #2

True / False

Any personal property that is used to run a business is exempt under the “tools of the trade” exception.



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QUESTION #3

Multiple Choice

Which of the following are a category of exempt personal property?



Government Benefits



Burial Plots



Homestead



Personal Savings Account

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Protected Property Forms

Remember: Make sure judgment debtors have your contact information.

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Protected Property Forms

- The *judgment creditor or receiver* must serve the Notice of Protected Property Rights, Protected Property Claim Form, and Instructions
- It is still important for you to know what is in them and have them handy in case you need to refer to them.
- You can always let the judgment debtor know they exist/are coming. This can speed up the process and is good community service.
- Make sure they have your contact info in case they file a claim, especially if you are serving for a court you don't regularly have contact with!

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New Garnishment Notice

- Must be given *by Plaintiff to Defendant* on the front of the writ
- Explains exemptions to garnishment
- Explains how to use the new forms for seeking an exemption
- Includes how to find legal help & replevy options

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New Rule 679a

- Requires a justice of the peace to use the new Order Appointing Receiver in Justice Courts form
- Requires all courts to include language regarding the process to seek an exemption under Rule 679b by either using the above form or adding in some required language in this rule

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New Rule 679b

- Outlines the notice and process for a judgment debtor to make a personal property seizure exemption claim.

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Forms

- Exempt Property Claim Form (*Texas Supreme Court*)
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Exempt Property Hearings

Remember: The judge can develop the facts. *Rule 500.6*

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Hearing Procedure

- Judgment debtor files a Protected Property Claim for or another sworn document with the same information.
- Court sets the hearing and notifies the parties (including receivers, constables, or sheriffs involved in the case).
 - Hearing must be within 10 days of when the exemption claim was filed unless there is good cause to extend the time.
 - The receiver or officer cannot sell the judgment debtor's property until after the court determines the exemption claim.

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When do wages stop being current?

A writ of execution has been issued for you to seize all non-exempt property from the judgment debtor. He lets you into his home to show you that he has no non-exempt property. You see his paycheck on a desk. Can you seize it?

What if the judgment debtor deposits the check into his checking account. Is it exempt then?

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Scenarios

Remember: You can use your phones to look at online resources.

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Scenario 1

Zebulon and Ester *Is it a rural or urban homestead?*

By <https://www.famefocus.com/wp-content/uploads/2016/06/waltons-house-1024x768.jpg>,
Fair use,
<https://en.wikipedia.org/w/index.php?curid=25660694>

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Zebulon and Ester

After they married, Zebulon and Ester bought a 200-acre farm in the middle of the country. Since then, suburbia sprung up around them. Their home is now located within the city limits. They began receiving police protection, electric, natural gas, sewer and storm sewer services from the city after they moved in. They still use a well for water.

There is a judgment against Zebulon and Ester. The attorney for the judgment creditor argues that the couple can only protect 10 acres for their urban homestead. Is that correct?

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Scenario 2

ABC Legal v. Debra Defendant *Is the vehicle exempt?*

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Scenario 2

ABC Legal v. Debra Defendant *What should Bobby Bailiff do??*

"I went to 123 W Street to make demand on a writ of execution against Debra Defendant. There were 3 cars in the driveway, so I looked up who the registered owners were. When I saw that Debra had 2, I decided to seize one if Debra didn't point out any other property to seize. I know 123 W Street is her homestead, because the plaintiff's attorney did some research and shared it with me"

- 3 cars at her home: 1 registered to Mark Defendant and Debra Defendant (minivan), 1 registered to Debra Defendant (Tahoe), and one registered to Grandma Defendant (car)
- Grandma Defendant's license has been expired for 4 years.
- I didn't see a handicap placard in any of the vehicles
- I don't know if the son has a driver's license
- The plaintiff's attorney suggested the seizure of the Tahoe.

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Scenario 2 Discussion

ABC Legal v. Debra Defendant

What questions should Bobby have asked?

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Scenario 3

Tiger Financial v. Bobby Bennett, d.b.a. Bennett Books
Homestead?

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Scenario 3

Tiger Financial v. Bobby Bennett, d.b.a. Bennett Books – Protected Property Claims + Homestead

Cathy Constable's Testimony in Justice Court: "I went to make demand on Bobby, and he lost it. He was very angry and kept ranting about how I can't take his home. The plaintiff's attorney had emailed me property records when I received the writ. Bobby's homestead is a ranch, and it doesn't even matter. I don't think this court gets to decide anyway. Of course, I'll do what you want judge, but I thought real property decisions were not in this court."

The plaintiff's research also shows that Bobby owes back taxes on his bookstore as well and his wife filed for divorce 10 years ago, but the case was eventually closed.

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Scenario 3 Discussion

Tiger Financial v. Bobby Bennett,
d.b.a. Bennett Books
Did Cathy do the right thing?

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Scenario 4

Perry Plaintiff v. Danny Defendant *Is the travel trailer exempt?*

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Scenario 4

Perry Plaintiff v. Danny Defendant *What should the constable do?*

Danny Defendant

“I got into some financial trouble after I retired. I thought I saved enough, but I didn’t. I do owe Perry money, but he can’t take my home. I live in my trailer. Also, the only money I get is my Social Security Retirement.”

- Sold his farm a few months ago and moved into his travel trailer.
- Travel trailers is parked at the local RV Park.

Perry Plaintiff

“Travel Trailers aren’t exempt. They are personal property, and I should be able to take it to get paid back.”

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Scenario 4 Discussion

**Perry Plaintiff v. Danny
Defendant**
How do you handle travel
trailers in an execution?

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Scenario 5

I have a writ only for John,
but all of his property is
owned by John and his wife
Rebecca. Is it protected?

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Scenario 5: Fire starter

- John and Rebecca sign a lease for an apartment.
- John falls asleep with a lit cigarette. This causes the building to catch on fire
- The landlord sues John and gets a judgment against him for the damage to the building.
- To what extent can this judgment be satisfied by Rebecca's separate property? What about community property solely controlled by Rebecca?

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Difference between community and separate property, 30-second version

- Anything acquired prior to the marriage is separate property
- A gift, an inheritance, or a personal injury settlement is separate property
- Otherwise, anything acquired during the marriage including salary, is community property.
- Name on the title does not necessarily matter.

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Tex. Prop. Code § 3.202(a)

A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

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Tex. Prop. Code § 3.202(b)

Unless both spouses are personally liable as provided by this subchapter, the community property subject to a spouse's sole management, control, and disposition is **not** subject to:

- (1) Any liabilities that the other spouse incurred before marriage; or
- (2) Any nontortious liabilities that the other spouse incurs during marriage.

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Tex. Prop. Code § 3.202(d)

All community property is subject to tortious liability of either spouse incurred during marriage.

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Lightning Round

Remember: You can use your phones to look at online resources.

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Lightning Round 1

A plaintiff's attorney wants me to levy on some rural property, but the judgment debtor's attorney says a rural homestead doesn't have to be contiguous. Who is right?!

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Lightning Round 2

So, I seized some firearms. What do I do now?!

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Questions

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Reminders

Remember: Don't forget about
the Exempt Property Module!

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