

Receiverships

Hon. Judge Blanca Oliver

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Resources

www.TJCTC.org

- Deskbooks, especially the Civil Deskbook
- Handout 1 – Exempt Property

<https://www.txcourts.gov/rules-forms/rules-standards.aspx>

- Texas Rules of Evidence
- Texas Rules of Civil Procedure

statutes.capitol.gov

- Texas Constitution and Statutes

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TJCTC also has a self-pace module on exempt property

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Forms

- Order Appointing Receiver (*Texas Supreme Court*)
- 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
- 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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The problem: money is owed.

A judgment debtor is entitled to aid from a court of appropriate jurisdiction, including a judgment court, to reach property to obtain satisfaction on the judgment if the judgment debtor owns non-exempt property.

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One tool for enforcing judgment: turnover

The court can order that the debtor turnover non-exempt property to the constable or sheriff in order for that property to be sold to repay the debt.

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Another tool: garnishment

In an independent action, the court can order a third party (like a bank) to give the debtor's nonexempt property to a constable or sheriff in order to pay a judgment.

9

Today's solution: appoint a receiver

The court may appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment debtor to the extent required to satisfy the judgment.

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What is a receiver?

A receiver is an officer of the court. They do not represent the creditors directly. Their job is to find and collect non-exempt property to pay a debt owed by the judgment debtor.

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In many circumstances ...

the receiver will freeze the judgment debtor's bank account to encourage compliance and then unfreeze the account once the debtor has agreed to a payment plan.

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Advantages of having a receiver

Cheaper than other options.

Greater flexibility in obtaining non-exempt assets.

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Where does a judgment creditor file a garnishment action?

The application for an order appointing a receiver must be filed in “a court of appropriate jurisdiction.”

Position of TJCTC is that the “appropriate” court is the court in which the judgment is granted.

Other disagree, arguing that the statute says the application must be filed in “A court of appropriate jurisdiction,” not “THE court of appropriate jurisdiction.” Also, the statute says that the application may be filed in the same proceeding as the judgment; it is not required.

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Application for receiver

*Can also be filed in your
court for a foreign judgment
that has been domesticated
in your court.*

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There is no filing fee for
an application to appoint
a receiver filed in same
proceeding as the
judgment.

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What must a judgment creditor prove?

The judgment debtor owns property, including present or future rights to property; and

The property is not exempt from attachment, execution, or seizure.

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Time for a Poll

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Poll 1

The short application for a receiver merely states that that the judgment debtor has nonexempt property that is not readily subject to attachment or levy. Is that sufficient to appoint a receiver?

- A. Yes
- B. No

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Poll 2

Is a judgment debtor entitled to notice prior to the appointment of a receiver?

- A. Yes
- B. No

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Poll 3

Can an order to appoint receiver be appealed?

- A. Yes
- B. No

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The court may require that the receiver

1. Be a resident of Texas;
2. Take an oath to faithfully execute their duties; and
3. To post bond in an amount within the court's discretion.

Why require a bond? How common is it to require a bond?

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Judgment debtor cannot enforce rights they don't know they have

- Judgments awarding monetary damages have to inform judgment debtors about exempt property. Rule 505.1(c)(6).
- Receiver or judgment creditor must serve debtor the Notice, Instructions, and Claim Form within 3 days of seizure or freeze. Rule 679b(a)
- No sale or distribution within 14 days of service of these documents [17 days if service was by mail. Rule 679b(b)]

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The Texas Supreme Court requires form order for receiver “except on good cause shown in a written order”

Under that form, a receiver may:

- Obtain judgment debtor's credit information and credit records;
- Obtain judgment debtor's financial information and records from judgment debtor or a third party;
- Negotiate and obtain payment agreements with judgment debtor, if receiver reasonably believes payment agreement is best option to satisfy the judgment and provides judgment debtor with the Notice of Personal Property Rights approved by the Supreme Court of Texas.

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Limit on receiver

A receiver cannot reduce the total balance owed under the judgment without judgment creditor's authorization.

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Time limit on receivership

Under the Texas Supreme Court's form, the receivership terminates on a date not to exceed 180 days after the date the order is signed, unless extended by the court on request of judgment creditor or receiver and on good cause shown.

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What is “good cause shown?”

That is mostly left to the discretion of the court, but there has to be some reason to keep the receivership open.

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Options when the payment plan lasts more than 180 days

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Option One: Maintain the Receivership as-is until the payment plan is completed

Advantage: allows court to continue to oversee the receivership to ensure fair treatment.

Disadvantage: keeps a lot of cases open on the court's docket; potentially gives the receiver more authority than is needed over a long period of time.

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Option Two: close receivership

Advantage: the payment plan has already been established. Court's docket shortened.

Disadvantage: the receiver does not get paid through the court once the receivership is closed, so receiver may have incentive to encourage debtors to use shorter, more burdensome payment plans. The court can no longer police the debt collection practices.

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One choice in closing the receivership

The court authorizes the receiver to continue accepting periodic payments as set forth in the agreement between the receiver and the debtor. This would include paying the receiver the fee the debtor agreed to.

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Even when the receivership closes

The court could order a final accounting at the end of the agreement between the receiver and the debtor.

The court could also order status reports regularly or if something important occurs, like the debtor's death, bankruptcy, failure to make payments.

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Option 3: Extend but limit receiver to merely accepting payments

Advantage: allows court to police the receiver, allowing court to renew the receiver's powers if necessary. Receiver can be paid during the entire payment period.

Disadvantage: Keeps case on the court's docket, potentially increases the court's involvement in receivership actions.

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The Option TJCTC Rejects: "Administrative Closure"

- Receivers and judgment creditors proposed administrative closure in order for the payment period to extend and avoid court involvement. It is a way of keeping the receiver on the case while the payment plan continues.
- TJCTC rejected this option because there is nothing in the rules or the form order which allows for it.

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Time for a Poll

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Poll 4

The Order Appointing Receiver specifically states “Judgment Debtor ... is ORDERED to turn over to the Receiver Judgment Debtor’s nonexempt property within ___ days after receipt of this order.” The judge wrote in “7.” The judgment debtor has a jet ski that is nonexempt. He did not turn it over, violating the order. Can he be subject to contempt?

- A. Yes
- B. No

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Poll 5

Does the court have to require receivers to execute a good and sufficient bond before acting under the court's order?

- A. Yes
- B. No

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Poll 6

Can a receiver be paid in the middle of a receivership.

- A. Yes
- B. No. They have to wait until the receivership ends.

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Exempt property

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Exempt property played an important role in the history of Texas

Beginning in 1819, the year of the first financial disaster in the United States, Americans moved to Texas to escape predatory creditors.

These Texians created the state we live in today.

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Modern example: the homestead exemption

Texas

- Rural homestead for a single adult is 100 acres
- Urban homestead is 10 acres
- No monetary limit

Kentucky, Tennessee, and Virginia

- Single adult can only protect \$5k of equity in their home.
- House can be sold, and the debtor gets the first \$5k.

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Time for a Poll

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Poll 7

True or False: someone cannot claim a homestead exemption unless they formally file the tax form with their county.

- A. True
- B. False

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Discussion question

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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Current wages are exempt

Current wages cannot be garnished.

- Exceptions are court-ordered child support payments, spousal maintenance, defaulted federal student loans, and federal income taxes.

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“Proceeds” of current wages are exempt

TJCTC position is that a paycheck is exempt because it is “proceeds” of current wages. A debtor cannot be ordered to turnover their paycheck to a creditor.

Under this position, wages stop being current when they are deposited, or the wage holder does something with the check.

This rule was created before direct deposit was widespread.

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Some argue that a deposited check is proceeds of current wages

Problems with this position is that the legislative intent expressly listed paychecks and did not expressly list deposited funds. If legislature wanted to extend protection to deposited funds, why didn't they expressly say so?

This interpretation is silent as to when wages stop becoming current.

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An ordinary savings account won't cut it.

In order to be exempt, the account has to be something like a 401k.

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Procedure for a hearing under Rule 679b

- 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).
- The receiver or officer cannot sell the judgment debtor's property until after the court determines the exemption claim.

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Time for a Poll

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Poll 8

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

- A. 5
- B. 10
- C. 14
- D. 21

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Poll 9

At a hearing on exempt property, who has the burden of proof?

- A. Receiver
- B. Judgment Debtor
- C. Judgment Creditor
- D. Constable/Officer

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Poll 10

Mark has a judgment against Rebecca. Rebecca is an attorney who uses her computer to draft legal motions. Is Rebecca's computer a "tool of the trade" that is exempt?

- A. Yes
- B. No