Fourth Edition
January 2026

Published by the
Texas Justice Court Training Center

An educational endeavor of the
Justices of the Peace and Constables Association of Texas, Inc.

Funded by the Texas Court of Criminal Appeals

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Address inquiries to: Permissions
Texas Justice Court Training Center
1701 Directors Blvd. Suite 530
Austin, TX, 78744

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User Notes

This *Practical Guide to Writs of Execution (4th ed. January 2026)* is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter in executing writs of execution. This manual is not intended to replace original sources of authority, such as the Civil Practice and Remedies Code or the Texas Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book. Please note that all references to "Rule __" are to the Texas Rules of Civil Procedure.

Rather than including the citations to cases in the text of the manual, we have listed only the case name in the text but have included the entire citation in the appendix of cases.

This manual represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information, and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

The Texas Justice Court Training Center thanks all of the constables and deputies who helped provide insight and material for this publication. Special thanks to Deputy Constable Roy Hart, Former Constable Bobby Gutierrez, Deputy Constable Wayne Rhodes, Deputy Constable Carl Eller, Deputy Constable Julien Smith, Former Deputy Constable Alfred Taylor, Constable Matt Wylie, Constable Michael Truitt, and all of the members of the Constable's Education Committee that helped to make this manual possible. Also note that, while these materials were developed for the use of constables and their deputies, all chapters except Chapter 4 also apply generally to sheriffs and their deputies.

We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas. Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in *Practical Guide to Writs of Execution.*

Texas Justice Court Training Center
January 2026

Chapter 1: Writs of Execution

A. What is a Writ of Execution?

A writ of execution is a writ signed by a judge directing the enforcement of a judgment. It orders the constable or sheriff to levy on (or seize) the judgment debtor's non-exempt property, sell it, and deliver the proceeds of the sale to the judgment creditor to be applied toward satisfaction of the judgment. Writs of execution can be issued by justice courts, county courts, and district courts in the State of Texas. They must be served by a sheriff, constable, or their deputies, and may be served anywhere in the state. *Rules 103, 501.2, 621, 629.*

What is a Writ?

A "writ" is a formal legal document from a court ordering a person to take or refrain from taking a specific action.

KEY POINT

Generally, a writ of execution may not issue until 30 days after the judgment to be executed was signed. However, an execution may issue within that original 30 days if the judge finds that the judgment debtor is about to remove or hide personal property subject to execution for the purpose of defrauding their creditors. *Rules 627, 628.*

While writs may look different in format, they should all comply with the requisites of execution in Rule 629. All writs of execution should be styled "The State of Texas." They should be directed to any sheriff or any constable within the State of Texas. They should also be signed by the clerk or justice officially and bear the seal of the court (if issued by a district or county court). There should be a description of the judgment, stating the court, date, and time that it was rendered. There should also be a copy of the bill of costs taxed against the judgment debtor in execution attached to the writ. The time limit for return of the writ should also be listed on the writ. *Rule 629.*

Issuance vs. Execution

Writs are issued by the court where the original judgment was ordered. However, writs are directed to any sheriff or constable within the State of Texas, because they should be executed in the county where the property awarded in the judgment is located.

B. Types of Writs of Execution

Writs of execution can direct the officer to satisfy a judgment in several different ways listed below.

Types of Writs of Execution	
Execution on a Judgment for Money	This type of writ requires the officer to seize non-exempt property in an amount to satisfy the judgment along with costs and any interest due. *Rule 630.* This type of writ will not list specific property, and the officer will have to determine what property to be seized ***(discussed further on page 19)***.
Execution for Sale of Particular Property	This type of writ will specifically list and describe property, either real or personal, that the officer is ordered to seize and sell. *Rule 631.*
Execution for Delivery of Certain Property	This type of writ will order the officer to take possession of property and deliver the possession to a person designated in the writ (usually the judgment creditor). *Rules 308, 505.2, 632.* This writ will also specifically list and describe any personal or real property to be seized. These writs are often called "special writs" in justice court.
Execution for Possession or Value of Personal Property	This type of writ commands the officer to levy and collect the value of specific personal property listed in the writ. *Rule 633.*

There are other types of process that an officer may receive where they are ordered to handle property "as under an execution." Two examples of this are an Order of Sale of Sequestered Property or in a Turnover Order. When an officer receives an order like this,

they should follow the rules for executions discussed in this manual. *Rule 711, Civil Practice and Remedies Code § 31.002.*

CLICK HERE

Sample forms and other resources can be found on the TJCTC Constable Resources page. A writ for delivery of specific property will look something like this:

"TO ANY SHERIFF OR CONSTABLE OF ANY COUNTY OF THE STATE OF TEXAS

GREETINGS:

WHEREAS, in the above number and entitled cause, heretofore, and on the 1st day of May, 2019, ABC MORTGAGE COMPANY AS SERVICER FOR 123 BANK, plaintiff, recovered a Final Judgment in the District Court of New County, Texas, against JOHN DOE, defendant, for the sum of $25,000.00 plus interest at the rate of 5.5% per annum from May 1, 2019, until paid; Attorney's fees of $1,500 for trial of the matter, and all costs of suit; together with a foreclosure of a lien on the following certain property, bounded and described as follows, **TO-WIT**:

1995 Globe Manufactured Home, Serial No. GSETX012345A/B
AND ALL COSTS OF SUIT;

THEREFORE, you are commanded to seize in place the Manufactured Home and take any and all steps necessary to deliver to the said ABC MORTGAGE COMPANY AS SERVICER FOR 123 BANK, plaintiff, the possession of said items hereinbefore described, as against the said defendant, JOHN DOE at 1000 Bluebird Lane, New City, Texas, 12345, and all persons claiming under or through them since the institution of this suit.

AND also, the further cost of executing this writ.

HEREIN FAIL NOT, but of this writ make due return within 90 days, with your endorsement thereon, showing how you have executed the same."

1. No Writs of Execution on Dormant Judgments

Writs of executions must generally be issued within 10 years after the judgment is entered or the last writ of execution has been issued, whichever is later. *Civil Practice and Remedies Code § 34.001.* If there is no writ of execution entered within 10 years, the judgment becomes dormant, and execution may not issue unless the judgment is revived. *Civil Practice and Remedies Code § 34.001.*

See Chapter 10 of the *Civil Deskbook* for a full discussion of dormant judgments and the revival of judgments.

C. Property

1. Real Property vs. Personal Property

Real property is land, anything directly attached to the land, and mineral rights. This includes homes, other buildings, ponds, crops, and trees among other things.

Personal property is any other type of moveable property or belongings. Items like guns, coin collections, furniture, cars, and recreational vehicles (RVs) are personal property.

COMMON PITFALL

Manufactured homes are generally treated as personal property unless the owner has elected to treat the home as real property and recorded such in the real property records of the county in which the home is located. *Property Code § 2.001.*

2. What is Non-Exempt Property?

Texas property law exempts certain categories of property from seizure, because there is an idea that certain types of property shouldn't be used to satisfy

Charging Orders

A writ of execution cannot be collected against a debtor's interest in a partnership, limited liability partnership, or a limited liability company.

Enforcing a judgment via this interest is accomplished via a charging order rather than a writ of execution. *Business Organizations Code §§ 101.112, 152.308*.

See ***David J. Willis, Charging Orders in Texas***.

debts. Exempt properties are things like a person's homestead, one vehicle, and things with special value to the owner like a limited number of heirlooms. This means that if a judgment is entered against a person, a judgment creditor can only ask the court for help satisfying their judgment by seeking writs or other orders to collect specific categories of property that are not exempt by the law (*non-exempt property*) to be sold. Chapters 41 and 42 of the Texas Property Code generally govern exempt property.

Other caselaw and statutes outline additional categories of property, usually related to bank accounts, like government assistance benefits, that are also exempt from seizure. These types of property are more likely to be sought in writs of garnishment and are discussed in Chapter 10 of the *Civil Deskbook*.

Homestead and Mineral Rights

The homestead exemption extends to the minerals owned by the homestead claimant if located under the homestead. ***In Re Poer***.

However, complications may arise if the ownership of the mineral interests is held by multiple parties, causing them not to be part of the homestead. An officer should seek guidance from the court if this issue arises.

Common types of property that will likely be non-exempt are boats, airplanes, other recreational equipment, collections (stamps, coins, etc.), stocks, bonds, other investments, and real property that is not claimed as homestead (vacation properties, rental properties, etc.).

KEY POINT

Beginning May 1, 2022, judgment creditors are required to give the defendant information about their exempt property rights whenever property is frozen or seized in attempts to enforce a judgment.

It is also important to note that corporations do not have exempt property.

a. Exempt Property Bench Card

Click Here to Open the Exempt Property Bench Card

3. Levy on Property

The officer levies on personal property and real property differently. In order to make a levy on real estate, it isn't necessary for the officer to take possession of that property. It is sufficient for the officer to indorse or notate a levy on real property on the writ.

Levy on personal property is made by taking possession of that property. If the judgment debtor does not have possession of the personal property but has an interest in the property, a levy can be made by giving notice of the levy of the judgment debtor's interest to the person who is entitled to possession of the personal property. *Rule 639.* ***See more about levy on page 27***.

BEST PRACTICE

It is a best practice for an officer who cannot physically take possession of a property to also post a notice at the location of the property of the levy in addition to notating the levy on the writ.

Chapter 2: Officer's Duties

A. Accepting the Writ

When an officer receives a writ of execution, they must notate on the face of the writ the time and date in which it was received. If more than one writ is received on the same day against the same person, the officer shall number them in the order received. *Rule 636.*

Writs of execution are addressed to any sheriff or constable within the State of Texas rather than to a particular office or officer. *Rule 622.* A constable has a duty to proceed without delay to levy property in their own county when they receive an order to do so, and the constable's deputies are required to carry out this duty if they are presented with a writ. *Rule 637; Local Government Code § 86.011(c).*

Constables also have jurisdiction to serve civil process, writs, etc., in counties adjacent to the one in which they serve in some instances. *See Rules 15, 16, 17, and 103; Local Government Code § 86.021; and Civil Practice and Remedies Code § 34.073.*

What happens when the officer receives a writ for property located outside their precinct?

The officer is not required to, but may transfer the writ to another officer in another precinct or even to another law enforcement agency, usually a sheriff's office, authorized to perform executions within their county. *Civil Practice and Remedies Code § 34.073(a).*

KEY POINT

If the service fee has already been paid, the officer will also need to make arrangements to transfer the service fee along with the writ.

The judgment creditor and judgment creditor's attorney should be kept informed about the transfer process.

What happens if the property is in another county?

While the previously discussed statutes might give the officer the jurisdiction to serve process in an adjacent county, the officer has no duty to execute on property outside the officer's county, unless it is real property that is partially in their county and partially within a contiguous county. *Civil Practice and Remedies Code § 34.073(b).*

BEST PRACTICE

The best practice is to communicate with the judgment creditor and adjacent county's constables and sheriff to determine how to go forward on these types of situations. It is also good to have an office policy on how the officers should handle receipt of executions for property outside their county and be consistent in following the policy.

Any agreements on how to handle the exchange of writs between offices may be memorialized in a memorandum of understanding (MOU) executed by the two offices. These documents can be helpful in showing that officers adhered to policy and showed diligence in execution.

COMMON PITFALL

The officer should always note what the time limit for return of the writ is. It will either be 30, 60, or 90 days, and it should be notated on the writ. The time limit for return is specified by the judgment creditor or their attorney. It is also important to note whether the service fee has been received, so that proper credit can be calculated when later determining the costs of executing the writ. *Rule 621.*

After accepting and notating the time and date when the writ was received it is important to determine exactly what the writ is asking the officer to do. It is most common for a writ to be somewhat general and command the officer to levy on and sell any non-exempt property to satisfy a judgment, but there are certain circumstances where the writ commands the officer to seize specific property and either sell that property or return that specific property to the judgment creditor. *Rules 308, 630-632.*

1. Writ of Supersedeas

KEY POINT

A writ of supersedeas suspends all further proceedings under an execution previously issued. It is usually issued when a judgment is being appealed. If this writ is received, **stop everything** and wait for further instruction from the court. *Rule 634.*

BEST PRACTICE

Judgment debtors are commonly the ones to notify an officer of a writ of supersedeas. If this happens, the best practice is to pause action on the case and contact the court and judgment creditor (or judgment

Appeals Don't Automatically Stop Judgment Enforcement

The filing of a notice of appeal alone doesn't stop a judgment creditor from enforcing a judgment. The judgment must be superseded. *Rules of Appellate Procedure 24 and 25.*

creditor's attorney) to verify if a writ of supersedeas has issued and keep everyone informed of the status of the writ.

2. Stay of Execution

A justice court can issue a stay of execution on any judgment within the first 10 days after the judgment is rendered. Such a stay can last three months, and the stay will prohibit the enforcement of that judgment by execution. *Rule 635.*

3. Activity Log

Most officers find that compiling all the information about each case in one activity log helps to stay prepared and organized. Many software programs already utilized by county offices have the capability to pull data from the county's databases directly into an activity log form. An example of an activity log can be found under the Constable Forms section of the TJCTC forms page.

Include the following in the Activity Log:

- ***Dates: writ expiration date, notice of sale dates, sale date.***
- ***Judgment Debtor Information: driver's license number, photo, vehicle registration, postal verification.***
- ***Property Check: appraisal district information, county party data (from county database: NET Data, Odyssey, etc.), Accurint, etc..***
- ***Judgment Creditor Information: attorney name and contact information, judgment creditor contact information, any other helpful details that they provide you with.***
- ***Demand Letter Information: interest, constable fees, etc..***
- ***Service Notes: any important notes about conversations or interactions with the judgment debtor or judgment creditor throughout the case including dates and times.***

B. Determining the Amount Due

An officer must know the amount owed by the judgment debtor based on the judgment. The officer should note what the amount of the judgment is, court costs, interest, and any other additional costs (fees for citation and levying execution are examples).

COMMON PITFALL

An officer must read the writ carefully to determine the amount that must be collected to satisfy the judgment. The officer is required to follow the writ and collect only what is specified in the writ, nothing more. Don't rely solely on what the judgment debtor's attorney says the total is; they could have made an error.

BEST PRACTICE

It is best to calculate the interest per day until a writ expires, so the officer can easily calculate an exact amount for the judgment debtor if they decide to pay the judgment. This will ensure payment in full.

1. Pre-Judgment Interest and Post-Judgment Interest on Cases Prior to 1987

Any interest due to the judgment creditor that accrued before the court issued a judgment is called pre-judgment interest, and it is calculated as simple interest. Prior to 1987, post-judgment interest was also calculated as simple interest.

A ***historical chart showing prior judgment rates*** can be found on the Texas Office of Consumer Credit Commissioner's Website.

Important Note

Sometimes interest is calculated based on 360 days rather than 365 days in a year when the interest is agreed upon in a contract. This is important to look out for when reviewing the writ.

Simple Interest Formula

The standard equation for simple interest is I = Prt where "I" is the interest amount, "P" is the principal amount, "r" is the interest rate per year in decimal, and "t" is the time period (in years). To use days instead of years, the interest rate is divided by the number of days per year, 365.

What does this mean for calculating interest on judgments? To calculate simple interest on judgments, an officer will multiply the judgment amount [P]with the interest rate in

decimal form divided by 365 (number of days in a year) [r] and then multiply the total by the number of days from the accrual of the cause of action to the date of judgment [t] *(for pre-judgment interest).*

KEY POINT

Usually, pre-judgment interest is included in the total judgment amount, but it may need to be calculated, because "t" is listed in the judgment in a format similar to "prejudgment interest at 10% from June 1, 2005 to April 15, 2006." Most often, officers will use the simple interest calculation to determine the interest accrued or owed for a partial year prior to the date the judgment is paid or satisfied. See ***page 15*** for an example of how the simple interest formula may be used to help calculate post-judgment interest for a partial year.

If the post judgment interest needs to be calculated on a pre-1987 judgment, "t" will be equal to the amount of time from the date of the judgment to the day the judgment is paid or satisfied.

I = Simple Interest

I = Prt

- **P = principal (judgment amount)**
- **R = interest rate**
- **T = time (number of days from accrual to judgment)**

I = (judgment amount) × [(interest rate) ÷ 365] × (number of days from when interest begins to accrue to judgment)

**Here, the interest rate is divided by 365, because we have the total number of *days* per judgment instead of *years*, so the interest rate is converted to the daily rate.

Example: What is the pre-judgment interest if the judgment was for $1000, the interest rate was 12%, and the number of days from when the interest began to accrue to judgment was 400?

1000 × (.12 ÷ 365) × 400 = pre-judgment interest
1000 × (0.00032877) × 400 = pre-judgment interest
1000 × (0.00032877) × 400 = 131.508
I = $131.51

2. Post-Judgment Interest

Generally, when a court awards one party money through a judgment, the judgment debtor does not pay right away. For this reason, Texas law allows judgment creditors to collect post-judgment interest to compensate for their loss of use of the money.

Judgments awarding money in Texas are required to specify the post-judgment interest rate to be applied. *Texas Finance Code § 304.001*. The post-judgment interest accrues from the date the judgment is rendered to the date that the judgment is fully satisfied or paid. This means that the judgment earns interest every day until it is paid. *Texas Finance Code § 304.005*. Post-judgment interest in Texas compounds annually. This means that the interest from each complete year that the judgment goes unpaid will be added to the original judgment amount, and then the judgment debtor will owe interest on that amount of money as well. *Texas Finance Code § 304.006.*

KEY POINT

The post-judgment interest rate added to the judgment must be the published rate by the Texas Office of Consumer Credit Commissioner, unless the parties agreed to a different rate in a contract. It is possible for a judgment to list 0% if the parties have contracted for zero interest.

CLICK HERE

The current post-judgment interest rate is published on the 15th of each month by the Texas Office of Consumer Credit Commissioner Interest Rates and can be found here: ***https://occc.texas.gov/publications/interest-rates***.

Annual compounding means that each year, the interest for that year is added to the original judgment amount and further interest is calculated based on the new principal amount that includes the interest from the year(s) before.

When a judgment is for specific articles, and they cannot be found, their value is that as assessed by the judge or jury (in the judgment) with interest at the prevailing post-judgment interest rate. *Rule 505.1(e).*

Compound Interest Formula

The standard formula for compound interest is $P^1 = P(1+r/n)^{nt}$ where "P^1" is the new principal amount, "P" is the principal amount, "r" is the interest rate, "n" is the compounding frequency, and "t" is the overall length of time the interest is applied usually in years.

To calculate post-judgment interest, an officer can use the simpler formula, $P^1 = P(1+r)^t$, because in Texas, the compounding frequency is always yearly, making "n" always 1. When you multiply or divide by 1, you always get the same number.

$P^1 = P(1+r/n)^t$

- **P^1 = the new principal amount (original judgment amount plus interest)**
- **P = the principal amount (judgment amount)**
- **r = the interest rate**
- **n = the compounding frequency (for post-judgment interest always 1 year)**
- **t =the overall length of time the interest is applied (in years)**

P^1 = (judgment amount) × [1 +(interest rate/1)] $^{(1)(\text{number of years})}$

Because post-judgment interest is always compounded annually, *n* will always be 1. This means the formula will effectively be $P^1 = P(1+r)^t$

Using this formula, the officer will multiply the original judgment amount by 1 plus the interest rate for each year that the judgment has accrued interest.

Example: What is the post-judgment amount on a judgment for $10,000 where the judgment was entered 5 years ago, the post-judgment interest rate listed on the judgment is 5%, and the debtor will pay the judgment fully today?

$P^1 = P(1+r/n)^{nt}$

$P^1 = \$10{,}000\ (1 + .05/1)^{(1)(5)}$

or

$P^1 = P(1+r)^t$

$P^1 = \$10{,}000\ (1 + .05)^{(5)}$

$P^1 = \$10{,}000 \times (1.05 \times 1.05 \times 1.05 \times 1.05 \times 1.05)$

$P^1 = \$12{,}762.82$, so the interest is $12,762.82 - $10,000 = $2,762.82.

	Judgment Amount	Interest Rate	Interest Earned	Year-End Balance
Year 1	$10,000.00	5%	$500.00	$10,500.00
Year 2	$10,500.00	5%	$525.00	$11,025.00
Year 3	$11,025.00	5%	$551.25	$11,576.25
Year 4	$11,576.25	5%	$578.81	$12,155.06
Year 5	$12,155.06	5%	$607.75	$12,762.81
Total Interest:			$2,762.81	

***Note: Rounding up to the closest cent on each calculation might result in a one or two cent difference in the total amount of interest paid.*

What if the Judgment Isn't Paid Until 45 Days into Year Six?

Remember, post-judgment interest accrues every day between the judgment and the date it is paid. Unfortunately, judgment debtors don't always pay exactly on the year mark!

So, using our example above, we would then use the simple interest formula to calculate the interest for the last 45 days and add it on to our total interest of $2,762.81.

Remember:

I = Prt

- **P = principal (judgment amount)**
- **R = interest rate**
- **T = time (number of days from when interest was last compounded to payment of judgment)**

I = (judgment amount) × [(interest rate) ÷ 365] × (number of days from when interest was last compounded to payment of judgment)

****Here, the interest rate is divided by 365, because we have the total number of *days* per judgment instead of *years*, so the interest rate is converted to the daily rate.**

I = $12,762.81 x (0.05 ÷ 365) x 45

I = $78.67

	Judgment Amount	Interest Rate	Interest Earned	Year-End Balance
Year 1	$10,000.00	5%	$500.00	$10,500.00
Year 2	$10,500.00	5%	$525.00	$11,025.00
Year 3	$11,025.00	5%	$551.25	$11,576.25
Year 4	$11,576.25	5%	$578.81	$12,155.06
Year 5	$12,155.06	5%	$607.75	$12,762.81
45 Days	$12,762.81	5%	$78.67	
Total Interest:			$2,841.48	
Total Amount Due at 5 Years and 45 days:			$12,841.48	

****Note: Rounding up to the closest cent on each calculation might result in a one or two cent difference in the total amount of interest paid.***

3. Partial Payments

If a judgment creditor accepts a partial payment, or there are prior levies of property that resulted in a partial payment to the judgment creditor, the declining principal formula must be applied, meaning that the payment would first go to all interest that had accrued thus far, with any remainder going to the principal balance. Going forward after the first payment, interest would only accrue on the remaining principal amount. ***Brainard vs. Trinity Universal Ins. Co.***, ***Hand & Wrist Center of Houston, P.A. v. Republic Services, Inc.***.

If we use the same example as above, and the judgment debtor makes a payment of $5000.00 in year three, the result would be as follows.

$P^1 = P(1+r/n)^{nt}$

$P^1 = \$10{,}000\ (1 + .05/1)^{(1)(2)}$

or

$P^1 = P(1+r)^t$

$P^1 = \$10{,}000\ (1 + .05)^{(2)}$

$P^1 = \$10{,}000 \times (1.05 \times 1.05)$

$P^1 = \$11{,}025.00$

$11,025.00 – payment of $5000 = new judgment balance of $6,025.00, that is used to compute the next 3 years of interest.

$P^1 = P(1+r/n)^{nt}$

$P^1 = \$6{,}025.00\ (1 + .05/1)^{(1)(3)}$

or

$P^1 = P(1+r)^t$

$P^1 = \$6{,}025.00\ (1 + .05)^{(3)}$

$P^1 = \$6{,}025.00 \times (1.05 \times 1.05 \times 1.05)$

$P^1 = \$6{,}974.69$, so the interest is $6,974.69 - $6,025.00 = $949.69

	Judgment Amount	Interest Rate	Interest Earned	Year-End Balance
Year 1	$10,000.00	5%	$500.00	$10,500.00
Year 2	$10,500.00	5%	$525.00	$11,025.00
Total Interest for Years 1 and 2:			$1025.00	
Payment:				-5000.00
Remaining Judgment Balance:				$6,025.00
Year 3	$6, 025.00	5%	$301.25	$6,326.25
Year 4	$6,326.25	5%	$316.31	$6,642.56
Year 5	$6,642.56	5%	$332.13	$6,974.69
Total Interest for Years 3-5:			$949.69	
Total Amount Due at end of Year 5:			$6,974.69	

***Note: Rounding up to the closest cent on each calculation might result in a one or two cent difference in the total amount of interest paid.*

KEY POINT

Remember, post-judgment interest is compensation to a party for the loss of use of that money. A judgment creditor can only recover interest on the amount that they have lost the use of.

C. Determining What Property to Levy On

An officer receiving a writ of execution does not have a duty to complete an exhaustive search for property belonging to the judgment debtor or determine what category property falls into. The officer also does not have a duty to determine the priority of property liens. *Civil Practice and Remedies Code § 34.071*.

BEST PRACTICE

However, there are several good reasons why doing some brief research is not only a best practice, but also in the officer's best interest. Background research on the writ and the parties is very important in streamlining the process of service as well as in keeping officers safe.

As the officer goes through this process, it is important to remember, while the judgment creditor is certainly more of the "client," the judgment debtor is usually a citizen and taxpayer of the county. The judgment debtor might not be happy to hand over property, but the more professionally officers execute the writ, the better their impression will be of the justice system as a whole.

1. Talk to the Judgment Creditor

Once the officer determines exactly what the writ is commanding of them, it is best to contact the judgment creditor's attorney or judgment creditor, if they are unrepresented. Not only can it give the officer good information to go on, this conversation also lets the judgment creditor know that the officer is working the writ seriously.

Many times, the judgment creditor will have already uncovered information that will make it easier to execute the writ, usually through post-judgment discovery. *Rules 500.9(b), 621a.*

Conducting post-judgment discovery allows the judgment creditor to determine what non-exempt property the judgment debtor has and where it is located. Post-judgment discovery is discussed in Chapter 10 of the *Civil Deskbook*.

KEY POINT

Even though the judgment creditor may have helpful information, it is very important that both parties understand that the judgment debtor has the right to designate what property that they want to be levied on first. *Rule 637;* ***Reyes v. Barrasa***.

Another important thing for an officer to explain to a judgment creditor or their attorney is that the officer and their county could have a policy that they do not incur any costs for executing the writ. This means that if there are moving or storage costs associated with the writ, the judgment creditor will pay those costs upfront.

At the end of the execution, the officer will include those costs to be paid back to the judgment creditor prior to any credits being made toward the judgment amount. *Rule 125.*

The above is also an important thing for an officer to discuss with their county attorney and auditor. Local Government Code *§* 118.134 implies that a county or officer executing a writ may pay the fees for things like storage and moving costs upfront and be reimbursed out of the proceeds later once the property is sold, but the officer must have a line item in their budget to pay for such fees.

A commissioners court may exercise powers (*like budgeting*) necessarily implied for the accomplishment of a county officer's assigned duties, so it may be proper for a commissioners court to approve a budget line item for an officer to store seized property under an execution. ***City of San Antonio v. City of Boerne***.

This is because the statutes give express permission for the officer to store property seized in an execution in a storage facility, so the commissioners could potentially allow in the budget process for the upfront payment with later reimbursement.

However, there are many reasons why a commissioners court may not choose to do so, including the risk of the county taking a loss if the amount made at an execution sale is less than the outstanding fees for storage.

BEST PRACTICE

a. Conversation with the Judgment Creditor's Attorney

Officer: Hello Mr. Smith. I received the writ of execution that you sent me for John Doe today. I am going to make demand this afternoon and was wondering if there was any additional information that you have before I go out to the address to talk with the judgment debtor.

Attorney: Hi Constable. Yes. I really want you to levy on Doe's vacation home. That's why I got a writ in your county.

Officer: It's good to know that he has that property here Mr. Smith, but I have to remind you that I must first levy on property that the judgment debtor designates because of Rule 637. Also, any costs like moving or storage fees are going to have to be paid by your client upfront, because the county can't incur those expenses. Your client will be reimbursed once we sell the property executed on. Also, about the vacation home, if we do levy on that property, it would be helpful if you provided me with the property description and document showing lienholders on the property that is filed in the county clerk's office. Do you know of any other non-exempt property that the judgment debtor owns that may also be subject to levy?

Attorney: There might be some personal property in the vacation home that qualifies. The big-ticket item is the house though.

Officer: Is there anything else about the judgment debtor that I should know?

Attorney: Well, I understand he is pretty mad about all of this, so he probably won't be happy to see you. Let me know how it goes.

Officer: Thanks for your help today. I'll be in touch. Feel free to reach out to me if you think of anything else that might be useful.

2. Use Your Resources

As part of their job in law enforcement, officers have access to county databases as well as many other paid databases and services.

Researching people before serving them can be helpful, some possible resources include:

- DPS Secure Site: ***https://securesite.dps.texas.gov/DpsWebsite/index.aspx***
- Your county system (follow any policies for use).
- TLETS: However, please note that it's possible that this can't be used for civil process (depending on interpretation of "criminal justice purpose" and the exact circumstances). Follow the use policy and consult with your county attorney and DPS representative about what is acceptable use of criminal history record information.

COMMON PITFALL

A criminal history check could also indicate that there is an ongoing criminal case that relates to property that might otherwise be seized in a writ of execution.

Other important resources to consider are the county property records, tax records, appraisal district, and court records (criminal and civil). Sometimes the easiest search that yields the best information is a simple internet or social media search.

D. Serving the Judgment Debtor

1. Demand Letter

Before an officer makes contact with the judgment debtor to inform them about the writ of execution and make demand, they must prepare a document to give the judgment debtor in simple language that they can understand.

Components to include in the demand letter are:

- the judgment amount, interest amounts – both pre-judgment and post-judgment,
- attorney's fees and interest – if awarded in the judgment,

Judgment Debtor Selling Property

What if you look up the judgment debtor on Facebook and see them selling lots of personal property, a boat, RV, and jet-ski, on the local Swap and Sell Page?

- Save photos of the listings. When the judgment debtor claims not to have non-exempt property, you can point to these items.
- Hurry up and make demand! The judgment debtor might know that the writ is coming, so they are trying to get rid of belongings.
- Be careful! If a person is trying to avoid execution on their property, they might not be happy to see an officer pull up at their home.

- constable/sheriff's fees and commission – if allowed,
- court costs,
- other costs of execution (publication, storage fees, towing, additional deputy time, and others), **and**
- instructions to the judgment debtor that any payment must go through the officer's office to ensure proper receipt and credit on the judgment.

A demand letter form can be found in the Constable Forms section on the TJCTC forms page.

COMMON PITFALL

If an officer does not explain to a judgment debtor how payments should be made if that judgment debtor chooses to pay, the judgment debtor may simply submit payment to the judgment creditor. This could result in improper credit being applied to the judgment. Payment through the officer's office protects the judgment debtor because there is a clear record of payment. It also ensures that the officer's costs and fees are calculated properly.

2. Serve the Judgment Debtor in Person or by Mail

BEST PRACTICE

The judgment debtor can be served a copy of the writ of execution and a demand letter via personal service, mail, or any other manner that the court directs, but the best practice is to serve it in person, so the officer can ensure that the judgment debtor understands the demand letter. *Rule 21a.*

Personal service is also preferable because the officer can ask the judgment debtor questions about the property that they own.

KEY POINT

It is important to note that the delivery of a copy of the writ and the levy on the property do not have to occur at the same time.

Good questions to ask are:

- How do you want to pay off this judgment?

Proceeding After Demand Letter

If a demand letter has been mailed to all known addresses, and the judgment debtor cannot be personally located, and there has not been a response within a reasonable timeframe, the constable can proceed with levying on any non-exempt property that is located.

- Do you own real estate or land?
- Do you own a boat?
- Do you own an RV?
- How many vehicles do you own?

The officer should also be on the look-out for property to execute on while they are serving the demand letter.

BEST PRACTICE

Officers should wear a body camera or use a portable electronic recording device when contacting the judgment debtor to make demand on a writ of execution. This is a best practice for several reasons.

- Cameras and recording devices can capture video or audio of the judgment debtor listing possible property for levy.
- The judgment debtor could make important statements that are relevant to ongoing criminal or civil cases.
- The judgment debtor could commit a criminal offense or contempt of court.
- The officer can look back to video to help remember what assets the judgment debtor had on the property without the need to take detailed notes while talking to the judgment debtor.

3. Require Judgment Debtor to Designate Non-Exempt Property

KEY POINT

The officer is required to levy on the property that the judgment debtor or their agent designates **before** taking other property to execute. *Rule 637.* It is very important to make sure that the judgment debtor understands that they can designate property to be levied first. If there is a language barrier or other similar issue, the officer should find another officer or reliable bilingual person to translate.

The rules also require the judgment debtor not to point out property which he has sold, mortgaged, or conveyed in trust, or property exempt from forced sale. *Rule 638.* The officer may inform the judgment debtor of Rule 638 in order to limit the improper designation of property. For example, the judgment debtor should designate a vehicle without a lien before a vehicle subject to a lien, unless both vehicles may be levied on without causing exempt property issues.

Special rules also apply to the sale of multiple lots within a city or town and large tracts of rural land. These rules may become important when the judgment debtor is designating property. See Special Rules Applying to Multiple Tracts or Large Tracts of Real Property on ***page 37***.

E. Tricky Issues Before Levy

1. What if One of the Parties Dies?

Effect of a Judgment Creditor's Death

If a judgment creditor dies prior to the issuance of a writ and there was an administration of their estate, then a writ of execution on a judgment owed to that judgment creditor should be issued in the name of the judgment creditor's legal representative and any other judgment creditors. There also will be a certified copy of an affidavit of death and certificate of appointment of the legal representative filed with the clerk of court issuing the writ of execution. *Civil Practice and Remedies Code § 34.002(a).*

If there is no administration of the judgment creditor's estate, then the writ of execution should be issued in the name of the judgment creditor and any money collected under that execution will be paid into the registry of the court, and the court will order the money to be paid to the parties that are entitled to it. *Civil Practice and Remedies Code § 34.002(b).*

If the writ of execution was issued prior to the death of the judgment creditor, then the writ is simply levied and returned as if that person were living. *Civil Practice and Remedies Code § 34.002(c).*

KEY POINT

This will require the officer to discuss any dealings that would have ordinarily been discussed with the judgment creditor's legal representative, usually the administrator or executor of the judgment creditor's estate.

Effect of Judgment Debtor's Death

A judgment debtor's death after the issuance of a writ of execution will stay the execution. However, any lien already acquired by a levy on the writ of execution must be recognized

and enforced by the county court or probate court in the payment of the deceased's debts. *Civil Practice and Remedies Code § 34.003.*

Once the officer is informed of the death, they should relay that information and any documentation provided to them to the court that issued the writ and await the court's instructions.

2. What if One of the Parties Changes Their Name?

This question comes up most often when a judgment debtor has changed their name or in the case of a judgment against a business, the business now operates under a new name.

A person or business cannot avoid paying a judgment by simply changing their name. However, it may be necessary for the judgment creditor to show that the person or business they requested the officer to serve and execute the writ of execution against, is the same person or entity that the judgment was originally rendered against.

KEY POINT

Like most other tricky issues, the key here is to stay in contact with the judgment creditor, so they can request a hearing in court if it is necessary to resolve this issue.

Chapter 3: Levy and Sale

A. Levy

1. What Does it Mean to Levy on Property?

An officer making levy on real property (real estate) does not need to physically go to the property and "hold down the fort" until the sale. Rather, the officer should indorse or notate on the writ that levy has been made. *Rule 639.* This means that an officer doesn't need to go to the property and stand guard until the sale can be made, but rather the levy is made when the officer says it is and writes that on the writ.

BEST PRACTICE

Many officers place a notice of the levy at the location of the property in addition to the requirement to endorse the writ.

The process for making levy on moveable personal property sounds simpler but can be quite difficult. The officer will take physical possession of the property.

In the case of a motorcycle or small equipment, taking possession is easy. However, if the officer needs to levy on a large aircraft or yacht, it might seem more difficult. The officer should not hesitate to ask for suggestions from a person with expert knowledge.

For example, if the officer is levying on large manufacturing equipment or construction vehicles, things like manuals and certificates might be

Officer Safety

- Don't forget that the officer may approach an individual who is not familiar with judgment enforcement orders. They might think they deserve more due process or another day in court.
- Look out for individuals with extremist views. A person who doesn't believe that the officer has authority to be there might react in a hostile manner.
- Some indicators might be signs on the property, no registration stickers on vehicles, or bumper stickers.
- Use the Contact and Cover principle. One officer speaks with the judgment debtor to handle the details of the writ and levy while the other covers to maintain overall scene control and safety.
- Officers should be aware of their surroundings, watching to see how many people are at a residence, and watching for potential weapons.

necessary for the new owner to possess or the items would be of little value. An officer who has levied on similar property may be able to help in addition to any other expert on the property levied.

While the process to take possession of the property may seem simple, property storage can become more complicated. Property storage is discussed on ***page 31***.

2. Restrictions and Limitations

There are limitations in executing civil process relative to the seizure of property. No civil rules or statutes allow the use of force to levy property in writs of execution. Officers must remember that they are executing civil process rather than acting in their law enforcement role. A peaceful entry to seize the property is required, but that is not to say if the situation changes, an officer cannot change their perspective from civil process to criminal investigation.

Important Note

An officer serving civil process cannot force entry into a restricted area at a business. Likewise, a person who refuses an officer entry to a restricted area at a business cannot be charged with the Class C misdemeanor offense of Preventing Execution of Civil Process under Penal Code § 38.16. ***Tex. Att'y Gen. Op. GA-0113 (October 3, 2003)***; ***Gateway 2000, Inc. v. Limoges***.

3. Levy on Particular Types of Property

a. Livestock

When an officer is required to make levy on livestock, it might be more complicated than just loading up a trailer with a few cows and taking possession. Rule 639 allows an officer to instead designate the number of animals and describe them by their marks or livestock brand.

This should only be done when the livestock is running at large in a range and cannot be easily herded and penned without great inconvenience and expense. There must also be two or more credible persons as witnesses to the levy, and the officer must also give notice to the owner, their herder, or agent. *Rule 640.*

BEST PRACTICE

The officer will also have to consider where the livestock will be kept pending sale. In order to limit liability, it is best to have someone who is in the business of raising and transporting livestock to figure out how the procedure should go. In some counties this might be an animal control department. If an officer is new to this, it is best to contact other local constables and sheriff's offices to determine the practice in their area.

b. Shares of Stock

An officer makes levy on shares of stock of any corporation or joint stock company by seizing and taking possession of the stock certificate. *Rule 641; Civil Practice and Remedies Code § 34.044*.

It is important to note that the rule allowing this levy does not impact or restrict rights to the shares as granted under Texas Uniform Commercial Code Section 8.317 (renumbered as Texas Business and Commerce Code Section 8.112).

c. Goods Pledged or Mortgaged

An officer may levy on property that has previously been assigned or mortgaged as security for a debt or contract. Once the sale has been made, the purchaser of the property is only entitled to possession of the property after they comply with the conditions of the pledge, assignment, or mortgage. In other words, the lienholder must be paid the amount of the lien first before the remaining amount can be applied to credit the judgment. If not, the buyer is responsible for paying off the lienholder, because the buyer has purchased only the judgment debtor's interest in the property. *Rule 643.*

d. Large and Cumbersome Property

Sometimes the property designated or found by the officer is difficult to take possession of, and the officer must levy in place. The officer can use some combination of locks, labels, and/or bonded security guards to ensure that the property is not removed until sale. Often it is enough to attach labels stating that the property has been levied on and it is unlawful to remove the property.

Appellate courts have ruled that it was appropriate for an officer to levy in place on a large amount of stock feed where the officer announced to the judgment creditor that he had levied on the stock feed and the judgment creditor was not to move or use the feed unless it was released to him. ***Smith v. Harvey***.

Another example where a levy in place may be proper is if the levy is on medical equipment or machinery. The officer will want to be very careful with this type of property because it may be easy to damage and would be very expensive if the officer were to damage it or mishandle it in any way.

BEST PRACTICE

A best practice in addition to a levy in place is to contact an expert who has experience handling the property. This additional work will show that the officer is being diligent and handling the property with care.

4. Writs Issued for Multiple People or Entities

There should be a separate writ for each judgment rather than for each debtor. For example, a judgment could be issued against two people, and both of the judgment debtors are jointly and severally liable. This means that each judgment debtor is liable for the full judgment, but that if one of them pays part of the judgment, they both get a credit to what they owe. In this case, one writ would issue, but both judgment debtors would be listed on the writ. *Rule 629.*

An officer executing the writ should serve it on both debtors. This type of writ may require attention to detail and close communication with the judgment creditor or their attorney to keep communications with each debtor straight. However, it could also be relatively simple and much like any other writ if the two debtors own joint property, for example if they are a married couple.

That's Not Fair!

It might not seem "fair" that one party may end up satisfying the entire amount of the writ even though others shared in the liability or wrongdoing that lead to the judgment being issued. Parties may have other legal rights to recover from their co-judgment debtors if they get left holding the bag, but those are not issues for the constable to worry about in executing the writ.

COMMON PITFALL

What if the writ lists one person as surety for another?

After making demand, the officer must first levy on the judgment debtor's property, but if property can't be found to fully satisfy the judgment, the officer may then levy on the surety's property. *Civil Practice and Remedies Code § 34.005.*

In a case where the officer is making levy on a surety's property, because the judgment debtor's property can't be found, it is very important for the officer to keep good notes and make a detailed return showing the efforts made while executing the writ.

Courts will not stop a sale of property unless the surety can show that the judgment debtor has property in the county where the judgment was rendered and that they are only a surety. ***Denson v. Taylor***.

5. Keep the Property Safe

When an officer seizes property and takes it into their custody, they should be mindful of the condition the property is in and keep good documentation of the seizure. This protects not only the property, but also the parties and the constable's office. The officer could be held liable if they are negligent and their negligence results in damage to the property. *Civil Practice and Remedies Code § 34.061.* For more information about officer liability related to the storage of property see ***page 53***.

BEST PRACTICE

For the above liability reasons, the best practice is to have any levied property stored in a professional storage facility that is bonded and insured in the case of theft, fire, storm, or other potential causes of harm to the seized property.

Generally, the judgment creditor pays the upfront costs of storage and is reimbursed with the sale proceeds as "costs of sale" prior to crediting the judgment amount. This is also another consideration for deciding how to levy on property as discussed earlier in this chapter beginning on ***page 27***.

However, this might not be possible in all cases, and any office that has the potential to seize property, either under a writ or due to the property's criminal or dangerous nature, should have an established policy regarding such property.

For many offices, the "property room" is actually a closet or filing cabinet. Even if the property storage location is small, officers must still take care to follow protocol and policy when handling seized property.

Small Property Closet

KEY POINT

This means that each office should develop a property storage policy. These policies can be simple or complex depending on the size of agency and number of items required to be stored. Each property receptacle should have its own log to show what property went in and out and who had contact with the property. Each piece of property should also have a tag or label attached to it, so that any handling of the property can be notated. Sample forms for logs and labels can be found in the Constable Forms section on the TJCTC forms page.

The tips for storage of property should be followed even if the property is being stored off-site by a storage facility or another third party.

Tips for Good Property Storage

- Take a video or photograph of the property at the time of seizure and release;
- Describe the property fully in the records including special markings and any defects at the time of seizure and release;
- Keep consistent records! Use the same process for any property seized (of the same type); **and**
- Keep a backup copy of property records if possible.

KEY POINT

Documentation of the state of the property when the officer releases it to the storage facility is especially important in case the company in some way damages the property.

6. When Levy is Not Possible

A writ of execution can be returned after one levy or one attempt to levy if the judgment creditor cannot designate any more executable property currently owned by the judgment debtor at the time of the first levy or first attempt. The officer may attempt to levy on a writ at any time during the life of the writ provided that there is enough time to complete the sale of any levied property. *Civil Practice and Remedies Code § 34.072.*

KEY POINT

Many offices have a policy of making multiple attempts on each writ prior to returning the writ. This shows diligence in executing the writ.

If the officer is unable to locate any property belonging to the judgment debtor to levy on, the return should be marked "nulla bona," to indicate that the writ is returned without execution. Even if returned nulla bona, the officer's return should include a description of the officer's attempts. ***See page 45 for a full discussion of what must be included in the return of execution***.

7. Writ of Venditioni Exponas

If property is seized under a writ of execution, but the officer does not have enough time to sell it before the writ expires, the judgment creditor must get a writ of venditioni exponas authorizing a sale after expiration of the writ of execution. This writ is just an extension of the original writ of execution. *Rule 647;* ***Borden v. McRae***.

Practically speaking, the officer should communicate the need for the writ of venditioni exponas and return the writ of execution to the court, including in the return an explanation about the need of extra time to complete the sale.

Next, the judgment creditor will request the writ of venditioni exponas that will direct the officer to sell the levied property from the original writ of execution. ***Borden v. McRae***.

Venditioni Exponas

Venditioni exponas translates from Latin to "that you expose to sale," and is sometimes abbreviated "vend, ex."

A good line of communication with the court and judgment creditor will ensure that this process happens seamlessly.

While Rule 647 only mentions a writ of venditioni exponas in the sale of real property, the writ can also be used when dealing with the seizure and sale of personal property. ***Warnock v. Marin***.

B. Right to Replevy

Any property seized under an execution can be returned to a judgment debtor if that judgment debtor pays a bond. There must be two sureties who are approved by the officer. The bond should be made payable to the judgment creditor. Also include when and where the judgment debtor is to deliver the property to the officer for sale or pay the officer a fair value, also listed in the bond, for the item. *Rule 644.*

After the judgment debtor has replevied the property in the above manner, the judgment debtor can sell or dispose of the property if they pay the officer the stipulated value. *Rule 645*.

The bond will be forfeited if the judgment debtor fails to deliver the property to the officer as directed by the bond and also fails to pay the value to the officer. The officer should then endorse the bond as forfeited and return it to the clerk or the court or the justice of the peace where the execution was issued. *Rule 646.*

If the judgment is still unpaid, either in whole or in part, when the clerk receives the forfeited bond, they must issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due.

The amount due should not exceed the stipulated value of the property on the original bond. This second execution is not eligible for a replevy bond by the judgment debtor, which should be notated on the face of the writ. *Rule 646.*

C. Property Sale

Once an officer has executed on property, the work isn't over. The officer must next sell the property at public auction with the proceeds to pay the outstanding amount of the judgment minus the costs of the execution and sale. *Rules 646a, 649.*

This sale will ideally take place prior to the expiration of the writ of execution, but if it doesn't, the judgment creditor may need to seek a writ of venditioni exponas to allow for the sale after expiration of the writ. *Rule 647.* ***See a discussion of venditioni exponas on page 33***.

1. Notice and Location of Sale

Notice of the public auction of personal or real property should be mailed to both the judgment creditor and judgment debtor (or their attorneys) via certified mail or delivered in person. *Rule 647.*

BEST PRACTICE

In addition to mailing the notice to the judgment creditor and judgment debtor, the officer may send notice to any lienholders and interested parties. This can increase the number of bidders at the auction, ensuring that the sale will be successful and satisfy the outstanding judgment. This is in the best interest of all parties. For example, if the property is commercial baking equipment, businesses in the local restaurant industry might be interested in coming to the sale, and the standard real estate professionals who routinely come to sales might not be as interested.

a. Sale of Real Property

Real property taken by execution is generally sold at public auction at the "courthouse door" on the first Tuesday of the month between the hours of 10:00 a.m. and 4:00 p.m. unless the court orders that it be sold at the place where the property is situated. *Rule 646a.*

If the first Tuesday of the month occurs on January 1 or July 4, the sale of real property shall take place on the first Wednesday of the month. *Civil Practice and Remedies Code § 34.041(c).*

A commissioners court may designate an area other than the area at the county courthouse where public sales of real property sold for execution will be held. The designated area must be in a public place within a reasonable proximity of the county courthouse and in a location as easily accessible to the public as the "courthouse door" would be.

Courthouse Door

The "courthouse door" is defined as the principal entrances to the courthouse where district court takes place.

If for some reason there is no longer such a courthouse and the proper authority has not designated a new one, the last place where district court was held in that county, shall be deemed to be the "courthouse door" whether there is a building there or not. *Rule 648.*

The newly designated location must be recorded in the real property records of the county, and sales held on or after the 90th day the location is designated must be at that location ***(other than online sales, see page 38)***. *Civil Practice and Remedies Code § 34.041(b).*

KEY POINT

Notice for the sale of real property must be posted for at least 20 days prior to the first Tuesday of the following month. This notice for sale of real property must be published in the newspaper once per week for three consecutive weeks prior to the date of sale. The notice must include a statement of the authority under which the sale is being held, the time of levy on the property, the time and place of sale, and a brief description of the property to be sold (including the number of acres, original survey, locality in the county, and the name by which the land is generally known). *Rule 647.*

The notice of sale should also include any other terms of the sale, for example how the purchaser must pay for the property. ***Eligible purchasers are discussed at page 39***.

Newspapers must charge the legal rate of two cents per word for the first publication of the notice for the sale of real property and one cent per word for each subsequent notice to be published in the newspaper *or* a rate not to exceed the published word or line rate for that class of advertising in that particular newspaper. This is another cost of sale that will be paid upfront by the judgment creditor and deducted from the proceeds of the sale.

After newspaper notice is complete, the newspaper will provide an affidavit of publishing to be attached

Common Terms of Sale

- Payment will only be accepted in cash, cashier's check, or money order. No business or personal checks.
- Purchaser must provide tax statement from the county tax assessor at the time of the sale.
- Purchaser will have until 1:00 pm on the day of the sale to provide payment to the constable's office.
- Property is sold "AS IS," and there are no warranties, expressed or implied.
- Purchasers are advised that the purchase of the property at a constable's sale may not extinguish existing liens or security interests, and any purchaser should consult legal counsel if they have questions.

to the officer's return. The affidavit will simply state the dates that the notice was published in the newspaper. An affidavit of notice publication form can be found in the Constable Forms section on the TJCTC forms page.

If there is no newspaper published in the county or none will publish the notice of sale for the compensation described in Rule 647, the notice must be posted at three public places within the county, one of which must be the "courthouse door".

BEST PRACTICE

Many offices post the notice of sale in three public places in the county in addition to the newspaper advertising to increase sale attendance.

Suggestions of public places for posting are:

- Where the sale will take place;
- The courthouse door where other public notices are posted; **and**
- The public area of the constable or sheriff's office.

Sale Location Example

Special Rules Applying to Multiple Tracts or Large Tracts of Real Property

When preparing for the sale it is important for the officer to take note of whether or not the property seized consists of one lot or multiple lots. If the real property is in a city or a town and is made up of several lots, tracts, or parcels, each lot, tract, or parcel must be offered for sale separately unless the character of improvements made on the lots is such that the lots would not be susceptible to separate. *Civil Practice and Remedies Code § 34.042.*

If real property taken under a writ is in a rural area, the judgment debtor may divide the property into lots of not less than fifty (50) acres and designate what order the lots will be sold in.

Multiple Lots, Only One House

Two lots or tracts might not be susceptible to separation for the purpose of selling if one home was built across the two lots. It would not be reasonable for the officer to sell each side of the home separately if it was intended to be a single-family home.

In order to do this, a judgment debtor must present a proper plat of the property as divided and surveyed by the county surveyor prior to the sale of the levied property at a time that will not delay the sale as advertised. The plat of the property must include field notes of each numbered lot with a certificate of the county surveyor certifying that the notes are correct. The judgment debtor must also pay the expenses of the survey and the sale.

If a judgment debtor elects to divide the property this way and follows the correct procedure, the officer shall stop any sale once the lots sold provide enough proceeds to satisfy the amount of the execution. *Civil Practice and Remedies Code § 34.043.*

b. Online Sale of Real Property

The commissioners court of a county may authorize a public auction of real property using online bidding and sale. The commissioners court may adopt rules governing these online auctions, which go into effect 90 days after they are published in the real property records of the county. *Civil Practice and Remedies Code § 34.041(a-1).*

KEY POINT

Note: Online bidding and sales may not be authorized for a sale under Property Code § 51.002 (power of sale conferred by a deed of trust or other contract lien). *Civil Practice and Remedies Code § 34.041(a-2).*

c. Sale of Personal Property

Personal property should be sold at either the premises where it was taken in execution, the "courthouse door" of the county, or at some other place if the nature of the property makes it more convenient for purchasers.

If it is possible, all personal property sold must be physically present and available for the view of the purchasers except for shares of stock, livestock, or any other property that the judgment debtor has a right to, but not exclusive, possession. *Rule 649.*

Notice for the sale of personal property must be posted for at least 10 successive days immediately prior to the date of the sale at both the "courthouse door" and at the place

where the sale is to be made. *Rule 650.* It is also common practice to post the notice of sale where the personal property is stored.

2. Auction

a. How to Determine the Opening Bid

BEST PRACTICE

There is no specific formula outlined under Texas law for determining the opening bid. Many officers start by calculating what all of the total costs of sale will be first, and then they add some amount that would go toward the actual judgment owed. There is also often a conversation with the judgment creditor or their attorney about what price to start the bidding at.

The officer has to strike a balance between attracting bidders to come to the sale and selling the property at the auction for as much as possible to go toward the judgment that is owed. As an officer becomes more experienced in conducting sales, they will have a better idea of what price strikes this balance.

b. Who Are Eligible Purchasers?

Generally, anyone who could execute a contract can also bid at an execution sale. There are a few people who are disqualified from purchasing property at an execution sale, usually due to there being a conflict of interest.

KEY POINT

A constable, sheriff, or their deputy executing the sale cannot purchase the property. Doing so would render the sale void. *Civil Practice and Remedies Code § 34.048.* This is applied both directly and indirectly, meaning a deputy could not purchase the property even if the elected constable conducted the sale. ***Blount v. Dutton***. Likewise, the sale can also be void if the officer uses a "strawman" third party to purchase the property and later turn it over to the officer. ***Davis v. Howe***.

In counties of more than 250,000 people **or** in those where the commissioners court has adopted the provisions of Civil Practice and Remedies Code § 34.0445, only people qualified under that section may purchase real property at an execution sale.

KEY POINT

Any officer conducting sales should verify whether or not the provisions of Civil Practice and Remedies Code § 34.0445 apply to sales in their county.

The requirements under that section are as follows:

- The purchaser will have to show:
  - a statement from the county assessor-collector in the county where the sale takes place showing that the purchaser does not owe delinquent ad valorem taxes, including those due to a school district; **or**
  - a written statement from the county assessor-collector stating that the person is a registered bidder at the sale being conducted.
- No bidders may bid or purchase property in the name of another person; **and**
- The deed executed by the officer after sale must name the winning bidder from the sale as the grantee and state that the tax statement was in order.

Civil Practice and Remedies Code § 34.0445 and *Tax Code §§ 34.011, 34.015.*

c. Purchase by Judgment Debtor or Judgment Creditor

COMMON PITFALL

Both the judgment debtor and judgment creditor can purchase the property at an execution sale if they are eligible purchasers. If the judgment creditor purchases property at the sale, they may request the officer to credit the amount of judgment on the bid. The credit may not be applied to the costs, and the judgment creditor may be required to pay the costs prior to the credit. ***Needham v. Cooney***; ***Texas Building & Mortgage v. Morris***.

A simple calculation of a credit might look something like this:

Winning Bid by Judgment Creditor:		$16,000.00
Total Amount of Judgment Due *(with interest included)*:	-	$15,604.29
Amount Still Due on Winning Bid After Judgment Credit:		$395.71
Total from Constable's Bill of Costs:		$2,450.00
	+	$395.71
Total Amount Due to the Constable's Office from Judgment Creditor:		**$2,845.71**

*These calculations are for illustrative purposes only. Most often if a judgment creditor is the winning bidder at an execution sale, their bid will be less than the amount of the judgment.

The credit is permitted unless the property has other liens, and the proper distribution of the proceeds needs to be determined by the court. If that is the case, the officer can require the judgment creditor to pay the bid in cash to be deposited in the registry of the court. ***Needham v. Cooney***.

BEST PRACTICE

It is a best practice to discuss how credits are applied and other similar matters with the judgment creditor before the sale takes place, to ensure there is no confusion about that process. It is also very important that both the judgment debtor and creditor understand that the only thing that is being sold is the judgment debtor's interest in the property, as is. This means if there are liens on the property, the property is still subject to those liens after the sale.

The officer cannot give legal advice and should make sure that the parties understand if they want legal advice, they will need to speak to an attorney. The officer can always refer a person seeking legal advice to the self-represented litigants page on TJCTC's website, where they can find contact numbers for legal aid, TJCTC materials, and links to other providers of self-help information related to Texas court practices and procedure.

CLICK HERE

This webpage can be found here: ***https://www.tjctc.org/SRL.html***.

d. Minimum Bids in Tax Sales

Tax Code *§* 33.50 requires the court in a foreclosure suit based on a tax lien to determine market value of the property at issue. The order of sale must specify that the property may be sold to the taxing unit that brought the suit or any other person, **other than a person holding an interest in the property or any party to the suit other than the taxing unit**, for the market value listed in the judgment or the total judgments against the property, whichever is less.

If a person owning an interest in the property or any party to the suit other than the taxing unit purchases the property, they must be the highest bidder **and** the

Note on Tax Sales

If real property is sold to collect a delinquent tax on foreclosure of a tax lien, then a person owning interest in the property can only purchase it if the amount of their bid is equal to or greater than the aggregate amount of the judgments against the property, including all costs of suit and sale.
Texas Tax Code § 33.50.

bid must be equal to or greater than the total amount of judgments against the property, including all costs of the suit and sale. Failure to comply with this requirement voids the sale. *Tax Code § 33.50;* ***Clint ISD v. Cash***.

So, if a property has a market value of $100,000 and the judgment amount is $150,000, someone who was a party to the suit (other than the taxing unit) or who holds an interest in the property can only purchase the property for $150,000 plus costs (and must be the highest bidder). Any other entity, including the taxing unit, can purchase it for $100,000 or more.

3. Tips for a Successful Execution Sale Handout

Click Here to Open the Tips for a Successful Execution Sale

D. Post-Sale Procedure

1. Collecting Funds

BEST PRACTICE

Payment should always be collected immediately following the sale in a verifiable form if possible. If the winning bidder is unable to pay at the sale or changes their mind prior to paying, then the officer can re-auction the property on that same day without re-advertising.

However, if the officer doesn't learn of the winning bidder not complying with the terms of the sale until later, then they would have to go through the entire notice process again. *Rule 653.*

After a sale has occurred and the funds have been collected from the buyer, the officer must retain the officer's costs and pay the judgment creditor the amount that satisfies the judgment at the earliest opportunity. Any proceeds left over after the judgment and costs have been satisfied must be paid to the judgment debtor. *Civil Practice and Remedies Code § 34.047.*

KEY POINT

There are rare circumstances where the officer may delay payment to the judgment creditor. One is if the officer is in possession of a writ of execution against the judgment creditor. To avoid any liability on the part of the officer, they must apply the proceeds of the sale to the writ against the judgment creditor prior to paying the judgment creditor. ***Branscum v. Reese***.

The exact process of accepting the payment from the top bidder, depositing it in the constable's office bank account (or county bank account), and writing or requesting a check to be mailed to the judgment creditor will vary from county to county based on their adopted procedures.

BEST PRACTICE

It is a best practice to have a clear, written policy and procedure for accepting payment and paying out proceeds. The constable should consult with the county auditor, treasurer, and other county officials to draft their procedure.

Any money collected to pay the balance of the judgment can't be sent via mail unless the party entitled to receive it (usually the judgment creditor) or their attorney has requested it be mailed. *Rule 655.*

a. What if the Top Bidder Doesn't Pay?

If the winner of the sale does not follow through with the terms of the sale, then that person is liable to the judgment creditor for twenty percent (20%) of the value of the property as encumbered and the costs. They could also be liable to the judgment debtor for the difference if the property sells for less at the second sale. *Rule 652.*

A judgment creditor may file a lawsuit to collect against a top bidder if the buyer does not follow through with the sale if they choose to. The only role that an officer would have in the lawsuit is that of a potential witness. For more information about liability issues see ***page 47***.

2. Drafting the Bill of Sale and Deed

The bill of sale may seem like a daunting task when the officer first looks at examples, because many of the standard bills of sale include some outdated or out-of-use language

(*aforesaid, hereunto, heretofore, etc.)*. However, there is no rule that says that the bill of sale must include such antiquated terms, and a plain language document is sufficient.

The bill of sale acts as the legal document that describes how the officer had authority to sell the property, gives a description of the sale, and explains that the property (or the judgment debtor's interest in the property) is conveyed to the winning bidder.

Necessary elements of the bill of sale include:

- heading including the court ordering the sale, case name, and the cause number,
- description of the officer's authority to levy on the property,
- date of the officer's levy,
- date of sale,
- description of the judicial sale, including notice of sale,
- description of price and payment by the winning bidder,
- legal description of the property,
- name and signature of the selling officer,
- disclaimer that there are no warranties and only the judgment debtor's interest conveys, **and**
- any other disclaimers the officer believes to be necessary.

Civil Practice and Remedies Code § 34.0445.

A form for a bill of sale can be found in the Constable Forms section on the TJCTC forms page.

Deeds for Real Property

In addition to the bill of sale, a real property deed should be drafted and filed along with the service fee in the county clerk's office for recording for sales of real property.

There are different types of deeds depending on the transaction. The deed for an execution sale will generally be titled "Constable's Deed" or simply "Deed."

The judgment creditor's attorney, if they have one, may prepare a proposed deed for the officer to complete. This can be very helpful, but it is important to double-check that everything is correct.

COMMON PITFALL

One thing to look out for is forms or proposed deeds called "Warranty Deed." A constable's deed is not a warranty deed, because the property is sold without any warranties.

E. What if the Judgment is Not Satisfied?

If after an execution is complete and the seized property is sold, the amount does not satisfy the entire judgment amount, the officer may start over to execute on other non-exempt property to cover the difference as long as the writ has not expired. *Rule 651; Civil Practice and Remedies Code § 34.072(b).*

COMMON PITFALL

Rule 651 may make it seem like writs of execution are never-ending, but they do have time limits of 30, 60, or 90 days, as specified by the judgment creditor, and noted on the writ. With such expirations and the length of the required notice of sale, it is difficult for an officer to have time to execute on a single writ multiple times.

There also is not a limitation on the amount of property that can be seized when executing the writ, so an officer must determine a reasonable amount of property to seize to satisfy the judgment. The judgment creditor may seek as many writs of execution as it ultimately takes to satisfy the entire amount of the judgment and costs.

Practically, how can the officer avoid these complications? Close communication and setting expectations with the judgment creditor or their attorney are very helpful in avoiding these pitfalls.

BEST PRACTICE

If a situation arises where the officer has levied on some property and a writ is close to its expiration date, it is essential to have the judgment creditor ready to ask for a writ of venditioni exponas or another writ of execution. See ***page 33*** for a discussion of writs of venditioni exponas.

F. Return of Execution

Once the levying officer has completed their requirements under the writ of execution, they must sign off on a return of execution that states what happened during execution of the writ.

The return can be attached to the writ, or it can be a separate document. The officer may also include things like a copy of relevant correspondence, inventory, sale notice, certified mail, and bills of sale or deeds. At the very least, this information should be kept in the officer's file on the case and referenced in the return. The return should then be filed with the clerk of the court or the justice of the peace who issued the original writ of execution. *Rules 15, 16, 107, 501.3, and 654.*

BEST PRACTICE

An officer should include anything in the return of execution that was specific to the particular execution and was specifically noted in the file as extraordinary or unusual.

The return of execution must include the standard requirements:

- the case number and case name,
- the court in which the case is filed,
- a description of what was served,
- the date and time the process was received for service,
- the person or entity served,
- the address served,
- the date of service or attempted service,
- the manner of delivery of service or attempted service,
- the name of the person who served or attempted service, **and**
- any other information required by rule or law.

Rules 107(b), 501.3.

Generally, the officer will file the return of the execution in person, electronically, or by fax with the clerk of the court. However, if the writ of execution was issued out of a different county than the officer's county, the officer may return the execution by mail.

Chapter 4: Liability of the Constable

In some instances, legal action may be taken alleging liability based on an officer's actions in executing writs. In most instances, this means a civil case where a party to one of their cases sues an officer and/or the county where they work for a money judgment due to some negligence in the officer's duties. There is also a specific contempt procedure for failure or neglect in performance of a constable's official duties. *Civil Practice and Remedies Code §§ 7.001, 34.068, 34.069, 34.070, and 34.074.*

A criminal case could be filed in rare situations where the officer's conduct rises to that level. Likewise, any of the above could also result in an elected official's removal or an officer's relinquishment of their TCOLE licensure.

KEY POINT

It is inevitable that things will go wrong when executing on writs from time to time. If a constable or deputy constable acts diligently, reasonably, and keeps good records, they should be able to overcome any complaints or lawsuits against them.

It is important to note that **this chapter only applies to constables and their deputies**. The rest of this guide applies generally to constables, sheriffs, and their deputies who handle writs of execution.

A. Immunity

There are several types of immunity or protection from liability that can come into play when a party files a lawsuit against the officer (and sometimes the county) alleging wrongdoing.

Each type may or may not apply depending on the facts involved in a situation. Sometimes only one type of immunity applies, and other times multiple might apply. This can be very complex and is not one-size-fits-all.

The following types of immunity are discussed only to give officers an idea of how immunity works. An officer facing a lawsuit should speak to either their county attorney or another attorney for advice specific to the facts in their case, not the attorneys at TJCTC.

Immunity that might apply to a lawsuit against an officer for their duties related to service of process, particularly in execution, will generally fall into one of four categories:

- **Sovereign Immunity**: protection from liability for a governmental body or entity. This does not protect individual officers from liability but could protect the county an officer works for. ***DeWitt v. Harris County***.

- **Official Immunity:** an affirmative defense, sometimes described as a shield, that protects government employees from personal liability when they act in good faith and within the scope of their duties. This will apply to cases where an officer is sued in their official capacity. ***Kassen v. Hatley***.

- ***(derived)* Judicial Immunity**: protection from liability for judicial officers that may be transferred to officers performing civil process duties acting *as an arm of the court*. This may apply when officers are sued in their individual capacity. ***Dallas County v. Halsey***.

- **Statutory Immunity or Exceptions to Immunity**: statutes that determine when a person will not be liable if they comply with the statutes, acting as an exception to other types of immunity. ***Merritt v. Harris County***.

The types of immunity that come into play will be fact specific. For example, sometimes a statutory immunity will impact whether or not an officer has derived judicial immunity or official immunity.

B. Liability for Constables Related to Deputies' Conduct

An elected constable is generally responsible for their deputies when the deputy is acting in their official capacity in furtherance of their job duties. For this reason, the constable is permitted to require a deputy to post a bond. *Local Government Code § 86.011(c). F*or example, when a deputy fails to endorse a writ of execution that results in a judgment creditor not collecting on their judgment when they should have, the elected constable may be liable.

However, the elected constable is not responsible for acts committed by a deputy outside the scope of their employment or unauthorized acts. For example, if a deputy runs a red

light and causes a car wreck when they are off duty, driving a personal vehicle, the elected constable will not be liable for the deputy's negligence. ***Matthews v. Perminter***.

A trickier situation is when a deputy, while doing their job duties, goes beyond what is authorized or commits a tort. This might happen if while working a writ of execution (*something the deputy is clearly authorized to do*), a deputy assaults a judgment debtor. Generally, the elected constable won't be responsible for the unauthorized act, but if the constable in any way authorized, participated, or ratified the deputy's acts, he may be held liable. ***Rhoden v. Booth***.

COMMON PITFALL

Elected officials are most often held accountable for unauthorized acts when the office either has a policy that is not in line with current law and practices or if the official learns of the unauthorized conduct of a deputy and attempts to conceal it or fails to make changes in their policy or reprimand the deputy.

Outcomes in this area of law are based on the facts in a given case, and the analysis of these facts can be complicated due to the constable's dual role as both a law enforcement officer and civil process officer. Often, these two roles are combined or intertwined in a case.

For example, additional facts might mean that the deputy stopped acting in their civil process role and shifted to a law enforcement role. While the use of force would likely not be authorized if the deputy was executing a writ, if for some reason it turned criminal, the use of force may be authorized or there might at least be an argument that it was. This can complicate the issues of liability and muddle what authority applies to the situation.

KEY POINT

For these reasons, TJCTC suggests if a constable or deputy is facing a situation such as this, they contact legal counsel with expertise in this area of the law.

C. Best Practices to Avoid Liability

All offices and officers should have an open line of communication with other county officials, especially the county attorney's office or the attorney contracted by the commissioners court to represent the county.

Each office should keep an ongoing file on every writ of execution that is submitted to the office. This file can be electronic or paper. It is important that there are notes of any action taken to show due diligence in executing the writ.
Items to include in the file are:

- all documents, notices, deeds, and other paperwork related to the writ,
- copies of all written communication on the writ,
- notes related to any direct face-to-face contact with the parties to the writ,
- notes related to any phone calls by the officer on the writ, **and**
- any body camera recordings related to execution of the writ.

Below is a discussion of the various duties that an officer has under Texas law in regard to execution of writs. This section is intended to give constables and deputies a general overview of what rules and statutes apply to the liability of the officer and county.

BEST PRACTICE

TJCTC suggests that any officer with a potential liability issue contact their county attorney or district attorney who provides civil advice to their county. Staff attorneys at TJCTC can help with general legal questions, but it is best to have the opinion of the attorney who would represent the officer and/or county if an issue of liability arises and to ensure that the officer follows established county policies and procedures.

D. Statutory Duties of Constables

There are several Texas statutes that outline an officer's affirmative duties under the law related to civil process, and some that establish a level action or inaction that may create officer liability. These statutes are discussed below.

1. Duty to Act in Good Faith

An officer will generally not be held liable for damages if they acted in good faith when executing a writ. What does it mean to act in good faith? Civil Practice and Remedies Code Section 7.003 states that the officer acted in good faith when the officer shows that, "a reasonably prudent officer, under the same or similar circumstances, could have believed that the officer's conduct was justified based on the information the officer possessed when the conduct occurred."

If an officer does not act in good faith and with reasonable diligence under this provision, they may not be entitled to the immunity from liability discussed below and may be held liable in a lawsuit. *Civil Practice and Remedies Code § 7.003;* ***Merritt v. Harris County***.

KEY POINT

This means that it is critical to keep up with the law relating to civil process and always make diligent attempts to execute on writs of execution. Knowing and keeping in touch with other constables and their deputies can also help an officer stay up-to-date on best practices in civil process.

2. Duties Under Local Government Code Chapter 86

The main job duties, powers, and prohibitions of constables and their deputies are outlined in Chapter 86 of the Local Government Code. Many of these apply when handling writs of execution.

Every constable has two main duties:

- Execute and return as provided by law, each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer; **and**
- Attend each justice court held in the constable's precinct.

Local Government Code § 86.021(a),(e).

This same chapter also gives constables the authority to execute any civil or criminal process throughout the county in which the constable's precinct is located and in other locations as provided by law. *Local Government Code § 86.021(b)-(c).*

Rule 103 states that the constable may serve process, including citation and other notices, writs, orders, and other papers issued by the court anywhere in the state.

Prohibitions included in this rule are:

- If an officer is party to or interested in the outcome of the suit, they cannot serve any process related to that suit;

- A constable cannot retain a fee paid for serving process in the constable's official capacity other than their regular salary or compensation; **and**

- A constable cannot serve process outside their official capacity if that process may be served in their official capacity.

Local Government Code § 86.021(d).

BEST PRACTICE

The above prohibitions are part of the reason that constables must only charge fees that are approved under their fee schedule. It is a best practice to also deposit any such fee paid to the constable for service of civil process into the proper county account as soon as possible after collection.

Constable fee schedules are discussed in Chapter 3 of the *Fines, Fees, and Costs Deskbook*.

Unfinished Business

When a new constable takes office, the prior constable will transfer all unfinished business to the new constable for them to proceed with as if they had been the original officer receiving the process. *Local Government Code § 86.025.* ***The duty of a successor in office is discussed further on page 54***.

a. Duty to Deliver Money Collected

If a constable receives a bond, bill, note, or account from a person in their official capacity and that money is due to another person, for example after making demand on a writ or after an execution sale, the constable will be liable under the bond to the person to whom the money is owed if they fail to pay it. *Local Government Code § 86.023.*

KEY POINT

This duty makes it very important for a constable's office to have a clear plan of how money will be deposited into the county account and then dispersed to whom it is owed. The constable should work with other county officials like the auditor and county treasurer to ensure this process goes smoothly and can be handled promptly.

Each day that the judgment creditor is not paid, the judgment is still accruing interest.

b. Failure or Refusal to Execute Process

When a constable fails or refuses to execute process, there are two ways for the injured party to request relief – through the contempt process under Local Government Code §

86.024 or through a lawsuit under Civil Practice and Remedies Code Chapter 34 (discussed in the next section).

To proceed under Section 86.024, the injured party files a motion for contempt in the court that issued the writ of execution, because they believe that the officer owes them money due to their failure or refusal to execute process.

The officer will then be given 10 days' notice and a hearing will be set. At the hearing, the court will decide if the officer's failure or refusal caused the injured party actual damages. If the court believes that they did, a fine from $10 to $100 with costs will be issued to the officer, and that fine will be collected by the court for the benefit of the injured party. *Local Government Code § 86.024.*

This process is separate from the injured party filing a lawsuit against the officer for failure or refusal to execute process under Civil Practice and Remedies Code Chapter 34.

3. Duties Under Civil Practice and Remedies Code Chapter 34

Chapter 34 of the Civil Practice and Remedies Code provides the guidance and remedies for a civil suit based on an officer's violation of duties related to the execution and return of writs, even those found under statutes found outside of this chapter. *Civil Practice and Remedies Code § 34.076.*

This means that if a party is suing an officer because they failed to carry out, or were negligent in their civil process duties (discussed in this chapter), this chapter will apply.

KEY POINT

Civil lawsuits filed for violations of these constable's duties must be brought in the county where the officer holds office and no later than the first anniversary of the date on which the injury to the judgment creditor accrues. *Civil Practice and Remedies Code § 34.086(b),(c).*

a. Duty Related to Seized Personal Property

After an officer makes levy on personal property and takes it in their custody, the officer must take reasonable precautions to ensure that the property is not lost or damaged. If

property becomes lost or damaged when in the custody of an officer, they will be liable if it was due to the officer's negligence. *Civil Practice and Remedies Code § 34.061.* For tips on good property storage, see ***page 32*** above.

While the officer can be held liable, it is important to note that it is the responsibility of the injured party to prove both that the officer actually took possession of the injured person's property and the value of the property that was lost or damaged along with the officer's negligence. *Civil Practice and Remedies Code § 34.061(c).*

BEST PRACTICE

This duty is why any levied property in the officer's possession is best stored with a professional storage facility for that type of property rather than at the constable's office where adequate security and insurance may not be available to shield the officer and county from liability.

b. Duty of Successor Officer

If a constable dies or leaves office, the writs received by that constable pass to their successor in office. The successor has the same duties to execute the writ and should proceed as if they were the receiving officer. *Civil Practice and Remedies Code § 34.062; Local Government Code § 86.025.*

COMMON PITFALL

Constables new to office must be especially careful of this provision. It is not uncommon for a constable to find unlabeled files and boxes of paperwork in places they may not have thought they would when they start their term. If this is the case, the district clerk, county clerk, and justice of the peace or their clerk may be able to provide the constable with a list of process they have sent to their office where no officer's return has been filed. This won't, however, catch any process that has been sent to the constable from out of county or by litigants. The constable should keep good records of the state of the office when they take over and document any continuing process carefully.

c. Duty to Endorse Writ Properly

It is essential that an officer who receives a writ endorses it properly with the date and time it was received. This becomes more important when more than one writ against the

same person is received on the same day. *See Rule 636, Civil Practice and Remedies Code § 34.063,* and ***page 8***.

KEY POINT

This is one of the easiest duties for an officer to comply with if they make it routine. The small act of looking at the time and notating it on the writ could save an officer thousands of dollars. If an officer fails to endorse properly and number multiple writs received in the same day or falsely endorses a writ, the officer and their sureties are liable to the judgment creditor for actual damages suffered for the failure or false endorsement.

In order to recover at trial, the judgment creditor in execution must prove four things:

- The officer failed to properly number or endorse the writ of execution;
- The officer's failure precluded the levy of executable property owned by the judgment debtor;
- The executable property owned by the judgment debtor was not exempt from execution or levy; **and**
- The judgment creditor suffered actual damages.

Civil Practice and Remedies Code § 34.063.

d. Duty to Return Writ Properly

The officer executing a writ has a duty to ensure that the return is correct and tracks with what actually happened.

Because it is so important for the return to be accurate, the officer can file an amended or corrected return even after the original has been filed with the court. *Civil Practice and Remedies Code § 34.064.* ***See page 45 for a full discussion of what must be included in the officer's return of execution***.

KEY POINT

When an officer has notice of a defect or mistake on that officer's return, the officer **must** amend or correct the return within 30 days. A failure to make a correction to the return can result in the officer being held in contempt of court. *Civil Practice and Remedies Code §§ 7.001(b), 34.064.*

BEST PRACTICE

If the office has more than one employee, a best practice is to have another person quickly review each return to make sure any errors are caught before it is filed with the court.

e. Duty to Levy and Sell

If the judgment debtor has property that can be levied on and sold, then the officer must execute the writ, levy on, and sell the property located in their county. *Civil Practice and Remedies Code § 34.065, Rule 637.*

KEY POINT

If the officer fails or refuses to levy on or sell property subject to execution and a levy and sale could have taken place, the officer and their sureties may be liable to the judgment creditor on an execution for actual damages suffered. *Civil Practice and Remedies Code § 34.065.*

If the judgment creditor files a lawsuit under this section, they will have the burden to prove the following in order to collect a judgment:

- The judgment creditor has a valid judgment against the judgment debtor;
- The writ of execution was issued to the judgment creditor;
- The writ was delivered to the officer;
- The judgment creditor's judgment was unpaid and unsatisfied;
- The property to be levied on was subject to execution (*see below for definition*);
- The officer failed or refused to levy under the writ (*see below for definition*); **and**
- The amount of actual damages suffered.

Civil Practice and Remedies Code § 34.065(b).

For purposes of a lawsuit under this section, for the judgment creditor to prove that **the property in question was property to be levied,** they must prove:

- The judgment debtor owned the property;
- The property was accessible to the officer under the law;
- The property was located in the officer's county; **and**
- The property was not exempt from execution.

Civil Practice and Remedies Code § 34.065(c).

For purposes of a lawsuit under this section, for the judgment creditor to prove that **an officer failed or refused to levy under the writ,** the judge must also make a finding that:

- The judgment creditor specifically informed the officer that the judgment debtor owned the property in question;
- The property was subject to execution; **and**
- The creditor directed the officer to levy on the property.

Civil Practice and Remedies Code § 34.065(d).

Formula for Damages Under Section 34.065

In a lawsuit under this section, actual damages are equal to the amount of money the property would have sold for at a constable's sale minus any costs of sale, commissions, and additional expenses of execution.

f. Improper Sale

If an officer sells property without giving the proper notice or in a manner other than that outlined in the Civil Practice and Remedies Code and the Rules of Civil Procedure, the officer may be liable to the injured party, either the judgment debtor or judgment creditor depending on the case.

However, an officer will only be liable for selling property under writ of execution improperly if there are actual damages. The party injured by the improper sale must prove that the sale was not proper and any actual damages that they suffered. *Civil Practice and Remedies Code § 34.066.*

The reason for this section is that the legislature wanted to give a party who lost money due to an officer's lack of following the procedures to hold a proper sale, a way to recover without making execution sales void and further causing damages to the purchaser of the sale. ***Rogers v. Moore***.

E. Criminal Liability

If an officer violates one of their statutory duties related to civil process or otherwise acts outside of their authorized duties as peace officers, a prosecutor or local grand jury may find probable cause that a criminal offense was committed.

While this section is not exhaustive, it is a limited discussion of the most common criminal liability related to service of writs of execution and other process.

1. Abuse of Official Capacity and Official Oppression

KEY POINT

Abuse of Official Capacity and Official Oppression are offenses that involve abuse of a public office found in Chapter 39 of the Texas Penal Code that may only be committed by public servants. These offenses may arise when an officer uses the status of their job either to benefit personally or intentionally violate the rights of others.

Abuse of Official Capacity ranges from a Class C misdemeanor to a first-degree felony, depending on the facts of the case. Official Oppression is generally a Class A misdemeanor; however, it can be a higher-level offense if certain elements are met.

Even if these cases are filed as misdemeanors, the prosecutor with felony jurisdiction will handle these cases, because the district courts and criminal district courts have original jurisdiction. *Penal Code §§ 39.02, 39.03; Code of Criminal Procedure Art. 4.05.*

A public servant commits the offense of Abuse of Official Capacity if, with intent to obtain a benefit or with intent to harm or defraud another, they intentionally or knowingly:

- Violate a law relating to the public servant's office or employment; **or**
- Misuse government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

Penal Code § 39.02.

A public servant acting under color of their office or employment commits an offense if they:

- Intentionally subject another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that they know is unlawful;

Acting Under Color of Office or Employment

For the purposes of this section, this means that the public servant acts or purports to act in an official capacity or takes advantage of such actual or purported capacity. *Penal Code § 39.03.*

- Intentionally deny or impede another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing their conduct is unlawful; **or**
- Intentionally subject another to sexual harassment.

Penal Code § 39.03.

2. Assaultive Offenses

Assaultive offenses, like Assault Causing Bodily Injury and Aggravated Assault, among others, are set out in Texas Penal Code Chapter 22. An officer could be charged with one of these offenses if unwarranted or excessive force is used in executing a writ or other civil process.

KEY POINT

An officer must remember that there are limitations in executing civil process relative to the seizure of property. No civil rules or statutes allow the use of force to levy property in writs of execution. Officers must remember that they are executing civil process rather than acting in their law enforcement role.

A peaceful entry to seize the property is required, but that is not to say if the situation changes, an officer cannot change their perspective from civil process to criminal investigation.

BEST PRACTICE

Officers must also comply with all office and county policies on the use of force. If any officer is not sure what their official policies are, they should contact their supervisors and county attorney to make sure that they understand any and all policies in place. If there is no policy in place, the elected official should consider working with other law enforcement offices and elected officials to develop such a policy. It is a best practice to have such policies in place.

3. Criminal Trespass

Criminal Trespass and other trespass-related crimes are set out in Texas Penal Code Chapter 30. These offenses could be charged in situations where an officer enters property without permission to serve process or make demand prior to executing a writ.

Generally, a person commits Criminal Trespass when they enter or remain on or in the property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle without effective consent and the person:

- had notice that the entry was forbidden; **or**
- received notice to depart but failed to do so.

Penal Code § 30.05.

There are many definitions and defenses located in Chapter 30, and most peace officers have a general understanding, but should reference the Penal Code if they have specific questions.

KEY POINT

It is important to remember that civil process is part of a civil case, and courts have the power to hold a party in contempt if they do not comply with a court order, so the officer will not be able to use the same force as in a criminal case to execute civil process, both against people and property.

There is a Supreme Court case that outlines the difference between public and restricted areas at business, and an officer should keep this in mind when serving civil process at businesses. It holds that an officer serving civil process cannot force entry into a restricted area at a business. Likewise, a person who refuses an officer entry to a restricted area at a business cannot be charged with the Class C misdemeanor offense of Preventing Execution of Civil Process under Section 38.16 of the Penal Code. ***Tex. Att'y Gen. Op. GA-0113***; ***Gateway 2000, Inc. v. Limoges***.

Chapter 5: Resources

A. TJCTC Resources

The TJCTC Constable Resources page may be accessed at the following link: ***https://www.tjctc.org/tjctc-resources/Constable-Resources.html***.

Forms may be found on the TJCTC website at the following link: ***http://www.tjctc.org/tjctc-resources/forms.html***.

B. Statutes and Rules

The Texas Constitution and Statutes can be accessed online here: ***https://statutes.capitol.texas.gov/***.

The Texas Rules of Civil Procedure and Texas Rules of Evidence can be found on the Texas Judicial Branch website at: ***http://txcourts.gov/rules-forms/rules-standards/***.

Chapter 6: Appendix of Cases and Authority

A. Cases

Blount v. Dutton, 967 S.W.2d 955 (Tex. App. –Beaumont 1998, no pet.).
Borden v. McRae, 46 Tex. 396, 1877 WL 8543 (1877).
Brainard v. Trinity Universal Ins. Co., 216 S.W.3d 809 (Tex. 2006).
Branscum v. Reese, 219 S.W. 871 (Tex. Civ. App. Fort Worth 1919, no writ).
City of San Antonio v. City of Boerne, 111 S.W.3d 22, 28 (Tex. 2003).
Clint Independent School Dist. v. Cash Inv., Inc., 970 S.W.2d 535, 538 (Tex. 1998).
Dallas County v. Halsey, 87 S.W.3d 552, 554 (Tex. 2002).
Davis v. Howe, 213 S.W. 609 (Tex. Comm'n App. 1919, judgm't adopted).
Denson v. Taylor, 132 S.W. 811 (Tex. Civ. App. 1910).
DeWitt v. Harris County, 904 S.W.2d 650, 653 (Tex. 1995).
Felts v. Bell County, 132 S.W. 123 (Tex. 1910).
Gateway 2000, Inc. v. Limoges, 552 N.W.2d 591 (S.D. 1996).
Hand & Wrist Center of Houston, P.A. v. Republic Services, Inc., 401 S.W.3d 712 (Tex. App.—Houston (14th Dist.)).
In Re Poer, 76 B.R. 98 (Bankr. N.D. Tex. 1987).
Kassen v. Hatley, 887 S.W.2d 4, 8 (Tex. 1994).
Matthews v. Perminter, 162 S.W. 1180 (Tex. Civ. App. Texarkana 1913, no writ).
Merritt v. Harris County, 775 S.W.2d 17 (Tex. App.—Houston [14th Dist.] 1989, writ denied).
Needham v. Cooney, 173 S.W. 979 (Tex. Civ. App. El Paso 1915, writ ref'd).
Reyes v. Barrasa, No. 04-12-00673-CV (Tex. App. –San Antonio 2013, pet. denied)(mem. op).
Rogers v. Moore, 94 S.W. 13 (Tex. Civ. App. 1906), aff'd 97 S.W. 685 (1906).
Rhoden v. Booth, 344 S.W.2d 481 (Tex. Civ. App. Dallas 1961, writ ref'd n.r.e).
Smith v. Harvey, 104 S.W.2d 938 (Tex. Civ. App.—San Antonio 1937, writ ref'd).
Texas Building & Mortgage Co. v. Morris, 123 S.W.2d 365 (Tex. Civ. App. Beaumont 1938), writ dismissed w.o.j., (Feb. 15, 1939).
Warnock v. Marin, 93 S.W.2d 793 (Tex. App. – El Paso, 1936, no writ).

B. Attorney General Opinions

Tex. Att'y Gen. Op. GA-0113 (October 8, 2003)